

CHAPTER 7

FAMILY LAW -- DOMESTIC RELATIONS

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BIRTH AND PARENTAGE

Colorado law requires both parents to support their children, regardless of their marital relationship. The Uniform Parentage Act ("UPA"), C.R.S. 19-4-101 to 130, provides a procedure to establish a parent-child relationship. The statute avoids such pejorative labels such as illegitimacy and legitimacy. A child, the natural mother, a man presumed or alleged to be the father, or other interested parties, may bring a paternity action under the UPA to establish fatherhood and the payment of support. The Colorado Department of Social Services may also start the action. The court usually requires both parties and the child to undergo genetic blood testing or other tests of inherited characteristics that determine a percentage probability of paternity. These tests have become so sophisticated that they can usually determine with about ninety-eight or ninety-nine percent accuracy whether a man is the child's actual father. A jury trial is not allowed, and the issue of the existence or non-existence of a parent-child relationship is determined by a judge.

The father may be a "presumed" father or a "non-presumed" father under the law. A man is "presumed" to be the child's father if:

1. He is married to the child's mother or attempts to legally marry her before or at the time of birth, or if the child is born within three hundred days after the marriage or attempted legal marriage is terminated by death, annulment, a declaration of invalidity, divorce or legal separation;
2. He marries the child's mother after the child's birth, and he acknowledges the child as his own by filing a written document with the court or the registrar of vital statistics, or he has his name put on the child's birth certificate, or he has promised in writing to support the child or is court-ordered to support the child;
3. He receives the child into his home and openly acknowledges the child as his natural child;
4. He acknowledges his paternity of the child in a writing filed with the court or registrar of vital statistics, and after proper notice the mother does not dispute the acknowledgment in writing to the court or registrar of vital statistics; or
5. The blood tests show he is not excluded as the probable father, and that the probability of his parentage is 97 percent or higher.

A husband also is treated as the natural father of a child if he consents in writing to assisted reproduction, and his wife conceives because of assisted reproduction. The donor is never legally the father of the child, as long as the procedure is done through a licensed physician.

Both parents—including "presumed" and "non-presumed" fathers, and including fathers

who did not want the child and who may have never seen the child—have the obligation to financially support the child and, conversely, can inherit from the child. The child also can inherit from the parents. Parenting time and parental responsibility for residence and major decision-making may be ordered in a paternity action. A new certificate of birth is substituted for the original certificate if a finding of paternity is made.

Relinquishment

Although a child's parents are presumed to be fit and proper custodians for a child, they may choose voluntarily to renounce their parental rights. They may give up the child permanently through a "relinquishment" proceeding in court. C.R.S. 19-5-100.2 to 108. Special counseling of the parents is required. The court also may order counseling for any child, and may order that a child who is younger than twelve be prepared for relinquishment, termination of parental rights, or adoption. The court may appoint a guardian *ad litem* (GAL) to protect the interests of the child.

The court must be satisfied that the parties are fully advised of the consequences of the relinquishment and that the relinquishment is voluntary and not a result of fraud, duress, or coercion. Upon proper request, and if the court determines it is in the best interests of the child, the court must give preference to a grandparent, aunt, uncle, or brother or sister of the child when ordering legal parental responsibility after the relinquishment is granted.

The order of relinquishment releases the parent and child from all legal obligations with respect to each other. However, the child remains an heir to the parents until there is a subsequent final decree of adoption by another party. Courts will not allow relinquishment for the sole reason that a parent does not wish to pay child support, unless there is another available and appropriate person (such as a stepparent) to take over the parental responsibility for the child.

Dependency and Neglect and Termination of Parental Rights

Parents are required to provide proper parental care, including food, shelter, education, and medical care for their child. The duty to provide proper parental care includes protecting a child from persons who might abuse or harm the child, and maintaining proper supervision and control. If a parent does not take proper care of the child or provide proper supervision, the Department of Social Services may file a petition in dependency or neglect (known as a "D&N case") against the parent. Criminal charges also may be filed against the parent. The principal statute dealing with such issues is part of the Colorado Children's Code, C.R.S. 19-3-100.5 to 703.

If the Department of Social Services files a petition in dependency or neglect, the court may place the child with a relative, in a foster home, or in other child care facility. The court will appoint a guardian *ad litem* (GAL) to represent the interests of the child. The parents are entitled to have a treatment plan designed to reunite them with their child within a reasonable period of time. If the treatment plan fails, the court may ultimately terminate the parent-child relationship.

The Colorado legislature has recognized the importance of fostering and promoting the relationship between parent and child wherever possible. The severing or termination of ties between a parent and child is a drastic step. Consequently there are strict constitutional and statutory requirements to protect the parents and the child to ensure that such termination decisions are clearly in the best interests of the child.

A decree of termination divests the child and parents of all legal rights and obligations to each other. Thereafter, a child is ordinarily placed for adoption. However, the right of the child to inherit from the parent ends only with the subsequent entry of a final adoption decree.

Adoption

Under the Colorado adoption statute, C.R.S. 19-5-200.2 to 403, any child who is under the age of eighteen and is free for adoption (that is, the parents' rights to the child have been voluntarily or involuntarily terminated by a court) may be adopted, either by relatives, friends, or strangers who are over the age of twenty-one. The court requires that a study be made of the adoptive parents' home before the court permits the adoption. A child who is twelve years or older cannot be adopted without the child's written consent. Once the child is adopted, the child has the same rights, responsibilities, and relationship to the adoptive parents as if they were biological parents. A new birth certificate is issued for the child to reflect the adoption.

In Colorado, a birth parent or parents may designate a specific applicant with whom they wish to place their child for adoption. This often is referred to as a designated adoption. All relinquishment and adoption requirements still apply. Otherwise, there is strict confidentiality regarding the identities of the birth and adoptive parents, except for general background and medical information.

The Colorado legislature also has recognized the strong desire of some birth parents and some adults who were adopted to obtain information about each other by creating a voluntary adoption registry. Adoptees over the age of twenty-one and birth parents (or relatives if either is deceased) may register with the state registrar of vital statistics to determine whether a match exists. If there is a match, the registrar provides identifying information to each. For more details about the registry, see C.R.S. 25-2-113.5.

The legislature also has established a procedure to appoint a trained confidential intermediary to search for biological relatives. If the intermediary locates the relatives, and mutual consent is obtained, information is released. If both parties do not consent, all information obtained by the intermediary remains confidential. For more information about the intermediary process see C.R.S. 19-5-301 to 307.

"Stepparent adoption" occurs when the parent who has custody of the child marries or remarries, and the new spouse wants to adopt the child. The court may terminate the parent-child relationship with the non-custodial parent if the non-custodial parent consents or has abandoned the child by not making any contact with the child, nor paying child support, for more than one year. The stepparent then can adopt the child if the court finds it to be in the best interests of the child. This is not automatic, however, and the non-custodial parent has the right to object—

although that parent would continue to be responsible for ongoing support of the child, in that case. For more detail about stepparent adoption, see C.R.S. 19-5-203.

Adults also may be adopted, although this is rare. Single persons, as well as married people, are eligible to adopt a child; however, a married person may not be allowed to adopt unless the spouse agrees.

It is not legal in Colorado for a person to accept money or any "thing of value" in connection with a relinquishment and adoption, except attorney fees or other charges approved by the court. However, county or licensed agencies may charge for facilitating adoptions.

EMANCIPATION

In Colorado, the age of presumed emancipation is twenty-one (C.R.S. 2-4-401(6)); however, the age of presumed emancipation is nineteen for purposes of child support, unless the child is mentally or physically disabled or is still in high school. C.R.S. 14-10-115(1.5)(a). Courts generally allow children who are eighteen years old to determine where they wish to live, and what parenting time they want to have with each parent.

A child may emancipate earlier than age twenty-one by marriage or entry into the military service, or by establishing independence. In actions concerning a child, a court may determine that the child is emancipated for one specific purpose only, which does not apply to other areas.

In determining whether emancipation has been established, the court must consider all of the relevant facts and circumstances, including such significant factors as:

1. The financial independence of the child;
2. The child's establishment of a residence away from the family home, especially with parental consent; and
3. Whether the child is under the control of or dependent upon her/his parents.

There are a number of things which a minor may do at age eighteen, including:

1. Enter into a legal contractual obligation and be bound to the same extent as any other adult person;
2. Manage an estate in the same manner as any other adult person;
3. Sue and be sued in any action to the full extent as any other adult, without the necessity for a guardian *ad litem* (GAL) or someone acting in one's behalf; and
4. Make decisions regarding one's own body.

Unless there has been negligence in their supervision of their child, parents are not normally responsible for the destructive acts of their children, based solely upon the relationship of the parent to her/his child. On the other hand, children are not responsible for the acts of their parents, simply due to that relationship, and they do not have a duty to support their parents. A parent, however, can be held liable for the willful and malicious acts of their child under eighteen

who lives with them, up to \$3,500, plus reasonable attorney fees. C.R.S. 13-21-107.

Many Colorado statutes assign varying ages of consent, depending on the activity. The following chart illustrates the wide variety of ages used in Colorado.

AGE CHART

- One must be at least age twenty-one to purchase beer, wine or liquor (C.R.S. 12-47-901)
- Pawnbrokers cannot pawn to a minor who is under eighteen (C.R.S. 12-56-104)
- One may marry another without parental consent at age eighteen (C.R.S. 14-2-106)
- One is considered an adult at the age of eighteen for criminal acts they commit (C.R.S. 19-1-103(18))
- One who is eighteen may purchase lottery tickets—but cannot enter a gambling casino until they are twenty-one (C.R.S. 24-35-214, 12-47.1-809)
- With some exceptions (competition or firing range), one who is under the age of eighteen may not possess a handgun—although hunting with a valid license may be permitted (C.R.S. 18-12-108.5)
- One who is under the age of eighteen cannot buy cigarettes—but there is no law prohibiting minors under eighteen from actually smoking tobacco (C.R.S. 24-35-503)
- One can marry another, with parental or judicial consent, at age sixteen (C.R.S. 14-2-106, 108)
- It is a criminal offense to have consensual sex with a person who is under the age of fifteen (C.R.S. 18-3-411)
- A child who has reached the age of twelve may object to the appointment of a guardian, in the event of a parent's death (C.R.S. 15-14-203)
- A child who has reached the age of twelve cannot be adopted without her/his consent (C.R.S. 19-5-203)
- A child under the age of ten cannot be tried for criminal or delinquent offenses (C.R.S. 18-1-801)

But A Child of Any Age May Do the Following:

- Obtain treatment for venereal disease without parental consent or notification. C.R.S. 25-4-402(4).
- Obtain treatment for drug addiction without parental consent or notification. C.R.S. 13-22-102.
- May consent to medical treatment for his or her own child. C.R.S. 13-22-103(3).
- Obtain birth control information, procedures, and supplies without parental consent or notification. C.R.S. 13-22-105.

CHANGE OF NAME

It is possible to change your name lawfully without resorting to any legal proceedings. If the change is not made for a fraudulent purpose, there are no formalities, except the person should use the new name for all purposes.

In Colorado, the courts encourage, rather than discourage, the filing of petitions for name change, because it is more advantageous for such changes to be a matter of record and for all public records to conform to the name actually used. C.R.S. 13-15-101 to 102. The statute specifically requires that the petition set forth the petitioner's full and correct name, the new name desired, the results of a certified fingerprint-based criminal history check, and a concise statement of the reasons for the desired change. A party who is dissolving their marriage may petition the court, as a part of the dissolution action, to return to a previous name in the final decree.

If the name change is granted, a notice of the name change must be published at least three times in a newspaper published in the county in which the petitioner resides. The notice must be published within twenty days after the order of the court is made. A custodial parent may seek to change a minor child's surname. The non-custodial parent must be given prior reasonable notice of the filing of the petition by the custodial parent to allow the non-custodial parent the opportunity to object.

COHABITATION (LIVING TOGETHER)

An increasing number of couples are living together before or instead of marriage. In the past, these were considered to be "meretricious" (immoral) relationships, and the courts would not honor promises the parties made to each other. This has changed in recent years, and other states have recognized oral, unwritten agreements to share property or income. It is advisable to have a written contract if property is involved. Without such a contract, serious problems may occur upon the death or disability of one party or the dissolution of the relationship. The parties also should protect each other by having their wills updated. They also may want to execute powers of attorney to take care of situations of disability or incompetence.

Example 1: A and B have lived together for five years. A bought a house four years ago, and it is in his name only. However, A became unemployed three years ago and all of the house payments, home maintenance and repairs, etc. have been paid by B. A has found another partner and wants B to leave.

Question: Does B have any financial stake in A's house?

Answer: Possibly. B can bring a civil action in "equity" and ask the court to find an implied contract.

Example 2: C and D have lived together for twenty-five years; they were very happy and planned to grow old and die together. D is hit by a car and is in a coma. If he recovers at all, he will be seriously brain damaged. He never got along very well with his family and has not seen them for years. His family is very religious and they believe that only God can take a life. D was not religious at all and often told C that if he was to become severely disabled, he would like to be allowed to die peacefully without medical intervention. C and D both worked throughout the relationship and put all their money into a checking account, which is in D's name and now contains \$100,000.

Question 1: Can D's relatives continue to force unwanted medical care on D, at a cost of \$15,000 per week, even though C would like the medical care terminated so that D can die peacefully?

Answer: They probably can. Furthermore, since C has no "legal" relationship to D, s/he may not even be allowed to visit him in the hospital!

Question 2: If D's relatives have D declared incompetent because of his serious disability and they take care of his financial affairs, will C have a right to any of the \$100,000 in D's bank account?

Answer: Maybe or maybe not. Even if s/he does eventually get some of the money, s/he may have to go through long and expensive litigation first. See also the answer to Example 1 above.

Example 3: E and F were deeply in love. They had lived together for three years and had one child, who was the apple of their eyes. F is from a very wealthy family and has always told E that if anything happened to him, he wanted her and the child to have everything. Unfortunately, F was hit by lightning and died unexpectedly; E then discovered that F had never gotten around to changing his will, which left his entire estate to the Old Cat's Home. (He had always loved cats.) Instead of inheriting \$8 million, E has been kicked out of F's home by the executor of F's estate, who is selling the house and will give the entire estate and the proceeds to the Old Cat's Home.

Question: Does E have any chance of getting any share of F's estate?

Answer: Probably not, although if she can prove that her child is F's child (which may be difficult and perhaps impossible now that F is dead), the child may have a right to a certain share of the estate. Again, if the child obtains a share of the estate, it probably will be after long and lengthy litigation.

These problems could have been prevented. A and B could have put A's house into both their names, or A could have signed a contract with B so that B would be sure to receive her/his share of the house if they separated. C and D could have put the bank account into both names, and D could have executed a Power of Attorney giving C the authority to act on his behalf if he were disabled. F could have changed his will to include his friend E and their child. It is very difficult, time consuming, and expensive to correct these problems at a later date.

MARRIAGE

Colorado recognizes both statutory and common-law marriage. A statutory marriage is a marriage entered into between two people who are able to marry. The requirements under the Uniform Marriage Act, C.R.S. 14-2-101 to 113 include the following:

1. They presently must not be married to someone else;
2. They are eighteen or over, or have parental or court consent;
3. They are not related too closely under Colorado law (see C.R.S. 14-2-110);
4. They comply with all licensing requirements; and
5. They are married by a person qualified to perform marriages under Colorado law (generally judges, certain public officials, religious officials or the parties themselves).

Marriage by proxy (when one party is not present) is rare but is allowed if the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage.

The following related persons are prohibited from marrying: ancestor and descendant; brother and sister or half-brother and half-sister; uncle and niece or aunt and nephew. Same sex marriages are currently not permitted and Colorado law currently does not provide for civil unions, but the national and international legal climate is quickly changing. More specific information may be found in Kim Willoughby's book, which is listed in "Selected References" at the end of this chapter.

Licenses are issued by the county clerk only when:

1. The applicants show that they have met the age requirements and are not in a prohibited relationship; and
2. They pay the license fee.

Common-law marriages take place when both parties agree to be married and thereafter live together with the intention of being married, even though they do not participate in a formal marriage ceremony. Unlike some states, Colorado does *not* require a fixed period of time of cohabitation—it is the general act of holding oneself out to the public as being married that is the determining factor. Common-law marriages are as entirely binding and "legal" as statutory marriages. They can be terminated only by death, divorce, or annulment, just like statutory marriages—there is no difference between the types of marriages.

However, common-law marriages can present a problem if one of the spouses (or a third party) denies there was a marriage. The court then must decide if the parties had agreed to be married, or if they simply were living together.

PROBLEM 1

Joan Davis and Richard Davis were childhood sweethearts who started living together when they were eighteen years old. They had two children. They never agreed to be married, although everyone assumed that they were married because they had the same last name. Also, they told their family and close friends that they had eloped to Las Vegas and had gotten married there. They referred to each other as "my husband" and "my wife." Are they married?

Response: Courts would likely find that a marriage existed, since they both consistently held themselves out to others as spouses over a long period of time.

PROBLEM 2

Jean Johnston and Brian Wilson met at a bar and fell in love. They went home to Brian's apartment and decided they were made for each other. They solemnly agreed then and there to be husband and wife and the next day moved all of Jean's things into Brian's apartment. But within a month, Brian had concluded that Jean was a terrible housekeeper, a worse cook, and an unpleasant nag. Furthermore, Jean discovered that Brian drank too much, did not use deodorant, had no interest in sharing household chores, and had gambled all her money on racehorses. Was this a marriage?

Response: Maybe not, but a court would primarily look to see if Jean and Brian had held themselves out to others as being married, and whether they took such marital actions as filing their income taxes together and commingling their funds in a shared bank account.

PROBLEM 3

Mr. Smith hired Ms. Jones to be his housekeeper. They eventually fell into a companionable, and then a sexual relationship. Mr. Smith told Ms. Jones he loved her and wanted to marry her. She agreed to be his wife. Thereafter, they lived together for a year. Ms. Jones believed that they were, in fact, married. Mr. Smith, however, had always told his grown children that Ms. Jones was only his housekeeper. Was this a common-law marriage?

Response: Likely not, since both parties had not held themselves out to others as being married. Courts would closely look at Ms. Jones' arguments that a marriage existed, however, and might fashion some remedy for her out of equity.

DIVORCE, LEGAL SEPARATION, AND ANNULMENT

Marriage terminates by death, divorce, or annulment—although spouses may also terminate their relationship through a legal separation, though they still remain married and cannot marry someone else. Divorce, called "dissolution of marriage," legal separation, and annulment, called a "declaration of invalidity," can be obtained only by a court order. An annulment proceeding is a challenge to the validity of a marriage from its inception. Typical reasons for an annulment include one or both of the parties being less than the legal age to marry, or that one was already married to another person, or fraud of some sort was involved. Someone

who remarries before a prior marriage has terminated is committing bigamy and can be criminally prosecuted. Furthermore, the second marriage may be invalid.

The legal separation process is identical to the divorce process, and all aspects of the marriage are settled, but the parties remain technically "married." Legal separation is generally used when the parties have religious prohibitions against divorce but do not want to be together any more, or when one party has important benefits as a dependent (for instance, someone who is very ill and is not able to obtain medical insurance coverage but has very high medical bills, or military dependents' benefits). Congress has passed a law (known as COBRA) requiring employers to provide continuing insurance coverage to such dependents for three years after divorce, so it is less likely that legal separation will be used in these situations. A decree of legal separation will be changed to a decree of divorce if either party wishes, any time at least six months after the decree of legal separation has been granted.

Grounds For Divorce

In the past, society was opposed to divorce, and getting a divorce was difficult. One party had to prove "grounds" for divorce (cruelty, adultery, abandonment, etc.), and the party who was "at fault" could be severely penalized by receiving little property, losing custody of the children, or having to pay maintenance (also known as alimony or spousal support). Now, however, most states, including Colorado, have adopted the Uniform Dissolution of Marriage Act, which is a "no-fault" divorce law. C.R.S. 14-10-101 to 133. If one party says the marriage is "irretrievably broken" and there is "no chance for reconciliation," the court grants a divorce; therefore, one spouse cannot prevent the other spouse from receiving a divorce. The passage of this law relieved the court of the obligation to listen to the parties recite their laundry list of complaints against each other. The property is divided "equitably" (or fairly, which is not necessarily "equally") without regard to fault. The court allocates parental responsibilities, including parenting time and major decision-making responsibilities for the children according to their "best interests," without regard to parental fault. Maintenance, which is financial assistance for a spouse, is based on need and the parties' standard of living, not fault, and is meant for either gender. Child support is based on a mathematical formula involving income shares and parenting time, not fault.

The courts also encourage out-of-court settlements in divorce cases by alternative dispute resolution methods, including mediation (see C.R.S. 13-22-301 to 313), which occurs when both parties meet with an impartial mediator who acts as a facilitator to help the parties reach a fair and voluntary agreement on the divorce terms, rather than fighting about it in court. Mediators do not decide the issues—they help the parties themselves decide all matters. It also is possible in Colorado to get divorced "by affidavit" which is mailed to the court. In such cases, the parties reach a settlement of all issues and neither party goes to court. If children are involved, however, both parties must have legal counsel to obtain a divorce by affidavit. Some attorneys are now offering collaborative law techniques to reduce the high conflict often associated with divorce. Most courts require all parents to successfully complete a three-to-four hour parenting education seminar (see C.R.S. 14-10-123.7) in order to understand the effects of their divorce or legal separation upon their children, and to learn effective ways to help reduce the conflict between themselves and to move on with their separate lives.

Property and Debts

While the parties are married, each can earn and spend money, buy and sell property, and incur debts, even against the other's wishes. Most debts are "marital debts," even though one of the parties objected to the other party incurring the debt. If either party files for divorce (or legal separation or annulment), a temporary restraining order automatically applies to both parties and "freezes" the assets. Neither party can dispose of marital assets without consent of the other or a court order, unless it is for the necessities of life or during the ordinary course of business.

When the court decides the marital property issues, it divides the property and debt between the parties and decides whether either party should pay maintenance (also called alimony or spousal support) to the other party. "Marital property" includes all property acquired during the marriage by either party except:

1. Property received by inheritance;
2. Property received as a gift;
3. Property that either party owned before the marriage; or
4. Property excluded by valid agreement of the parties.

Appreciation, or the increase in value of separate property, is considered marital property, but it is not automatically offset by a decline in value of other separate property. All property acquired after the marriage is presumed to be marital property, regardless of how the property is titled, except as above. Separate property can become marital property if it is commingled—*e.g.*, one spouse receives an inheritance and puts the money in an account that is a joint account with the other spouse.

The property is to be divided equitably—which does not necessarily mean equally. However, an equal division is a good rule of thumb to begin with. It is necessary to determine the fair market value of the property as near as possible to the date the divorce decree will be granted.

Parental Responsibility (formerly called “Custody”)

In 1999, the Colorado legislature changed terms to help parents more fully understand their responsibilities as parents; and to get away from the concept that parents “own” their children, as well as to reduce the conflict in divorce actions. What was formerly known as custody is now properly termed allocation of parental responsibilities, including parenting time and major decision making responsibilities. The statute change has worked well, and parents are now encouraged to value their role as caregivers of their children, rather than trying to beat out the other parent for “ownership” of a child.

If there are minor children, the court allocates parental responsibilities and determines how much child support will be paid. Parenting time is based on the "best interests of the child," which includes all relevant factors such as the wishes of the child, the relationship of the child and parents, and the ability of the parents to encourage the sharing of love, affection and contact between the child and the each parent. The court is not to presume a person is better suited to

care for the child because of that person's gender. A professional evaluation may be performed by qualified mental health professionals (see C.R.S. 14-10-127) to assist the court in making its decision regarding a parental responsibility allocation; or a Special Advocate (see C.R.S. 14-10-116) may be appointed to conduct an investigation and make recommendations to assist the court. Note that, as of 1997, there is no longer a guardian *ad litem* (GAL) in domestic relations (Title 14) cases, but there continues to be the GAL function in children's law (Title 19) cases. The former GAL in domestic relations cases is now either a Child Legal Representative or a Special Advocate (not to be confused with a court appointed special advocate or CASA volunteer in the juvenile court system provided under the Children's Code). Child Legal Representatives are always attorneys, and they represent the child's best interests (not the child's wishes); and the Special Advocate can be anyone the court appoints—but is usually a family law attorney or mental health professional who is trained to perform this function.

Parenting plans define how parents care for their children and how they make major decisions regarding the health, religious training, education, and general welfare of the child together. C.R.S. 14-10-123.5. Parental responsibility for the child's physical residence is determined in the parenting plan. The time-sharing plan does not have to be equal (and it usually is not equal), and generally involves one primary residential caregiver. The parties must agree to a "joint-parenting plan" before a joint parental responsibility arrangement is approved by the court.

Child Support

Child support is based on a mathematical formula introduced by the Colorado legislature in 1986. C.R.S. 14-10-115. The formula is based upon the combined gross income of each parent. There are specific requirements for determining a person's gross income. Certain expenses of the children, such as work-related daycare, health insurance premiums and long distance travel expenses for parenting time, are used to calculate the final amount.

There are court enforcement procedures available to collect child support, such as contempt—which may be punishable by a fine, jail sentence or both—garnishment of financial assets, or automatic wage withholding by the employer. A parent may not withhold parenting time for failure to pay child support—they are two entirely separate issues.. Child support is payable until a child reaches the age of nineteen, unless the child is still in high school or an equivalent program, in which case the support continues until the end of the month following graduation; or unless the child is mentally or physically disabled.

The court does maintain an "open" court case in divorce cases, so that either parent can come back to court under appropriate circumstances and ask to change the parenting responsibilities, parenting time, or child support sections of the court order. Often, financial circumstances of the parties change, necessitating a modification of child support. The court also can change its previous order regarding maintenance (alimony/spousal support), unless maintenance was previously waived by the party; but generally it cannot change the way it previously divided the property and the debts.

Post-Secondary Education

Prior to July 1997, both parents could be ordered to contribute to post-secondary education costs. Post-secondary education includes college and vocational education programs. However, due to a change in the law, if both parties cannot agree, the court may no longer order them to contribute to post-secondary education costs.

Parenting Time (formerly called “Visitation”)

Parents are entitled to reasonable and appropriate parenting time in accordance with the child’s best interests, unless such parenting time would endanger the child's physical health or significantly impair the child's emotional development. It is always more beneficial to the child if the parents attempt to maintain an amicable relationship after the divorce. Parenting time is a right of the child, and that is very zealously guarded by the court. Failure to comply with parenting time orders is punishable by contempt, including a fine or jail sentence and other remedies. If a parent has been convicted of a crime that involves domestic violence that constitutes a potential threat or endangerment to the child, the other parent may object to the parenting time by filing a special motion with the Court.

Grandparent Visitation

A grandparent may apply to the court for reasonable grandchild visitation rights (C.R.S. 19-1-117), and even for parental responsibility of a child, in certain situations (C.R.S. 14-10-123.3). The definition of grandparent includes a parent of the child's father or mother who is related to the child by blood, in whole or by half, adoption or marriage, except where parental rights have been officially terminated.

Maintenance (previously known as “Alimony” or “Spousal Support”)

Maintenance may be awarded in Colorado if a spouse of either gender does not have enough property, including marital property, to provide for one's reasonable needs, and is unable to support oneself through appropriate employment. The court considers all financial circumstances of the parties, as well as the age of the parties, ability to work, duration of the marriage, and the standard of living established during the marriage. The amount and duration of the award of maintenance is discretionary with the judge and often is difficult to estimate in advance. As a general rule, maintenance terminates at a specific date, or with the death of either party or the remarriage of the party who is receiving maintenance.

Marital Agreements

Colorado law recognizes "premarital and post-marital agreements" under the Colorado Marital Agreement Act. C.R.S. 14-2-301 to 310. A "prenuptial" or "premarital" agreement is a contract between the parties that allows them to decide, before marriage, how any property, etc. will be divided in case the marriage is not successful, or in the event of their deaths. Parties who already are married also may enter into a postnuptial agreement after the marriage has occurred. Marital agreements are often used by parties in a second marriage to protect their assets for their children of a prior marriage. The courts generally enforce these written agreements if the parties

execute the agreement voluntarily and with knowledge of their legal rights, and if they meet certain technical qualifications, such as fair and reasonable disclosure of property and financial obligations. A party must be very careful when entering into a marital agreement. Years later, it may not seem to be such a good idea, but usually it will be enforceable as a valid contract. Like any contract, a "prenuptial" agreement can be modified by the parties later.

DOMESTIC VIOLENCE

Neither spouse has the legal right to physically hurt or abuse the other spouse, at any time or for any reason—including for religious or cultural reasons. However, spousal abuse (called "battering") does occur. More often, it is abuse of the wife by the husband, although wives also may abuse husbands; and gays and lesbians may batter their partners. The batterer may or may not also abuse the children. Battering occurs in all races, religions, and economic classes. It may be situation-oriented, the occasional slap, or so severe that it results in death. It is often escalating and cyclic—that is, it begins as relatively minor abuse and becomes more severe over time.

There can be a variety of reasons for battering, but two patterns are common: (1) the cultural or religious background of the abuser is such that wife-beating is accepted as an appropriate aspect of marriage; or (2) the batterer is emotionally disturbed and attacks the spouse as a result. It is fairly common for men whose fathers beat their mothers to marry women who were battered as children. Both parties then fall into a pattern of abusing and of accepting abuse. Financial stress or drug or alcohol abuse may aggravate abuse.

In the past, the law tended to "look the other way" where battering was concerned, until the seriousness of the problem became more apparent. As a result, the law has become more aware of the fact that battering is a dangerous crime, not just a private marital disagreement.

The Colorado legislature has enacted several significant domestic abuse laws that strengthen both civil and criminal restraining order laws and procedures for victims of domestic violence. Law enforcement officers are now mandated to arrest and charge people suspected of committing domestic violence. Standardized forms are used throughout Colorado, and a central registry for domestic violence cases is maintained by the Colorado Bureau of Investigation. The registry alleviates the need for a victim to show proof of the restraining order.

Police officers also can telephone a judge during non-court hours and obtain an immediate emergency protection order for the victim's protection if there are reasonable grounds to believe an adult is in immediate and present danger of domestic abuse. The emergency protection is good only until the end of the third day of judicial business following the day of issue, unless it is extended by a judge. C.R.S. 14-4-103.

In addition, it has been made easier for the victim to obtain a restraining order against the batterer. The problem, however, is that often the victim agrees to reconcile with the batterer, and the cycle of abuse continues. Both victim and batterer generally need counseling to learn why they seek out and maintain abusive relationships and how they can change. Victims of abuse can call the Colorado Coalition Against Domestic Violence at (303) 831-9632 for more information

about the signs of abuse, how to leave an abusive partner, and how to reach agencies that will provide help and counseling.

In civil law, there are restraining orders that can provide some protection. By statute, a temporary restraining order and injunction automatically binds both parties when a divorce or legal separation is filed and there is completion of service. It directs the parties not to molest or disturb the peace of the other party, not to transfer, encumber, dispose of or hide property from the other, and not to remove the children from the state. C.R.S. 14-10-107(4)(b). A more detailed order can be obtained from the judge when a divorce is filed, which may include such provisions as removal of the batterer from the home. C.R.S. 14-10-108. A civil protection order may be requested in county or district court, whether or not a divorce is filed, to protect victims from current or former relations or persons living with them, including the protection of persons over age 60 from elderly abuse. C.R.S. 13-14-102. Finally, an order can be obtained through the county court which will provide protection between strangers or between persons who are neither currently nor formerly in a relationship and who do not live together.

Although none of these remedies provides an absolute safeguard, approaching the problem through the civil system and the criminal justice system together provides far more protection than was previously available. Police officers are required to enforce restraining orders and emergency protection orders when they have cause to believe that a violation has occurred. Violations are punishable by contempt and a fine and/or jail sentence.

The rise of domestic violence is giving way to a new trend in domestic litigation, called domestic or interspousal torts. In these civil claims, the victim sues the perpetrator spouse for damages for personal injuries caused by their wrongful conduct. Examples of such claims include assault and battery, intentional infliction of emotional distress, and outrageous conduct. In Colorado, interspousal tort claims must be filed separate and apart from dissolution of marriage proceedings.

ORPHANS

A parent may, in a will, designate the guardian of a minor child in the event of the parent's death. A child who is twelve years of age or older may object to the appointment of the guardian. C.R.S. 15-14-203.

The probate court can appoint a guardian if the parent does not do so, or if the child has objected. If the child is age twelve or over, the child can request a specific guardian, and the court will appoint that person, unless it is against the child's best interests. The guardian may resign, or the court may remove the guardian, if necessary, upon the request of any interested party. The guardian basically has the powers and responsibilities of a parent, except the guardian is not personally liable to provide financial support from the guardian's own funds. The guardian is empowered to facilitate education, social or other activities and to authorize medical or other professional care and treatment. A separate conservator who is responsible to manage the child's financial affairs also may be appointed.

THE ELDERLY

Families may include an aged parent or relative who becomes incapable of caring for themselves or who can no longer manage their own affairs. A family member, concerned person, or the Department of Social Services may petition the court for guardianship, which provides the aged person with a guardian who is responsible for the incompetent (a legal term) person's physical care, including food, clothing, shelter, and place of residence. The family or agency may apply for the appointment of a conservator, who will be responsible for the care of the incompetent person's financial affairs. Sometimes, the incompetent person needs both a guardian and a conservator. Unless the incompetent person has a conservator and/or guardian, the person continues to be legally competent and fully in charge of their own affairs, and no one else has the right to make legal decisions for that person.

All adults should plan for the administration of their affairs and distribution of their property after death. Any person eighteen years of age or older who is of sound mind may make a will. There are many benefits of a will—the primary one being that it will allow you to determine how your property should be divided after death. If a person dies without a will, the estate and property of the decedent passes according to the laws in effect at the time of death. C.R.S. 15-11-102 and 103.

Colorado law permits the so-called “living will,” which makes it possible for a person to direct in writing that under certain circumstances at some future time, life-sustaining procedures designed to prolong the dying process are stopped or withheld. C.R.S. 15-18-101 to 113. The intent of the law is to allow the declaration to be made while a person is still competent to make the decision, and it takes effect when the specific conditions of the living will have occurred.

The "Colorado Patient Autonomy Act," C.R.S. 15-14-503 to 509, provides for the designation of a durable medical power of attorney to another adult to make medical decisions for someone who is otherwise unable to do so. The authority of the agent includes consenting to or refusing medical treatment, including artificial nourishment and hydration. The law is not intended to condone or authorize euthanasia or mercy killing, but rather to permit natural death to occur.

Colorado also allows a person to designate that his/her organs or tissue may be used after death for transplanting into a living person. C.R.S. 12-34-101 to 110. Such organs as eyes, livers and hearts are fairly routinely used for such transplantation, so that the living person can recover their health or eyesight. One can designate on their driver's license that s/he wishes to donate her/his organs, so that arrangements can be made quickly after a fatal accident.

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