



**CAMERON COUNTY DISTRICT ATTORNEY**

**Luis V. Saenz**

*District Attorney*

**RECEIVED**

*By Opinion Committee at 3:29 pm, Sep 19, 2025*

**RQ-0616-KP**

September 19, 2025

Via U.S. Mail & Electronic Mail

Office of the Attorney General  
The Honorable Ken Paxton  
Attention Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548  
E: [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

**RE:** *Request for Attorney General's Opinion regarding appropriate method to amend a declaration of informal marriage.*

Dear Attorney General Paxton:

The County of Cameron, via a request made by their Litigation Counsel, Mr. Daniel Lopez, has asked I submit this request for an Attorney General's Opinion. The issue relates to clarifying the legally permissible means to amend a *declaration of informal marriage* that contains an error. Constituents have approached the Cameron County Clerk to seek to amend a declaration of informal marriage with an error affidavit.<sup>1</sup> The Clerk is hesitant to permit the use of an error affidavit as requested insofar as the constituents are not seeking to amend a formal marriage license. Based on information and belief, there is no guidance from the County and District Clerks Association on this matter. Based on information and belief, 1 in 4 Texas County Clerk's do not permit informal marriage applicants to use an error affidavit to correct errors in documents related to informal marriages. The Vital Statistics Section of the State Health and Human Services has promulgated two separate forms for

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<sup>1</sup> For the purposes of this question, the term "error affidavit" refers to the affidavit described in Tex. Fam. Code § 2.209(c) ("[i]f one or both parties to a marriage license discover an error on the recorded marriage license, both parties to the marriage shall execute a notarized affidavit stating the error.").

each type of marriage, formal and informal: Form VS 180 for formal marriage (references to Texas Family Code § 2.004), and Form 180.1 for informal marriage (references Family Code § 2.402). See Texas Health and Human Services website, <https://www.dshs.texas.gov/vital-statistics/vital-statistics-partners/partner-forms> (accessed on September 19, 2025).

## QUESTIONS:

1. May an error affidavit be used to amend a *certificate or declaration of informal marriage* that contains an error?
2. If not, what is the appropriate mechanism to amend a *certificate or declaration of informal marriage*?

## BACKGROUND:

In 2009, in an effort to update the process of issuing marriage licenses the Legislature passed, and the Governor approved House Bill 3666. House Comm. on Judiciary & Civ. Juris., Bill Analysis, Tex. H.B. 3666, 81st R.S. (2009); Hearing on H.B. 3666 Before the House Comm. on Judiciary & Civ. Juris., 81st R.S. (April 22, 2009) (statements of Washington County Clerk Beth Rothermel at or near minute 1:52:30) (video available online at <https://house.texas.gov/videos/4979>); see also, Acts 2009, 81<sup>st</sup> R.S., ch. 978, General and Special Laws of Texas (codified at Tex. Fam. Code §§ 2.002, 2.004, 2.005, 2.006, 2.009, 2.404).

The bill analysis for HB 3666 outlines that:

H.B. 3666 requires both parties to a marriage, if one or both parties discover an error on the recorded marriage license, to execute a notarized affidavit stating the error. The bill requires the county clerk to file and record the affidavit as an amendment to the

marriage license, and the affidavit is considered part of the marriage license. The bill requires the clerk to include a copy of the affidavit with any future certified copy of the marriage license issued by the clerk. The bill requires the executive commissioner of the HHSC by rule to prescribe the form of the affidavit.

H.B. 3666 authorizes a clerk, on the proper execution of a declaration of informal marriage, to prepare a certificate of informal marriage, to enter on the certificate the names of the persons declaring their informal marriage and the date the certificate or declaration is issued, and to record the time at which the certificate or declaration is issued. The bill makes conforming changes in provisions relating to a declaration of informal marriage.

House Comm. on Judiciary & Civ. Juris., Bill Analysis, Tex. H.B. 3666, 81st R.S. (2009).

At the hearing wherein the House Committee considered H.B. 3666 it was discussed that:

Section 6, this is interesting. Currently there is nothing in law that allows a clerk's association to offer a duplicate. So, this gives a way that you can offer a duplicate marriage license, if your dog eats it up, if you lose it, whatever it is, you can finally have a duplicate. And then we have later in that section we have a correcting measure. What can happen is 'I am Lois Winklemann. I have two 'n's on the last of my name. I am marrying James Darren Kolkhorst, and they left one of the 'n's off of Winklemann.' And I note this after we get married. About, you know, six months later when we're doing something, I look at that, and I say, 'look, forever my name is going to have one "n" in it.' And there was no real



correcting manner. Now they can have a correcting manner that is standard for the state of Texas.

Hearing on H.B. 3666 Before the House Comm. on Judiciary & Civ. Juris., 81st R.S. (April 22, 2009) (statements of State Representative Kolkhorst at or near minute 1:49:41) (video available online at <https://house.texas.gov/videos/4979>). State Representative Kolkhorst continued by saying:

Finally Section 9 of the bill. This is for common law marriages. You can offer a certificate. Currently, now, what they got is all of their information is on file with the County Clerk's Office. This would clean that up. After 911 everyone's kinda sensitive about having numbers and things that are open to, can be, attained by open records. And so, this would give our, what we call informal marriages, or better known as common law marriages, a certificate. And with that, the repealer is in Section 10 of the Family Code.

Hearing on H.B. 3666 Before the House Comm. on Judiciary & Civ. Juris., 81st R.S. (April 22, 2009) (statements of State Representative Kolkhorst at or near minute 1:51:00) (video available online at <https://house.texas.gov/videos/4979>). A representative of the county clerk's association testified that:

This is, as Representative said, a cleanup bill. There is a lot to this bill. All sections of Chapter 2, or almost all sections of Chapter 2 are addressed. What happens is that experiences are not addressed that take place every day in the County Clerk's Office with regard to so many different things: licenses being lost; a misspelled name on a marriage license; a pastor puts a wrong day on a marriage license; all kinds of things. This bill addresses all the different circumstances that can happen in a clerk's office. Currently, the county clerks are making up their own rules, making up their own policies to address these things that are not stated in statute. And so with this bill, this is going to help the

county clerks of Texas so very much to handle our day to day duties with regards to issuing of marriage licenses.

Hearing on H.B. 3666 Before the House Comm. on Judiciary & Civ. Juris., 81st R.S. (April 22, 2009) (statements of Washington County Clerk Beth Rothermel at or near minute 1:52:30) (video available online at <https://house.texas.gov/videos/4979>). “We feel like this will give county clerks of the state of Texas something they can sink their teeth in and say, ‘it is law, we have to do it this way’.” Hearing on H.B. 3666 Before the House Comm. on Judiciary & Civ. Juris., 81st R.S. (April 22, 2009) (statements of Comal County Clerk Joyce Straighter at or near minute 1:55:35) (video available online at <https://house.texas.gov/videos/4979>).

But there are a lot of different parts that are impacted on this bill of the Family Code. And again, this has been vetted very thoroughly by the Clerks’ Association, these ladies... are very particular about what they do and the records that they keep. They are very particular. They do not like to issue these public documents without proof of who you are, and what you are, and what you are going to do with them.

Hearing on H.B. 3666 Before the House Comm. on Judiciary & Civ. Juris., 81st R.S. (April 22, 2009) (statements of State Representative Kolkhorst at or near minute 1:56:36) (video available online at <https://house.texas.gov/videos/4979>).

Texas Family Code § 2.209(c) provides:

If one or both parties to a marriage license discover an error on the recorded ***marriage license***, both parties to the marriage shall execute a notarized affidavit stating the error. The county clerk shall file and record the affidavit as an amendment to the ***marriage license***, and the affidavit is considered part of the ***marriage license***. The clerk shall include a copy of the affidavit

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SEEK JUSTICE AND JUSTICE ALONE

with any future certified copy of the marriage license issued by the clerk.

(emphasis added).

Texas Family Code § 2.204(c) provides:

On execution of the declaration, the county clerk shall record the ***declaration or certificate of informal marriage***, deliver the original of the ***declaration*** to the parties, deliver the original of the ***certificate of informal marriage*** to the parties, if a ***certificate*** was prepared, and send a copy of the declaration of informal marriage to the bureau of vital statistics.

(emphasis added).

The term “certificate” was added to Family Code ch. 2 by HB 3666. *See* Acts 2009, 81<sup>st</sup> R.S., ch. 978, General and Special Laws of Texas, § 9 (codified at Tex. Fam. Code § 2.404) ( amending the section to add in the phrase “certificate or” before “declaration of information marriage” in (1) the title of § 2.404, (2) in (b), in (c), and in (d), and adds (a-1) that lays out how to issue a certificate of informal marriage).

The Texas Administrative Code outlines how to amend a *marriage license*:

1. Both parties must execute a notarized affidavit stating the error being remedied. 25 Tex. Admin. Code § 181.25(e).
2. The affidavit to amend the marriage license must contain:
  - a. the full names of applicants, including the maiden surname of the female applicant;
  - b. the date on which the marriage occurred;

- c. a statement identifying the error to be corrected; and
- d. the corrected statement.

25 Tex. Admin. Code § 181.25(f).

- 3. Upon receipt of the notarized affidavit, the county clerk shall file it as an amendment to the marriage license. 25 Tex. Admin. Code § 181.25(g).
- 4. The affidavit is considered part of the marriage license. 25 Tex. Admin. Code § 181.25(h).

The Government Code provides that “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Tex. Gov’t Code § 311.011(a). “[W]ords [in statutes] shall be given their ordinary meaning.” Tex. Gov’t Code § 312.002(a). “Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.” “If a word is connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art.” Tex. Gov’t Code § 312.002(b).

## DISCUSSION:

The question presented by Cameron County turns on the meaning of the Legislature’s use of the phrase/terms (1) *declaration or certificate of informal marriage* and (2) *marriage license*. Even though the Legislature, with H.B. 3666 (81st R.S.), created a mechanism to amend errors related to marriage paperwork, it could be interpreted said mechanism is limited only to those instances of a formal *marriage license* – the code section refers to an error affidavit being used to modify a recording, amending, and being a part of a *marriage license*. See Tex. Fam. Code § 2.209(c). It is important to note, this section does not use the language “declaration or certificate of informal marriage” which was the phrase used in the Marriage Without Formalities



Chapter that provides for informal marriages. *See* Tex. Fam. Code §§ 2.401 et seq. (sub. Ch. E). The legislative history also makes the distinction between the term and use of *marriage license* and the *declaration or certificate of informal marriage*. *See* House Comm. on Judiciary & Civ. Juris., Bill Analysis, Tex. H.B. 3666, 81st R.S. (2009). If the terms were synonymous, then the Legislature would not have made a distinction by using two separate terms. *See Tex. Dep't of Protective & Regulatory Services v. Mega Child Care, Inc.*, 145 S.W.3d 170, 177 (Tex. 2004) (generally courts avoid statutory interpretation that leads to absurd results).

Although the Family Code itself does not broadly define *license*, *declaration*, or *certificate*, Black's defines the terms as:

- license – “[a] privilege granted by a state or city upon the payment of a fee, the recipient of the privilege then being authorized to do some act or series of acts that would otherwise be impermissible.” LICENSE, Black's Law Dictionary (12th ed. 2024);
- declaration – “[a] formal statement, proclamation, or announcement, esp. one embodied in an instrument.” DECLARATION, Black's Law Dictionary (12th ed. 2024);
- certificate – “A document certifying the bearer's status or authorization to act in a specified way; esp., an official paper stating that one has completed a course of study or passed an examination.” CERTIFICATE, Black's Law Dictionary (12th ed. 2024).

While the testimony before the House Committee on the Judiciary & Civil Jurisprudence that the framers of H.B. 3666 sought to provide a procedure and system for all the county clerks to uniformly handle marriage matters, given the linguistic/semantic overlap of the terms *license* and *certificate*, there is potential for ambiguity. *See* Hearing on H.B. 3666 Before the House Comm. on Judiciary & Civ. Juris., 81st R.S. (April 22, 2009) (statements of Washington

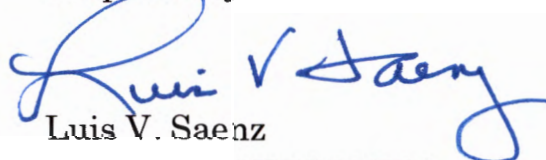


County Clerk Beth Rothermel at or near minute 1:52:30) (video available online at <https://house.texas.gov/videos/4979>).

Is the phrase *declaration or certificate of informal marriage* included and/or encased in the meaning of the term *marriage license*? Or is it the case, the term *marriage licenses*, as used in the Family Code, refers exclusively to the *license* provided for in subchapter A, B, and C of Chapter 2 of the Family Code? If not, then it is likely the case that the term *marriage license* as used in Family Code 2.209(c) did not refer to the *declaration or certificate of informal marriage* provided for in Family Code § 2.402. But given the need and goal of standardization, it could be the Legislature intended for the modification provision to apply to all methods of recognition of marriage.

Understanding these distinctions will help ensure our Clerk is correctly addressing requests submitted to her by constituents. Your attention to this matter, response, and clarification is greatly appreciated as it is very important to Cameron County.

Respectfully,



Luis V. Saenz

DISTRICT ATTORNEY

CAMERON COUNTY, TEXAS