

LAW OFFICES OF PHYLLIS LAMBERT

P. O. Box 93342  
Southlake, TX 76092  
[p.lambert@phyllislambert.com](mailto:p.lambert@phyllislambert.com)  
[www.phyllislambert.com](http://www.phyllislambert.com)

Direct (817) 988-9381

Fax (214) 276-7566

**Common Misconceptions About Texas Family Law – THESE ARE WRONG!**

**1. My spouse and I are separated.**

The truth is, although some states have laws providing for legal separation, Texas does not recognize legal separation. In Texas, you're either married or you're not. You may not be living with your spouse anymore, but you are still married until you get a formal divorce.

**2. If you live together in Texas for seven years, you're married under common law.**

The truth is, Texas is among the few states that still recognize common law marriage (Texas calls it an "informal marriage"), but living together for seven years won't do it.

In order to be married under common law in Texas, an informal marriage can be established either by declaration (registering at the county courthouse without having a ceremony), or by meeting a three-prong test showing evidence of (1) an agreement to be married; (2) cohabitation in Texas (notice that no length of time is specified); and (3) representation to others that the parties are married. A 1995 update adds an evidentiary presumption that there was no common law marriage if you don't file a suit for proof of common law marriage within two years of the date the parties stopped living together.

The bottom line is that 1) living together in and of itself for seven years doesn't create a common law marriage in Texas and 2) if you do intend to be married, it's easier to just go get married formally than to count on being married under common law.

Be careful, though, if you intend to cohabit and not be married under common law. Before you do, you should consider signing a written cohabitation agreement that clearly establishes the fact that you do not intend to be married under common law. Once you cohabit, don't introduce your significant other to friends or family as "my husband" or "my wife," and don't allow them to do the same for you. Don't file joint federal income tax returns, and don't take out loans as "husband and wife." Don't change the last name on your driver's license or any other documents to that of your significant other, and don't let them change their name to yours. Some unwary cohabitants have made these mistakes, which constitute the "representation to others" prong of the statute, and found themselves married under common law without realizing it.

Also, if you think you were married under common law and you and your common law "spouse" split up, you have to file a suit to prove you were married within two years of the date you split up or you are going to have a hard time proving you were married under common law.

Finally, once you are married under common law, there is no common law divorce. You have to file for divorce and get a decree signed by a judge that establishes the fact that you are divorced. Otherwise, common law marriage continues until you do.

As an aside, I can't find the true source of why people think that living together for seven years makes people married under common law. The "seven years" portion of the myth possibly originated from the 1877 Supreme Court case addressing the issue of common law marriage, *Meister v. Moore*, 96 U.S. 76 (1877), where the parties, William and Mary, happened to live together for seven years. However, their living together for seven years did not in and of itself establish common law marriage, and none of the states that presently has laws allowing for common law marriage stipulate any time period for living together.