

Common Law Marriages



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The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and other personnel eligible for legal assistance from the Space Base Delta 1 Legal Office. 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 particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws change from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

COLORADO COMMON LAW MARRIAGES

The State of Colorado recognizes common law marriages as valid marriages. Once a marriage is valid within Colorado, it is entitled 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. If so decided, the procedures for obtaining a divorce through state court must be followed. Colorado case law defines certain factors that establish 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 spouse and spouse; (3) consents to the marriage; (4) co-habits; and (5) has the reputation in the community as being married. The key question, however, is whether the parties mutually intended to enter a marital relationship of mutual support and mutual obligation.

Mutual consent is the agreement of both parties to be spouse and spouse. Public acknowledgement of the agreement can be demonstrated in many ways. However, it is most commonly demonstrated by living together (co-habitation), but co-habitation alone does not establish a common law marriage. The parties' reputation in the community holding themselves out as spouse and spouse can be accomplished by one party taking the other's last name, filing joint tax returns, having joint bank or credit card accounts, 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.

Some problems with a common law marriage are that it is more difficult to prove the relationship and it is subject to more scrutiny because there is no registration process for the marriage. The marriage 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 exists. 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.

There are problems which may arise in divorce proceedings because of difficulties in proving the existence of the marriage. One party may deny there ever was a marital relationship, and thus, the relationship may have to be proven to gain support for property division. This may require witnesses to establish the validity of the marriage. There are other legal bars in order to constitute a valid marriage which include the age of the parties and the capacity to consent. Before entering into a common law marriage, consideration should be given to the rights and responsibilities of the parties involved.