



USAF ACADEMY LEGAL OFFICE
2304 Cadet Drive, Suite 2100
USAFA, CO 80840
(719) 333-3940

COMMON LAW MARRIAGE IN COLORADO

Does Colorado Recognize Common Law Marriages?

For the last several years, John and Jane have been living together in Colorado, using the same last name. They have referred to their marriage in the presence of friends, family, and co-workers. They file their income taxes using a joint return. However, they never obtained a marriage license or went through a formal marriage ceremony in a church or before a judge. Will the law recognize their marriage? Do they have all of the same legal benefits and obligations of other married couples?

Colorado, along with nine other states and the District of Columbia, recognize so-called "common law" marriages. Accordingly, the law may treat John and Jane's marriage the same as any other valid, legal marriage.

What constitutes a common law marriage?

A common law marriage can be defined as a marriage not otherwise prohibited by law between a man and a woman who are at least eighteen years old that is not based upon a license, ceremony, or any other legal formality but upon the couple's agreement to have a marital relationship. Most states recognizing common law marriage require that the couple intend to have a marital relationship, live together, and have a reputation of being husband and wife.

What does the law require for a common law marriage in Colorado?

A couple does not need to obtain a marriage license or participate in a wedding ceremony to have a common law marriage; however, each party must be at least eighteen years old and the couple must:

- Mutually consent or agree to live as husband and wife; and
- Mutually and openly assume a marital relationship.

The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibility vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed 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.

Therefore, the couple must be adults, must agree that the marriage exists, and must behave in public as a married couple. A court may consider the conduct of the couple and the duration and nature of their relationship to verify the existence of an agreement between them.

Many people mistakenly believe that a couple has a common law marriage after living together for a certain period of time. Living together for a long period of time may help to demonstrate the couple's agreement to be married, but the law does not require a specific time period.

What should couples keep in mind?

If challenged, a couple may have to prove the existence of their common law marriage. The couple may use some or all of the following evidence, or other similar evidence, to demonstrate their agreement to have a marital relationship:

- A woman takes the surname of the man with whom she lives;
- The couple refers to their marriage in conversations with other people, such as friends, family, and co-workers;
- The couple files joint tax returns for federal or state income tax purposes;
- The couple lists each other as spouses on insurance forms and retirement plans;
- The couple has joint checking and savings accounts; and
- The couple owns property as joint tenants.

If a couple married by common law wishes to end their marriage, they must get divorced in the same manner as a couple married in a ceremony. The divorce will address all the issues involved in any divorce, including parental responsibility for their children, parenting time with their children, child support, maintenance, and property division. Any future marriage of either spouse will be invalid if a court does not properly dissolve the common law marriage prior to the next marriage.

Military benefits and the common law spouse

Common law spouses are entitled to the same benefits as legally married spouses. However, special documentation is needed to prove that the common law marriage is valid. The procedures and requirements for obtaining a military ID card are laid out in AFI 36-3026 *Identification Cards for Members of the Uniformed Services, Their Eligible Family Members, and Other Eligible Personnel*, para 2.4.2.

This handout was prepared by the Air Force Legal Office using materials provided by the Colorado Office of Legislative Legal Services. This document contains general legal advice. Consult the Legal Office about your specific case.