



Legal Opinion L-2001-07
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TO : Philip H. Arnold
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Through: Ronald Russo
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FROM : Steven A. Bartholow
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SUBJECT : Common Law Marriage - Idaho

Recently, one of the attorney advisors in the Office of General Counsel was asked for informal advice regarding a common law marriage alleged to have occurred in Idaho. While researching the question, the attorney noted that Idaho enacted legislation in 1995 providing that common law marriages entered into in Idaho on or after January 1, 1996 will no longer be recognized. This change is found in Chapter 2 of Title 32 of the Idaho Code, which states as follows:

32-201. What constitutes marriage – No common-law marriage after January 1, 1996.—(1) Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by the issuance of a license and a solemnization as authorized and provided by law. Marriage created by a mutual assumption of marital rights, duties or obligations shall not be recognized as a lawful marriage. (2) The provisions of subsection (1) of this section requiring the issuance of a license and a solemnization shall not invalidate any marriage contract in effect prior to January 1, 1996, created by consenting parties through a mutual assumption of marital rights, duties or obligations.

Consequently, effective January 1, 1996, the state of Idaho no longer recognizes common law marriages. However, if the common law marriage was entered into prior to January 1, 1996, Idaho will still recognize that marriage as a valid marriage, presuming the marriage was created by consenting parties through a mutual assumption of marital rights, duties or obligations.