

MARRIAGE IN NORTH CAROLINA

Marriage is a serious commitment. Marriage is also a legal contract. Marriage results in many legal consequences that people contemplating marriage should address before getting married. The best way to be assured that you have addressed these relevant issues is to consult with an attorney who has expertise in family law. You should do this well in advance of marrying as it could take several weeks, or even months, to draft and finalize necessary documents to address your relevant legal needs.

Prior to contemplating marriage, you may not have previously had any reason to consult with an attorney; however, your marriage changes your legal status in many ways. When either spouse has children, or a dependent spouse from a prior marriage, obligations for past and future family support can be complex. When one party has significantly more assets than the other prior to marrying, a premarital agreement should be considered.

Before you get married, you should decide how to best handle your separate property so that you do not unintentionally convert it to marital property. Separate property is defined as property that one spouse owned before getting married. You should also be aware of North Carolina's laws regarding property you may receive through an inheritance or through a gift once you are married. What about estate matters? Do you need a new will prior to getting married or immediately after marrying?

Making use of an experienced attorney's advice prior to marrying may help you avoid future problems and unnecessary, costly litigation.

REQUISITES AND CAPACITY TO MARRY

Marriages, to be valid in North Carolina, must be between adults, including those of the same gender, who both consent to the marriage. Marriages between individuals of the same gender were not recognized in North Carolina prior to October 10, 2014. On that date, a U.S. District Court judge ruled that North Carolina's ban on same-sex marriage was unconstitutional. The U.S. Supreme Court ruled that same-sex marriage bans were unconstitutional on June 26, 2015, which legalized same-sex marriage in all states. This represented a dramatic shift in the law surrounding marriages and leaves a lot of questions unanswered. Many of the laws referring to marriage still use the term Husband and Wife or male and female. Due to the lack of clarity on many issues surrounding same-sex marriage, consultation with an attorney is advised if you are a same-sex couple seeking to marry.

One area of confusion and uncertainty is the recognition of out-of-state same-sex marriages which were valid in the issuing state prior to the court decisions declaring North Carolina's ban on same-sex marriage unconstitutional. Although there is no answer from an appellate court in North Carolina at this time, it is generally accepted that out-of-state same-sex marriages which were valid in the issuing state will now be recognized in North Carolina, even if the marriage occurred prior to the court decisions. This does not apply to civil unions or domestic partnerships.

AGE TO MARRY

All unmarried people who are 18 years or older may lawfully marry. Unmarried people who are over 16 years of age, and under 18 years of age, may marry so long as a person or agency having legal custody of the underage party gives written consent to the marriage. Under very limited circumstances, unmarried people over 14 years of age and under 16 years of age may marry.

ADDITIONAL REQUIREMENTS

Any two people seeking to be married must not have a closer relationship than first cousins. You do not have to be a resident of North Carolina to get married in North Carolina.

LICENSE TO MARRY

Before you get married you must apply for and receive a marriage license. Marriage licenses are obtained from the Register of Deeds office of the county where the marriage is to take place. Obtaining a marriage license by misrepresentation, or false pretenses, is a misdemeanor criminal offense.

In order to obtain a marriage license, you must show proof of age in North Carolina by providing your driver's license, military or State ID, passport, or certified birth certificate. You will also need to show proof of your Social Security number. This can be done by submitting a W-2 form, payroll stub, or any official document with your Social Security number on it. If you have previously been married, the date of divorce or date of your prior spouse's death must be provided. The fee for a marriage license is presently \$60.00 – cash only. This cost can change; make sure to check with the County Clerk's office in advance.

Once a marriage license is obtained, you may be married immediately. No waiting period is required. You must marry within 60 days of the license being issued or the license expires. In order to be validly married, you must have a justice of the peace or a religious clergyman sign your marriage license and that person must also return the license to the Register of Deeds office within 10 days.

WHAT TO CONSIDER BEFORE MARRYING

THE MARRIAGE CEREMONY

There are two types of marriage ceremonies: religious or civil. A religious ceremony must be performed by an ordained minister. Marriages performed by ministers of Universal Life Church after July 3, 1981 are not valid marriages. A civil ceremony is performed by a magistrate. There must be two witnesses at the marriage ceremony. Once you are married, whoever performed the marriage ceremony is required to provide you with a marriage certificate. The certificate must include the married couple's names, addresses, the date of the marriage, the county that issued the marriage license, and the date the license was issued. You can also obtain a copy of your marriage certificate at any time by contacting NC Vital Records at www.vitalrecords.nc.gov or calling 919-733-3000. The minister or magistrate performing the ceremony must sign the marriage license you obtained prior to the ceremony and return it to the Register of Deeds office within 10 days of the ceremony.

WHAT TO CONSIDER BEFORE MARRYING

Premarital Agreements: A Premarital Agreement is a written contract between two people who are about to be married. A premarital agreement becomes effective upon marriage. These agreements can set the terms of possession of assets, treatment of future debt and earnings, control of the property for each party, and the possible division of property if the marriage were to be dissolved at a later date. These agreements are more common if either or both parties have substantial assets, children from a prior marriage, potential inheritances, high incomes, or have previously been through a divorce. These agreements can be very complex and both sides should have independent legal counsel to advise them in the drafting and review of the prenuptial agreement prior to it being signed. The spouses-to-be should not use the same attorney.

Estate Planning, Wills, Inheritance: You and your potential spouse should have wills that reflect your wishes and needs. Discuss these wishes and needs with your potential spouse. Then, prior to marriage, consult with a qualified attorney in order to put in place the proper legal documents to effectuate your wishes and needs should you die.

Once married, spouses automatically have the right to share in each other's estates. If you have children from a prior marriage, and want them to inherit specific bequests from your estate, then you should give serious consideration to having a will. If children are born during the marriage, or adopted, they will also be entitled to share in the estate of their parents.

Once drafted, your will should be reviewed periodically to meet changing needs and circumstances. If an individual dies without a will, state laws then control how that person's property will be distributed to his/her heirs. In order to ensure that your estate is distributed according to your desires and your spouse's desires, you should consider having a will.

Legitimacy of Children: A child born to a husband and wife is deemed legitimate and the husband is presumed to be the child's natural father. If a couple are not married and have a child, the child is considered "born out of wedlock" under North

Carolina law and is not entitled to many protections afforded legitimate children. If the couple later marry each other, the child then becomes legitimate. If they desire, the now-married couple can have the Registrar of Vital Statistics issue a new birth certificate for the child.

Same-Sex Couples: This is an area where the laws have not been changed after the recognition of same sex marriage. The law still refers to father and mother. If you are a same-sex couple looking to have or adopt a child, you should consult a qualified attorney.

Name Change: Prior to marrying, a couple will need to address the issue of "what to call themselves". Traditionally, wives have assumed the husband's last name. This is not a legal requirement. At the time of marriage, the wife can assume her husband's name without a formal legal proceeding. The husband can assume the wife's last name and couples have also been known to combine or hyphenate their last names. A more formal, court-ordered process should be considered in the latter two incidences. This is another area of the law that has been affected by same-sex marriage, but the laws have not yet been changed.

Separate verses Marital Property: Property that a spouse owns prior to getting married (land, stocks, bonds, savings/checking accounts, retirement accounts, or even a business) is generally considered to be that spouse's separate property, even after marriage. Property acquired during the marriage is generally considered marital property. If spouses divorce, marital property is divided equitably between them. Separate property remains each respective spouses' separate property.

Generally, property that is acquired by gift or inheritance after marriage is also considered separate property. If this property consists of real estate, you should be aware of how refinancing or changing the deed to such a property can also unintentionally convert this property to marital property.

Property that is acquired in exchange for separate property usually remains separate property. For example, if you own a car prior to marriage and trade it for a different car after marriage, the vehicle acquired after marriage typically remains your separate property.

You should also know that using your separate property for marital purposes during the marriage can change the classification of the property from separate to marital property. Once separate property is converted to marital property it remains marital property. How do you keep your separate property from becoming marital property? This is a complicated issue and a person contemplating marriage, or newly married, should consult an attorney experienced in family law matters.

The **North Carolina Advocates for Justice** is a nonprofit, nonpartisan association dedicated to protecting people's rights through community, education and advocacy. This brochure is presented as a courtesy of NCAJ's Family Law Section.

If you have further questions about the information discussed in the brochure, you should consult an attorney. It is suggested that you write down all questions prior to meeting with an attorney to ensure that your questions are answered directly and promptly.

If you need to find a family law attorney to assist in a child custody or child support case in North Carolina, you may search for attorneys in your county at www.ncaj.com under "Find A Lawyer".