

by section 1 of this Act. In issuing the license the clerk shall deliver it in its entirety to the licensee. The clerk shall see to it that every blank space required to be filled by the applicants is so filled before delivering it to the licensee.

402.205 Petition to court by seventeen-year-old for permission to marry — Evidentiary hearing — Reasons for denying petition — Effect of pregnancy — Emancipation of minor — Other court-imposed conditions — Fee.

(1) A minor who is seventeen (17) years of age may petition the family court in the county in which the minor resides, or the District Court in that county if a family court division has not been established in that county, for an order granting permission to marry. The petition shall contain the following:

(a) The petitioner's name, gender, age, date of birth, address, and how long the petitioner has resided at that address, as well as prior addresses and dates of residence for the six (6) months preceding the petition;

(b) The intended spouse's name, gender, age, date of birth, address, and how long the intended spouse has resided at that address, as well as prior addresses and dates of residence for the six (6) months preceding the petition;

(c) An affidavit attesting to the consent to marry signed by:

1. The father or the mother of the petitioner, if the parents are married, the parents are not legally separated, no legal guardian has been appointed for petitioner, and no court order has been issued granting custody of petitioner to a party other than the father or mother;

2. Both the father and the mother, if both are living and the parents are divorced or legally separated, and a court order of joint custody to the parents of the petitioner has been issued and is in effect;

3. The surviving parent, if the parents were divorced or legally separated, and a court order of joint custody to the parents of the petitioner was issued prior to the death of either the father or mother, which order remains in effect;

4. The custodial parent, as established by a court order which has not been superseded, where the parents are divorced or legally separated and joint custody of the petitioner has not been ordered; or

5. Another person having lawful custodial charge of the petitioner;

(d) A statement of the reasons why the petitioner desires to marry, how the parties came to know each other, and how long they have known each other;

(e) Evidence of the petitioner's maturity and capacity for self-sufficiency independent of the petitioner's parents and the intended spouse, including but not limited to:

1. Proof that the petitioner has maintained stable housing or employment for at least three (3) consecutive months prior to the petition; and

2. Proof that the petitioner has completed high school, obtained a High School Equivalency Diploma, or completed a vocational training or certificate program;

(f) Copies of any criminal records of either party to be married; and

(g) Copies of any domestic violence order or interpersonal protective order involving either party to be married.

(2) Upon the filing of the petition for permission to marry, the court shall set a date for an evidentiary hearing on the petition that is no sooner than thirty (30) days but not later than sixty (60) days from the date of the filing.

(3) The petitioner may be represented by counsel in court proceeding pertaining to the petition to marry.

(4) The court shall take reasonable measures to ensure that any representations made by a minor party are free of coercion, undue influence, or duress. Reasonable measures shall include but are not limited to in-camera interviews.

(5) Following an evidentiary hearing, the court shall grant the minor's petition for permission to marry unless:

(a) The age difference between the parties is more than four (4) years;

(b) The intended spouse was or is a person in a position of authority or a position of special trust as defined in KRS 532.045 in relation to the minor;

(c) The intended spouse has previously been enjoined by a domestic violence order or interpersonal protective order, regardless of whether or not the person to be protected by the order was the minor petitioner;

(d) The intended spouse has been convicted of or entered into a diversion program for a criminal offense against a victim who is a minor as defined in KRS 17.500 or for a violent or sexual criminal offense under KRS Chapter 506, 507, 507A, 508, 509, 510, 529, 530, or 531;

(e) The court finds by a preponderance of the evidence that the minor was a victim and that the intended spouse was the perpetrator of a sexual offense against the minor under KRS 510.040, 510.050, 510.060, 510.110, 510.120, or 510.130;

(f) The court finds by a preponderance of the evidence that abuse, coercion, undue influence, or duress is present; or

(g) The court finds that it would otherwise not be in the minor party's best interest to grant the petition to marry.

(6) A past or current pregnancy of the minor or the intended spouse shall not be sufficient evidence to establish that the best interests of the minor would be served by granting the petition for marriage.

(7) The granting of a petition for permission to marry filed under subsection (1) of this section shall remove the disabilities of minority. A minor emancipated by the petition shall be considered to have all the rights and responsibilities of an adult, except for specific constitutional or statutory age requirements, including but not limited to voting, the use of alcoholic beverages, and other health and safety regulations relevant to him or her because of his or her age.

(8) The minor shall be advised by the court of the rights and responsibilities of parties to a marriage and of emancipated minors. The minor shall be provided with a fact sheet on these rights and responsibilities to be developed by the Office of the Attorney General and the Cabinet for Health and Family Services. The fact sheet shall include referral information for legal aid agencies in the Commonwealth and national hotlines for domestic violence and sexual assault.

(9) The court may make any other orders that the court deems appropriate for the minor's protection and may impose any other condition on the grant of the petition that the court determines is reasonable under the circumstances for the minor's protection.

(10) The court may set a fee not to exceed twenty dollars (\$20) to file a petition for permission to marry under this section.

the perceived death and later marries the other person, the marriage is still bigamous and void if the first spouse is alive. *Rose v. Rose*, 118 S.W.2d 529, 532 (Ky. 1938).⁴

Parol evidence (prior or contemporaneous evidence that contradicts the record) is insufficient to prove to a court that a divorce has been granted. *Trimble v. Wells*, 234 S.W.2d 683 (Ky. 1950). In other words, it is not enough to show that two spouses made an informal agreement to divorce; they must actually divorce.

IV. Marriage not solemnized in the presence of an authorized person prohibited.

All marriages not solemnized or contracted in the presence of an authorized person or society are prohibited and void. [KRS 402.020\(1\)\(c\)](#).

There is one statutory exception to this rule: When a person professes to have authority to solemnize marriages and purports to solemnize a marriage without such authority, the marriage is legally valid if either or both of the parties to the marriage believes that the person had such authority. [KRS 402.070](#).

For a thorough discussion of who may solemnize, see [page 12](#) of this guide.

V. Marriage between more than two persons prohibited.

Marriages between more than two persons are prohibited in Kentucky. [KRS 530.010](#). This includes intentionally bigamous or polygamous marriages and marriages in which one party is not yet divorced (see [pages 6–7](#) of this guide).

VI. Marriage with person under age 18 prohibited.

Under [KRS 402.020\(1\)\(f\)](#), a marriage in which one or both parties are under age 18 at the time of marriage is prohibited and void.⁵

A. Exceptions.

A marriage where one or both parties is under age 18 will be valid if it was entered into in the Commonwealth of Kentucky prior to July 14, 2018, or if it was entered into lawfully in another state or country prior to the parties residing in the

⁴ *But see* [KRS 530.010\(2\)](#) (allowing for a defense to bigamy if the person “believed he was legally eligible to remarry”).

⁵ Although [KRS 402.020](#) states, in part, that the marriage of a person under the age of eighteen is prohibited and void, a federal district court has previously concluded that such a marriage is merely voidable and, therefore, valid, absent a court declaration to the contrary. *See Holbert v. West*, 730 F. Supp. 50, 52–53 (E.D. Ky. 1990). The primary function of the clerk is to determine whether a marriage license should be issued based on the facts and information available. Whether the subsequent marriage is legal is a matter, ultimately, for the courts to resolve.

Commonwealth of Kentucky. [KRS 402.020\(2\)](#). The General Assembly has also provided a qualified exception for 17-year olds. See [KRS 402.205](#).

B. Special process if 17-year old applies for a marriage license.

Under [KRS 402.205](#), a 17-year old may petition the family court or the District Court (if there is no family court) in the county in which the minor resides for an order granting permission to marry. The court may impose a fee of no more than \$20 to file the petition. [KRS 402.205\(10\)](#). For the petition to be legally adequate, it must contain personal information, an [affidavit](#) attesting a parent or guardian's consent to the marriage,⁶ a statement detailing why the minor petitioner seeks to marry, evidence of the petitioner's maturity, and copies of any criminal records of the parties seeking to marry. For an exhaustive list of the statutory requirements of the petition, and what documents may satisfy each element, consult [KRS 402.205](#).

Once the petition is filed, the court must set a date for an evidentiary hearing that is no sooner than 30 days, but not later than 60 days, from the date of the filing. [KRS 402.205\(2\)](#). The petitioner may be represented by counsel during the proceeding. [KRS 402.205\(3\)](#). It is the court's duty to ensure that any representations made by a minor party are free of coercion, undue influence, or duress, and may take any reasonable measures to do so. [KRS 402.205\(4\)](#). If the court grants the minor's petition for permission to marry, county clerks may rely on the court's determination that the petitioners met the requirements for the exception.

Obtaining the court's permission to marry is not sufficient to solemnize a marriage. The county clerk must receive a certified copy of the court order; without a certified copy of the order, the clerk must not issue a marriage license. At least 15 days must elapse between when the court order was granted and when the clerk issues the marriage license. [KRS 402.210](#).

VII. Common-law marriages prohibited.

Kentucky law does not allow for the creation of common-law marriages. In *Pendleton v. Pendleton*, 531 S.W.2d 507, 509–10 (Ky. 1976), the court stated: “[I]n this state there is no such thing as a common-law marriage. What might be a common-law marriage somewhere else is no marriage at all here. As distinguished from being ‘void’ or ‘illegal’, it simply does not exist as a ‘marriage’ of any kind.”

However, while Kentucky law does not allow for a common-law marriage to be created within the Commonwealth, Kentucky will recognize a common-law marriage legally recognized by another state. See *Vaughn v. Hufnagel*, 473 S.W.2d 124, 125 (Ky. 1971).

⁶ Please see Appendix B for a [sample affidavit](#).