



Ohio's Marriage Laws

Marriage is a legal as well as a spiritual and personal relationship. When you state your marriage vows, you enter into a legal contract. There are three parties to that legal contract: 1) you; 2) your spouse; and 3) the state of Ohio. The state is a party to the contract because, under its laws, you have certain obligations and responsibilities to each other, to any children you may have, and to Ohio.

What are the obligations of marriage?

It is important for both of you to realize that you have the obligations of mutual respect, fidelity and support of each other. Both parties to the marriage must support themselves and their spouse out of their respective property or by their respective labor. If a married person is unable to do so, as in the case of injury or disease, the other spouse must assist in the support so far as the spouse is able. The duty to support also extends to the parties' biological and adopted children. Failure to provide support to your spouse or your dependents may result in a civil action to recover the cost of "necessaries" or a criminal charge for non-support of dependents.

How do we get a marriage license in Ohio?

The probate court in each of Ohio's 88 counties is the only agency in this state authorized to issue a marriage license. To apply for a marriage license, you must go to the probate court of the county in which one or the other of you lives. If neither of you is an Ohio resident, you must apply in the county where the marriage will be solemnized.

Both of you must appear at the probate court in person and state under oath the following: name, age, residence, place of birth, occupation, Social Security number, father's name and mother's maiden name, if known, and the name of the person expected to solemnize the marriage, if known. The probate court may ask each of you for a birth certificate showing your age or proof of other pertinent facts, as well as a photo ID.

If one or both of you has been married before, you must include in your application the names of the parties to that marriage and the names of any minor children. If either one of you has been divorced, you must provide the places, dates and case numbers of the divorces. Also, you must present a certified copy of the most recent divorce decree at the time you apply.

The probate court in each of Ohio's 88 counties has set a fee for the marriage license. Check with your local probate court for this cost.

Before 2001, Ohio marriage licenses could not be issued in fewer than five days from the date of application unless, for good cause, the probate judge waived the time limitation. Effective February 2001, the law changed, and there is no longer a five-day waiting period requirement. The marriage license is good for 60 days. If your marriage is not performed within that time, you must get a new license.

Who may contract a marriage?

Male persons of the age of 18 years and female persons of the age of 16 years, not nearer of kin than second cousins and not having a husband or wife, may be joined in marriage. A minor must first obtain the consent of his or her parents, surviving parent, parent who is designated the residential parent and legal custodian of the child by a court of competent jurisdiction, the guardian of his or her person, or any of the following who has been awarded permanent custody of him or her by a court exercising juvenile jurisdiction: an adult person; the Department of Human Services or any child welfare organization certified by that department; or a public children services agency. (This consent for a minor generally applies to females under the age of 18, but also may apply to males under 18.) In addition, an applicant under the age of 18 years must provide proof of age and must prove that he or she has received marriage counseling satisfactory to the court.

No license to marry will be issued if either applicant is under the influence of intoxicating liquor or narcotic drugs, or if infected with syphilis that is communicable or likely to become so.

Since June 26, 2015, Ohio same-sex couples may obtain marriage licenses and be married, and Ohio does recognize marriages of same-sex couples contracted in other states. Same-sex married couples have all the rights and responsibilities of every other married couple. For instance, they may inherit from each other, and are recognized for tax purposes. Both same-sex spouses may be listed on their children's birth certificates, although details of how this is done and other custody matters are still being worked out at this writing.

In order to inherit from or make legal decisions for each other, persons in unmarried relationships, whether same-sex or heterosexual, must prepare formal planning documents such as wills, nominations of guardianships, health care and financial powers of attorney, and designations to authorize control over disposition of remains at time of death, as well as parenting agreements. Persons in unmarried relationships are advised to consult with an attorney who is experienced in such planning for their situation, and to be aware that this area of the law is complex and subject to change.

What is a premarital contract?

A premarital agreement (also called a *prenuptial* or *antenuptial* agreement) is a contract entered into by persons about to be married who wish to resolve issues of support, distribution of wealth and identification, separation and/or division of property, in the event of the death of either spouse or the failure of the proposed marriage. Generally, premarital agreements can be used to strip the parties of some or all rights to each other's property that would normally arise by virtue of marriage. Consequently, they are commonly used by persons who wish to preserve all or a part of their wealth, or to keep the wealth in the same family that generated it. Premarital contracts also may be used by those who have been previously married and wish to see that their property goes to the children of the prior marriage on the termination of the proposed marriage or upon the death of one spouse. Both parties to a premarital agreement should consult with separate legal counsel.

Who may perform a marriage ceremony?

There are specific, named categories of persons who are authorized to solemnize marriages in the state of Ohio, including ordained or licensed ministers of any religious society, specified judges and mayors.

Is common law marriage recognized in Ohio?

Until October 1991, Ohio recognized the formation of common law marriages, and the courts required specific factors to establish a valid common law marriage. Since October 1991, parties who wish their marriage to be recognized by the state have been required to obtain a marriage certificate. While Ohio does not recognize common law marriages entered into after 1991, it does still recognize common law marriages that were validly entered into before that date, as well as those that arose in another state according to that state's laws.

As a married couple, must we use the same last name?

No. Either spouse may keep his or her own name, assume the other's name, or both may adopt a new surname upon marriage. Also, there is nothing to prevent a person from using a new name that combines the couple's two names. Traditionally, a wife assumed her husband's name, but as a modification, the wife sometimes adds her husband's name to her own last name or joins the two with a hyphen. If you are changing your name, you must notify several agencies of this fact. These include the Social Security Administration and the Ohio Bureau of Motor Vehicles. Without these changes, problems may arise concerning your driver's license and income taxes for the Internal Revenue Service. If you change your name after marriage, you should also notify banks, credit account holders and employers, insurers, retirement plan administrators and other appropriate state agencies of the change. If you cannot or do not know how to notify any retirement plan administrators, you may contact the Pension Rights Project at Pro Seniors (513-345-4160 or 866-735-7737) for assistance.

How does marriage affect property ownership?

In Ohio, the act of getting married does not give either a husband or wife an ownership interest in assets that were owned by the other spouse before the marriage. It also does not create an obligation or liability for the premarital debts of the other spouse. Assets acquired after the marriage may be titled jointly by the couple or held in the separate name of either spouse. However, if one spouse dies, the surviving spouse has rights under the law, whether or not the deceased spouse had a will. Those rights include a family allowance, an interest in real property and the right to remain in the couple's home for at least one year, even if all assets were owned in the deceased spouse's name. A non-owner spouse has an ownership interest in real estate, whether acquired before or after the marriage, that cannot be released without his or her consent. In case of a divorce, the court decides how assets will be divided between spouses.

What should we do about insurance beneficiaries?

If you acquired life insurance policies before marriage, you may wish to designate your spouse as a beneficiary. To do this, contact your insurance agent. If you are covered by a group insurance plan through your employer, you should advise your employer if you wish to change your beneficiaries.

How important is record keeping?

There is no better time to start keeping records than the present. This is an excellent habit to develop, because you can never tell when a receipt or a check stub will save you many dollars. It would be wise to obtain a safe deposit box for safely keeping insurance policies, marriage certificate, birth certificates, religious certificates, deeds, contracts and other valuable documents.

A checking account is a handy record-keeping device. Your canceled check acts as a valuable receipt in case any question should arise as to the payment of a bill. Furthermore, the payment of bills by check also will serve as an adequate record in case the Internal Revenue Service should question a deduction. If you pay your bills online or with a credit card, you will want to keep track of your receipts, and print proof of payment for significant items.

Record keeping may become essential to proving a separate (pre-marital) interest in an asset. The spouse who asserts separate property at the time of a divorce has the burden to prove that he or she owned the asset prior to marriage, and to trace the asset through the duration of the marriage to the time of divorce.

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