



## OFFICE OF THE STAFF JUDGE ADVOCATE

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## MARRIAGE

South Dakota statutes define marriage as a personal relation, between a man and a woman, arising out of a civil contract. Marriage requires consent of the parties followed by a ceremony.

There are no formal residency requirements to be married in South Dakota. All that is needed to be married in this state is a valid marriage license.

### **How to Apply for a Marriage License**

A marriage license can be obtained from any register of deeds office in South Dakota. Each of you should take your driver's license with you as proof of age and identity when applying for a marriage license. If you do not have a driver's license, you should bring a certified copy of your birth certificate or baptismal certificate. In addition, you should bring \$40 in cash and your social security numbers. No blood test nor waiting period is required.

### **The Marriage Ceremony**

Marriages may be performed by a justice of the Supreme Court, a judge of the Circuit Court, a magistrate, a mayor, or any person authorized by a church to perform marriages. The marriage ceremony must take place within twenty days following the issuance of the marriage license. Once you are married, the individual who solemnizes the marriage must return the license to the Register of Deeds within 10 days. Certified copies of the marriage record are available from the register of deeds for seven dollars.

### **Age Requirements for Marriage**

Both the man and the woman must be eighteen years old to marry. If either person is a minor, between the ages of sixteen and eighteen, the register of deeds will issue a marriage license only if the duly acknowledged written consent of the parent or guardian has been filed in the register of deeds office.

### **Prohibited Marriages**

Generally, you are free to marry anyone you choose as long as that person is not already married or a close relative. South Dakota prohibits marriages between parents and children; brothers and sisters, including half brothers and sisters; uncles and nieces; aunts and nephews; first cousins; stepfathers and stepdaughters; and stepmothers and stepsons.

The South Dakota Legislature recently amended the statutes to prohibit marriages between persons of the same sex. South Dakota statutes also state that all marriages contracted outside this state, which would be valid by the laws of the jurisdiction in which they were contracted are valid in this state.

### **Common Law Marriages**

A common law marriage is one by agreement of the two parties without a formal ceremony. South Dakota does not recognize a common law marriage, unless it was consummated prior to 1959.

## **Prenuptial Agreements**

A prenuptial agreement is a contract entered into by a man and a woman before marriage, whereby the property rights and interests of the parties are determined. Generally, prenuptial agreements are used to determine the disposition of property on the death of one of the parties. Prenuptial agreements may also make provision for the disposition of the property in the event of divorce, separation, or the occurrence of any other event.

Prenuptial agreements are generally held to be valid in South Dakota. The South Dakota Legislature has adopted the Uniform Premarital Agreement Act. It should be noted, however, that South Dakota will not uphold a prenuptial agreement that attempts to restrict a spouse's right to receive alimony in the event of divorce. Such an agreement is considered contrary to the public policy of the state. Although parties may enter into prenuptial agreements defining support obligations in the event of divorce, the court has the ultimate authority to approve or reject the agreement. Even if the court approves the agreement, it has the authority to later modify it.

Since your will or estate plan may be affected by any prenuptial agreement you may enter into, you should consult a lawyer to make sure that all these instruments conform.

## **Name Change**

Although it has been customary for the woman to assume her husband's last name upon marriage, there is no legal reason for doing so. A woman may retain her maiden name without any formal legal proceedings simply by continuing to use it. In addition, a man may assume his wife's last name upon marriage.

If a woman chooses to use her husband's last name, the husband's first name does not become a part of the woman's name. Consequently, the woman should sign her name as Jane A. Smith and not as Mrs. John Smith. The same rule applies if the man chooses to use his wife's last name. It is important for a person to always sign his or her name in the same way.

Any name change should be communicated to the Social Security Administration and the division of motor vehicles (so that you can obtain a corrected driver's license). You should also notify employers, banks, insurance companies, and creditors of your marriage and any change in your name.

## **Living Together Without Marrying**

Although in South Dakota it is not illegal for two people to live together as husband and wife without marrying, it is still illegal in some states.

If you choose to live together without marrying, you should be sure that you understand your legal rights and obligations if you have children, buy or sell property together, sign a lease or a contract, or make other important commitments. You should also realize that an agreement, either informal or written, which establishes your rights and responsibilities to each other, may not be legally enforceable. If you have any questions, you should talk with a lawyer.

## **Child Support**

Both parents of a child are under a legal duty to support the child in accordance with the law until the child attains the age of eighteen, or until the child reaches the age of nineteen if he or she is a full-time student in a secondary school. Any child born of the marriage or within ten months of the dissolution is presumed to be a child of the husband and wife. Any actions to rebut the presumption must be brought within sixty days of birth. If the presumption is not rebutted within the specified time limit, the spouse will be liable for child support upon dissolution of the marriage whether the child is genetically proven to be the natural child or not.

## **Adoption**

There are several social service agencies that will assist married couples or single persons in finding a child for adoption. Before a child can be legally adopted, the child must live in the home of the prospective parents for at least six months. If the child is over twelve years of age, the child must also consent to the adoption.

A child, when adopted, may take the name of the adoptive parents. The adopted child and the adoptive parents have the legal relation of parent and child and have all the rights, duties, and responsibilities of that relationship. Following an adoption, the natural parents relinquish all rights, duties, and responsibilities toward the child.

Any minor child may be adopted by any adult person as long as the person adopting the child is at least ten years older than the adopted child. A married person cannot adopt a child without the consent of his or her spouse. In some circumstances, adoption also requires the consent of the child's parents, if living. A home study must be completed prior to adoption.

The files and records of the court in adoption proceedings are confidential and may not be inspected or copied. However, the adoptive parents and their attorneys, representatives of the department of social services, and the child, when he or she reaches maturity, are permitted to inspect and copy the records. Any other persons wanting access to the files and records must obtain an order of the court expressly permitting inspection or copy. Certain information which does not identify the natural parents may be released upon written request and proof of identification. If you would like more information regarding this information, you should consult with your lawyer or the department of social services.

## **Changing Life Insurance Beneficiaries**

A life insurance policy is a contract which the insurance company must carry out according to its terms. Neither a spouse nor children share in it unless specifically named as beneficiaries. As the family composition changes, the insurance policy should be brought up to date to cover your changing situation.

If either of you own life insurance policies, bank accounts, real estate, bonds, securities, or other personal property jointly with someone else, you should consider changing them to name your spouse as beneficiary or joint owner in order to afford the fullest protection to your spouse and family.

You should also advise your employer of your new status so that you can receive any employment benefits that are due to married persons. Many companies offer fringe benefits that are of special interest to married persons.

## **Selecting a Family Lawyer**

If you do not know a lawyer personally, you may want to consult the lawyer referral service of the State Bar, listed in the yellow pages of your South Dakota telephone directory.

Choose your lawyer for his or her skill, reputation in the community, and integrity. The best time to go to a lawyer is before, not after, you are in some legal difficulty. Just as your doctor can better help you if he or she is given a chance to practice preventive medicine, a lawyer can save you time, money, and difficulties if you consult him or her before making any major decisions.

***NOTICE: This brochure is based on South Dakota law and is designed to inform, not to advise. No person should ever apply or interpret any law without the aid of an attorney who knows the facts and may be aware of any changes in the law.***

