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FROM COUNSEL

A Preventive Law Service of the Fort Riley Legal Assistance Office
Keeping You Informed On Personal Legal Affairs

Kansas Marriage and Divorce Information

MARRIAGE

(a) Marriage is a legal contract. It affects your rights to own and to sell property, the amount of income tax that you owe, your need for a will and insurance, and your retirement plans. Before you marry, both parties must go to the district courthouse and apply in person and sign an Application and Affidavit to Obtain Marriage License under oath. Under Kansas law, there is a three-day waiting period before the clerk or judge will issue the license—this period includes holidays and Sundays. Blood tests are no longer required. A fee of \$59 is charged for the license.

(b) If both you and your fiancé are 18 or older you do not need any other person's consent. If you or your fiancé are under 18, a parent or guardian and a district court judge must consent. You can be married by an ordained clergyperson of any religion or any judge of a court record.

(c) In marriage, the husband and the wife are legally obligated to support each other. You should be aware of this as you establish your jobs or roles in your marriage. Kansas laws do not require one partner to provide the family's income and the other partner to be a homemaker. Together, each husband and wife must decide how they will support each other.

(d) Even though a marriage must be built on trust, both the husband and the wife should carefully examine their respective roles in the marriage, and the possible consequences of this arrangement in the event of separation, divorce, or death.

(e) The Marriage Fraud Amendments Act of 1986 requires that any immigrant who seeks permanent residence on the basis of marriage to a citizen or permanent resident, is on a conditional basis for two years. Permanent status will be denied if, during that two year period, it is determined that the marriage was entered into for immigration benefit. If the marriage is not a sham, the conditional status is removed and the alien is granted permanent resident status. If the marriage takes place during deportation proceedings, the alien is required to leave the United States for two years before obtaining conditional resident status. A 1996 amendment allows an alien involved in a deportation proceeding to establish by clear and convincing evidence that the marriage was entered into in good faith, not for the purpose of procuring the alien's entry, and no fee or other consideration was given.

COMMON LAW MARRIAGES

A common law marriage is a marriage by agreement of the two persons without any formal ceremony or license. A common law marriage will be recognized in Kansas if the couple

considers themselves to be married and publicly holds themselves out to be married and if they are legally eligible to marry. No minimum period of cohabitation is required. Common Law marriages are subject to the same legal obligations and privileges that apply to marriages with licenses. Once a common law marriage is established, the couple must get a court ordered divorce to terminate the marriage.

LIVING TOGETHER WITHOUT MARRYING

(a) Unmarried couples living together have become more and more common. In Kansas, it is no longer illegal for persons of the opposite sex to live together and share a sexual relationship without being married.

(b) However, couples living together should be aware that although they avoid the legal obligations of marriage by doing so, they are also denied the legal protections of marriage. If you choose to live together without marrying, you should be sure that you understand your legal rights and obligations if you buy or sell property together, have children, sign a lease or a contract, or make other important commitments.

(c) You should know that an agreement, either informal or written, that establishes your rights and responsibilities to each other, may not be legally enforceable. If you have questions, talk with a lawyer.

(d) Individuals of the same sex are not permitted to marry in Kansas, but may enter into legal obligations together, including parenting.

NAME CHANGES

(a) It is customary for the wife to assume her husband's last name upon marriage, though she is under no legal compulsion to do so. She may retain her maiden name without any formal legal proceedings by simply continuing to use it.

(b) If she assumes her husband's name and later wants to resume her maiden name, she must petition the district court in the county where she lives for her legal name change. A woman may have her previous name restored at the time of a divorce.

DIVORCE

(a) Divorce is a legal termination of a marriage. To get a divorce in Kansas, the petitioner must be a Kansas resident for 60 days.

(b) There are several grounds for granting a divorce: incompatibility (no-fault); failure to perform a material marital duty; and mental illness (where the spouse has been confined to a mental institution for two years or the court has found the spouse mentally ill or mentally incapacitated).

(c) Suits must be filed in the district court in which either spouse lives at the time of filing or where the spouse being filed against can be served.

DIVISION OF PROPERTY

(a) In a divorce proceeding, the district court uses common law principles by dividing the property and debts of the parties in a fair, just, and equitable manner, rather than using the community property principles.

(b) The Kansas Courts follow the “total divisibility” rule, which means the court will consider all property owned by the couple at the time of filing for divorce as marital property to be divided. Unlike some states, Kansas law does not distinguish between premarital property that one party had before the marriage or received by gift or inheritance.

(c) The preferred method of splitting the property is when the parties agree on the division because they are in the best position to determine its value, sentimental and otherwise. The court will review the agreed upon division and provided it is “just and reasonable” it will be approved.

(d) If the parties cannot agree, the court will consider the age of the parties, the length of time the marriage lasted, the types of property involved, the present and future earning abilities of the parties, how and when the property was acquired, family ties and obligations, whether maintenance is allowed, and other pertinent factors in dividing the property. The court is given wide discretion in the weight it gives to each factor, or such other factors the court considers necessary.

(e) The court may order either spouse to pay "maintenance" (alimony) to the other party. It may order regular monthly payments or a lump sum payment. The court's power to award maintenance is limited to 121 months. This may be extended in some circumstances. The court may modify future payments unless the decree says it cannot. The court may not modify past due maintenance payments.

CHILD SUPPORT AND CUSTODY

(a) Both parents are considered to have equal rights to raise their children. Also, fit parents are entitled to custody of the child before custody will be granted to a non-parent.

(b) Normally, the parties will have joint custody of the children with physical custody and visitation to be determined based upon what is in the best interest of the minor children. Mediation is mandatory in Geary, Riley, and Clay Counties for divorces involving minor child. The point of mediation is to work out a parenting plan (custody plan) prior to the final divorce hearing.

(c) As parents, you must support your children until they reach majority age (18). If you do not, a court could order payments. Failure to obey is civil contempt. Your children could also be taken from you.

(d) Child support is established from the Child Support Guidelines based on the combined incomes of the parties, the number and ages of the children, and other considerations. A parent who does not visit his or her children is still required to pay support as ordered.

(See Also: From Counsel Sheets: Army Regulation 608-99: Family Support, Child Custody, and Paternity; Kansas Law on Custodial Parent Move-Away Cases; Child Support: Garnishment and Involuntary Allotment; Collecting Garnished Child or Spousal Support; and Kansas Child Custody, Child Support & Visitation)

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