

Marriage

Marriage: Illinois' laws on marriage are about as simple and straightforward as they get. Those 18 and older may marry without parental consent.¹ Kids aged 16 to 18 need the consent of **both** parents² (only one parent is necessary if one cannot be located or has died) or judicial approval. To get married, both parties must personally appear before the county clerk, fill out and sign an application, and pay a nominal fee.³ The clerk then issues a marriage license and a marriage certificate.⁴ At the ceremony, the person solemnizing the marriage completes the certificate and sends it back to the county clerk.⁵

Restrictions: There are a few prohibitions to marriage: Illinois law prohibits same-sex marriages.⁶ Uncles may not marry nieces and aunts may not marry nephews.⁷ Cousins **may** marry, so long as they're both at least 50 years old or one of them is sterile.⁸

Children born to or adopted into prohibited marriages are considered by the law to be the legitimate offspring of the defective marriages.⁹ This affords the children all of the rights of children born to legitimate marriages (why should they pay the price if their parents' marriage is somehow invalidated?). Consider this: let's say a lesbian "married" to another lesbian is artificially inseminated and gives birth. The marriage is not legitimate, but the child is. Were the non-biological "mother" to die, the surviving lesbian spouse would not inherit anything under Illinois' intestacy laws, but the child would.

Bigamy and Polygamy: Bigamy is, of course, being married to two people at the same time and polygamy occurs where a person has several spouses. Illinois, like all states, prefers monogamy and has outlawed bigamy and polygamy.¹⁰ Bigamy and polygamy are crimes in this state¹¹ – people with multiple spouses can go to jail.

If your spouse marries someone else, your marriage is unaffected and the second marriage should be declared invalid. If, however, you find out that your spouse was previously married to someone else when he or she married you, you've got a problem. Your marriage is not entirely secure. The defect can be cured, however, by dissolving the first marriage.¹² Upon the finalization of the divorce, the second marriage is said to have been "cured" and is, from that point on, valid.

Don't take this lightly – as America's population lives ever-longer lives, the problem is becoming more common. Many people marry, split up, and then ten or twenty years later, marry again. In such cases, the second spouse is only a "putative spouse" and the first spouse stands in the better position. Consider the case of poor Anna Kuznar.¹³ In 1953, Mitchell Kuznar married a young woman named Emilia in Poland. Unhappily, the marriage didn't last. Rather than go through the formalities and cost of a divorce, however, young Mitchell simply left Emilia and moved to America. In the United States, Mitchell met Anna, fell in love, and in 1971 they married. Thirty years later, when Mitchell died, Anna tried to collect his estate but the court awarded everything to Emilia back in Poland. Anna was merely a "putative spouse" – Emilia was his real spouse and she inherited everything.¹⁴

Marriage by Proxy: Soldiers and sailors used to have the opportunity to marry their homeland sweethearts "by proxy." A friend would stand in for the soldier/groom and the marriage was considered valid. Illinois no longer recognizes such marriages. Both parties have to be present and actively engaged in obtaining the certificate and license as well as the marriage ceremony.

Common Law Marriages: Common Law Marriages are recognized by some states – but not since 1905 in Illinois.¹⁵ It used to be that if you forgot to follow some of the rigorous formalities of the marriage process (see above) but nonetheless lived together and held yourselves out as husband and wife for years, the courts would later consider you to be married. This can be important for things like inheritance, insurance, taxes, etc. The law in Illinois is this: if you don't follow and satisfy all of the requirements of the law, you are not married. No matter how long you live together, no matter what you tell everyone in the world, regardless of whether you exchange rings and vows, if you don't follow the requirements of the law, you're not married. Children born to, or adopted by, common law marriages

are, however, considered "legitimate" under Illinois law.¹⁶

If you established a common law marriage in a state that recognizes common law marriages, Illinois may recognize the marriage if you later move to Illinois.¹⁷

Cohabitation Agreements: Although Illinois courts will not recognize a common law marriage, you can still draw up a valid contract that will determine how property will be divided and whether either "spouse" should pay money to the other. Sex, however, may not be a part of the deal.¹⁸ An awful lot of people are "living together" these days; an apparent backlash to what are seen by some as draconian property division and financial support provisions of the divorce laws. If you're thinking about moving in with someone, or are already living together, do yourself a favor and have one of our attorneys prepare a cohabitation agreement. They don't cost much and they're worth it. Breaking up is hard and to do and dividing the property and sorting out the bills is nearly impossible. A good cohabitation agreement will help minimize conflict if there are problems and will help you and your partner focus on the aspects of the relationship that are more important than money.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.