

# **Marriage**

## **What is marriage?**

The law defines marriage as a personal relation, between two people, 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, baptismal certificate, or passport. 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 judge, a mayor, or any person authorized by a church to do marriages. The marriage ceremony must take place within twenty days after the issuance of the marriage license. Certified copies of the marriage record are available from the register of deeds for seven dollars.

## **Age requirements for marriage**

Both parties 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.

## **Common Law Marriages**

A common law marriage is one by agreement of two parties without a formal ceremony. South Dakota does not recognize a common law marriage originating in this state, unless it was consummated before 1959. The state will, however, recognize a common law marriage which has been validly entered into under the laws of another state.

## **Prenuptial agreements**

A prenuptial agreement is a contract entered into before marriage, whereby the property rights and interests of the parties are determined. Generally, prenuptial agreements are used to decide the disposition of property on the death of one of the parties. Prenuptial agreements may also make provision for the disposition of the property if 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, in part, 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 if divorce. An agreement waiving or limiting alimony is considered contrary to the public policy of the state. Although parties may enter into prenuptial agreements defining support obligations if divorce, the court has the ultimate authority to approve or reject the agreement. Even if the court approves the terms of an agreement related to alimony, it maintains the authority to later change 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 one party to assume the other party's last name upon marriage, there is no legal reason for doing so. One may keep their former name without any formal legal proceedings simply by continuing to use it.

It is important for a person to always sign their 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 get a corrected driver's license). You should also tell employers, banks, insurance companies, and creditors of your marriage and any change in your name.

## **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 may want to consider changing them to name your spouse as beneficiary or joint owner to afford the fullest protection to your spouse and family.

You should also tell 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 which can be accessed online at the State Bar of South Dakota website: <https://findalawyerinsd.com/>.

Choose your lawyer for their 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 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.

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

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