

AT HOME

Living Together and Marriage

New Hampshire does not recognize “common-law” marriage. If, however, you live together, acknowledge each other as husband and wife for a period of at least 3 years, and one of you dies, the law recognizes you as having been legally married for purposes of inheritance only. If you live together without marrying and acquire property together, upon separating, either person can bring a legal action to determine who is allowed to keep the property.

If you decide to get married, you should be aware of the legal effect marriage will have on your life. You must get the State’s approval before you are married or divorced. In New Hampshire, parental consent is required to get married if you are under the age of 18. In New Hampshire, you do not need a physical examination or a blood test in order to receive a marriage license. You and your intended spouse must file a Notice of Intention to be married in the town in which either of you lives. There is a three-day waiting period before a marriage license is issued. After the license is issued, you have 90 days to get married before the license expires.

New Hampshire law recognizes antenuptial (also called prenuptial) agreements. These are agreements or contracts between two people about to marry, that define their rights and obligations during the intended marriage, or at divorce or death. If you think you want a prenuptial agreement, you should contact an attorney.

When you marry, you can (but are not required to) choose to change your last name to your spouse’s, or the two of you can combine last names. If you decide to change your last name, be sure to notify the Social Security Office, the Department of Safety if you have a driver’s license, and all your banks and credit card companies.

All property acquired during the marriage belongs to both of you and can be divided if you get divorced, regardless of whether title is only one spouse’s name. Property owned before the marriage can be taken into consideration at that time. If you have been married more than a very few years, there is a presumption that the Court will divide the property equally, but other factors can influence the division of property.

Whether you are married or living together, it is a crime to force your spouse or partner to engage in any kind of sexual contact or activity. It is also against the law for your partner to injure you or threaten you so that you fear for your physical safety. If your partner or ex-partner, or someone you have dated, has done any of these things to you, seek the help and protection of the police and the Court. Many crisis centers throughout the State help you learn your legal options when faced with domestic violence.

Children

Parental Rights and Responsibilities

When you become a parent, whether married or unmarried, you share with the other parent the rights and responsibilities for the care, custody, nurturing, companionship and support of your children until they reach the age of majority, 18. As parents, you will make decisions about schooling, religious training, medical treatment and all the other elements required for raising children. These are automatically your rights as a parent under New Hampshire law.

If, however, you are unmarried and the mother of your child has not acknowledged that you are the father, you may need to first establish that you are the father before you are able to exercise your rights as a parent. A paternity action may be brought in Superior Court. Blood or DNA tests will usually prove conclusively whether you are the father.

You may also ask the Court to step in when you and the other parent cannot agree about custody, visitation or support issues. This is done either through a divorce action or through a petition to establish custody, support and visitation.

Children have a right to receive financial support from a parent who is not a member of the household due to separation, divorce or desertion. If you are a parent or guardian and have dependent children who are entitled to child support payments, New Hampshire's Division of Human Services has an Office of Child Support that can locate an absent parent, determine paternity, establish a child support order, and/or review an order to see if it meets guideline amounts.

Child support services are available to any parent or guardian with whom the child lives. There is no charge for these services. To receive more information on these services contact a Division of Human Services' Child Support Services near you.

Termination of Parental Rights

If you fail to fulfill your responsibilities as a parent, your parental rights can be limited or even ended entirely in certain situations. The court can limit your rights where there are charges of abuse or neglect and can terminate your parental rights where extended and serious breaches of parental responsibilities have occurred. This may happen when, for example, you have abandoned, neglected, or abused your child.

Adoption

An adult does not have to be married to adopt a child. A child over the age of twelve years must agree to be adopted. In all adoptions, the mother and the biological father of the child must agree to the adoption. If the biological parents are under the age of 18, the court may require the legal guardians of those parents to consent to the adoption. In some cases, additional or different people have to consent to the adoption. If you are considering adoption, you should contact an attorney.

Domestic Violence

It is against the law for your spouse/partner (whether male or female) to injure you or threaten you so that you fear for your physical safety. In addition, a spouse or partner cannot force sexual contact or relations on you against your will, or destroy or threaten to destroy your property. You should not live or stay with a person who threatens your safety in any of these ways. You have the right to live in a safe environment. If any member of your household or your spouse, ex-spouse, partner, or ex-partner, or someone you have dated, have done any of these things; you may seek the help and protection of the police and the Court.

The District and Superior courts and the Family Division have the power to issue a domestic violence restraining order that requires an abusive person (your attacker) to stay away from you and to stop abusing you. You may ask the police to file criminal charges against the abusive individual. You do not need to file for divorce; you do not need a lawyer; you do not need to pay for any Court fees in connection with getting a restraining order. If you are under 18, you do not have to be accompanied by a parent in order to obtain a domestic violence restraining order.

For more information about domestic violence, see the numbers in the back of this booklet or “Domestic Violence” by NH Legal Assistance.

Divorce and Separation

A married couple may decide to separate. If the Court determines the terms of the separation, it is a legal separation. The marriage itself is not dissolved and the parties are not free to remarry. In a legal separation decree, just like in a divorce, the Court may order support and custody of minor children, visitation, alimony, and division of property and debts.

Divorce is the legal end of a marriage. New Hampshire law allows for either a “no fault” or a “fault” divorce. No-fault divorce means that a divorce can be granted without proof of “fault” or “guilt” of a spouse. A divorce can be granted regardless of the other spouse’s objections to the divorce. Any separation or divorce proceeding must be filed in Superior Court in the county where one of the parties lives. In Grafton or Rockingham County, proceedings must be filed in the Family Division. In addition to the filing fee, the cost of a divorce depends on: whether the divorce is contested; whether children are involved; how much property and/or debt is to be divided; and whether the parties are able to reach an agreement.

For more information see “Divorce and Separation in New Hampshire” by the New Hampshire Bar Association.

Wills

A will states how you want your property distributed after your death and nominates the guardian of your minor children if you are a parent. A will is a legal document that must

comply with certain requirements to be valid. Therefore, if you wish to have a will, you should consult with an attorney. If you die without a valid will, your property will be distributed according to a formula established by law to your relatives. If there are no living relatives, your estate becomes property of the State. Without a will, the law cannot and does not take into account your particular desires or any special circumstances that may exist in your family. Therefore, it is recommended that you have a will, especially if you are a parent.

For more information see “Why Should I Have A Will” by the New Hampshire Bar Association.

Durable Power of Attorney for Health Care

A durable power of attorney for health care document names another person to be your agent and allows them to make health care decisions for you if you are unable to make them yourself. The New Hampshire Legislature created a durable power of attorney for health care document, and in it, you can include instructions for the types of life-sustaining treatment you want or do not want in case you become terminally ill or permanently unconscious. A disclosure statement accompanies the durable power of attorney for health care and includes important information about the durable power of attorney for health care.

Living Will

The State of New Hampshire recognizes a written health care form called a “living will.” A living will informs your family and doctors of your wishes and the type of medical treatment you want if you reach a point where you cannot make these health care decisions yourself and you are either terminally ill or permanently unconscious. Similar to a durable power of attorney for health care, a living will is created by preparing and signing the proper form while you are still mentally alert and competent, and the form should be signed by you in front of two witnesses and a notary public as soon as you make your decisions regarding such life-sustaining treatment. A living will is a statement by you and it serves as evidence of your wishes concerning life-sustaining treatment if you don’t have a durable power of attorney for health care or if your agent under a durable power of attorney for health care is unavailable or otherwise not able to serve.

Organ Donation

If you wish to donate any of your organs upon your death, you should include this wish in your will. You should also let your family and friends know of your wishes, and fill out an organ donor card; express your intentions on the appropriate part of your driver’s license; and/or include organ donation in your instructions under your durable power of attorney for health care.

For more information see “Organ and Tissue Donation in New Hampshire” by the New Hampshire Bar Association and New Hampshire Medical Society.