There is No Divorce Without a Marriage

By K. Dean Kantaras

YOU CAN'T GET A DIVORCE IF you are not married. You must have a valid marriage if you want to bring a legal action to dissolve it.

Most marriages are "ceremonial," in that they are performed by a person authorized to perform the marriage ceremony. The ceremonial officer may be a minister, priest, rabbi, imam, judge, clerk of court and, in Florida, a notary public. However, there are still states in which a ceremonial marriage is not required, as they recognize "common law" marriages.

Therefore, a judge in Florida only has the jurisdiction to dissolve a marriage if there has been a valid marriage. In order to convince a court that it has no jurisdiction, the spouse claiming that there was no marriage must overcome a presumption that a ceremonial marriage is valid. This is one of the strongest presumptions known to law. The presumption becomes stronger as time passes. In other words, if the validity of the marriage is attacked in, say, the first year of the marriage, the presumption exists but is then easier to overcome.

A court will consider things such as the length of the relationship, the establishment and maintenance of a home, family, whether the public perceives the parties as a married couple, and the way the couple introduces themselves to others and the community in general.

This simple conception can be complicated when a current marriage that is ceremonial was preceded by a marriage of one of the parties that was not dissolved prior to the ceremony. Generally, there is a strong presumption that the current marriage is valid, and any previous marriages are presumed to have ended either by death or divorce. Proving the death of a prior spouse is usually not too difficult. However, proving that a divorce was never granted can be difficult due to the overwhelming number of places a divorce could have been attained.

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In Florida, common law marriages were abolished by a statute that became effective on January 1, 1968. Even though that was over forty years ago, valid common law marriages continue to exist in Florida. Those marriages are recognized by the law, and the spouses in such marriages have all the rights and obligations of those who had a ceremonial marriage.

However, if couples enter into a common law marriage, after January 1, 1968, in a state that continues to recognize common law marriages and then move to Florida, a situation exists that is referred to in law as a conflict of laws issue. Florida's position is that if the marriage is valid in the state where it is entered into, Florida considers it a valid marriage. So, although a common law marriage made after January 1, 1968 in Florida is void, Florida will uphold the validity of such a marriage where it was valid when made.

On the other hand, a bigamous marriage, one in which one of the spouses was married at the time of the new marriage, is considered void in Florida. That means, it is as though the second marriage never happened. In such cases, the judge has the right to enter a judgment declaring the marriage void because the parties are entitled to a legal determination of their status.

In addition to the above situations, Florida applies the common law to what the law calls a "voidable" marriage. That is a marriage where there was some possible impediment to a legal marriage, such as an underage spouse or a claim of drunkenness, where the parties remain married after the impediment is removed. The parties to such a voidable marriage may not remarry until a court annuls or dissolves the voidable marriage.

Since, statistically, only fifty percent of all marriages last a lifetime, anyone marrying someone who was previously married should confirm that the previous marriage was terminated by a court or death and that their intended is legally eligible to enter into a marriage.

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