

925.5 General

925.5.1 Defined

- A. Establishment of relationship - A marriage relationship is determined either by applicable state law or by the deemed marriage provision of the RR Act. Under state law, a marriage relationship may be created when an individual participates in a ceremony (civil or religious), is eligible to inherit intestate property as the surviving spouse or is living with another person in a common-law relationship. Under our deemed marriage provision, however, we can establish a marriage relationship when a ceremonial marriage would not be recognized under state law due to certain impediments or defects.

NOTE: The deemed marriage provision can only be applied when there are no adverse claimants.

- B. Validity of marriage - The validity of a marriage is ordinarily determined by the law of the state in which the marriage took place. If valid in that jurisdiction, the marriage is ordinarily held valid in other jurisdictions.

A marriage of miscegenation (interracial) is valid even though state law may bar such a marriage. Such laws were declared unconstitutional by the Supreme Court in 1967.

925.5.2 When Proof of Marriage (POM) Required

Documentary POM is required from an applicant for a monthly annuity, LSDP or RLS (except a designated beneficiary) who claims status as the wife, husband, widow(er) or step-parent of an employee.

Documentary POM of any other person may also be required when such person's marriage is relevant in the determination of payments under the RR Act.

Before 6-1-58, a spouse applicant's statement on the application that (s)he was ceremonially married to the employee was accepted as POM under certain circumstances if the employee verified the statement on Forms G-346 or G-345.

Effective 6-1-58, POM is required in all cases, except those where the spouse's application was filed before that date. Therefore, in a survivor case the widow(er) need not submit POM if a spouse annuity began to accrue to such person before the employee's death and marriage was proved in accordance with procedures in effect prior to 6-1-58. Accept the applicant's statement on the application that a ceremonial marriage was performed without securing documentary evidence when there are no monthly annuities payable and it is apparent that the total amount payable does not exceed \$25.

925.10 Ceremonial Marriage

925.10.1 Preferred Proofs

The following are preferred POM:

- A. The original certificate of marriage;
- B. A copy of or statement regarding a public record of the marriage certified by the custodian of such record or by an RRB employee;

NOTE: An imaged marriage certificate obtained from a state or county website maintained by the custodian of records may be considered acceptable evidence in some instances. It has been determined that proofs obtained from official state or county websites in the state of Florida are considered acceptable evidence. Submit questions about websites in other states to P&S, RAC.

- C. A copy of or statement regarding a church record of the marriage certified by the custodian of such record or by an RRB employee.

NOTE: Religious ceremonial marriages performed in Mexico by a clergyman have no legal status. Ordinarily, however, when a religious ceremony of marriage is shown to have been performed, it can reasonably be inferred in the absence of evidence to the contrary that a civil ceremony preceded the religious ceremony. The performance of a religious ceremony that has not been preceded by a civil ceremony subjects the officiating clergyman to criminal prosecution, BUT the performance of a criminal act is not to be presumed.

925.10.2 Secondary Proofs

If none of the preferred proofs of marriage can be furnished, obtain a signed statement from the applicant explaining why the preferred proofs are unavailable. Also obtain one of the following forms of evidence:

- A. The sworn statement of the clergyman or official who performed the marriage ceremony; or,
- B. Other evidence of probative value such as:
 - 1. The sworn statements of two persons who know the facts of the marriage (preferably eyewitnesses to the marriage ceremony) showing the time and place of the marriage and the basis of the affiant's knowledge; or
 - 2. Excerpts from naturalization certificates, deeds, immigration records, insurance policies, passports, or from original business, employment, labor, fraternal, school, church, or other records that show the relationship of husband and wife, and a sworn statement from a knowledgeable

person showing when and where the husband and wife resided together and the basis of that person's knowledge.

Evidence of cohabitation should be developed only if the applicant lived in a state where such evidence can be used to establish a marriage and if the applicant claims to have participated in a marriage ceremony but cannot submit proof. Examiners will initiate such development only if it is requested by the attorney-advisor.

In determining the acceptability of secondary evidence, consider the statements and conduct of the parties. Also consider the length of time during which the parties have lived together as husband and wife; the longer the period, the stronger the inference. When children were born of the relationship, the inference is even stronger.

925.15 De Facto (Deemed) Marriage

925.15.1 Defined

A deemed marriage is created when the claimant's marriage to the employee would have been valid under applicable state law except for a legal impediment, provided:

- A. There was a marriage ceremony. (This requirement may be met by the individual's participation in a ceremony conducted under civil, religious or tribal practices, and situations in which certain formalities were observed such as securing a marriage license, but no ceremony was actually performed although the parties believed a ceremony had been performed. The term includes all ceremonial marriages we would otherwise recognize as valid were it not for the defect but does not include common-law marriage.); and
- B. The claimant went through the marriage ceremony in good faith not knowing of the impediment at the time of the marriage; and
- C. The claimant was living in the same household with the employee at the time of the death of the employee, or, in a life case, at the time (s)he files the application. (In a survivor case, this requirement must be met even if the claimant was entitled to a spouse annuity at the time of the employee's death.); and
- D. At the time of filing an application there is no other person (based on a valid marriage or inheritance rights under state law) who had filed and been found entitled to any type of survivor benefit, or, in a life case, there is no other person who is or was entitled to a spouse's benefit at SSA; and
- E. The impediment is one resulting from a prior undissolved marriage or otherwise arising out of a prior marriage or its dissolution, or one arising from a defect in the procedure followed in connection with the purported marriage.

925.15.2 Legal Impediment

The deemed marriage provision applies only:

- A. To marriages that are invalid because the prior marriage was not dissolved, or the attempted dissolution was not valid (e.g., Mexican mail order divorce) or, if dissolved, there was a restriction against marriage still in effect at the time of remarriage; or
- B. When the marriage is invalid because of a procedural defect in connection with the marriage. Examples of such defects are: religious marriage in a country (such as Mexico) which requires a civil ceremony for a valid marriage, or failure to comply with state licensing requirements. When a valid marriage is alleged, do not look for a procedural defect which makes the marriage invalid; however, if it comes to your attention, it must be considered since it would require deemed marriage development.

When the marriage is invalid for other reasons under state law (e.g., because it was incestuous), the deemed marriage provision does not apply.

925.15.3 Good Faith

The applicant must establish that (s)he acted in good faith and in ignorance of any legal impediment which invalidated the marriage as of the time (s)he went through the marriage ceremony. Good faith, or lack of it on the part of the employee makes no difference; nor does it matter if the applicant learned of the invalidity of the marriage after the marriage took place.

The test for determining whether the claimant acted in good faith is the individual claimant's belief at the time of the ceremony. If the claimant believed that the marriage was valid, the requirement is met. The fact that another person might not have had the same belief under the same circumstances, or that a more prudent course could have been adopted, will not prevent a finding that the claimant acted in good faith.

Generally, if the action taken was based on the advice of an attorney or other person who the claimant believes would know the law (e.g., minister, marriage license clerk, etc.), consider the claimant to have acted in good faith in the absence of evidence to the contrary. Other factors which may be helpful in resolving the question in doubtful cases (i.e., whether the claimant's allegation of believing the marriage valid is creditable) are the claimant's education, experience in worldly affairs and age.

Usually, the statement of the claimant is sufficient to determine whether there was good faith.

Include in the statement from the claimant why, at the time of the ceremony, (s)he believed the marriage to be valid. If a prior marriage is involved, include also in the statement whether (s)he knew of it and its invalid dissolution or lack of dissolution. If

there was a restriction on remarriage, the claimant's statement should include the reason (s)he believed the restrictions did not apply.

925.15.4 Living in the Same Household

To determine whether the claimant was living in the same household as the employee at the time of the employee's death or at the time the application was filed in a life case, use the applicable rules in FOM-I-935.

925.15.5 Development

Usually, if entitlement is possible under the deemed marriage provision, it is not necessary to determine the legality of the relationship under state law before developing deemed marriage. Development may be under state law or under the deemed marriage provision, whichever way is quicker or easier. However, if two people are claiming the status of a widow(er), you must develop under state law; in such cases, the deemed marriage provision cannot be applied.

925.15.6 Prior Spouse Entitlement

If, in the course of developing "good faith", the prior spouse inquires about benefits, explain the requirements for entitlement and the necessity of filing an application.

925.20 Common-Law Marriage

925.20.1 General Rules for Determining Validity

Subject to the exceptions in the different States, the following guidelines may be used in determining whether a common-law marriage may exist.

- A. How created - Ordinarily, a common-law marriage is created when parties free to contract marriage enter into an agreement to be husband and wife, and actually live together as husband and wife subsequent to and as a provision of the agreement.
- B. Bigamous marriage contracted in good faith by at least one party - A valid common-law marriage may arise in some States if at least one of the parties to a bigamous marriage contracted it in good faith and they lived together as husband and wife in a State which recognizes common-law marriages after the impediment is removed.

An agreement of marriage after removal of the impediment may, in some States, be inferred from the parties continued cohabitation.

- C. Both parties enter into bigamous marriages knowing that such marriage is void - Ordinarily, a common-law marriage will not arise when both parties enter into a bigamous marriage knowing that such marriage is void, even after removal of the

impediment unless the parties enter into a new agreement of marriage and live together as husband and wife after the new agreement.

- D. Parties domiciled in State which does not recognize common-law marriages - If the parties were domiciled in a State which does not recognize common-law marriages but they contracted a marriage in a State where such marriages are recognized, their marriage will be considered valid by the State of their domicile except in Utah.
- E. Cohabitation in State not recognizing common-law marriage - If a couple lives together and declares to be husband and wife after removal of an impediment to a bigamous marriage, do not assume a valid marriage in a State that does not recognize common-law marriage. (Wisconsin is an exception to this general rule.)
- F. Cohabitation requirement - After an agreement to be husband and wife, some States require cohabitation but the cohabitation need not always be in the State where the agreement was made.
- G. Marriage not valid in beginning - When the marriage was not valid in the beginning, generally the relationship is presumed to be still invalid after removal of the impediment. However, convincing evidence that the parties intended to establish a valid marital relationship after the removal of the impediment could validate the marriage.

925.20.2 When Proof of Common-Law Marriage Is Required

Secure proofs (described in FOM-I-925.20.3 through 925.20.6) whenever

- A. The parties agreed to be husband and wife and/or lived together as such in a State that recognizes common-law marriages - If the parties lived together as husband and wife while living temporarily or visiting in a State which recognizes common-law marriages, a valid common-law marriage may arise from their temporary stay in that State. Therefore, if a valid marriage cannot be established under the laws of the State where the parties have been domiciled, it may be possible to establish a common-law marriage in a State in which the couple visited (ask about the places they visited together).
- B. Ceremonial marriage alleged, supporting evidence not submitted - When a ceremonial marriage is alleged but evidence that such marriage was solemnized by a clergyman, justice of the peace, or other civil official authorized to perform the marriage ceremony has not been submitted, do not try to establish a common-law marriage until all reasonable efforts have been made to establish the relationship on the basis of the alleged ceremonial marriage.
- C. Ceremonial marriage void - If a ceremonial marriage was void when entered into because of a legal impediment and the parties continued to live together as

husband and wife after removal of the impediment, develop for a common-law relationship.

925.20.3 Proof When Husband and Wife Are Both Living

- A. Primary proof - Obtain a completed Form G-124, Statement of Marital Relationship, from both husband and wife, and a completed Form G-124a, Statement Regarding Marriage, from a blood relative of each party.

When a G-124a cannot be secured from a blood relative, another knowledgeable person may substitute if the employee furnishes a statement explaining why no blood relatives can complete the G-124a.

- B. Evidence in lieu of Form G-124a - Although Form G-124a does not indicate the absence of a ceremonial marriage, an applicant may object to its completion. The fact that completion of a G-124a might prove embarrassing is not sufficient reason why the form should not be secured. If the claimant explains satisfactorily in writing why use of a G-124a would actually be detrimental to the parties or to children born of the relationship, accept other evidence of equal value. Acceptable substitute evidence includes documents identifying the parties as husband and wife, such as:

- Copies of purchase agreements;
- Contracts and leases executed by both parties;
- Bank accounts;
- Correspondence;
- Insurance policies, employment, church, or fraternal records;
- Other documents of equal value.

925.20.4 Proof When One Spouse Is Deceased

Obtain a completed Form G-124 from the surviving spouse and a completed Form G-124a from each of two blood relatives of the deceased husband or wife.

If you cannot secure statements from blood relatives, or if you can only secure a statement from one, obtain a written explanation from the applicant. For each statement not obtained from a blood relative of the decedent, secure a completed G-124a from a person who knows the facts. (See FOM-I-920.15.4B on substituting other evidence for Form G-124a.)

925.20.5 Proof When Husband and Wife Are Both Deceased

Secure a completed Form G-124a from a blood relative of each deceased party. Obtain a G-124a completed by an individual other than a relative as a substitute upon written explanation if such relative's statement is not reasonably obtainable. (See FOM-I-925.20.3B on substituting other evidence for Form G-124a.)

925.20.6 Proof When Ceremonial Marriage Void Due To Legal Impediment

If both or one of the parties who entered into a ceremonial marriage that was void because of a legal impediment are alive there may be a valid common-law marriage if:

- A. the impediment is later removed; and
- B. the parties continued to live together as husband and wife; and
- C. such marriages are recognized under applicable State law.

Signed statements by blood relatives and other are not required in these cases. Obtain proof of the ceremonial marriage and Forms G-124 completed by both the husband and wife or by the surviving party. This rule applies even though the State law requires proof of a new agreement to be husband and wife after the impediment is removed.

If the parties were separated temporarily for reasons such as ill health, financial trouble, employment away from home, or service in the Armed Forces, the living-together requirement may be met in some States.

925.20.7 Foreign Common-Law Marriages

If the employee was not domiciled in any State (the term "State" includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam and American Samoa), but rather in a foreign country, the law of the District of Columbia would govern. In the District of Columbia, a marriage not valid in the place where it is contracted is not valid anywhere. Therefore, a common-law marriage is only recognized if it is valid under the applicable law in the place where it was contracted.

For example, Legal Opinion L-97-26 determined that common-law marriages were not recognized in Ontario, Canada. Since the relationship between the claimant and the deceased employee could not be recognized as a valid marriage under the laws of Ontario, Canada, the relationship does not create a valid marriage under the laws of the District of Columbia, and the claimant could not be recognized as the widow for purposes of awarding her a widow's insurance annuity under the Railroad Retirement Act.

Headquarters examiners must submit cases involving foreign common-law marriages to their attorney advisor for a determination on the validity of the marriage.

925.25 Marriage or Divorce Under Indian Tribal Custom

925.25.1 Field Office Action

Status as a spouse under state law may exist as a result of an Indian tribal or custom marriage. Take the following action when an applicant (employee, spouse, or survivor) reports, or you become aware of, a marriage or divorce under Indian tribal custom:

- A. Develop and report all the facts; and
- B. Cite the state statute, if any is readily available, determining the validity of such marriage or divorce.

925.25.2 Condition for Validity

It is impossible to put into the FOM all the state laws and tribal customs. However, such marriages are recognized as valid under laws of various states if:

- A. There was a tribal government to which the parties were subject at the time of the marriage; and
- B. The parties at the time of the marriage had been following tribal customs and laws; and
- C. The marriage was in accordance with tribal customs and laws.

925.25.3 Proofs

Indian tribal rolls in the custody of a tribal council or agent may constitute the only extant record of a tribal ceremony. However, among Navaho Indians a tribal marriage certificate was issued for marriages after 2-11-54, and should be secured if such marriage is alleged. This would also be true of a tribal marriage for members of any other tribe which is known to have, by resolution or otherwise, provided for licensing and ceremonial requirements.

The evidence must establish that the applicable requirements have been met in order for the marriage to be binding under Indian tribal customs and laws and thus recognized as valid under state law. If one or more of the requirements was not met, the relationship may (under California or Louisiana laws) be a putative marriage which would also establish the necessary status under state law. (A putative marriage is one in which the innocent party to a void marriage may acquire inheritance right as a spouse.) If the applicant does not have a status as spouse under the foregoing provisions, such status may exist under the deemed marriage provision if the acts of the parties constitute a ceremony under FOM-I-925.15.1.

925.30 Chinese Custom Marriage

An applicant may have the status of a spouse on the basis of a custom marriage which took place in China. A Chinese custom marriage would be recognized as valid under state law if the Chinese procedural requirements of law and custom for affecting a marriage were met. These requirements for the respective period are as follows:

A. Prior to 1912

1. Consent of the two interested families to the contract of marriage; and
2. A betrothal conducted by a go-between and evidenced by a formal contract; and
3. A ceremony of some sort concluding the marriage.

B. After 1911 and before 5-5-31

1. All requirements in Item A. above; and
2. consent of the parties to the marriage.

Lack of family consent to a marriage would not actually invalidate such a marriage but would make it merely voidable, i.e., valid unless and until declared void by courts.

C. After 5-4-31 and before 5-1-50

A celebration of marriage between consenting parties in open ceremony and in the presence of two or more witnesses.

The "open ceremony" requirement means that the observance must have been public, i.e., everybody who wished to attend must have been able to do so. When only guests were invited and no other persons were or would have been admitted, there is no open ceremony.

D. After 4-30-50

Examiners will submit to the GC for an opinion on the requirements for marriage on the Chinese mainland.

If the marriage is invalid because one of the requirements above was not met, the marriage may be a deemed marriage if there was a ceremony. See FOM-I-925.15.1.

