

# Know Rights and Duties of Marriage

## **Q: What are the rights and duties imposed on a couple when they marry?**

**A:** In its most basic terms, marriage is a legal contract which creates a unique relationship between a man and a woman. Ohio law imposes on them a basic duty of mutual respect, fidelity, and support. This means that each has the duty to care, support, and protect the other. In addition, each has a right to the company, cooperation, society, sexual relations, conjugal affection, love, comfort, and solace of the other. This bundle of rights is often called the “right of consortium.” Anyone who interferes with these rights by negligently or intentionally injuring a spouse could be sued by the other spouse.

## **Q: Can one spouse still sue another for “alienation of affection”?**

**A:** Before 1978, Ohio allowed two types of lawsuits that flowed from the mutual obligation of fidelity in marriage: “alienation of affection” and “criminal conversation.” In an alienation of affection lawsuit, an aggrieved husband, for example, would sue his wife’s lover for wrongfully and intentionally causing his wife to lose her affection for him. To win such a lawsuit, the husband had to prove that the intruder intentionally injected himself between the husband and his wife and wrongfully destroyed the relationship, the love, and affection. Where there was no existing love and affection, or where the spouse was actually the aggressor, the offended spouse would not win.

In a criminal conversation suit, adultery was the key element. The aggrieved husband, for example, would sue his wife’s lover for violating his exclusive right to sexual relations. In a criminal conversation suit, it was not necessary to show any alienation of affection; the suit was simply for damages for violating the spouse’s exclusive right to sexual relations.

Even though 1978 legislation prohibited these types of lawsuits, some individuals have filed similar suits since then against an intruder to the marriage, alleging that the intruder’s actions constituted the “intentional infliction of emotional distress.” Lower courts have awarded money damages in these types of actions. However, the Supreme Court of Ohio overruled these lower court decisions by declaring that “alienation of affection” and “criminal conversation” lawsuits cannot be revived under the term “intentional infliction of emotional distress.”

## **Q: Are there other consequences of marriage?**

**A:** Yes, they include the following:

1. A husband and wife may enter into legally binding contracts with each other and may individually contract or conduct business with other individuals without the partner being involved.
2. Except for dower rights and the right to remain in the home after the death of the other, a husband or wife may individually own property as if they were not married.
3. Neither can be held responsible for the acts, crimes, or negligent action of the other. Except for the legal provision making each spouse responsible for “necessities” charged by the other, neither

- spouse is liable for the debts of the other, including those incurred by either before the marriage.
4. The couple cannot agree to stop supporting their children or to change the obligations imposed upon them by law.
  5. The couple is jointly responsible for the care, education, and welfare of their children and each has equal right to custody until a court grants to one of them custody according to a court order.
  6. A married woman may sue or be sued and any judgment the court may make can be enforced as if she were not married.

**Q: Must a woman assume her husband's last name?**

**A:** No. Nothing prevents a woman from keeping her own last name. The taking of the husband's last name is the result of custom and not a requirement of law. In addition, a woman may also assume a hyphenated last name by joining her last name with her husband's.

If a woman assumes her husband's last name and the marriage is ultimately terminated, the divorce/dissolution decree may contain a provision that restores the woman to any name she had prior to the marriage.

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*This "Law You Can Use" column provided was by the Ohio State Bar Association (OSBA). It was prepared by John Gilchrist, a Columbus attorney and author of Divorce in Ohio and How to File for Divorce in Ohio.*

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