Family Law

MARRIAGE

One must generally be 18 years of age and mentally competent in order to marry in the state of Colorado. Two types of marriages are: (1) the ceremonial marriage that requires the couple to have a license, a ceremony (judge or religious), and two witnesses; and (2) the common law marriage that is a marriage by operation of law. In order for a common law marriage to exist, the couple must live together, intend to be considered married, and hold themselves out to third parties and/or the community as being married. The type of conduct that can be used to demonstrate the intent to be married includes such things as having joint bank accounts, owning property jointly, or filling out joint tax returns. Although the couple can be considered common law married, there is no such thing as a common law divorce. That is, the only way a common law marriage can be dissolved is through the same divorce proceedings used to end a ceremonial marriage. You cannot simply declare the relationship over.

ANNULMENT

A marriage can be declared invalid by a court of law based on certain very specific statutory criteria. The action may be brought by either one of the parties to the marriage, a legal representative of a party who may not be competent, or by the parents or legal guardians of one of the parties.

Sufficient legal grounds for an annulment include:

- lack of legal capacity due to mental incapacity because of infirmity or to the influence of drugs/alcohol
- being underage and having not received the consent of a parent or guardian
- physical incapacity to consummate the relationship

- marriage based on fraudulent act or representation, which goes to the essence of the marriage
- duress—that is, by force or threat
- entering the marriage as the result of a joke or dare or where the marriage otherwise would be prohibited by law, such as when someone who is not legally divorced gets married again, or marriage between close relatives such as an uncle and niece or a sibling (brother or sister).

Marriages are not easily annulled. The person bringing the action must prove his or her case by clear and convincing evidence. That is a higher burden of proof than that typically required in civil (versus criminal) actions. Children born of annulled marriages are considered legitimate in the eyes of the law and both biological parents are required to support the child. However, paternity may be challenged and either proved or disproved by way of genetic blood tests.

Depending on the legal basis for the annulment, the time during which annulment may be filed with the court (the statute of limitations) is generally between six months and two years.

DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION

Legal Separation

The procedures involved in dissolution of marriage, divorce or a legal separation, are identical. All matters relating to custody, child support, parenting time, maintenance, division of property, and debt are determined in the course of either of these legal proceedings. The only major difference between divorce and legal separation is that under a legal separation, the parties are still considered married in the eyes of the law. Any additional property or debt accumulated individually after the legal separation is each person's respective sole and separate property.

A decree of legal separation may be changed into a decree of dissolution of marriage six months after entry of the motion.

Dissolution of Marriage

Colorado is a "no fault" state. This means that the only thing that needs to be alleged by the parties seeking to dissolve their marriage is that the marriage is "irretrievably broken." At least one of the parties must have lived in Colorado for at least ninety days prior to the filing of the petition seeking dissolution. The petition may be filed in the county where either party resides or where the marital residence was or currently is. A decree of legal separation or decree of dissolution of marriage may be entered ninety days after the filing of the petition.

The important issues in the divorce concern parental responsibilities, child support, parenting time, maintenance, and division of property and debt. Colorado is an "equitable division" state not a "community property" state. The parties either may decide what division of property is equitable or the judge can decide. The property does not have to be divided 50-50.

The parties may agree about how to resolve the issues involved in their divorce. This agreement is called a "separation agreement". The court will review this agreement, however, in order to determine whether it is fair to the parties and to any minor children.

If the parties cannot resolve the issues on their own, they may participate in mediation either voluntarily or by order of the court. If the parties still cannot resolve the matter after mediation, the parties may set a hearing before the court and let the judge resolve the issues.

Regardless of what the parties agree, the primary concern is what will be in the best interests of the children. This includes parenting responsibilities, parenting time, and child support. As of February 1999, "custody" will not be awarded in cases filed after that time. Instead, the court will "allocate parental responsibilities." For orders entered before February 1999, "custody" referred to legal custody and physical custody. Legal custody referred to decision-making power for the children. This means that a parent that had "sole" legal custody had final say in all decisions, while parents who shared "joint" custody had to agree on all decisions, primarily those involving education, religion, and medical issues. Physical custody referred to where the child resided. The parent who had the children most of the time was referred to as the "primary residential custodian" and the other parent had "parenting time" (formerly called "visitation").

For new cases, the court will allocate parental responsibilities; that means the court will assign decision-making responsibilities to the parents similar to "legal custody." The court can award to one parent sole or joint decision-making responsibility for all areas or customize the order for different areas such as medical decisions. As part of parental responsibilities, the court also will determine "parenting time" for both parents. The parenting time allocation will determine child support. The court's decision will be 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 parent to encourage the sharing of love, affection and contact between the child and each parent. The court is not to presume a person is better suited to care for the child because of that person's sex. A professional evaluation performed by qualified mental health professionals may be ordered by the court in making its allocation decisions. The decision-making and parenting time arrangements should be set out in a "parenting plan" submitted by the parties or the court can create its own plan.

PATERNITY

The first thing you need to know as an 18-year-old male is that in Colorado, if you have sexual intercourse that results in a child, without exception, you are responsible for supporting that child regardless of the relationship between you and the child's mother.

Paternity actions have three purposes: (1) to establish the existence of the parent-child relationship; (2) to protect the parent-child relationship; and (3) to determine paternity so that it can be established who has the legal obligation to support the child and have that obligation enforced. An action to establish the paternity of a child may be brought by any interested party including either parent, the child, the child's legal guardian, the Department of Social Services, or a child support enforcement unit.

An action for paternity may be brought by any person other than the minor child anytime before the child becomes 18 years of age. An action brought by the child may be brought anytime before the child becomes 21 years of age.

A person who has sexual intercourse within the confines of the state of Colorado automatically submits to the jurisdiction of the state for the purposes of a paternity action. The county in which such action should be heard is the county in which the child or the alleged father resides, or in any county in which public assistance is being paid. Personal jurisdiction over the alleged father will be necessary in order for there to be a valid order for child support.

The concept of personal jurisdiction requires that the alleged father must have had sufficient contact with the state of Colorado to allow the state to have the power to order him to pay child support. Normally, sufficient jurisdiction will be found where the child was conceived in the state of Colorado. The minor child must be made a party to the action. A court-ordered guardian, known as a guardian *ad litem,* may be appointed to represent the child's best interests.

After a paternity action has been brought, an informal hearing will be held as soon as practicable if it is determined by the court to be in the child's best interest. At this initial hearing, there will be either an admission or denial of paternity. If paternity is admitted, a subsequent hearing will be held to determine the issues of parental responsibilities, parenting time, and child support. If paternity is denied, the parties and the minor child will be ordered by the court to undergo genetic blood tests to determine the probability of paternity. Neither party may demand a jury trial. A trial would take place before the judge only. After the paternity hearing, the court will issue orders as to paternity of the child, the issuance of a new birth certificate, parental responsibilities, parenting time, and child support.

Child support in a paternity proceeding can be ordered retroactive to the date of the birth of the child. The father of the child also may be ordered to pay all or a portion of any unpaid medical expenses resulting from the pregnancy and birth of the child.

Any orders entered concerning the best interests of the child, such as parental responsibilities, parenting time, and child support, subsequently can be modified or changed.

ADOPTION

The juvenile court has exclusive jurisdiction over matters relating to adoption and the relinquishment of parental rights. In order for adoption to occur, the child must otherwise be "available" for adoption. The biological parents must either voluntarily consent to the adoption or have their respective parental rights terminated. In order for an adoption to proceed, both biological parents must be provided with notice of any and all proceedings.

The procedures relating either to the adoption or relinquishment process are highly technical. The parties seeking to relinquish their child and/or consent to the adoption must undergo counseling. Generally, an investigation must take place to determine the appropriateness of the adoption.

DOMESTIC VIOLENCE

Domestic violence takes many forms. It includes physical violence; emotional abuse; sexual assault; and excessive control over the activities, person, and finances of another. A victim's safety, as well as the safety of the minor children, is of primary importance. Victims can stay with family and friends, and there are also "safe houses" and shelters in most areas to assist victims of domestic violence. Shelters provide additional security and access to resources that cannot normally be found among friends and family.

Several types of protection orders (formally known as "restraining orders"), both temporary and permanent, can be obtained through either the district court or county court if any type of domestic violence has occurred or is occurring. The orders frequently prohibit an individual from making any contact with a complaining party. These protection orders prohibit an individual from harassing, molesting, intimidating, threatening, and retaliating against the party who obtained the protection order. The restrained party may be (1) ordered to vacate the home of the victim and may be ordered to stay away from any other location where the victim may be found; (2) ordered to refrain from contacting or communicating, either directly or indirectly, with the victim; and (3) prohibited from possessing or controlling a firearm or other weapon. The court issuing the restraining order has the discretion to order additional protections that may be necessary for the victim.

A victim of domestic violence can receive assistance in completing the forms for a temporary protection order either through the clerk of the court or court volunteers from women's shelters, such as Project Safeguard. The complaint for a protection order must be filed in the county in which the perpetrator resides. The temporary protection order will be issued only after a hearing that indicates that sufficient cause exists for the issuance of the order. The temporary protection order issued must be personally served (normally by the sheriff's department) on the perpetrator. The temporary protection order will provide a date and time for hearing on whether the order should be made permanent. The perpetrator must appear in court on that date and time so as to be provided an opportunity to defend against the temporary protection order. If the perpetrator does not appear, the temporary protection order will be made permanent under the same or different conditions as those set forth in the temporary protection order.

Protection orders often include provisions for the temporary care, custody, and control of the minor children, not to exceed 120 days, pending further hearing on the matter. If additional protection or further orders for the minor children are needed, one of the parties must apply to the district court for further orders.

Violation of a protection order is a criminal act that can result in a large fine or jail or prison, regardless of whether such restraining order was issued in county or district court.