* * * Certificate of Biblical Marriage * * *

In the Presence of the Almighty Yahweh & All His Holy Angels,
Of the Holy Alliance of the Freeborn of Heaven & Earth:

In the County of x

In the State of x

And Nation of x

x.....x

Are Hereby Considered MARRIED,
According to the Biblical Custom of Adam & Eve,
and by Biblical Custom of the People of Israel;
Even with His & Her Two Witnesses
(by two witnesses is a thing known~)

x.....x

x.....x

x.....x

In The Restored True & Original Hallowed Names of Father & Son;
which Son forever Remains the Nazarene, from Out of Galilee, Out of Israel;
In Order to Confirm Our Rights to the Sanctity of the Institution of Marriage;
Even by Decree of the First Cosmic Authority of Life & Truth,
Author of Love, and ultimate Source of Power & Wisdom, even
He Who Calls Himself Yahweh, Creator & Sovereign of Earth & Cosmos!

* * * We be Considered before Yah as Husband & Wife. * * *

Halleluiah!, Glory to the Most High Yahweh!

Here is the holding from the decision of the United States Supreme Court in Meister v. Moore 96 US 76 (1877):

"As before remarked, **the statutes are held merely directory; because marriage is a thing of common right...**" [emphasis added]

Directory - A provision in a statute, rule of procedure, or the like, which is a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed. Black's Law Dictionary, 6th Ed.

The statutes to which the Court was referring were statutes in Massachusetts and Michigan that purported to render invalid marriages not entered into under the term of written [statutory] state law.

While the various state courts have prattled on for almost 200 years about what the laws of their states do and do not allow concerning marriage, the **US Supreme Court cut straight to the heart of the issue in declaring that statutes controlling marriage can only be directory because marriage is a common right, which is not subject to interference or regulation by government.** Or phrased another way, the God-given right to marry existed prior to the creation of the states or the national government, and therefore it is beyond their purview to alter, modify, abolish, or interfere with, such a right.

In its decision in Meister, the Court refused to even examine the numerous state court decisions prior to making its own decision. While this was assailed by legal commentators of the day as an egregious choice, **we can only agree with the Court in its choice because a state court opinion has no authority to affect a fundamental right that existed antecedent to the formation of the state.**

It should be noted that **Meister has never been reversed and is still controlling case law concerning the fundamental right to marry without state interference**.

Meister v. Moore

96 U.S. 76 (1877)
Annotate this Case

Syllabus
Case

U.S. Supreme Court
Meister v. Moore, 96 U.S. 76 (1877)

Meister v. Moore

96 U.S. 76

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Syllabus

This was ejectment, brought Oct. 9, 1873, by Bernard L. Meister, for the possession of certain lots of ground in Pittsburgh, Pa.

Both parties claimed under William Mowry, the plaintiff, as the alienee of the alleged wife and daughter of said William, and the defendants, as the vendees of his mother, in whom the title of the property vested, if he died unmarried and without issue.

The plaintiff, to maintain the issue on his part, introduced evidence tending to prove that sometime in the year 1844 or 1845, said William went from Pittsburgh to the Saginaw Valley, in the State of Michigan, and there became acquainted with Mary, the daughter of an Indian named Pero; that in the latter part of the year 1845, Mowry and Mary were married, and thereafter lived and cohabited together as man and wife, and had one child born to them, named Elizabeth; that said Mowry died intestate sometime in 1852 at Pittsburgh, leaving no issue living at his death save said Elizabeth, who afterwards married one Isaacs; and that they, Aug. 27, 1873, conveyed the demanded premises to the plaintiff.

The defense was:

1. That the plaintiff's evidence, even if true, did not, under the statute of Michigan regulating the solemnization of marriage, establish a valid marriage between William Mowry and the Indian woman.

2. That that evidence utterly failed to establish a valid marriage at common law.

The Revised Statutes of Michigan upon the subject of the

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solemnization of marriages, adopted in the year 1838 and in force at the time of the alleged marriage, enact as follows:

"SEC. 6. Marriages may be solemnized by any justice of the peace in the county in which he is chosen, and they may be solemnized throughout the state by any minister of the gospel who has been ordained according to the usages of his denomination and who resides within this state and continues to preach the gospel."

"SEC. 8. In the solemnization of marriage, no particular form shall be required except that the parties shall solemnly declare, in the presence of the magistrate or minister and the attending witnesses, that they take each other as husband and wife. In every case there shall be at least two witnesses, besides the minister or magistrate, present at the ceremony."

"SEC. 14. No marriage solemnized before any person professing to be a justice of the peace or a minister of the gospel shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority in such supposed justice or minister, provided that the marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage."

"SEC. 15. The preceding provisions, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among the people called Friends, or Quakers, nor marriages among the people called Menonists, but such marriages may be solemnized in the manner heretofore used and practiced in their respective societies."

Rev.Stat. 1838, pp. 334, 335.

The court below charged the jury that the validity of the alleged marriage must be determined by the laws of Michigan, and that if they found that neither a minister nor a magistrate was present thereat -- and such was the plaintiff's proof -- it was invalid under the statute of that state, and their verdict should be for the defendants.

There was a verdict for the defendants. Judgment was rendered accordingly, whereupon the plaintiff brought the case here.

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MR. JUSTICE STRONG delivered the opinion of the Court.

The learned judge of the circuit court instructed the jury that if neither a minister nor a

magistrate was present at the alleged marriage of William A. Mowry and the daughter of the Indian Pero, the marriage was invalid under the Michigan statute, and this instruction is now alleged to have been erroneous. It certainly withdrew from the consideration of the jury all evidence, if any there was, of informal marriage by contract per verba de praesenti. That such a contract constitutes a marriage at common law there can be no doubt in view of the adjudications made in this country from its earliest settlement to the present day. Marriage is everywhere regarded as a civil contract. Statutes in many of the states, it is true, regulate the mode of entering into the contract, but they do not confer the right. Hence they are not within the principle, that where a statute creates a right and provides a remedy for

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its enforcement, the remedy is exclusive. No doubt a statute may take away a common law right, but there is always a presumption that the legislature has no such intention unless it be plainly expressed. A statute may declare that no marriages shall be valid unless they are solemnized in a prescribed manner, but such an enactment is a very different thing from a law requiring all marriages to be entered into in the presence of a magistrate or a clergyman or that it be preceded by a license, or publication of banns, or be attested by witnesses. Such formal provisions may be construed as merely directory, instead of being treated as destructive of a common law right to form the marriage relation by words of present assent. And such, we think, has been the rule generally adopted in construing statutes regulating marriage. Whatever directions they may give respecting its formation or solemnization, courts have usually held a marriage good at common law to be good notwithstanding the statutes unless they contain express words of nullity. This is the conclusion reached by Mr. Bishop, after an examination of the authorities. Bishop, Mar. and Div., sec. 283 and notes. We do not propose to examine in detail the numerous decisions that have been made by the state courts. In many of the states, enactments exist very similar to the Michigan statute, but their object has manifestly been not to declare what shall be requisite to the validity of a marriage, but to provide a legitimate mode of solemnizing it. They speak of the celebration of its rite rather than of its validity, and they address themselves principally to the functionaries they authorize to perform the ceremony. In most cases, the leading purpose is to secure a registration of marriages and evidence by which marriages may be proved; for example, by certificate of a clergyman or magistrate or by an exemplification of the registry. In a small number of the states, it must be admitted, such statutes have been construed as denying validity to marriages not formed according to the statutory directions. Notably has this been so in North Carolina and in Tennessee, where the statute of North Carolina was in force. But the statute contained a provision declaring null and void all marriages solemnized as directed, without a license first had. So, in Massachusetts, it was early decided that a

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statute very like the Michigan statute rendered illegal a marriage which would have been good at common law but which was not entered into in the manner directed by the written

law. Milford v. Worcester, 7 Mass. 48. It may well be doubted, however, whether such is now the law in that state. In Parton v. Henry, 1 Gray (Mass.) 119, where the question was whether a marriage of a girl only thirteen years old, married without parental consent, was a valid marriage (the statute prohibiting clergymen and magistrates from solemnizing marriages of females under eighteen without the consent of parents or guardians), the court held it good and binding notwithstanding the statute. In speaking of the effect of statutes regulating marriage, including the Massachusetts statute (which, as we have said, contained all the provisions of the Michigan one), the court said:

"The effect of these and similar statutes is not to render such marriages, when duly solemnized, void although the statute provisions have not been complied with. They are intended as directory only upon ministers and magistrates, and to prevent as far as possible, by penalties on them, the solemnization of marriages when the prescribed conditions and formalities have not been fulfilled. But in the absence of any provision declaring marriages not celebrated in a prescribed manner, or between parties of certain ages, absolutely void, it is held that all marriages regularly made according to the common law are valid and binding, though had in violation of the specific regulations imposed by statute."

There are two or three other states in which decisions have been made like that in 7th Massachusetts.

We will not undertake to cite those which hold a different doctrine, one in accord with the opinion we have cited from 1 Gray. Reference is made to them in Bishop, Mar. and Div. sec. 283 et seq.; in Reeve's Domestic Relations 199, 200; in 2 Kent Com. 90, 91; and in 2 Greenleaf on Evidence. The rule deduced by all these writers from the decided cases is thus stated by Mr. Greenleaf:

"Though in most if not all the United States there are statutes regulating the celebration of marriage rites and inflicting penalties on all who disobey the regulations, yet it is generally considered that in the absence of any positive statute declaring that all marriages

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not celebrated in the prescribed manner shall be void or that none but certain magistrates or ministers shall solemnize a marriage, any marriage, regularly made according to the common law without observing the statute regulations would still be a valid marriage."

As before remarked, the statutes are held merely directory, because marriage is a thing of common right, because it is the policy of the state to encourage it, and because, as has sometimes been said, any other construction would compel holding illegitimate the offspring of many parents conscious of no violation of law.

The Michigan statute differs in no essential particular from those of other states which have generally been so construed. It does not declare marriages void which have not been

entered into in the presence of a minister or a magistrate. It does not deny validity to marriages which are good at common law. The most that can be said of it is that it contains implications of an intention that all marriages, except some particularly mentioned, should be celebrated in the manner prescribed. The sixth section declares how they may be solemnized. The seventh describes what shall be required of justices of the peace and ministers of the gospel before they solemnize any marriage. The eighth declares that in every case -- that is, whenever any marriage shall be solemnized in the manner described in the act -- there shall be at least two witnesses present beside the minister or magistrate. The ninth, tenth, eleventh, sixteenth, and seventeenth sections provide for certificates, registers, and exemplifications of records of marriages solemnized by magistrates and ministers. The twelfth and thirteenth impose penalties upon justices and ministers joining persons in marriage contrary to the provisions of the act, and upon persons joining others in marriage knowing that they are not lawfully authorized so to do. The fourteenth and fifteenth sections are those upon which most reliance is placed in support of the charge of the circuit court. The former declares that no marriage solemnized before any person professing to be a justice of the peace or minister of the gospel shall be deemed or adjudged to be void on account of any want of jurisdiction or authority in such supposed minister or justice, provided the marriage be

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consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. This, it is argued, raises an implication that marriages not in the presence of a minister or justice or one professing to be such were intended to be declared void. But the implication is not necessarily so broad. It is satisfied if it reach not beyond marriages in the mode allowed by the act of the legislature.

The fifteenth section exempts people called Quakers or Friends from the operation of the act, as also Menonists. As to them, the act gives no directions. From this also an inference is attempted to be drawn that lawful marriages of all other persons must be in the mode directed or allowed. We think the inference is not a necessary one. Both these sections, the fourteenth and the fifteenth, are to be found in the acts of other states, in which it has been decided that the statutes do not make invalid common law marriages.

It is unnecessary, however, to pursue this line of thought. If there has been a construction given to the statute by the Supreme Court of Michigan, that construction must in this case be controlling with us. And we think the meaning and effect of the statute has been declared by that court in the case of Hutchins v. Kimmell, 31 Mich. 126, a case decided on the 13th of January, 1875. There, it is true, the direct question was whether a marriage had been effected in a foreign country. But, in considering it, the court found it necessary to declare what the law of the state was; and it was thus stated by Cooley, J.:

"Had the supposed marriage taken place in this state, evidence that a ceremony was performed ostensibly in celebration of it, with the apparent consent and cooperation of the parties, would have been evidence of a marriage even though it had fallen short of

showing that the statutory regulations had been complied with or had affirmatively shown that they were not. Whatever the form of ceremony, or even if all ceremony was dispensed with, if the parties agreed presently to take each other for husband and wife, and from that time lived together professedly in that relation, proof of these facts would be sufficient to constitute proof of a marriage binding upon the parties, and which would subject them and others to

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legal penalties for a disregard of its obligations. This has become the settled doctrine of the American courts; the few cases of dissent or apparent dissent being borne down by the great weight of authority in favor of the rule as we have stated it,"

citing a large number of authorities, and concluding, "such being the law of this state." We cannot regard this as mere obiter dicta. It is rather an authoritative declaration of what is the law of the state notwithstanding the statute regulating marriages. And if the law in 1875, it must have been the law in 1845, when, it is claimed, Mowry and the Indian girl were married, for it is not claimed that any change of the law was made between the time when the statute was enacted and 1875. The decision of the Michigan Supreme Court had not been made when this case was tried in the court below. Had it been, it would doubtless have been followed by the learned and careful circuit judge. But accepting it as the law of Michigan, we are constrained to rule there was error in charging the jury that if they found neither a minister nor a magistrate was present at the alleged marriage, such marriage was invalid, and the verdict should be for the defendants.

It has been argued, however, that there was no evidence of any marriage good at common law which could be submitted to the jury, and therefore that the error of the court could have done the plaintiff no harm. If all the evidence given or legally offered were before us, we might be of that opinion; but the record does not contain it all, and we are unable therefore to say the ruling of the court was immaterial. The case must therefore go back for a new trial. We do not consider the other questions presented. They may not arise on the second trial.

Judgment reversed and new trial ordered.

NOTE -- In Meister v. Bissell, which embraced the same facts as did the preceding case and which was argued at the same time and by the same counsel as was that case, MR. JUSTICE STRONG, in delivering the opinion of the Court, remarked that the opinion given in that case controlled this.

Judgment reversed, and new trial ordered.

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Common-law marriage in the United States

From Wikipedia, the free encyclopedia

Common-law marriage in the United States can still be contracted in nine states (Alabama, Colorado, Kansas, Rhode Island, South Carolina, Iowa, Montana, Utah and Texas) and the District of Columbia. New Hampshire recognizes common-law marriage for purposes of probate only, and Utah recognizes common-law marriages only if they have been validated by a court or administrative order.[1] Common-law marriage can no longer be contracted in 27 states, and was never permitted in 13 states. The requirements for a common-law marriage to be validly contracted differ from state to state. Nevertheless, all states — including those that have abolished the contract of common-law marriage within their boundaries — recognize common-law marriages lawfully contracted in those jurisdictions that permit it.[2] Some states that do not recognize common law marriage also afford legal rights to parties to a putative marriage (i.e. in circumstances when someone who was not actually married, e.g. due to a failure to obtain or complete a valid marriage license from the proper jurisdiction, believed in good faith that he or she was married) that arise before a marriage's invalidity is discovered.

The principle of common-law marriage was affirmed by the United States Supreme Court in Meister v. Moore (96 U.S. 76 (1877)), which ruled that Michigan had not abolished common law marriage merely by producing a statute establishing rules for the solemnization of marriages.

Contents

General principles

The status of common-law marriage in the United States varies by state. In Meister v. Moore, 96 U.S. 76 (1877), the United States Supreme Court, relying on Hutchins v. Kimmell, 31 Mich. 126 (1875) ruled that Michigan had not abolished common-law marriage merely by producing a statute which established rules for the solemnization of marriages, because it did not require marriages to be solemnized: it required only that, if a marriage was solemnized, it could be solemnized only as provided by law. Otherwise, the court found that, as the right to marry existed at common law, the right to marriage according to the tradition of that common law remained valid until such time as state law affirmatively changed it. The Court did not find it necessary to pass special legislation specifically outlawing the common law contract of a marriage, but it was sufficient for a state's general marriage statutes to clearly indicate no marriage would be valid unless the statutory requirements enumerated were followed.

While a number of U.S. states recognize either same-sex marriage, or domestic partnerships with the same legal incidents, as marriage, no U.S. state except Iowa and Rhode Island, where the law is untested, currently recognizes same sex common-law marriages. The Federal Defense of Marriage Act permits any state to not recognize same-sex marriages from another state, but the federal government will recognize them.[citation needed]

Income tax

A common-law marriage is recognized for federal tax purposes if it is recognized by the state where the taxpayers currently live, or in the state where the common-law marriage began. If the marriage is recognized under the law and customs of the state in which the marriage takes place (even if the state is a foreign country), the marriage is valid (Rev. Rul. 58-66). Practitioners should be alert to the specific state requirements necessary for their clients contemplating filing joint returns under common-law marriage statutes.

Availability by state

This section needs additional citations for verification. Please help improve this article by adding citations to reliable sources. Unsourced material may be challenged and removed. (September 2010)

Common-law marriage can still be contracted in nine states (Alabama, Colorado, Kansas, Rhode Island, South Carolina, Iowa, Montana, Utah and Texas) and the District of Columbia. New Hampshire recognizes common-law marriage for purposes of probate only, and Utah recognizes common-law marriages only if they have been validated by a court or administrative order.[1]

Note there is no such thing as "common-law divorce" — that is, you cannot get out of a common-law marriage as easily as you can get into one. Only the contract of the marriage

is irregular; everything else about the marriage is perfectly regular. People who marry per the old common law tradition must petition the appropriate court in their state for a dissolution of marriage.[3]

The situation in Pennsylvania became unclear in 2003 when an intermediate appellate court purported to abolish common-law marriage[4] even though the state Supreme Court had recognized (albeit somewhat reluctantly) the validity of common-law marriages only five years before.[5] The Pennsylvania legislature resolved most of the uncertainty by abolishing common-law marriages entered into after January 1, 2005.[6] However, it is still not certain whether Pennsylvania courts will recognize common-law marriages entered into after the date of the Stamos decision and before the effective date of the statute (i.e., after September 17, 2003, and on or before January 1, 2005), because the other intermediate appellate court has suggested that it might not follow the Stamos decision.[7]

The situation in Oklahoma has been unclear since the mid-1990s, with legal scholars reporting each of 1994, 1998, 2005, and 2010 as the date common law marriage was abolished in the state. However, as of February 19, 2014, several Oklahoma executive agencies continue to represent common law marriage as legal there,[8] and no reference to the ban appears in the relevant statutes.[9]

Common-law marriages can no longer be contracted in the following states, as of the dates given: Alaska (1917), Arizona (1913), California (1895), Florida (1968), Georgia (1997), Hawaii (1920), Idaho (1996), Illinois (1905), Indiana (1958), Kentucky (1852), Maine (1652, when it became part of Massachusetts; then a state, 1820), Massachusetts (1646), Michigan (1957), Minnesota (1941), Mississippi (1956), Missouri (1921), Nebraska (1923), Nevada (1943), New Mexico (1860), New Jersey (1939), New York (1933, also 1902–1908), North Dakota (1890), Ohio (1991), Pennsylvania (2005), South Dakota (1959), and Wisconsin (1917).

The following states never permitted common-law marriages: Arkansas, Connecticut, Delaware, Louisiana, Maryland, North Carolina, Oregon, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wyoming. Note that common-law marriage was never known in Louisiana, which is a French civil or code law jurisdiction, not an English common law jurisdiction. As such, it is a former Council of Trent jurisdiction.

Nevertheless, all states — including those that have abolished the contract of common-law marriage within their boundaries — recognize common-law marriages lawfully contracted in those jurisdictions that permit it. This is because all states provide that validity of foreign marriage is determined per lex loci celebrationis - that is, "by law of the place of celebration." Thus, a marriage validly contracted in Ohio, including common-law marriages entered into before that state abolished new common-law marriages in 1991, is valid in Indiana, even if it could not be legally contracted in Indiana because Ohio law is the basis of its validity. However, a marriage that was not lawfully contracted in Ohio would not be valid in Indiana even if it could have been lawfully contracted there, by the same principle.

Common law marriage determinations frequently refrain from identifying a specific date of marriage in common law marriage cases when this is not necessary, because often, there is no one marriage ceremony that establishes this date. Even when a relationship begins in a state that does not recognize common law marriage, a common law marriage between the parties is often recognized if that relationship continues at a time when the parties relocate to a state that does recognize common law marriage. It is not uncommon for someone to claim to be a spouse based upon time the couple spent together in a common law marriage state even after the couple leaves that state. The case law does not definitively establish whether a brief presence in a common law marriage state by a couple who otherwise are eligible to have a common law marriage, that does not establish domicile in that state, gives rise to a common law marriage that must be recognized in a state that does not itself have common law marriage.

Additionally, some courts have held that all marriages performed within the U.S. must be valid in all states under the Full Faith and Credit Clause of the U.S. Constitution.[10] However, none of the cases to date has actually used the Clause to validate a sister-state marriage, and the question shows no sign of reaching the U.S. Supreme Court - whose decision would apply nationally, not just locally or within a federal circuit.

Legislation

The requirements for a common-law marriage to be validly contracted differ in the eleven states which still permit them.

Alabama

A valid common law marriage exists when there is capacity to enter into a marriage, the man and woman must be at least 16 with legal parental consent and present agreement or consent to be husband and wife, public recognition of the existence of the marriage after 181 days, and consummation.[11]

Colorado

The elements of a common-law marriage are, with respect to both spouses: (1) holding themselves out as husband and wife; (2) consenting to the marriage; (3) cohabitation; and (4) having the reputation in the community as being married.[12] Different sources disagree regarding the requirement of cohabitation and some indicate that consummation (i.e. post-marital sexual intercourse) is also an element of common law marriage. Colorado, by statute, no longer recognizes common law marriages entered by minors in Colorado, and also does not recognize foreign common law marriages entered into by minors, even if that marriage would have been valid where entered into under local law. See Section 14-2-109.5, Colorado Revised Statutes. The constitutionality of this limitation as applied to foreign marriages has not been tested in litigation.[13]

Colorado, Montana, and Texas are the only U.S. states to recognize both putative marriage and common law marriage.[14][15]

District of Columbia

"A marriage that is legally recognized even though there has been no ceremony and there is no certification of marriage. A common-law marriage exists if the two persons are legally free to marry, if it is the intent of the two persons to establish a marriage, and if the two are known to the community as husband and wife."

Common-law marriages have been recognized in the District of Columbia since 1931.[16]

Iowa

The three elements of a common-law marriage are: (1) the present intent and agreement to be married; (2) continuous cohabitation; and (3) public declaration that the parties are husband and wife.[17] The public declaration or holding out to the public is considered to be the acid test of a common-law marriage.[18]

Section 701—73.25 of the Iowa state code, titled Common law marriage states:

A common law marriage is a social relationship between a man and a woman that meets all the necessary requisites of a marriage except that it was not solemnized, performed or witnessed by an official authorized by law to perform marriages. The necessary elements of a common law marriage are: (a) a present intent of both parties freely given to become married, (b) a public declaration by the parties or a holding out to the public that they are husband and wife, (c) continuous cohabitation together as husband and wife (this means consummation of the marriage), and (d) both parties must be capable of entering into the marriage relationship. No special time limit is necessary to establish a common law marriage.

Edit: 701—73.26 Rescinded, effective October 2, 1985.

[19]

This rule is intended to implement Iowa Code section 425.17.

Kansas

Under Kansas Statute 23-2502, both parties to a common-law marriage must be 18 years old. The three requirements that must coexist to establish a common-law marriage in Kansas are: (1) capacity to marry; (2) a present marriage agreement; and (3) a holding out of each other as husband and wife to the public.[20]

Montana

A common-law marriage is established when a couple: "(1) is competent to enter into a marriage, (2) mutually consents and agrees to a common law marriage, and (3) cohabits and is reputed in the community to be husband and wife." [21]

New Hampshire

New Hampshire recognizes common-law marriage for purposes of probate only. In New Hampshire "[P]ersons cohabiting and acknowledging each other as husband and wife, and

generally reputed to be such, for the period of 3 years, and until the decease of one of them, shall thereafter be deemed to have been legally married." Thus, the state posthumously recognizes common-law marriages to ensure that a surviving spouse inherits without any difficulty.[22]

Rhode Island

The criteria for a common-law marriage are: (1) the parties seriously intended to enter into the husband-wife relationship; (2) the parties' conduct is of such a character as to lead to a belief in the community that they were married.[23]

South Carolina

The criteria for a common law marriage are: (1) when two parties have a present intent (usually, but not necessarily, evidenced by a public and unequivocal declaration) to enter into a marriage contract; and (2) "a mutual agreement between the parties to assume toward each other the relation of husband and wife." [24] Common law marriages can dissolve in legal divorce and alimony.

Texas

The Texas Family Code, Sections 2.401 through 2.405,[25] define how a common-law marriage (which is known as both "marriage without formalities" and "informal marriage" in the text) can be established in one of two ways. Both parties must be at least age 18 to enter into a common-law marriage.

First, a couple can file a legal "Declaration of Informal Marriage", which is a legally binding document. The form must be completed by both marriage partners and sworn or affirmed in presence of the County Clerk. The Declaration is formally recorded as part of the Official County Records by Volume and Page number, and is then forwarded by the County Clerk to the Texas Bureau of Vital Statistics, where it is again legally recorded as formal evidence of marriage. This is the same procedure that is used when a marriage license is issued and filed; the term "Informal" refers only to the fact that no formal wedding ceremony (whether civil or religious) was conducted.

Second, a couple can meet a three-prong test, showing evidence of all of the following:

first, an agreement to be married;
after such agreement, cohabitation within the State of Texas; and
after such agreement, representation to others (within the State of Texas) that the parties are married.

Regarding the second prong, in the actual text of the Texas Family Code, there is no specification on the length of time that a couple must cohabitate to meet this requirement. As such, an informal marriage can occur under Texas law if the couple lives together for as little as one day, if the other requirements (an agreement to be married and holding out as married to the public) can be shown.

Likewise, a couple can cohabitate for 50 years, but if they never have an agreement to be married, or hold themselves out to the public as married, their 50-year cohabitation will not make them informally married under Texas law.

Dissolution of this type marriage requires formal Annulment or Divorce Proceedings, the same as with the other more recognized forms of 'ceremonial' marriages.[26] However, if a couple does not commence a proceeding to prove their relationship was a marriage within two years of the end of their cohabitation and relationship, there is a legal presumption that they were never informally married, but this presumption is rebuttable.

Utah

Utah recognizes common-law marriages only if they have been validated by a court or administrative order. For a common-law marriage to be legal and valid, "a court or administrative order must establish that" the parties: (1) "are of legal age and capable of giving consent"; (2) "are legally capable of entering a solemnized marriage under the provisions of Title 30, Chap. 1 of the Utah Code; (3) "have cohabited"; (4) "mutually assume marital rights, duties, and obligations"; and (5) "hold themselves out as and have acquired a uniform and general reputation as husband and wife" [27] In Utah, the fact that two parties are legally incapable of entering into a common law marriage, because they are already married, does not preclude criminal liability for bigamy or polygamy.

Other

Some states have abolished common law marriage, in that such marriages cannot be contracted anymore in those states, but they continue to recognize common law marriages which have been contracted in the past, before a specific date. Georgia recognizes common law marriages created before January 1, 1997; Idaho - created before January 1, 1996; Ohio - created before October 10, 1991; Pennsylvania - created before January 1, 2005.[28] If common law marriage is illegal in Oklahoma, which is not the view of several executive agencies,[8] the law banning it probably makes a similar distinction.[29] All earlier abolitions of common law marriage since World War II also recognise marriages contracted before their date as well, although these recognitions are no longer mentioned much: Mississippi - created before April 6, 1956; Michigan - created before January 1, 1957; Indiana - created before January 2, 1958; South Dakota - created before July 1, 1959; and Florida - created before January 1, 1968.

References

http://www.law.cornell.edu/wex/table_marriage

Oklahoma Senate Bill 1977, which abolished common law marriage in Oklahoma, appears to bar recognition of common law marriages contracted elsewhere after the abolition date.

The first such documented divorce occurred in 1887, when Frank J. Bowman of St. Louis sued for divorce from his common-law wife, Ida M. Bowman.he court granted the divorce along with alimony to Ms. Bowman of fifteen dollars per week."A Common Law Marriage Divorce". The Washington Post. December 15, 1887. p. 5.

PNC Bank Corporation v. Workers' Compensation Appeal Board (Stamos), 831 A.2d

1269 (Pa. Cmwlth. 2003)

Staudenmayer v. Staudenmayer, 552 Pa. 253, 714 A.2d 1016 (1998).

Act 144 of 2004, amending 23 Pa.C.S. Section 1103.

Compare Bell v. Ferraro, 2004 PA Super 144, 849 A.2d 1233 (4/28/2004), with Stackhouse v. Stackhouse, 2004 PA Super 427, 862 A.2d 102 (11/10/2004).

For example, the Department of Corrections and the Tax Commission

Oklahoma Statutes

See e.g. Thomas v. Sullivan, 922 F.2d 132, 134 (2d Cir. 1990

Waller v. Waller, 567 So.2d 869 (Ala.Civ.App. 1990). See also, Hudson v. Hudson, 404 So.2d 82 (Ala.Civ.App. 1981). (Alabama Attorney General - FAQ: Marriage/Divorce).

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TEX. FAM. CODE s. 2.401; Davis v. Davis, 521 S.W.2d 603 (Tex. 1975)

Hoage v. Murch Bros. Const. Co., 60 App.D.C. 218, 50 F.2d 983 (1931)

Martin, 681 N.W.2d at 617

In re Marriage of Winegard, 257 N.W.2d 609, 616 (Iowa 1977)." See Snyder-Murphy v. City of Cedar Rapids (Iowa 2004)

http://search.legis.state.ia.us/nxt/gateway.dll/ar/iac/7010___revenue%20department%20__5b701__5d/0730___chapter%2073%20property%20tax%20credit%20and%20rent__2e/_r_7010_0730_0250.xml?fn=document-frame.htm$f=templates$3.0 701—73.26 Rescinded, effective October 2, 1985.

See In the Matter of the Petition of Lola Pace (Kan. 1999).

See Snetsinger v. Montana University System, 325 Mont. 148, 104 P.3d 445, quoting In re Ober, 314 Mont. 20, 62 P.3d 1114. See also http://www.LawHelp.org/MT [1]

See: NH RSA 457:39 Cohabitation, etc.

See DeMelo v. Zompa, 844 A.2d 174, 177 (R.I. 2004) (pdf).

See Tarnowski v. Lieberman, 348 S.C. 616 (S.C. Ct. App. 200)

http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.2.htm#E

(Texas Family Code Chapter 24).

See Utah Code Ann. 30-1-4.5 (2004).

http://marriage.about.com/cs/commonlaw/ht/commonlaw.htm

See for example the law which might have banned it effective 2010, but apparently did not, Senate Bill 1977

http://www.originalintent.org/edu/marriage.php

Common Law Marriage

There is much confusion about common law marriage. Some believe it to be the manner in which God intended a man and woman to be married; others believe it to be nothing more than "shacking up" covered by dubious veneer of respectability. So what is the truth?

In order to find the truth, we must look at the origins of common law marriage as well as the manner of its use over the past few centuries. It should be remembered that men and women have been getting married for at least 5,000 years, and that government laws concerning marriage are a relatively new event.

Most people today see "common law marriage" as a noun. In other words, it is a singular thing. That perception is inaccurate. It is only "marriage" that is the noun. "Common law" is merely a system of law that certain marriages utilize. Today's commonly accepted method of marriage is to acquire a government marriage license. Such marriages may rightly be called a "statutory marriage" because it is the system of "statutory law" that this type of marriage utilizes.

As we stated earlier, marriages have been taking place since the beginning of time, and historical records show that they were already in existence at the beginning of written history. As society progressed, and its legal systems matured, questions arose as to what really constituted a marriage. These questions originally revolved around issues such as inheritance and the status of children as bastards. Over time, the "common law of England" (from which America derived its common law) began to develop legal boundaries that expressed society's view of what constituted a marriage. The common law does not so much "control" the act of getting married, or "establish" a marriage, as it sets out the markers that can be used to determine whether a man and woman are in fact married, or whether they are simply using the word "married" without the existence of any of the fundamental elements being present that society understands to accompany a true marriage. In short, common law does not operate upon a marriage unless or until the validity of a marriage is challenged in court. At that time, the court will use the common law standards that have evolved to decide if the alleged marriage was truly established as such.

What's Legally Valid and What's Not?

When examining a legal question, it is customary to lay foundation and then come to the final conclusive point. However, we believe that in this instance it is best to state the conclusive legal reality of common law marriage first and then investigate the particulars.

Here is the holding from the decision of the United States Supreme Court in Meister v. Moore 96 US 76 (1877):

"As before remarked, the statutes are held merely directory; because marriage is a thing of common right..." [emphasis added]

Directory - A provision in a statute, rule of procedure, or the like, which is a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed. Black's Law Dictionary, 6th Ed.

The statutes to which the Court was referring were statutes in Massachusetts and Michigan that purported to render invalid marriages not entered into under the term of written [statutory] state law.

While the various state courts have prattled on for almost 200 years about what the laws of their states do and do not allow concerning marriage, the US Supreme Court cut straight to the heart of the issue in declaring that statutes controlling marriage can only be directory because marriage is a common right, which is not subject to interference or regulation by government. Or phrased another way, the God-given right to marry existed prior to the creation of the states or the national government, and therefore it is beyond their purview to alter, modify, abolish, or interfere with, such a right.

In its decision in Meister, the Court refused to even examine the numerous state court decisions prior to making its own decision. While this was assailed by legal commentators of the day as an egregious choice, we can only agree with the Court in its choice because a state court opinion has no authority to affect a fundamental right that existed antecedent to the formation of the state.

It should be noted that Meister has never been reversed and is still controlling case law concerning the fundamental right to marry without state interference.

"Recognized" versus "Unlawful"

A lot of Americans hold the incorrect perception that common law marriage is unlawful. Nothing could be further from the truth. There is no state law anywhere that claims to make common law marriage "unlawful". Given the decision in Meister, such a law could not withstand the scrutiny of the US Supreme Court. And of course the exercise of a fundamental right is always lawful!

It is true that in many states common law marriage is not "recognized". Given the fact that common law marriage is lawful, one might reasonably ask what it meant by "not recognized". Without getting into a lot of legal mumbo-jumbo "not recognized" means that in the eyes of the State "the marriage is not known/understood/perceived to exist". We agree with that legal concept and we can see nothing in that matter to concern us.

A "statutory marriage" is registered with the State as a result of the man and woman applying for a State marriage license and thus entering into a three-party contract with the State. Obviously the State keeps records of all contracts to which it is a party and therefore such a marriage is "known to exist" to State authorities. It is equally obvious that a private common law marriage would not be "known to exist" to State authorities. The problem arises from the erroneous view that "not recognized" is synonymous with "invalid". Because of Meister, no state can arbitrarily declare common law marriage invalid by legislation, and none have done so! To state the point most clearly - "not recognized" does not mean, "invalid".

Validity of Marriage

Now that we have established that "recognition" and "validity" are two separate issues, one might then reasonably inquire as to what constitutes a "valid" marriage at common law?

It should be pointed out that under the common law, unless there is a controversy that arrives before a court of law, which calls into question the validity of a marriage, a marriage thought proper by the consenting parties is a valid marriage. It is bringing the marriage within the scope of judicial review that raises the specter of the marriage being invalidated.

The issues that a court may review in determining the validity of a marriage are:

Consent of both parties.
The existence of a marriage contract - oral or written.
The existence of a marriage contract - present or future tense
Prior marriages still in effect.
Whether or not there is/was cohabitation.
Solemnization or ceremony.
Marriage Certificate providing evidence of a ceremony.
A secret or deceptive marriage.
A marriage based on false representations.
Whether the scope and effect of an impediment produces an invalid marriage.
Whether there are children that will be rendered bastards.
Whether a religious figure performed the marriage ceremony.

This treatise would be prohibitively long (and likely pretty boring) if we explored each of these issues in depth. Instead we think it is in the best interest of the reader to discuss the elements that create a common law marriage that can never be invalidated by a court.

Consent - It is critical to be able to provide evidence of consent. Although verbal consent is sufficient for validity, there are times (such as after one party has died) that a showing of verbal consent by both parties may be difficult to achieve. For this reason, it is highly recommended that consent by demonstrated through the existence of a written marriage contract, signed by both husband and wife. Cohabitation is also generally viewed as evidence of consent.

Contract - A written marriage contract should establish the marriage in the present tense, as opposed to constituting a promise of marriage at some designated time in the future. Although courts have supported future tense marriage agreements, such an agreement is by means as secure as a present tense contract. The contract should specify the basic rights and duties of each party.

Prior Marriages - Although courts have upheld the validity of some marriages in which one or both parties were still married (at common law) to other people, one should not count on such leniency. One should be able to prove (through evidence) that any prior marriages have been properly dissolved.

Secret Marriages - Although the courts have generally accepted the view that a husband and wife may choose to keep a marriage secret without affecting its validity, again, one should steer clear of arrangements that leave room for today's court to render unfavorable decisions concerning validity.

Solemnization or ceremony - Although the accepted doctrine is that a ceremony of solemnization is not a required element for validity, such a ceremony demonstrates consent as well as dispelling any speculation of secrecy or deception.

Certificate of Marriage - While marriage certificates are most common these days in statutory marriages, one can create a marriage certificate easily enough on a personal computer, or one can have a graphic artist create one for you. The certificate should be signed by three witnesses. A properly executed marriage certificate lends to the evidentiary weight of consent.

Photographic Evidence - In addition to a certificate of marriage, today one can memorialize the event in photographs or on video.

Religious Ceremony - The requirement to have a religious figure perform the service is essentially dead. Such a requirement would bar atheists from marriage. Additionally, and more importantly, the common law is based on the Bible and there is no scriptural command, or even permission, for a religious leader to perform a wedding ceremony. This reality has been given recognition by the courts.

In summary, validity (or lack thereof) is often determined based a composite picture drawn from the totality of the circumstances. The person who wishes to establish an incontrovertible record of a valid common law marriage should make sure to steer clear of areas that leave room for ambiguity. One who wishes to make an incontrovertible record should:

Have both parties sign a marriage contract and have the document notarized.
Have a ceremony with witnesses present.
Have three witnesses sign a marriage certificate.
Memorialize the ceremony in photographs or on video.
Cohabitate after the contract has been signed or the ceremony performed.
Let friends, co-workers, and people in the community know you and your spouse are married.

By applying each of these elements, there is no court in America that can declare your common law marriage invalid.

Why has Common Law Marriage acquired a dubious reputation?

Many people shy away from common law marriage today because they feel it is nothing more than "shacking-up", covered by a very thin veneer of respectability, as well as affording no legal protection concerning property rights and child custody issues if the marriage fails. Since those are really two separate issues, lets look at the "shacking-up" perception first.

Pretending To Be Married

People who look at common law marriage as merely shacking-up are not necessarily wrong in their view. Whenever The People have a right secured to them that the government cannot control or interfere with, there will always be people who will misuse that right. That's just human nature. Common law marriage is not immune to that human foible and may very well, by its nature, be more prone to misuse than some other rights.

It is sad but true that many people simply use the principle of common law marriage as a convenient cover for cohabitating without any intention of establishing a true marriage. It is also true that historically the state courts have been filled with people alleging to be the spouse of a deceased person only for the purpose of getting at the decedent's property. These circumstances (as well as others) have led the courts to establish criteria for the validity of common law marriages.

We encourage people to use their right of common law marriage only in circumstances where a truly committed marriage is desired. In our opinion, marriage should be approached with reverence; its dignity promoted and preserved.

Property and Custody Right

There is a perception that there are no protections for property rights and/or child custody concerns in a common law

marriage. That is one of the many inaccurate perceptions of common law marriage.

All marriages, statutory and common law, are based on a contract. In the case of a statutory marriage, the contract is between three parties - the husband, the wife, and the State - the State being the superior party of interest. In such marriages, if the husband and wife wish to dissolve the marriage they must do so through a court that is enforcing that State's Family Law Code. We say "must" because once the State was involved in the contract as the superior party of interest, the husband and wife are legally bound to obey the State in matters that are controlled by the State's Family Code.

In the case of common law marriage, there are two ways that property rights and child custody issues can be addressed. The first and most desirable method is to structure the contract to include the mechanism by which a termination of the contract shall occur. The parties to the contract (husband and wife to be) can sit down and agree on how they would want to dissolve the marriage if that circumstance were to occur. In a section of the contract concerning the dissolving of the contract, the parties can specify how property is to be divided and how child custody issues will be addressed. Often times constructing a framework for such matters when you're happy and in love will help provide a smoother road if the unfortunate occurs. We suggest structuring methods that involve submitting your possible disputes to your church elders or to a small panel of trusted friends. In this way the decisions that you're seeking will be rendered by people who know you and love you, rather than by some government bureaucrat in a black robe.

If pre-structuring a mechanism for divorce within the contract doesn't appeal to you, you always have the option of submitting your marriage to the jurisdiction of your State's family law court. And have no doubt, if you submit your marriage contract to the Family Law Court, it will assume jurisdiction. You should understand that if you take this route, you are surrendering your independence to the State. You cannot back out if you don't like what the court decides. You will be bound by the decisions of the court just as if you'd entered into a statutory marriage.

Proving Your Marriage

You will only be called upon to "prove" your marriage if you are seeking some right or benefit (either private or public) that is available only to a person who is married. Examples of such matters are; death benefits to spouse on a life insurance policy; company provided medical benefits to spouse, etc.

If the right or benefit is coming from a private firm, usually a properly executed Marriage Certificate will do the trick. If that is deemed insufficient, one may need to provide a sworn affidavit. Generally, a sworn affidavit is considered conclusive on a matter unless the opposing party can rebut the affidavit.

If the right or benefit is coming from a government agency, one should start by submitting the properly executed Marriage Certificate. If the agency says that the certificate is unsatisfactory, one should immediately ask for an administrative hearing. At the hearing, one should do the following:

Submit into evidence items 1, 3, & 4 (above), plus any other items of evidentiary value that proves the marriage.
Ask to be sworn in and then give direct testimony that you and your spouse are married; give the details of your marriage (i.e. contract, dates, ceremony, etc.). In your testimony, include the Court's holding from Meister, that all State marriage statutes are merely directory in nature and that there can be no adverse consequence or invalidity for not following a statute that is only directory.
Ask the agency representative (who should not the be the hearing officer) to be sworn in and then ask him/her to enter into the official record any evidence the agency possesses that your common law marriage is not lawfully valid.
Ask the agency representative to enter into the official record any evidence that the agency is precluded from recognizing any lawfully valid marriage.

If you are prepared, and you're astute during the hearing, odds are good the agency will recognize your marriage as valid and binding upon them. If they don't, then their own official record can now be used against them in a court action to force them to recognize the marriage. Remember, when a court reviews an agency's decision, it is nothing more than an "administrative appeal" handled by a guy in a black robe. The only evidence that the court can consider about your marriage is that which was entered into the official record during the administrative hearing and any agency regulations on the subject.

More on Common Law Marriage

It is interesting to note the current definition of "marriage license" in Black's Law Dictionary, 6th Ed [1991] (which is the one used in a Family Law court):

Marriage license - A license or permission granted by public authority to persons who intend to intermarry... By statute in most jurisdictions, it is made an essential prerequisite to lawful solemnization of the marriage."

So far, so good; a license is required for persons who desire to "intermarry". Fine; but what exactly does "intermarry" mean?

Black's Law Dictionary (6th Ed):

Intermarry - See Miscegenation.

Black's Law Dictionary (6th Ed):

Miscegenation - Mixture of races. Term formerly applied to marriage between persons of a different race. [Now called "intermarry".] Statutes prohibiting marriage between persons of different races have been held to be invalid as contrary to equal protection clause of the Constitution.

[Editor's Note: Please note that the courts have held it to be unconstitutional to altogether "prohibit" such marriages, but the courts do not say that it is unconstitutional to require such marriages to be licensed.]

Keeping the foregoing facts in mind, let's look at a typical State marriage statute. Since we are most familiar with California statutes, we'll examine the section from the California Family Code:

Section 300 - Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary. Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization as authorized by this division... [Underlines added for emphasis]

As you likely know, statutory law that lays a duty upon a person must be specific in the particulars that give rise to the duty. You will note that the section 300 does not require anyone to apply for a license; it merely says that consent "must" be followed by the issuance of a license. How then shall we interpret "must" in this context?

Must - This word, like the word "shall", is primarily of mandatory effect... But this meaning of the word is not the only one, and it is often used in a merely directory sense, and consequently is a synonym for the word "may"...
Black's Law Dictionary, 6th Ed.

Given the US Supreme Court's holding in Meister [that all State marriage laws are merely directory in nature] which of the two definitions of "must" are applicable? Clearly the definition that gives the statute a directory character must be applied if the statute is to comports itself with the Meister decision, and thus remain within the bounds of Constitutionality.

If the legislative draftsmen who wrote these laws were not attempting to deceive you, section 300 would not depend on the subterfuge of veiled definitions, and it would read as follows:

Section 300 (our revised version) - Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary. Consent alone does not constitute marriage. Consent may be followed by the issuance of a license if a license is applied for. If a license is issued, the marriage must then be followed by solemnization as authorized by this division...

Reference Material

If you would like to learn more about common law marriage, an excellent legal analysis of the subject can be found in the book, "Common Law Marriage and its Development in the United States", written by Otto E. Koegel, D.C.L. This book was published by John Byrne & Company in 1922 and can generally only be found in a well-stocked law library.

The United States Code

The United States Code is a compendium of federal statutes that have been arranged within an orderly system so as to provide a simple manner in which to locate the text of a desired statute.

The United States Code is the result of an evolutionary process that started back in the earlier 1800's. In the early days of this nation, when Congress passed laws they were simply assigned a number (in addition to the name of the act) for identification purposes. This system resulted in the statutes that Congress passed being found solely by tracking down the "statute-at-large" number.

Since these statutes-at-large were not arranged in any manner other than number and date, attempting to locate all the statutes that Congress had passed on a particular subject was very tedious. As the number of laws increased, the task went from merely tedious, to tedious and uncertain. The need for some form of logical organization became clear and compelling.

Congress made several unsatisfactory attempts to organize its laws. The process finally came to fruition after the Civil War and the system of organization began to take shape in an efficient manner and one very similar to that which we see today. The system of organizing statutes is referred to as "codifying".

Today most of the laws of Congress have been codified into the United States Code (USC). The USC is comprised of 50 separate "titles". Each title deals expressly with a particular area of federal law. These titles are then broken down into subtitles, which express a more detailed breakdown by subject matter. These subtitles are then broken down into chapter, and the chapters into sections. The index at the beginning of each title, as well as at the beginning of each subtitle and chapter can be helpful in locating the text that you need. A good site to view the USC is at http://www.law.cornell.edu/uscode/. The complete USC may also be purchased on CD-ROM from the US Government Printing Office, at http://www.gpo.gov/.

It should be noted that not all federal statutes appear in the USC; some statues-at-large remain uncodified. One current example is the IRS Reform and Restructuring Act of 1998. This legislation has not been codified. One cannot find its provisions by reading the USC. One must pull the actual statute-at-large (usually from a law library) in order to know what Congress has commanded within that act.

In addition to being a compendium of codified federal law, the USC contains a nightmarish labyrinth of federal jurisdictional foundations. At this time, no bill pending before Congress is required to reveal to Congress, or to the American public, from what provision of the Constitution the legislation derives its authority. [See the Constitutions page within this site for more information about the requirement of all laws to conform to the Constitution.] Accordingly, one must engage in lengthy and arduous research in order to determine which provision of the Constitution provides the lawful authority for the act to exist.

Congressional Acts (most of which end up codified to the USC) gain their Constitutional jurisdiction from one or more of the following Constitutional provisions. The jurisdictions sections are listed in order of frequency of application.

Article I, Section 8, Clause 17 - This section grants Congress exclusive [sole] authority over all placed where the United States is the sovereign. Examples of these places would be, Washington DC, areas within the borders of the states of the Union that have been properly ceded to the United States, and US embassies in foreign countries. This Constitutional authority is often referred to as "territorial authority". This authority must be used with the authority shown immediately below.

Article IV, Section 3, Clause 2 - This section is a handshake with Article I, Section 8, Clause 17 (above) and grants Congress the authority to legislate for territory belonging to the United States (see examples above). [It should be carefully noted that the states of the Union do not "belong" to the United States.] In two US Supreme Court cases from the early 1900's the Court stated that Congress was free to legislate for the "its" places, in ways that would be unconstitutional if applied to the states of the Union. [See the section, US Territorial Authority, within this site for more information.] FDR's backers saw these regrettable decisions by the Court as a huge loophole in the Constitution. The vast majority of federal laws passed ever since the New Deal Era have been territorial in nature. Article I, Section 8, Clause 17, and Article IV, Section 3, Clause 2, are by far the most frequent Constitutional authorities used by Congress.

Article I, Section 8, Clause 4 - This section grants Congress authority to regulate commerce with foreign nations, between the states of the Union, and with Indian Tribes. Despite the prevalence of legislation under the above listed authorities, law school professors teaching in the 1950's used to call the interstate commerce portion of this provision, "The Everything Clause". The reason for this was the prevailing opinion of the US Supreme Court during the 30's, 40's, and 50's, which allowed Congress to lay its hands on many issues as long as it used the touchstone of its interstate commerce authority. In the eyes of many, the interstate commerce clause was the holy grail of federal authority within the states. Today the pendulum has begun to start it swing back in the proper direction (although it has quite a way to go to get back the intention of the framers of the Constitution). The US Supreme Court has signaled over the last decade that will not be so willing to accede to the federal government's claims of authority that rely upon the interstate commerce clause. All these facts notwithstanding, a very large percentage of federal legislation is based on Congress' authority to regulate interstate and foreign commerce.

The US Constitution grants the United States 19 "enumerated powers" (authorities). We have discussed two. The other 16 powers combined do not account for anywhere near the amount of legislation passed under the authority of the two powers specifically discussed.

Many Americans erroneously believe that the United States Code is "just like the State code, but only addresses other things". The USC is distinctly different in that it is strictly limited to containing laws that deal exclusively with "federal matters". If you steer clear of federal matters, there is nothing in the USC that can reach or affect you.

For those who find exploring and discovering unknown facts to be rewarding, a trip through various parts of the United States Code can be interesting. Most of the USC will never impact upon your life, but Titles that may be of interest are:

Title 15, Commerce and Trade. Examine the scope topics that fall within this title.
Title 18, Crimes and Criminal Procedure.
Title 19, Customs Duties. Many revenue laws are tied to this title.

Title 26, Internal Revenue Code. Our personal favorite!
Title 42, Public Health and Welfare. We find chapters 7 (social security) and 21 (civil rights) to be of interest.
Title 47, Territories and Insular Possessions

To understand how quite a number of federal programs have been made operable within your state, and without your knowledge, see the section, State Codes, within this website. Warning - that section may make you very upset with your state government!

Although the USC is "the law" in federal matters, there is another set of codes that is pivotal in understanding how most federal statutes operate. That set of codes is called the Code of Federal Regulations. The Code of Federal Regulations is used by the departments and agencies of the Executive branch to expand upon and clarify the manner in which the US government will enforce statutes contained within the USC. One should be cautious not to assume one understands federal law by viewing the statutes alone. The regulations are of critical importance and federal case law is also of some benefit in seeking clarity (although the federal courts have made, and continue to make, some terribly inaccurate case law). To understand why federal case law can be misleading, read the sub-section "Does The Law Work", contained within The Law section of this site.

Code of Federal Regulations

Regulations are created and used by executive agencies to "clarify" the intent and scope of federal statutes, which an agency is charged with administrating or enforcing. Statutes are the actual laws passed by Congress; regulations are the "who, what, when, where, and how" involved in administrating and/or enforcing the statute.

Modern History

As the New Deal unfolded in the early 1930's and Congress began to increase both the number of agencies and the scope of the authority of those agencies, the agencies began promulgating voluminous regulations. There was no mechanism for publishing, codifying, accessing or updating these regulations. There was considerable confusion about which regulations were in effect at any given time. In several 1934 Supreme Court cases involving administrative law violations, difficulty in keeping abreast of the current body of administrative law became obvious. Neither the defendants nor the government correctly understood which regulations were currently in effect. In response, Congress passed the Federal Register Act (ch. 417, 49 Stat. 500 (1935)). The Act mandates the daily publication of the Federal Register, whose purpose is to serve as a central repository of the publication of all newly adopted rules and regulations. Furthermore, publication in this periodical is constructive notice to all who may be affected by a regulation.

Although the Federal Register was helpful in notifying the government and people of changes and additions to federal regulations, the regulations were still not codified. Congress amended the Federal Register Act in 1937 to require codification and subject access to the regulations through publication in the Code of Federal Regulations (CFR). The first CFR was published in 1939.

The purpose of the CFR was/is to provide a system of categorization whereby all the regulations promulgated [created] by a federal department or agency on a given subject can be located and tied to the corresponding statute. The CFR does an admirable job of providing that service.

As stated in the opening paragraph, regulations are intended to elaborate on the working details of a statute. It is beyond Congress' ability to be experts in every field concerning which it may be called upon to legislate. The US Supreme Court has referred to the text of Congressional legislation as "the broad language of the statute", which often times requires more detail to be properly placed into effect. These "details" are found in the "implementing regulations" promulgated by the agencies that must administrate and/or enforce a statute. Federal agencies are charged with faithful implementation and enforcement of the laws [statutes] through the regulations they promulgate. Although properly speaking, regulations are not law, rules and regulations have the full force and effect of the law.

[Editor's Note - It should be noted that federal statutes, as well as their associated regulations, only have force and effect upon those persons who are properly within federal jurisdiction, and has no force or effect upon anyone else. See the section, Federal Jurisdiction, within this website for more information on federal jurisdictional limitations.]

In 1946 the Administrative Procedures Act (APA) was passed clarifying the process of making

regulation, allowing for greater accessibility and participation by all citizens. The APA required the publication in the Federal Register of all proposed rule changes and a period for public comment. Proposed and final regulations that have general applicability and legal effect are required to be published in the Federal Register. The administrative regulation-making process requires that proposed regulations be published and that a comment period be provided. When the comment period closes, the agency may finalize the regulation. Once the regulation becomes final, it is published again in the Federal Register and then codified into the Code of Federal Regulations.

In 1990 the regulatory landscape was changed yet again by passage of the Negotiated Rulemaking Act of 1990 (NRA) [currently codified to 5 U.S.C §§ 561-570]. The NRA allows for greater involvement by affected parties in the drafting of regulations. Changes under NRA are more procedural than substantive and need not be addressed further in this document.

Regulations Control the Law

The power of regulations is that they control the application of the statute.

"... we think it's important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act would impose no penalties on anyone".
California Banking Association v. Schultz, 416 US 21 (1974)

While not all statues require regulations, for practical purposes it can be generally considered that a statute for which an implementing regulation has never been created has no administrative or judicially cognizable consequence for failing to follow the statute.

"Although the relevant statute authorized the Secretary to impose such a duty, his implementing regulation did not do so. Therefore we held that there was no duty to disclose..."
United States V. Murphy, 809 F.2d 142, 1431

"The reporting act is not self-executing; it can impose no duties until implementing regulations have been promulgated."
California Bankers Ass'n v. Schultz, 416 US 21

"For federal tax purposes, federal regulations govern."
Lyeth v. Hoey, 305 US 188, 59 S. Ct 155

"...failure to adhere to agency regulations may amount to a denial of due process if the regulations are required by constitution or statute."
Arzanipour v. Immigration and Naturalization Service, 866 F. 2d 743 746 (5th Cir. 1989)

Although regulations are controlling in most circumstances, and they have the full force and effect of law, it is important to note that regulations can never expand upon the powers vested in the agency by a statute. Here is how the California Supreme Court phrased it:

Administrative agency may not, under guise of its rulemaking power, abridge or enlarge its authority or act beyond powers given it by statute which is source of its power; administrative

regulations that alter or amend statute or enlarge or impair its scope are void.
San Bernardino Valley Audubon Soc. V. City of Moreno Valley, 51 Cal.Rptr.2d. 897 (1996, Cal.App. 4th Dist)

On this issue the federal courts have stated:

"...power to issue regulations is not power to change the law..."
US v. New England Coal and Coke Company 318 F.2d 138 (1963)

Making Sense of the Code of Federal Regulations

As one can clearly see, the regulations are preeminent in their significance. When attempting to understand the specifics of a law, one should always research not only the applicable statutes, but also the associated regulations. To overlook the regulations would be a critical mistake.

Statutes are generally (but not always) codified into the United States Code (USC). [See the section, United States Code, within this website for more details on the United States Code.] The CFR is a much larger compendium than is the USC. This is because the CFR provides all the intricate and/or technical details that are required to properly administrate or enforce a statute. As an example, a statute may be only three paragraphs in length, but the implementing regulation(s) may be eight pages long! Additionally, there may be numerous regulations associated with just one statute! This reality makes the CFR many times larger than the USC. In the average law library the USC (annotated lawyer's edition) takes up a modest size bookcase. The CFR usually takes up the better part of a wall.

The CFR, like the USC, is separated into 50 distinct "titles". Each "title" addresses a distinct subject matter. Examples are; Title 26 - Internal Revenue; Title 27 - Alcohol, Tobacco and Firearms; Title 28 - The Judiciary; Title 8 - Immigration and Naturalization; Title 19 - Customs. These titles are then broken down into Parts and Subparts. As we stated earlier, the regulations are voluminous - Title 26 of the CFR has 799 Parts (although some are reserved for future use).

There is a numerical relationship between the subject matter in the Titles of both the USC and CFR. For instance, in the USC, Title 8 deals with Immigration matters - so does Title 8 of the CFR. Title 26 of the USC addresses taxes; so does Title 26 of the CFR. This type of number-to-subject relationship between the USC and CFR exists in all but a few of the titles.

The format that is generally used to designate a section within the CFR is exemplified by this citation: 26 CFR 301.6012.

That citation is broken down as follows: 26 CFR means the 26th Title of the CFR. "301" is a reference to Part 301 within Title 26. "6012" is the section of the USC that this section of the CFR is expanding upon. Don't let that last sentence confuse you - the numbers that appear after the decimal point in a CFR citation are always the same as the section number of the USC to which the regulation pertains. However, since the regulations are more detailed than the statute, the section number for the regulation may be broken down into numerous "sub-sections" that do not appear in the USC.

As an example, within Title 26 of the USC there is §641. For the CFR to expand on that section

properly, Part 1 of the CFR offers the following sections:

1.641(a)-0
1.641(a)-1
1.641(a)-2
1.641(b)-1
1.641(b)-2

You can easily see why the CFR is a larger compendium than the USC when there are five sub-sections in the regulations to clarify just one statute.

Each "Part" within a Title of the CFR addresses a specific aspect of the subject matter of the Title. We wish we could tell you that there is a standardized system in place for determining which aspects of the subject matter get codified to which Parts of a Title, but such is not the case. Each title deals with such diverse issues that no hard-and-fast rule can be constructed for how areas are broken down and assigned into the various Parts of each Title.

In order to find the precise location of a regulation within the CFR one might find the "Contents" section at the front of each CFR Title to be useful. Additionally, the publisher of the CFR [the National Archives and Records Administration (NARA)] has been kind enough to publish an appendix to the CFR, called the "CFR Index and Finding Aids". Inside that volume one will find (amongst other things) the "Parallel Table of Authorities and Rules". This "table" lists all of the sections of the USC and then provides you with the CFR location of the regulations that have been promulgated for any specific USC section. [The "table" also provides this same cross-reference system for Statutes-at-Large and Executive Orders.]

In order to clarify the formatting we've just discussed, we'll examine some CFR Parts. Here is a small sample of the Parts from Title 26 [CFR]:

Taxes upon individuals Part 1
Estate tax Part 20
Gift tax Part 25
Employment tax Part 31
Taxes on wagering Part 44

It should be noted that there is also a numerical relationship between the individual section of the USC and the corresponding section of the CFR. Let's look at an example. Section 6001 of the USC is the section that requires the keeping of books and records. The purpose of the regulation is to specify who needs to keep such books and records, and under what circumstances.

Keeping in mind from the list above that different Parts address different taxable activities and types of taxes, one must ask if §6001 applies to all taxes, or just some taxes and/or taxable activities. The way we can make that determination is to examine the CFR to see which types of taxes (or taxable activities) require the keeping of books and records, and which do not. After examining the CFR and its Parts, we find that the Secretary of the Treasury [who creates tax regulations] has promulgated only the following regulations concerning §6001:

Title 26 [CFR] - Parts 1, 31, 55, 156

Title 27 [CFR] - Parts 19, 53, 194, 250, 296

So...§6001 (the requirement to keep books and records) has been made enforceable by the Secretary of the Treasury upon only 4 types of taxes in Title 26, and 5 specific taxable activities in Title 27 (Alcohol, Tobacco and Firearms).

In Title 26, those taxes (Parts) are:

Part 1 Taxes Upon Individuals
Part 31 Employment Taxes.
Part 55 Excise Taxes on Real Estate Investment Trusts and Regulated Investment Companies.
Part 156 Excise Taxes on Greenmail.

In Title 27, those taxable activities (Parts) are:

Part 19 Distilled Spirit Plants.
Part 53 Manufacturers Excise Taxes-Firearms and Ammunition.
Part 194 Liquor Dealers.
Part 250 Liquors and Articles from Puerto Rico and the Virgin Islands.
Part 296 Misc. Regs Relating to Tobacco Products and Cigarette Papers and Tubes.

Therefore, according to the regulations promulgated by the Secretary of the Treasury, if you are not involved in one of the activities listed above (Parts 19, 53, 194, 250, & 296), or liable for one of the taxes listed above (Part 1, 31, 55, & 156), there is no legal requirement for you to keep books and records.

When There Are No Regulations

It should be kept in mind that the government routinely attempts to use a regulation for matters concerning which a regulation has no applicability.

Our editor was once called by friends who own a tanning salon. Not long after they opened, an FDA official visited their business and demanded to inspect the tanning beds. The owners (a husband and wife who are not Patriots) were taken aback and refused to allow the inspection. The official left saying that he would return at a later date. Our editor researched the FDA regulations for the owners and found that the only regulations promulgated on the subject of "tanning devices" dealt with tanning devices used for medical purposes. In other words, tanning devices used by a doctor's prescription, or administered directly by the doctor's staff. Obviously there was no regulatory authority for the FDA to inspect "recreational" tanning beds. The owners wrote a succinct letter to the FDA official informing him of his complete lack of jurisdiction to inspect the beds in their business. Two weeks later the official returned to their business and stated that if they did not allow the inspection right then, he would return later in the day with a team of armed US marshals and close their business down and take their 12 month-old infant (who was present at the business with them) into "protective custody". While the owners capitulated and allowed their beds to be inspected, the FDA official never presented any evidence of FDA jurisdiction. He simply used crude threats of violence to create fear and gain compliance.

Of course the underlying reality is that the FDA official was initially relying on the "medical" regulations until the owners called him to accountability on the issue. Once the official's misrepresentation was exposed, he chose the path so common to petty tyrants - he chose to toss the law out the window and use threats and coercion to accomplish what the law would not support.

The regulations can be a powerful tool, but one must recognize that courage is an essential element when facing a dishonest government.

What If There Are Regulations?

Many times there are regulations concerning a matter that the government has contacted you about. Does this mean you must comply with the regulations? Maybe "yes" and maybe "no". One must remember that regulations only clarify the implementation of a statute. Therefore the question becomes, "Under what authority did Congress pass the statute?" In other words, if a statute was passed under the federal government's interstate commerce authority, the regulations still apply only to matters over which the US has interstate commerce authority. Accordingly, if a government official shows up at the local shoe repair shop and attempts to impose their authority by presenting regulations that were written for a statute that relies on US interstate commerce authority, it is extremely unlikely that the regulation has any lawful applicability to the local shoe repairman.

Although today most Americans prefer to let the government "tell them" what is right or wrong, the US Supreme Court has held that it is the duty of each Citizen to determine for himself if the government actually has the authority it claims in any given situation. This dovetails perfectly with one of the founding principles of our form of government, which is that all government power is derived from the consent of the governed [that's you]. Since the government's authority to act is derived from the Citizens, there is no better person to determine the truth about the government's authority than you! Trusts

The purpose of this article is to inform you of the various factors and issues concerning trusts so that you may make an informed decision as to whether a trust may be of any benefit in your life.

Statutory v. Non-Statutory

The first and most fundamental issue that one needs to understand is the distinction between a statutory trust and a non-statutory trust. A non-statutory trust is generally referred to as a common law trust. [See The Law within this site for information on the common law.]

Statutory trusts are those, which like corporations, are established by and through a law created by the legislature of your state. Such trusts are imbued by the legislature with certain "financial advantages" (e.g. exempting certain property from State taxation of one form or another). However, such trusts are 100% within the regulatory control of the State. If the legislature were to change its mind tomorrow and withdraw the trust's financial advantage, they would be doing nothing wrong and you would have no recourse. When you place property in a statutory trust, you are in effect saying to the legislature, "I agree that this property is within the State's jurisdiction and it would be really great if you'd treat me fairly in the future". Placing one's property within a statutory trust also makes that property ripe for administrative levy and/or seizure in the event

that a tax agency makes a claim against the person who established the trust, or against the trust directly.

Conversely, common law trusts are not created by legislative fiat, but are created in the realm of Equity and under a Citizen's unalienable right to contract. [See The Law in this site.]

"A pure Trust is non-statutory. The Court holds that the Trust is created under the realm of equity under common law and is not...created by legislative authority."
Croker v. MacCloy, 649 US Supp 39

[A contractual organization is] "created under the common law of contracts and does not depend upon any statute for its existence."
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It is important to know and understand that an organization (such as a common law trust), which has not been created under State authority, generally cannot be regulated, and most State laws (written to effect corporations) have no legal force upon such an organization. [See the Sales Tax page within this website for a revealing discussion on the term "person", and corporations.] We say that such a trust cannot "generally" be regulated, because we wish the reader to understand that there are certain activities that are inherently subject to State regulatory control [e.g. hauling toxic waste on the highway] and if a common law trust were to engage in such an activity, then it would be subject to State regulatory control.

Another advantage of a common law trust is that the trust possesses the same rights, privileges and immunities (speaking in Constitutional terms) as the trustee.

"The fact that a business trust is not regarded as a legal entity distinct from its trustees, if a true trust...may result in this advantage to the trust, which a corporation does not possess: The trust consists of individuals...who are Citizens, and who, therefore, are entitled to certain rights and immunities such as those guaranteed by the privileges and immunities clauses of the Federal Constitution, which do not apply to Corporations."
Morrissey v. Commissioner of Internal Revenue, 296 US 344 (1935)

This is an important concept that translates into important real-life benefits. Most "organizations" are statutory fictions and are subject to virtually every law on the books. They are also obligated to open their "books and records", upon demand, to allow the government to explore whether or not some violation (of a virtually endless list of laws) has occurred. Statutory entities may also be prohibited from activities from which a Citizen with unalienable rights cannot be prohibited.

Common law trusts are not bound by laws controlling the actions of corporations. Common law trusts are not bound by "public policy" decisions of the legislature that are masquerading as "law". Common law trusts need not open their books to anyone unless ordered to do so by a true judicial warrant issued by an appropriate court. Common law trusts may freely engage in any activity that any American Citizen may engage in (provided that the trustee is a Citizen of a state of the Union). [See our Citizenship page for distinctions in the nature of citizenship.]

"These trusts - whether pure trusts or partnership - are unincorporated. They are not organized under any statute; and they derive no power, benefit, or privilege from any statute."

Hecht v. Malley, 68 L ed 949

A Pure Trust is not subject to legislative control. The Court holds that the Trust is...not subject to legislative restriction as are corporation and other statutory entities created by legislative authority."
Croker v. MacCloy, 649 US Supp 39

"A Pure Trust derives no power, benefit, or privilege from any statute."
Crocker v. Malley 264 US 144

So What Does One Use a Trust For?

Trusts are used primarily for four purposes:

Protection of assets
Generational preservation of assets
The conduct of business
Privacy

[Editor's Note: For the balance of this article, the word "trust" shall mean a common law trust, unless otherwise indicated.]

Privacy - Common law trusts can provide privacy in a manner that no statutory entity can. Whenever the State is a party to a business arrangement, such as establishing a corporation or other statutory entity, the State requires the particulars from all the associated parties and that information becomes a part of the public record and is generally accessible.

By contrast, a common law trust is traditionally held in the strictest privacy, with no one but the settlor and the trustee knowing all the details of the trust and the identities of those involved.

Generational Preservation of Assets - Many people would prefer to avoid a situation in which inheritance taxes would be owed on property after their death. By placing property (real or personal) in a Family Preservation Trust, the "owner" of the property (the trust) never dies, and therefore no "inheritance" takes place. Despite the fact that the property belongs to a trust, current and future generations of family may make unfettered use of the property under the terms of the trust. This form of trust arrangement should always be an irrevocable trust (which will be addressed shortly).

Protection of Assets - We live in a society that is increasingly complex. Legislatures are pumping out laws faster than the average Citizen can keep track of them, while at the same time recourse to the courts to solve every little grievance is on the increase. We know that there are laws firms in existence today that conduct research to see what companies are in the best financial position to be sued. Add to that a government that is hungry for any excuse (lawful or otherwise) to seize one's property and this is likely the most precarious time in American history for a Citizen to own property of any significant value.

For these reasons and others, Americans are now protecting their assets through trusts on an ever-increasing basis. Done correctly, a settlor may retain the use and benefit of the property

while no longer being the actual owner. This form of trust arrangement should always be an irrevocable trust (which will be addressed shortly).

Business Trusts - This trust activity may be the least used, and is certainly the one with the most untapped potential. A common law Pure Trust Business Organization is a phenomenal corpus from which to conduct the private business operations of the average enterprise.

"One of the objectives of a business Trust is to obtain for the trust associates, most of the advantages of corporations, without the authority of any legislative act and with the freedom from restrictions and regulations generally imposed by law upon corporations." 13 Am Jur 2d, page 379, Paragraph 51

When a trust conducts business, it enjoys privacy, freedom from most State regulation, separation of personal assets from business assets, and the officers of the trust are shielded from the liabilities of the business (unless fraud or wrongful death are involved). That last benefit is similar in concept and operation to what corporate officers call, "the corporate veil". Here is what the federal courts say about the protections afforded to the trustee(s), managing agents, and the trust.

"The fact that the trustees hold property, does not mean the trustees own personal property. Trust property cannot be held under attachment nor sold upon execution of trustees' personal debt...Trustees and beneficiaries cannot be held liable for debts incurred by the trust. If, in fact, a true trust had been created, the certificate holders [the true owners of the Trust property] are not liable on obligations incurred by the trustees or managing agents appointed by the trustees.
Hussey v. Arnold, 70n N.E. 87; Mayo v. Moritz, 24 N.E. 1083

"Trust property cannot be held under attachment nor sold upon execution, for the trustee's personal debts."
Clew v. Jamison, 182 US 461, 21 S Ct 645

As you can see, a trust affords the very same type of protection for, and from, the trustee(s) and managing agents as a corporation does for its officers.

Pure Trust Business Organizations also have the added advantage of incurring no federal or State tax liability. The IRS has confirmed this in writing. Original Intent possesses a determintion letter from the IRS, which states:

"According to our National Office, a Pure Trust Organization (an unincorporated business trust) is an organization that has no return filing requirements and is a nontaxable organization. Therefore, your Pure Trust Organization doesn't need an EIN"

It should be noted that when the IRS issues a written determination from its National Office, the determination is a product of their legal staff, issued after significant review and consideration. The IRS has not reversed this position since it was confirmed in 1960. The IRS cannot reverse this position because it is based on Constitutional principles.

Revocable v. Irrevocable

All trusts, common law or statutory, come in two flavors - "revocable" and "irrevocable".

Revocable means that the trust can be readily dissolved and the property within the trust reverts to the sole ownership of the "grantor" (the former owner). These trusts are often referred to as a "Grantor's Trust". Such trusts do not afford much asset protection. In most cases, the law considers such trusts to be little more than an "alter-ego" of the grantor. Many courts have declared revocable trusts to be nothing more than a "dba" of the grantor.

Irrevocable trusts offer the strongest asset protection possible. Like a corporation, irrevocable trusts are considered a separate legal "person" from the settlor and/or the grantor(s). Irrevocable trusts generally exist for eternity - or until some specified event occurs, requiring the termination of the trust. However, unlike a corporation, a common law pure trust may exercise all the rights, privileges and immunities of the trustee. If the trustee is a Citizen of a state of the Union, that's a significant advantage over other business forms.

It should be understood that property conveyed into an irrevocable trust becomes the sole property of the trust and will generally not be returned to the previous owner. Once property is conveyed into trust, it is "held in trust" by the trustee and administrated in the best interest of the trust, in accordance with the trust indenture. This is one of the essential reasons that property within such a trust is so secure - there can be no claim made that the property still belongs to the former owner (grantor).

Proper Trust Administration

Over the years, folks within the Patriot movement have made some serious mistakes. Improper trust administration is certainly one of the most notable areas where Patriots have gotten into trouble and brought quite a bit of pain upon themselves.

Patriots are always looking for the "fastest" way to solve a problem. We think that is only natural because often times a Patriot is already under attack from a government agency and is trying desperately to find a way to thwart the aggressive actions of the government. In most cases we have seen, the Patriot is morally and legally in the right, but does not have the expertise to prevail over a fleet of government lawyers, or the Patriot has taken the proper steps and the agency is simply steamrolling the Citizen - and the rights of every American in the process - because if you plow over the rights of one Citizen, you are plowing over the rights of all Americans. Nevertheless, if in haste we make poor choices, we will likely feel the consequences of those poor choices in the future.

Adding to the problem is the plethora of Patriot "gurus", who learn just enough to be a danger to themselves, and then begin to tell others "how it is". These "gurus" have done as much to injure the Patriot movement as anything the government has done over the past 30 years. There are few things more discouraging than finding out that your own side laid the foundation for your failure! We have spoken to many former Patriots who have left the movement because they felt that the movement didn't know what it was doing. There's certainly some truth to such observations. Trust administration is clearly one of those areas.

A trust is administrated by a trustee, or a board of trustees. That's the long and the short of it. There is no other proper and lawful way for a trust to be administrated. Anyone who tells you

otherwise is ignorant or lying to you.

Many in the Patriot movement have been fond of conveying property into trust, becoming Managing Agents (or whatever term they use as an equivalent) of the trust, and then having the trustee delegate complete authority to them. They then wonder why several years later the IRS (or some other government agency) is able to take "the trust's" property from them. The reason is simple, the trustee acted in manner which vitiated the credibility and legal protections of the trust.

Another huge mistake made by Patriots is the unfounded belief that you can avoid an income tax (if legitimately owed) by conveying the income into trust prior to paying the taxes. The IRS nails Patriots on this stupid mistake all the time. Let's be clear on this: A trust can do nothing to alleviate any legitimate tax liability that you may have. If you owe the tax, you must pay it! However, if you don't owe a tax on the money (or other property) that you receive, then conveying it into trust may well protect it later from an attack by an unlawful and money-hungry government. [See Federal Income Tax and State Income Tax to help you determine if you owe income tax.]

Patriots have probably made as many trust mistakes, as there are inexperienced and unqualified trustees in the Patriot movement. We cannot address all the errors that we have seen. What we can say with absolute certainty is this: If you establish a trust, make sure you acquire a qualified and professional trustee. To do otherwise is to place everything at risk.

[For professional trustee services, Contact Us.]

The Business Trustee

Having a professional trustee is even more essential if a trust is involved in business activities. Trusts that merely hold property have very few dealings with other people, but a business trust will generally be an active part of the business community and will interact with numerous people, entities, and government bureaucrats. For this reason it is essential that a business trust have a trustee (or trustees) who is knowledgeable in various areas.

The trustee of a common law business trust should be knowledgeable in the following areas:

Constitutional law - A common law trust relies on the rights of the trustee, which are secured by and through his state Constitution and the US Constitution. It should be manifestly obvious that a trustee cannot assert his rights, and thus those that are operational for the trust, if he has little knowledge of the his own rights, privileges, and immunities, as well as the remedies that are available to secure those rights from abridgement.

Trust law - It should be plainly obvious that one cannot administrate what one doesn't know or understand.

Contract law - It will fall within the duties of the trustee to execute agreements in the name of the trust.

Tax law - Although a Pure Trust Business Organization has no tax payment or reporting requirements, the trustee must know how to preserve that position.

General Business Law - Although a trustee should not be involved in "running the business", he cannot properly undertake his trustee duties if he does not have a firm grasp of fundamental

business practices.

We feel compelled to make one disclaimer concerning business trusts. If you believe that you will need to acquire a significant amount of investment capitol from investors in order to achieve your business goals, a business trust is likely not the proper business form to establish. Although there is no practical reason that investors cannot invest in the business activities of a trust and receive the same returns and assurances, investors are inexperienced with business trusts and will virtually always insist that their capitol go into a corporation.

The Government Lies (Again)!

As common law trusts have experienced a resurgence of popularity, the government and its cronies (i.e. financial institutions, tax attorneys, CPAs, the media, etc.) have embarked on a campaign of lies intended to undermine the growth and expansion of common law trusts - especially business trusts.

Over the last 2 years we've seen articles published in periodicals for the financial industry, as well as in other more mainstream publications, which assert that common law trusts are not real - that they do not actually exist - and that promoters of such trusts are merely charlatans who are preying upon the ignorance and naiveté of an unwitting public.

Many of these articles have been written by attorneys who know that they are lying. In one recent case, after reading an article in which the author (an attorney for the Trust department of bank) stated that there is no such thing as a "common law trust" we contacted the editor of the well-known financial publication that printed the article and provided him with numerous federal court decisions concerning common law trusts. We asked him how he could run an article in which it was stated that common law trusts don't exist, when the federal courts have been verifying their existence for 225 years. We pointed out that since it would have been a simple task to check the author's allegation, the editor must have either been remiss in his duties, or intentionally chosen to publish the lie. We asked that a retraction be printed. What was his response? Silence. We never heard back from him and no retraction was printed.

Accountants are routinely sent information from the IRS telling them to be on the lookout for "abusive" trusts. These publications frequently contain the words "common law trust" in the warning.

For a full and detailed examination of the IRS' "smear campaign" against common law trusts, see Debunking IRS Lies on this site.]

Summary

We hope that this article has given you some useful information concerning common law trust. We also hope you will visit Debunking IRS Lies so that you won't be intimidated by the carefully crafted statements from the snakes (oh...sorry...we meant "attorneys") at the IRS. Once you understand the word games the government is playing, you will have a good laugh at their expense.

Here is what we've covered in this article:

Common law trusts are established under the unalienable right of Citizens to contract with one another.

A contract of a particular form (a "trust indenture") creates a trust.

Trusts may be used for various purposes.

No matter what purpose you have in mind for a trust, increased privacy will always be one of the benefits.

These purposes may be advantageous to you and/or your family.

Trust can be revocable or irrevocable. Irrevocable is generally a better choice.

If you owe income tax on your earnings or income, it must be paid before you convey money or property into trust.

If you have paid the tax, or don't owe a tax, conveying property into trust can protect your assets from a future unlawful attack by the government.

A professional trustee is essential to the proper operation of a trust.

In the business arena, common law trusts offer many of the same advantages as statutory entities, but without the government "strings" attached.

A Pure Trust Business Organization has no tax payment or reporting requirements.

Common law business trusts are not the best vehicle with which to seek investment capital.

Reading how the government attempts to misrepresent common law trusts will assist you in understanding how the IRS generally misrepresent a myriad of issues to the public.

Obviously, the area of trust law, and its proper administration, is far too large and detailed to fully address within this article. If you would like additional information, or would like to establish a trust, or are seeking a professional trustee, please Contact Us.

If you have found this page to be informative, please send this URL to a friend. http://www.originalintent.org/edu/trusts.php