

What is Common Law Marriage in Colorado?

Do I have a common-law marriage?

A common-law marriage is more than a committed partnership or long-term boyfriend/girlfriend. It is the intention to enter into a marital relationship – to share a life together as spouses in a committed, intimate relationship of mutual support.

Unfortunately, it is not always possible to say definitively whether two people have a common-law marriage without a court decision.

The court must consider several factors when determining whether two people are common-law married.

Some of those factors are:

1. If you and your partner lived together (“cohabitated”);
2. If you and your partner “hold yourselves out” as a married couple to your friends/family/the community. This can be how you introduce yourselves to people and what specific labels (like “husband” or “wife”) you use when you refer to your spouse.
3. Filing tax returns as a married couple;
4. Obtaining benefits for each other (like health insurance at your work) as a married couple;

5. Obtaining public benefits (like Medicaid or Food Stamps) as a married couple;
6. Using the same last name;
7. Purchasing property together as a married couple.

You must also have the "legal capacity" to be married - the same laws that apply for ceremonial marriages apply here. (You cannot be first cousins, a minor, or already married to someone else, etc.)

In addition, you and your spouse must have agreed to be husband and wife, or husband and husband, or wife and wife.

How long do we have to live together to have a common-law marriage?

There is no time requirement for establishing a common law marriage in Colorado. A common law marriage could possibly be valid after one day. Or you could live together with your boyfriend/girlfriend for decades but not be common-law married.

Who decides if we have a common law marriage?

In some cases, a court will decide this (for instance, if you want to end the marriage and file for divorce, or if you want to claim an inheritance). In cases where you want to obtain benefits such as Social Security survivor's benefits, the agency will decide if they accept that you have a common law marriage. (If they decide you don't, you can appeal their decision in court.)

Courts will look at several factors in making a decision about if two people are common-law married to each other. The Court must consider the factors and evidence together - there is no single element that will prove or disprove a common-law marriage.

If we have a common-law marriage, and we want to end our relationship, do we have to get a divorce?

Once you agree that you are married, with a ceremonial marriage or with a common-law marriage, you are married permanently, unless you obtain a divorce or annulment or one of you dies.

If you have a common-law marriage, and file for divorce, one of the issues for the court hearing your divorce to decide is whether the court agrees with you that you have a common law marriage. If the court decides that you did in fact have a marriage, then in order to end the relationship, the case must move forward as a dissolution of marriage.

The court will also decide issues about any minor children of your marriage, property and debts, maintenance (alimony) and everything else that is usually decided during a divorce.

Does Colorado recognize common-law marriages established in other states? Do other states recognize common-law marriage if established in Colorado?

If a common-law marriage is valid (legal) in the state in which it began, all states will recognize the marriage. Some states do not legally recognize (allow) for common-law marriages to begin in those states. If you lived in another state when your common-law marriage began, you will have to check with that state to see if it allows common-law marriages to begin in that state. If it doesn't, your common-law marriage could not begin until you move to a state that allows common-law marriages.

What's the difference between a common-law marriage and a marriage with a wedding license

and a ceremony?

Once it's been determined that a common-law marriage does exist, there is no difference. A couple in a common-law marriage has all the legal rights and duties of any married couple, including benefits, insurance, pension, and inheritance.

The Colorado Supreme Court has ruled that discrimination against common-law marriages (for instance, offering different benefits to employees who have common-law marriages or refusing to rent to tenants who are married by common law) is unconstitutional.

What about our children? Will questions about our common-law marriage affect them?

Generally, if there is no question who the mother and father are (or father & father, or mother & mother), the children's rights are protected under Colorado law regardless of the status of your marriage.

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