

# **Colorado Legal Services**

Legal help for low-income Coloradans seeking assistance with civil legal needs

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What is Common Law

## **What is Common Law Marriage in Colorado?**

### **Do I have a common-law marriage?**

You may have a common law marriage if you "hold yourselves out" as husband and wife - introduce each other as husband and wife, file tax returns as a married couple, obtain benefits for each other (like health insurance at your work) 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 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. This doesn't apply to engaged couples who "agree" to be married in the future, but it does apply to couples who agree that they are already married.

### **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. There are other factors which are used to decide if a common law marriage exists.

### **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 a number of factors in making a decision about your common law marriage, although there is no standard that a court has to follow - it's up to the judge to decide. The factors that a judge can consider include actions that you and your spouse took as husband and wife, or husband and husband, or wife and wife: buying property together, signing deeds together, taking out loans together, holding joint bank accounts, sharing a home, and having children together. These factors might be considered evidence of a marriage, if you acted as husband and wife (or husband & husband, or wife & wife) and presented yourselves as such when you did these things.

### **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 proceed as 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 marriage might begin when 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. 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. If you have a valid common-law marriage, you should be able to enjoy all the rights and responsibilities of marriage, including benefits, insurance, pension, and inheritance.

### **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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