

COMMON LAW MARRIAGES



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Colorado Common Law Marriages

The State of Colorado recognizes common law marriages as valid marriages. Once valid within Colorado, it is entitled to be given recognition in any other state within the United States, even if that state does not allow the establishment of common law marriages for its own citizens. Because the marriage is legally valid, the only way to dissolve the marriage is through divorce. To obtain a divorce, the procedures for obtaining a divorce through state court must be followed. Colorado case law defines certain factors that establish a common law marriage. Additionally, the Colorado Attorney General has provided some guidance on the factors establishing a common law marriage. The common law elements of a valid marriage are that the couple: (1) is free to contract a valid ceremonial marriage, i.e., they are not already married to someone else; (2) holds themselves out as husband and wife; (3) consents to the marriage; (4) cohabits; and (5) has the reputation in the community as being married.

Mutual consent is the agreement of both of the parties to be husband and wife. Public acknowledgement of the agreement can be demonstrated in many ways, however it is most commonly demonstrated by living together (co-habitation). Co-habitation alone does not establish a common law marriage. A reputation in the community of the parties holding themselves out as husband and wife can be accomplished by one party taking the other's last name, filing joint tax returns, or other activities.

There is no real advantage to a common law marriage versus a statutory marriage. The marriage can only be terminated by divorce and the obligations for support are still required. Entitlement to governmental benefits, including military benefits, and the right to inheritance are the same.

One problem with a common law marriage is that it is more difficult to prove the relationship and it is subject to more scrutiny since there is not a process for registration of the marriage. It may be subject to challenge at any time if it appears the requirements of a common law marriage have not been met. It will also be

more difficult to prove the marriage to governmental agencies for entitlement to benefits. The Air Force requires proof of the marriage and will accept an affidavit by the parties that the marriage has been entered into. Keep in mind that simply signing an affidavit does not create a valid common law marriage. The other factors must also be present. The marriage cannot be a sham to collect benefits and the marriage could be scrutinized if it appears it is not valid. Unlawful cohabitation is still an offense under Article 134 (para 69) of the Uniform Code of Military Justice.

There are problems which may arise in divorce proceedings because of difficulties in proving the marriage. One party may deny there ever was a marital relationship and the relationship may have to be proven to gain support for property division. This will make it necessary to call witnesses to establish the validity of the marriage if there is a dispute over the agreement. There are other legal bars to marriage including the age of the parties and the capacity to consent which must be met to constitute a valid marriage. Before entering into a marriage, consideration should be given to the rights and responsibilities of the parties involved.

Sources:

People v. Lucero, 747 P.2d 660 (Colo. 1987)
Taylor v. Taylor, 10 Colo. App. 303 (Colo. App. 1897)
http://www.coloradoattorneygeneral.gov/initiatives/cons_umer_resource_guide/common_legal_questions#common_law

The information provided in this document is meant for the sole use of Active Duty service members, retirees, and their families. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibilities vary widely according to the facts and circumstances in each case. Laws can vary across states, services, and civilian jurisdictions. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

COMMON LAW MARRIAGE AFFIDAVIT

We, _____ and _____, after first being duly sworn upon oath depose and state:

- a. That _____ is serving on active duty in the United States Air Force.
- b. That we have mutually agreed to become husband and wife and to establish a common-law marriage under the laws of the State of Colorado.
- c. That we have been living together as husband and wife since _____.
- d. That we are holding each other out to be husband and wife to our friends, family, associates acquaintances, as well as the general public at large.
- e. That _____ has (been)(never been) married (and was divorced on _____ day of _____, _____ at _____.)
- f. That _____ has (been)(never been) married (and was divorced on _____ day of _____, _____ at _____.)
- g. That our marriage is not for the purpose of effecting a ruse or sham on the United States Government in order to receive additional benefits of whatever sort from the government.
- h. That we have been counseled as to the legal ramifications of a common law marriage by the 21 Space Wing Staff Judge Advocate Office.

STATE OF COLORADO)
COUNTY OF EL PASO)

Subscribed and sworn to before me this _____ day of _____, _____, by _____ and _____.

WITNESS MY HAND AND SEAL.

NOTARY PUBLIC
My Commission expires on: