

# **COMMON LAW MARRIAGE**

A Publication of the Office of Legislative Legal Services<sup>1</sup>

## ***Does Colorado Recognize Common Law Marriages?***

For the last several years, John and Jane have been living together in Colorado, using the same last name. They have referred to their marriage in the presence of friends, family, and co-workers. They file their income taxes on a joint return. However, they never obtained a marriage license or went through a formal marriage ceremony in a church or before a judge. Will the law recognize their marriage? Do they have all of the same legal benefits and obligations of other married couples?

Colorado recognizes so-called "common law" marriage. Accordingly, the law may treat John and Jane's marriage the same as any other valid, legal marriage.

## ***What constitutes a common law marriage?***

A common law marriage can be defined as a marriage not otherwise prohibited by law between a man and a woman who are at least eighteen years old that is not based upon a license, ceremony, or any other legal formality but upon the couple's agreement to have a marital relationship. Most states recognizing common law marriage require that the couple intend to have a marital relationship, live together, and have a reputation of being husband and wife.

Historically, the courts of England and a number of the original states recognized common law marriages. The practice grew rapidly, especially in the West, because of the difficulty of finding someone qualified to perform a marriage ceremony and because couples did not have the ability to travel to obtain a marriage license. Currently, Colorado and twelve other states, including the District of Columbia, recognize common law marriage, and each state establishes its own requirements for proof of such a marriage.

## ***What does the law require for a common law marriage in Colorado?***

A couple does not need to obtain a marriage license or participate in a wedding ceremony to have a common law marriage; however, the couple must:

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- Mutually consent or agree to live as husband and wife; and
- Mutually and openly assume a marital relationship; and
- Each party must be at least eighteen years old.

Therefore, the couple must be adults, must agree that the marriage exists, and must behave in public as a married couple. A court may consider the conduct of the couple and the duration and nature of their relationship to verify the existence of an agreement between them.

Many people mistakenly believe that a couple has a common law marriage after living together for a certain period of time. Living together for a long period of time may help to demonstrate the couple's agreement to be married, but the law does not require a specific time period.

### *What should couples keep in mind?*

If challenged, a couple may have to prove the existence of their common law marriage. The couple may use some or all of the following factors to demonstrate their agreement to have a marital relationship:

- A woman takes the surname of the man with whom she lives;
- The couple refers to their marriage in conversations with other people, such as friends, family, and co-workers;
- The couple files joint tax returns for federal or state income tax purposes;
- The couple lists each other as spouses on insurance forms and retirement plans;
- The couple has joint checking and savings accounts; and
- The couple holds property as joint tenants.

If a couple married by common law wishes to end their marriage, they must get divorced in the same manner as a couple married in a ceremony. The divorce will address all the issues involved in any divorce, including parental responsibility for their children, parenting time with their children, child support, maintenance, and property division. Any future marriage of either spouse will be invalid if a court does not properly dissolve the common law marriage prior to the next marriage.

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