

Marriage in North Carolina

Perhaps the most important decision one ever makes is the decision to marry. Certainly it greatly affects a person's personal happiness and future. But society at large also has an interest in marriage because marriage is the foundation of the family. To protect society's interest in the institution of marriage, therefore, each state has enacted laws designed to ensure both the legality and the stability of the marriage union.

Many couples view marriage as a serious religious or spiritual commitment. It is also a legal contract. Marriages are usually entered into on the basis of a couple's love, faith, and trust in each other, not on the basis of carefully drafted and negotiated documents. Nevertheless, marriage has many legal consequences that people who are about to marry should realize.

All of the rights and obligations of marriage do not end just because the marriage does. Each spouse may have claims against the other for child custody and child support, claims to property of the other, or claims to support from the other. It is good to think about these potential claims before you enter marriage. You have the right to modify many of the obligations imposed by the law by entering into a premarital agreement.

The purpose of this pamphlet is to help you understand North Carolina marriage laws and some of the legal matters that may affect the lives of any married couple.



This pamphlet was prepared as a public service by the Communications Committee and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and could affect the information in this pamphlet. If you have specific questions with regard to any matters contained in this pamphlet, you are encouraged to consult an attorney. If you need an attorney, please contact the North Carolina Lawyer Referral Service, a nonprofit public service project of the North Carolina Bar Association, via phone (1-800-662-7660; local 677-8574) or online (www.ncfindalawyer.org).

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Eligibility

North Carolina law establishes legal limitations concerning marriage that deal with age and blood relationships. In general, one must be at least 18 years of age to get married in this state. Minors 16-18 may marry with their parents' or guardians' consent. Persons between 14-16 years of age may marry if the female is pregnant or gives birth and there is a District Court order authorizing the marriage. It is unlawful for persons under 14 to marry.

The law discourages marriage by persons who are in the same family. First cousins may marry, but persons who are more closely related than first cousins may not.

Common law marriage or marriage by consent is not recognized in North Carolina. However, common law marriage may be recognized by North Carolina if the parties have engaged in behavior in another state which would be recognized by that state as common law marriage. Marriage between individuals of the same gender is not recognized as valid in North Carolina, regardless of where the marriage was obtained.

The License

You must obtain a marriage license before you may be legally married – whether in a civil or religious ceremony. A marriage license can be secured from any Register of Deeds office. No waiting period is required before the ceremony takes place, however, the license is only good for 60 days after it is issued. Obtaining a license by misrepresentation is a misdemeanor.

Premarital Agreements

Parties about to marry may enter into a written contract before marriage with respect to a variety of matters so long as the contract meets the requirements of North Carolina law. Such a contract then becomes effective upon marriage of the parties. A premarital agreement cannot eliminate a child support obligation. If you are contemplating marriage and you have children or obligations from a prior marriage, have an expectation of significant gifts or inheritances from third parties, own property or wish to provide for disposition of assets and liabilities or wish to limit exposure to future spousal support obligations, it is wise to consult an attorney with an expertise in marital law before you marry. Keep in mind that these agreements can be complex in some circumstances, so they are best examined and drafted well in advance of the date of the marriage.

The Ceremony

Marriage ceremonies may be either religious or civil. A religious ceremony is performed by an ordained minister or is performed in accordance with the recognized practices of any religious denomination or federally or state recognized Indian

Nation or Tribe. A civil ceremony is conducted by a magistrate, the only civil officer authorized to perform marriages. There must be two witnesses at any marriage ceremony, whether it is civil or religious.

The Marriage Certificate

After a marriage ceremony, whoever performs the ceremony is required to give the couple a marriage certificate. This certificate includes the couple's names and addresses, the date of the marriage, the county that issued the marriage license and the date of the license. The minister or magistrate must sign the license and return it to the register of deeds who issued the license; this is the official record of the ceremony.

Estate Planning and Inheritance

A new husband and wife automatically have new legal rights and responsibilities. Each spouse is now eligible to share in the estate of the other. As soon as children are born to the marriage or legally adopted, they also will become eligible to share in the estate of their parents. Stepchildren are not treated as children of the marriage unless adopted.

If you are contemplating marriage, you should consider writing a will. If a person dies without a will, state laws govern how that person's income and property will be distributed. Regardless of the amount of income or property involved, it is wise for each spouse to have a will to govern distribution of the estate and to take advantage of federal and state laws favorable to those who are married.

See the "Protecting Your Assets: Wills, Trusts and Powers of Attorney" pamphlet in this series for more information.

Name Change

While it is possible for a person to change his or her name by the common law method of consistent and non-fraudulent use, the recommended method is to obtain a name change in accordance with the North Carolina statutes. A wife usually assumes her husband's last name. However, she is under no legal obligation to do so, and she may retain her maiden name at the time of marriage with no formal legal proceedings. But if a wife who took her husband's name wants to resume her maiden name, she must petition the Clerk of Court in the county where she resides for the legal name change. A woman who is divorcing her husband may resume her maiden name by requesting this change in the divorce proceedings. If she wishes to take back her maiden name at some date before or after the divorce settlement, she must petition the court for the restoration of her name. She should contact the clerk for the necessary forms.

Sometimes a married couple may wish to assume a combined or hyphenated name that includes both of their names. The wife

may assume this name at the time of marriage with no formal legal proceedings, but it is recommended that the husband petition the court for a legal name change.

In any name change, it is important to keep all official records up to date. Any name change should be communicated to all government agencies that might be affected — such as the Social Security Administration, the Department of Motor Vehicles, and the Vital Statistics Office of the Department of Human Resources. Such private institutions as your bank, insurance company, employers and others should also be notified of changes in your name and marital status.

Insurance

If you have life or health insurance and then marry, you should consider what changes should be made in your insurance program. All insurance companies that carry policies on you that may be affected by this change in status should be notified. Also, perhaps the beneficiaries of your life or health insurance policies need to be changed or expanded to include your spouse.

Income Tax Status

A married couple is entitled to file a joint federal income tax return if they were married at the end of the tax year. Filing a joint tax return can sometimes reduce taxes, but the financial advantage of the joint return varies with each couple's individual financial situation, and filing a joint return renders both parties jointly and severally liable on the return.

Legitimacy and Illegitimacy

A child born to a husband and wife is legitimate. A child born to a couple who were not married when the child was born is deemed illegitimate under state law. If the parents of a child born out of wedlock later marry each other, the child becomes legitimate. A new birth certificate will be issued by the Registrar of Vital Statistics upon presentation of a certified marriage certificate. A child of a marriage that is prohibited by law (e.g., a bigamous marriage) is also legitimate.

Adoption

When a child is adopted, he has the same legal status as a natural child, including the right to financial support from his parents and the right to inherit property from them. The biological parents of a child who has been adopted are no longer legally his parents.

Whether to adopt is an important decision for both the child and the adoptive parents. All of the legal and social aspects of an adoption should be discussed with the lawyer who handles the adoption and with the social agency responsible for the placement.