

COMMON LAW MARRIAGE IN COLORADO

Colorado is one of about a dozen states which recognize common law marriage, or a marriage without formal ceremonies (See *CRS §14-2-104(3)*). With some limitations, the states that recognize common law marriage are: Alabama, Colorado, Idaho, Iowa, Kansas, Montana, New Hampshire, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas and Utah. The District of Columbia also recognizes common law marriage, and some foreign jurisdictions including Australia, Canada, Israel and Scotland.

Spouses in a Colorado common law marriage enjoy all of the rights and benefits of being legally married, and that marriage is recognized by all states and the federal government as to all marital property rights and all child custody concerns. No special time limit is necessary to establish a common law marriage in Colorado. A common law marriage can only be terminated by divorce or death. To remarry without divorcing one's common law spouse constitutes bigamy, and would invalidate the new marriage. (see: *CRS §18-6-201 & CRS §14-2-110*).

There is no hard-and-fast rule or single piece of evidence that always establishes a common law marriage. Determination of whether a common law marriage exists will depend on the specific facts and circumstances in each case. In Colorado, the elements of a common law marriage are:

1. Cohabitation as husband and wife
2. Mutual consent of the parties to be husband and wife, in the present
3. A "holding out to the public" by both parties that they are husband and wife
-*Mutual public conduct - a reputation among the community in which the couple lives that the parties hold themselves out as husband and wife*

- Both parties must be capable of freely entering the marriage, and not married to someone else.

The burden of proof is on the party asserting that a common law marriage exists, by a preponderance of the evidence. No particular documentation is required to establish a common law marriage in Colorado, but the kinds of evidence often used to establish a common law marriage include:

- Filing joint tax returns as a married couple (*either married-jointly, or married-separately*)
- Insurance coverage for each other under a "family" plan (*auto, health, or other*)
- Joint tenancy of property, particularly real estate with right of survivorship
- A will or other estate document referring to the partner as spouse
- Naming each other as beneficiary in retirement plans and insurance policies
- Named as "Next of Kin" on hospital admission forms, veteran's benefits applications, etc
- Identified as spouses in applications, school records, contract forms and hotel/motel registers
- Manner in which parties describe themselves to landlords in rental agreements
- Introducing each other as husband and wife to family, friends, and the public
- Joint finances, like joint bank accounts or joint credit cards, or mutual financial support
- Wife taking and using the surname of the husband, or the parties wearing wedding rings
- Use of the husband's surname, such as naming children born to the parties
- W-4/Withholding Exemption Certificates showing exemptions as a married person

There is no official Certificate of Common Law Marriage in Colorado. If the parties to a common law marriage need documentary proof of their marriage, they may complete and sign an Affidavit of Common Law in front of a notary, attesting to the common law marriage.

The affidavit may be filed with the County Clerk and Recorder in the county of residence.