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# Amy Edwards

FAMILY LAW

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## Family Matters

E-newsletter

December 2013

Welcome to our fifth issue of  
*Family Matters*  
e-Newsletter.

This monthly Divorce e-newsletter is brought to you by Divorce Magazine and Amy A. Edwards, with the law firm of Mattox, Davis, Edwards & Alexander, P.A. We hope you will find the information and articles useful. If you wish to be removed from our mailing list, please reply with the subject "Remove."

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**Common Law Marriage:  
Did You *Accidentally* Get Married?**

### About Us



Amy A. Edwards is a Board Certified Specialist in Family Law.

She is a principal at the Greenville law firm of [Mattox, Davis, Edwards & Alexander, P.A.](#) in North Carolina.

### Web Site of the Month

[www.NCpedia.org](http://www.NCpedia.org)

[NCpedia](#) is an online encyclopedia about all things North Carolina, from biographies, symbols and wildlife to industry, culture and government. State history buffs will appreciate the vast amount of online historical data available there, including the

# Common Law Marriage: Did You Accidentally Get Married?

By Amy A. Edwards

Common law marriages are based on an agreement between the parties, without any paperwork or a formal ceremony performed by a person vested with authority to perform marriages. In my practice, I have met a number of people who believed they were "common law married" in North Carolina. Some people have the mistaken notion that if a couple lives together for some period of time, then the relationship is magically transformed into a legally valid marriage. Each state has laws that list the specific requirements of a marriage. North Carolina is one of many states that does not permit common law marriage. A couple might have lived together for many years and even held themselves out as "husband and wife" but unless they have undergone the legal requirements of marriage, they were not legally married in this state. No doubt this is great news to some clients, who thought they "accidentally" got married, but bad news to others. And speaking of accidental marriage, much to the dismay of some of those same people, there is no accidental divorce (i.e., common law divorce).

## What About Common Law Marriage From Other States?

There are U.S. states that recognize common law marriage. Some of those states are Western states that historically had to make a "do it yourself" marriage available to residents because there was such a small population that ministers or magistrates did not live in a town or close to one. Most of the settlers living in the Western U.S. did not want to "live in sin" without the benefit of marriage, so common law marriage in the United States was born. If a couple is validly married in another state that recognizes common law marriage, only then will North Carolina give their marriage decree full faith and credit, recognizing it as a valid marriage.

## What is Required For a Valid Marriage?

If you do decide to tie the knot in North Carolina, the spouses must "take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other." Both husband and wife must be at least 18 years old. No one younger than age 14 can legally marry, and minors ages 14 to 18 may marry only in limited circumstances, including pregnancy. NC Gen. Stat. §51.

A valid marriage requires the ceremony to be made in the presence of a person with authority to marry individuals. That person must officially declare them to be married in the presence of two witnesses. The person with that authority may be an ordained minister of any religious denomination, a minister authorized by a church, or a magistrate. Another person of authority may be designated "in accordance with any mode of solemnization recognized by any religious denomination, or federally or State recognized Indian Nation or Tribe." A person who performs the marriage without a marriage license, or fails to sign and return the license to the Register of Deeds within ten days of the marriage shall be guilty of a Class 1 misdemeanor, and pay a \$200.00 fine. A license is only valid for 60 days and must be signed by the person who performed the marriage. In Pitt County, applicants can apply for a [marriage license online](#).

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[My Husband's Name is \*Not\* on the Deed. Why](#)

history of the [City of Greenville](#), which was originally named Martinsborough.

## Tip of the Month

Make sure you have a disaster plan for your [family](#) and [business](#) in the event of a [hurricane](#) or other inclement weather, fire or other emergency.

[Build a kit](#) and download a sample disaster plan at [www.ready.gov](http://www.ready.gov). The site offers sample supply lists, evacuation plans and a link to the NOAA National Weather Service. You will also find plans tailored to meet the needs of the [elderly](#), [pets](#), [military](#) families, infants and [children](#), people with disabilities, and other special groups.

## Legal Term of the Month

### Affidavit

An affidavit is statement signed under oath that functions like courtroom testimony. Although an affidavit can be used in lawsuits for limited purposes, often motions filed before a trial date, judges do not generally accept affidavits in place of the courtroom testimony by a witness. This is so because an attorney cannot cross examine a piece of paper.

## Legal Trivia

### Christmas Trivia

North Carolina criminal law prohibits anyone from taking or digging up American Holly, Trailing Christmas or any other Christmas greens from private or public land. Anyone convicted of this crime will be guilty of a Class 3 misdemeanor

NC Gen. Stat. §14-129.



## My Husband's Name Is Not On the Deed. Why Does He Have to Sign?

By Gary B. Davis\*

Throughout this Article, we will assume the property is owned solely by the wife, but the analysis is exactly the same if property is owned solely by the husband. Although real property in North Carolina may be owned solely by one party to a marriage, if he or she wants to sell the property (or borrow money on it by securing the debt with a mortgage or Deed of Trust), the spouse of the owner, in most cases, will be required to sign the Deed of conveyance (or Deed of Trust) for the transaction to proceed.

This is because of NCGS 29-30 which provides that in the event a married person dies, the surviving spouse can claim a life estate (the right to the use and benefits of the property during the lifetime of the surviving spouse) in 1/3 in value of any property owned by the deceased during the marriage, EVEN IF SHE NO LONGER OWNS IT, unless the spouse had signed the Deed or Deed of Trust. In other words, if the wife, Mary owns property solely in her name, and sells it to Mr. and Mrs. Brown, but Mary's husband John does not sign the deed, and Mary then died, even 20 years later, John could have a legal right to take an interest in the house during the remainder of his lifetime. The same analysis applies in the case of a Bank which took a Deed of Trust for security on a loan where John did not sign the Deed of Trust.

Obviously the Browns or the Bank will not be willing to undertake the risk that their home (or their collateral) might be lost to them, and they will require that John sign the conveyance.

In some cases, John may have waived that right by entering into a properly prepared pre-nuptial (before marriage) or ante-nuptial (after marriage) Agreement. In those cases, John's signature would not be required if Mary decided to sell the property, or borrow money by signing a Deed of Trust on the property.

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### Family Matters Archive

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\* [Gary B. Davis](#) is an attorney with Mattox, Davis, Edwards & Alexander, P.A. He has been a [board certified specialist](#) in the area of real property, residential, business, commercial and industrial transactions since 1992.

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## Message in a Bottle? Digital Co-parenting With You, Your Ex and the Children



### Message in a Bottle? Digital Co-parenting With You, Your Ex and the Children

By Amy A. Edwards

As the holiday season approaches, separated and divorced parents have to face the inevitable discussions, sometimes more aptly called heated disputes, about the where, when and how the children will spend time with each side of the family. Even if you are an experienced veteran in this regard, a refresher course never hurts.

#### **The Good**

The children are "the good" in your lives. What is the message you should send to the other parent when talking about your child? Think about your child's best interest when you talk with your co-parent. This requires a business-like tone, as odd as that sounds. The two of you do share a "business" and it is your child. We've all had jobs that were unpleasant. Think of the other parent as that irritating person at work who is a real pest. While annoying, that coworker does certain unique tasks that only can be done by him or her. By doing so, that person makes everyone's work load a little lighter. It is the same way with co-parenting.

Before you contact your ex, set a goal for the communication. For instance, your child must have both parents sign a permission slip in order to go on a field trip or summer

camp. Decide beforehand to discuss only that issue. Focus on getting to the goal of joint decision making, not how angry or hurt you are by inconsiderate behavior by your ex or, worse yet, the new dating partner. Keeping conversations brief will help you avoid straying into irrelevant issues about your joint past. Your child will grow up to make his or her own decisions about your ex, but until then, your child needs nurturing and care from both of you. If your child is lucky enough to have two parents, nurture that support system. Encourage the bond with your child and the extended family of the other parent. Even if your ex is a lousy parent, he or she is the only other parent your child will ever have. Your child did not start the war between you and your ex but needs and loves both parents, and frequently, both sets of grandparents and extended families.

### **The Bad and the Ugly**

Unless you have a great relationship with your co-parent, communication between you can rapidly disintegrate and turn into an argument, name-calling or even an altercation if you aren't careful. Children certainly do not benefit by having a parent who is right and another who is wrong. That is *your* war, not your children's war. Even if you think you know everything there is to know about your child, you probably don't. When your child hears a parent criticizing the other, there is a perceived obligation to either defend the other parent or show solidarity to you when you take sides against your ex. This applies whether the ex is a good parent, bad parent, or something in-between.

Children might be pressured by parents to pick a team. They are ill equipped to referee divorcing or separated parents. This is especially true with teens, who are old enough to have a clear understanding about the custody battles during the parenting divorce war. Placing responsibility on teens by putting them in the middle of complex adult relationships forces them to take measures to protect the younger children, which they can't handle emotionally or even physically. Over the years, I have seen many children in custody battles suffer from intense anxiety, lose sleep, lose their appetites and develop stomach troubles because they are forced to make efforts to fix the parent relationship so they can have relief. Children should not have to play politics, nor are they rewarded for good behavior by the "good" parent. Instead, they have two parents that they wish wouldn't fight all the time.

Too often, children are caught in the eye of the storm with no way to escape. Especially if you grew up in a family separated by divorce, remember how unhappy it made you feel when your families went to war. Think about your child's perspective the next time you tell a child to "go tell your mother/father" to do something, buy something or discuss child support. If you need to vent about the ex, talk with a therapist or counselor who actually is equipped to unpack some of the baggage you have because of a separation or divorce. Your child might also benefit by having a neutral person to listen to problems and make suggestions about possible solutions.

### **One Solution: Digital Co-parenting**

Digital communication is fast and fairly inexpensive. One way to reduce the tension is to make an effort to communicate only by e-mail unless there is a *bona fide* emergency, and agree to check it at least once a day. People tend to communicate more politely and are more reluctant to hurl insults at the other parent when he or she knows it is easily documented, and can be proven in court. Although they are becoming "old school" e-mails can be more easily stored, in contrast to text messages that aren't kept by the service provider for very long. These providers intentionally avoid keeping records of text messages to make it more difficult for people seeking copies of texts, even by means of subpoenas. If you use text messages, print them or forward them to a computer or other device that has storage capacity and backup protection. Be sure the children don't have passwords to the e-mail address use. Get

a separate e-mail address that you use only for co-parenting communication.

North Carolina law specifically encourages electronic communication between parents and children as a supplement to visitation but not as a substitute for visitation. In this context, the law defines "electronic communication" as contact, other than face-to-face contact, facilitated by electronic means, such as by telephone, electronic mail, instant messaging, video conferencing, wired or wireless technologies by Internet, or other medium of communication.

The Court must first find it is in a child's best interest to order digital communication. Then, "the court may set guidelines for electronic communication, including the hours in which the communication may be made, the allocation of costs between the parents . . . and the furnishing of access information between parents necessary to facilitate electronic communication." Further communication between a child and parent is subject to supervision by the court. Parents cannot use the "amount of time electronic communication is used" to argue he or she should be entitled to move out of state because of it. NC Gen. Stat. §50-13.2.

### **Another Solution: Creating a Shared "Family Calendar"**

Consider using a shared online calendar. There are many options for free calendars, including those available from [Yahoo](#) and [Google](#).

Note reminders for school events, doctor's appointments, and organize the summer visitation time to avoid confusion. Remember to add extracurricular activities, such as sports or band practice, to the calendar, as well as any web site links where permission slips or other important documents can be printed and signed. Include days off from school, teacher workdays, and holidays as the school calendar is made available. Most schools have online access to the school calendar on the school web site, including [Pitt County Public School System](#).

The only two people with access to it should be the two of you, with one password. Hard feelings can be minimized if you refrain from having your dating partner or new spouse involved in calendar notations. Although he or she may mean well, it will make things worse if you delegate this chore. It would be inconvenient to discover that, because your partner did not remember to tell you the visitation schedule had to be changed, your angry call to the other parent went unanswered for thirty minutes while you sat there in the car griping about it with your child in the backseat. Calendars can be printed, but each of you needs to commit to regularly checking the calendar in case there are schedule changes, perhaps three times per week.

I find that clients frequently believe the other parent is being spiteful when there is a change of plans or one fails to meet the other at the designated time or location. However, it is often the case that the other parent genuinely thought plans had been changed or other arrangements had been made. Although exes can be spiteful, most do not want to do things that would upset the kids. After all, it is safe to assume communication with each other when you were married or dating was not good, which is a factor that led to the separation in the first place.

Handling the scheduling issues with your child or children with a shared calendar can cut down on misunderstandings. The more you take the high road with your co-parent in your communication, the better the odds are that he or she will grow tired of doing things just to push your buttons. If you routinely correspond in a business-like manner and ignore the insults and childish behavior from your ex, the more you take the wind out of his or her sails. Doing that might allow you to train your ex to find and receive that message in the bottle, benefiting you and your children.

## Can't Afford To Hire An Attorney For Your Entire Case? Divorce Coaching May Be Right For You.



## Can't Afford To Hire An Attorney For Your Entire Case? Divorce Coaching May Be Right For You.

By Amy A. Edwards

### The Problem

When a couple separates, one or both spouses might consult with an attorney only to find out an attorney representing him or her in the traditional way is out of the question. In years past, many people had the ability to take out home equity lines of credit or seek a personal loan to meet the other person on equal ground in the courtroom. However, in this economy, jobs are less secure and fewer people are able to qualify for loans that would enable someone to hire an attorney for full service representation. Real estate is no longer easily and quickly sold, even when both spouses agree their property should be sold and the sales proceeds divided. As a result, many people are navigating the court system *pro se* (Latin for representing yourself).

### The Options

The traditional way family law attorneys have served clients was to handle all of the case, giving advice, filing court documents, handling discovery and depositions,

participating in mediation, and concluding the case in front of a judge, followed by the task of preparing an order for the judge to sign when the trial ends. Those who cannot afford the traditional representation might benefit from non-traditional representation, which I call divorce coaching. Think of the divorce process as a restaurant. Rather than being seated and having your menu selection automatically grouped and delivered to your table, divorce coaching is more like a buffet where you might only choose a meat and one side dish instead of the soup, salad, bread, a main course that includes two side dishes, and dessert.

### **The Expectations**

Representing yourself in family court can be daunting. You are faced with a judge who expects you to be mindful of the rules and ready to proceed in a trial, knowing the important things you want to testify about and cross examining the other party. Divorce coaching is a practical way to represent yourself with some help. As long as the attorney and the client are clear at the beginning of the process, agreeing on exactly what services are to be provided, it can be very flexible because the client chooses what services he or she wants. At our firm, I usually charge an hourly rate to handle divorce coaching.

### **Divorce Coaching**

Common examples of divorce coaching include an attorney preparing legal documents for the client to sign and file, or consulting with the client about the evidence rules when he or she is testifying, such as hearsay or doctor-patient privilege. Other times, clients have their own detailed needs in mind when they choose divorce coaching. I have had clients who want to know what the rules are for family court and how to respond to subpoenas or civil discovery. Under some circumstances, an attorney may be hired to represent a client for a specific event, such as mediation.

A good attorney can give you insight about the overall system, including certain "pet peeves" of the judge or opposing counsel's routine manner of trying cases. Fortunately, in Pitt County, many of the family law cases filed each year are settled in mediation. If all matters cannot be agreed upon in mediation, the parties may agree on some. For example, people might be able to agree on the division of their property but not on child custody. The parties may jointly choose their mediator, and their choice of mediators makes a big difference. An attorney can give you the bird's eye view of which mediator might be best for your case, and you can take it from there.

Some of the most important tasks a family law attorney performs are retirement division orders, often known as QDROs (qualified domestic relations orders). Pension plans are very complex, and are often the most valuable asset a family has. Not only do QDROs and other similar orders address survivorship benefits, they address when a spouse or former spouse may receive benefits, vesting, cost of living increases, taxes and fees associated with the distributions, and special time limits that must be observed. On top of that, there are state laws that must be observed, as well as federal laws for these orders, and more rules for federal employees and military members. These orders can be slanted to the benefit of one person if the other person does not understand the benefits and risks at issue. If the judge has made a ruling on a litigant's pension and a QDRO or some other order is required in order to divide retirement, advice from a family law attorney about this valuable asset and the order that divides it is time well spent.

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[Divorce Magazine - Fall 2013](#)

Sample articles:

Property Issues in Divorce

Breaking the News to Your Kids

Your Parting Words

Understanding the Divorce Process

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Understanding the Divorce Process

Ten Detrimental Misconceptions About  
What Happens in Court

Are You In or Out?



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Thank you for reading our newsletter.

Sincerely,

**Amy A. Edwards**

*Mattox, Davis, Edwards & Alexander, P.A.*

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