



Common Law Marriage—Abolished?

By Kate Vetrano

Common law marriage is one of the most misunderstood legal doctrines—by lawyers and the public alike. The Commonwealth Court abolished it purely prospectively on September 17, 2003 in [PNC Bank Corporation v. Workers' Compensation Appeal Board \(Stamos\)](#) (2002 WL 32165830).

To enter into a common law marriage in Pennsylvania, the couple must simply declare their intentions to be married to each other – *verba in praesenti* – words in the present tense to take the other as a spouse.

Some claims for benefits arise when the couple *divorces* with one spouse claiming rights to equitable distribution of property and alimony while the other maintains that they were never married. Other claims arise when one spouse dies and the surviving spouse files for benefits from a pension plan or an estate, for social security, or for worker's compensation benefits.

In 1998, the Pennsylvania Supreme Court in [Staudenmayer v. Staudenmayer](#) (552 Pa. 253) declined to abolish common law marriage although the court was very critical of the doctrine and recognized that it was a "fruitful source of perjury and fraud." The Supreme Court noted abundant judicial criticism of common law marriages that have long been viewed with hostility.

In [Stamos](#), PNC Bank's employee died in an airplane crash while working and her common law husband brought claim for worker's compensation benefits. The bank appealed the grant of benefits to the Commonwealth Court and argued that the doctrine of common law marriage should be abolished. The Commonwealth Court believed itself to have been "called upon to address the issue left open by our Supreme Court in [Staudenmayer](#)". Although the court, an intermediate appellate court, questioned whether it had the authority to decline to follow a common law rule which the Supreme Court had left in place, it ultimately felt that in an appropriate case an "anticipatory overruling" may not be only permissible but an obligation.

The court was struck by "a system that allows the determination of important rights to rest on evidence fraught with inconsistencies, ambiguities, and vagaries." Many litigants tend to view common law marriage as "something rather like a legal raincoat they can put on and take off as changing circumstances dictate." A couple may hold themselves out as married for one purpose such as when applying for benefits, or as single for other

purposes. The court did not want to “place its imprimatur on a rule which [seemed] to be a breeding ground for such conduct and its attendant disrespect for the law itself. ”

The Commonwealth Court will henceforth only recognize marriages entered into pursuant to the Marriage Law, although the holding was not applicable to the claimant in the instant case. The dissenting justice disagreed that an intermediate court could determine that a common law right shall no longer exist because the court was usurping the function of the legislature. Even the Supreme Court felt it was more prudent to await guidance and action from the state legislature.

One court in Pennsylvania has abolished common law marriages after September 17, 2003. What happens to all the marriages under common law created before that date? The Commonwealth Court has in effect invited the legislature to act with this bold decision abolishing a doctrine that is recognized by our legislature by statute (23 Pa. C.S. 1103).

Determination of marital status should not be left to the courts. Inconsistent positions of the couple on the marriage, the possibility of fraud to gain benefits, and lack of a real purpose for common law marriages, all may lead to the conclusion that official records of a marriage should be the method of deciding who is married and who is not. Since many people could be relying on their marital status under common law, the Commonwealth Court correctly decided that the abolishment of the doctrine could not have retroactive effect. However the vagaries of marital status under common law need to be addressed. Couples who believe themselves married under common law should be required to register their marriages with the state by filing a certificate of marriage providing the date of marriage and the same information required for a statutory marriage. Such a registry recording *all* marriages would avoid future litigation over marital status with the attendant opportunity for fraudulent claims.

Kathleen B. Vetrano practices family law at Vetrano & Vetrano in King of Prussia, Pennsylvania (www.VetranoLaw.com).