

Chapter 13

Family Relationships

Lisa T. C. Blattner, Esq.
Blattner Law Firm, LLC

13-2. Courtney Baldwin, Esq.
Polidori, Franklin, Monahan & Beattie, LLC

SYNOPSIS

- 13-1. Grandparents' and Great-Grandparents' Visitation Rights
- 13-2. Allocation of Parental Responsibilities of Others Over a Child
- 13-3. Divorce
- 13-4. Getting Your Divorce Without a Lawyer
- 13-5. Use of Former Name
- 13-6. Anticipating Marriage
- 13-7. Marriage and Public Benefits
- 13-8. Protection from Family Violence
- 13-9. Common Law Marriage
- 13-10. Resources

Family relationships are always changing, whether it be because of marriage, divorce, death, or birth. Grandparents often are affected by these changes. See Chapter 14, "Grandparent Custody and Visitation Issues."

However, as the composition of traditional American families has transformed dramatically over the past century, traditional nuclear family households are largely being replaced by nontraditional family structures.

Under Colorado law, Grandparent is defined as being a person related to the minor's mother or father, who is related to the child by blood, in whole or by half, adoption or marriage. But a person is no longer considered a legal grandparent when that grandparent's child has lost his or her parental rights to the minor child.

This chapter will discuss what options there are for individuals who may not be considered a legal Grandparent under the law and/or someone else that may have interests over a Minor.

In addition, marriage, divorce, change of name, and prenuptial agreements are issues affecting all ages. This chapter will familiarize you with the requirements for a divorce and issues to consider if you decide to remarry. You also will find out how to decide, before marriage, what rights you want to retain over certain property if divorce or death occurs.

Finally, this chapter discusses family violence and how Colorado laws can help you with protection orders.

13-1. Grandparents' and Great-Grandparents' Visitation Rights¹

If you have a dispute with your adult children, or one of your children gets a divorce, you could be denied contact with your grandchildren. You have a remedy in court if a parent does not let you visit your grandchildren in certain situations. See Chapter 14, "Grandparent Custody and Visitation Issues."

13-2. Allocation of Parental Responsibilities of Others Over a Child²

When an individual is seeking allocation of parental rights (also referred to as custody) and visitation (also called parenting time) over a child, but that person does not meet the legal definition of parent, grandparent, or great-grandparent, or step-parents, step-grandparents, and great-grandparents that have no legal parental rights, this person is referred to as a "non-parent" and may be considered a "psychological parent" if they have stepped into a parental role with respect to a child or children.

A "non-parent" must first determine if they have the legal right (*i.e.*, standing) to gain parental rights over a child. A "non-parent" has standing under C.R.S. § 14-10-123 if:

- ▶ The child is not in the physical care of one of the child's parents at the time of filing, or
- ▶ The "non-parent" has physically cared for the child for a minimum of 182 days, and either is still physically caring for the child at the time of filing, or files an action within 182 days of losing physical care of the child.

Determining what "physical care" means is vital for determining if the "non-parent" has cared for the child for the past 182 days, and proving it is very fact dependent. The Court will look at the nature, frequency, type, and duration of care the legal parent(s) has had with the child to determine if the "non-parent" has standing. Simply because the legal parent(s) has lived occasionally with the "non-parent" and child during the 182 days, or the child periodically spends the night with the legal parent(s) in a different location, does not mean that a "non-parent" lacks standing to bring the matter to Court. Also, a "non-parent" does not have to prove that the legal parent(s) is unfit or otherwise acting against a minor's best interest. The "non-parent" just has to prove that the "non-parent" has assumed a parent-like role in the minor's life over a period of time.

¹This section applies to both grandparents and great-grandparents. The word "grandparent" in this section should be understood as also meaning "great-grandparent."

²Special thanks and consideration given to Courtney M. Baldwin, Esq. for this section.

If a “non-parent” has standing, the next steps are to:

- ▶ File a Petition for Allocation of Parental Responsibilities into an existing case involving the child and the legal parent(s), such as a divorce or parental responsibilities matter. If no case exists, then file in the County where the minor is a permanent resident or where the minor is found.
- ▶ The Petition can be filed without either legal parent’s consent.
- ▶ Notice of all legal proceedings shall be sent to the minor’s legal parents, guardian(s), custodian(s), or other person(s) allocated parental responsibilities. These individuals have the right to file a response pleading.
- ▶ The Petition and Summons must be personally served on the respondent or upon waiver and acceptance of service by a respondent, at which time a temporary injunction will be in effect against both parties. This temporary injunction includes:
 - Neither party can “disturb or molest” the peace of the other;
 - Neither party can remove the child without consent of all parties or without a Court order;
 - Neither party can, at least without a 14-day advance notice and with written consent of all parties, or by Court order, cancel, modify, terminate, or allow any policy of health or life insurance that provides coverage to the child lapse for nonpayment of premiums;
 - This temporary injunction shall last until the Court makes a further ruling.

The determination of whether an individual is able to seek allocation of parental rights of a child, when that individual is not a legal parent, nor grandparent, nor great-grandparent, is whether that “non-parent” has developed a parent-child relationship with the child through day-to-day interaction, companionship, and caring for the child such that the individual consistently acted as a legal parent would.

It is important to note that in some situations, should a “non-parent” succeed in obtaining allocation of parental responsibilities, that “non-parent” may be required to financial support the child and/or even pay child support.

13-3. Divorce

Divorce has become more common in recent years. In Colorado, you do not have to prove that a failed marriage is anyone’s fault. A “no-fault” divorce will be granted based on your inability to get along with each other. You merely state that the marriage is “irretrievably broken.”

A divorce decree restores your status to that of a single person. It also divides marital property and debts and provides for maintenance (also called alimony or spousal support) when appropriate. The court will not order spousal support if neither party needs it, nor will they order spousal support if you can prove you cannot pay it. Spousal support can also be modified or terminated if the supporting spouse can prove a substantial change in circumstance that has affected his or her ability to pay.

For couples with minor children, divorce settles custody (now called allocation of parental responsibility); visitation (also called parenting time); and child support issues. In Colorado, child support ends at age 19. A court may not order a parent to pay college costs. Either spouse

may receive temporary or permanent maintenance/spousal support, if he or she cannot support himself or herself through employment or assets. The court will first apply a formula that gives the lower-earning spouse 40 percent of the parties' combined incomes, multiplied by either 80 or 75 percent, for a duration based upon the length of the marriage. The court will then look at various other factors in deciding whether and how much maintenance (spousal support) to award.

You can get a divorce in Colorado if you or your spouse has been living in Colorado for at least 91 days prior to filing for divorce. This is true if you have been living in Colorado for at least 91 days before filing and your spouse has not.

The same laws and requirements apply to an action when filing for a legal separation. A legal separation decides all the issues a divorce decides, except that it does not free you to remarry, and each spouse will retain his or her rights to the other spouse's estate. No less than 182 days after the decree of legal separation, there is an absolute right for either party to convert the legal separation to a divorce, upon filing of a written motion.

If you move to Colorado and leave your spouse behind in another state, a Colorado court may not be able to decide property, child custody, and support issues, even if the court has jurisdiction to grant a divorce. A family law attorney can help you determine in which state you should file your case.

If you cannot agree on care and support for minor children or the division of property or debts, these matters will be decided by the court. There is no legal requirement that you have a lawyer, but you may decide to hire or consult with one. One lawyer cannot ethically represent both spouses. Courts will order divorcing spouses to attend mediation before allowing a divorce trial.

Colorado is not a community property state; the law requires an equitable division of marital property. As a result, you have to decide three things: (1) what is marital property, (2) what is it worth, and (3) what is a fair division. In Colorado, the court usually assumes that each party contributed to the marriage and the property of the parties and that an equal division of marital property is fair. Property each spouse had at the time of the marriage is generally separate property (not marital property subject to division). Thus, in all cases where property exists, but especially in short marriages, the court will consider the separate property each spouse had at the time of the marriage and still has at the time of the divorce, but will not divide separate assets. If one spouse has more separate property than the other, the court might not divide marital property equally.

You may have more property than you realize. Property isn't limited to your home, cars, and household items. Property also includes limited partnerships, business interests, investments, the cash value of life insurance, and pensions and retirement benefits that will pay out in the future. In the absence of a marital or prenuptial agreement, all property acquired during the marriage is subject to division regardless of how the property is titled. If part of a pension was earned during the marriage, that part is property the court can divide. If your divorce involves a pension, you should get legal advice.

Divorce is also sometimes considered when looking at one spouse being eligible for Medicaid benefits. If this is something you are considering, you should also get legal advice to ensure things are done correctly to properly qualify.

13-4. Getting Your Divorce Without a Lawyer

If you and your spouse can reach an agreement on all issues, or wish to proceed without attorneys, you may do your own divorce without a lawyer representing you or your spouse. Some legal aid offices or other low-cost legal services offices can help you complete the necessary forms. For example, Colorado Legal Services is a non-profit agency that provides free legal services to eligible low-income Coloradoans and seniors. Denver District Court has a pro se resource center, which sells packets of forms with lengthy instructions, and has a paralegal and volunteer attorneys to assist with the paperwork. El Paso County Bar Association offers programs such as call-a-lawyer and email-a-lawyer. Check with your local county Bar Association as most offer some sort of pro bono programs.

Remember that any agreements not included in your court papers cannot be enforced later. You can also obtain instructions and forms online at www.courts.state.co.us.

If neither you nor your spouse can afford to pay the filing fee necessary to obtain a divorce, you may request a Fee Waiver Application. This allows you to file the documents free of charge, but only if you can prove to the court that you are in fact indigent and unable to pay the fee. The forms are available at the court clerk's office, on www.courts.state.co.us – Self Help Forms, or you may be able to get them from your local legal services or legal aid office.

13-5. Use of Former Name

You may use whatever name you wish. When you marry, you may keep your own name or use your spouse's name. You also can resume using your own name after you have started using your spouse's name. When you divorce, any former name may be restored. You may request the change of name as part of your divorce proceeding, and the court will grant it so long as you are not trying to defraud anyone by the name change.

13-6. Anticipating Marriage

Often, people marrying later in life have property or children from earlier marriages. A marital agreement (also known as a prenuptial agreement) allows the couple to decide, in advance, what rights each of them will retain over certain property if a divorce or death occurs. A verbal marital agreement is not enforceable. In order to be valid, a marital agreement must be in writing and signed by both parties, and the couple must first make a complete disclosure of their respective financial circumstances to each other, including incomes. The couple can revoke or change the agreement later only by a signed written agreement.

Retirement benefits only may be waived by a current spouse. People who want such an agreement should get their own separate lawyers well before the wedding. An agreement will not be valid if both parties did not have the time and opportunity to get an attorney. The party with more assets or income should offer to pay the other person's attorney fees. If there is a divorce, dispute over a will, or other action where the property rights are an issue, a valid marital agreement will govern the matter.

Marital agreements also may be made between spouses who have been married for any period of time, so long as no action for dissolution of marriage or for legal separation has been filed or contemplated.

13-7. Marriage and Public Benefits

When a person who receives public benefits marries, his or her benefits can change or stop, depending on the person's age and which benefits he or she is receiving, as well as other factors. This section will outline some effects that marriage can have on some specific public benefit programs.

Social Security

Many people receive Social Security retirement benefits as the spouse of a qualified worker. That is because an individual who does not have a sufficient work history to receive Social Security benefits may be entitled to benefits on the work record of the spouse who does. In order to receive benefits as a spouse, the recipient must have a valid marriage to the qualified worker, through either a traditional marriage or by common law marriage. The spouse of a retired or deceased worker is eligible for benefits. Under certain circumstances, a divorced spouse is also eligible.

In general, to receive benefits as a widow or former spouse, a person must be unmarried. Remarrying may cause benefits to stop, under certain circumstances. Contact your local Social Security office for information.

Disability

When a worker becomes disabled, his or her spouse may be eligible for benefits under certain circumstances. While the spouse of a disabled worker is entitled to benefits in these situations, there are no equivalent benefits for the disabled spouse of the worker because the spouse is disabled.

Under certain circumstances, these benefits also are available to a divorced spouse of a disabled worker. In order to receive benefits, a divorced spouse of a disabled worker must not be married at the time of applying for benefits, and remarriage will cut off benefits.

While a disabled spouse is not entitled to benefits, a disabled surviving spouse or divorced spouse may be. Contact your attorney or local Social Security office for more information.

Supplemental Security Income (SSI)

With Supplemental Security Income (SSI), the effect of marriage is more complicated. Marriage can cause SSI benefits to decrease or even to end. For more information regarding these and other Social Security questions, you can consult Social Security online at www.ssa.gov or speak to an attorney.

Old Age Pension

Chapter 5, "Government Programs and Financial Assistance," explains the eligibility requirements for the Colorado Old Age Pension (OAP). Each spouse receives benefits as an individual, so for a couple the combined benefit would not decrease as with SSI payments. If both spouses receive SSI and OAP, their combined SSI income will go down, but their total income will remain the same. If one of the spouses is eligible for OAP and the other is not, the income of the ineligible spouse will count as available ("deemed") to the eligible spouse. This is a serious problem because it can cause that spouse to lose Medicaid, which is an important benefit. Even if

that individual had income from another source, and received only a small amount of OAP, loss of the Medicaid benefit may be crucial.

Medicaid for Long-Term Care

See Chapter 4, “Medicaid,” for an explanation of benefits for spouses of a Medicaid long-term care recipient. Getting married does not affect the benefits of the long-term care recipient.

13-8. Protection from Family Violence

If a family member or household member has abused you physically or verbally, or stalked, harassed, or coerced you, you may request a protection order. Coercion is when someone forces or intimidates you into doing something you do not want to do, or stops you from doing something you have the right to do. You can also get protection orders when family members or household members control your property, money, or important documents, like a driver’s license. The court can even issue the order against someone you used to live with, are related to, or with whom you used to be in a relationship.

Under the law, you can get an order keeping the abuser from threatening or injuring you, contacting you, or coming to your home, school, or workplace. The court can order the abuser to leave the family home if you both live there, and can issue orders for temporary custody if you have minor children. To qualify for this type of protection order, you must convince the court that there is imminent danger to the life or health of one or more people.

However, you cannot file a protection order on behalf of someone else, unless you are a valid agent under a valid General Durable Power of Attorney, Medical Power of Attorney, Guardian, and/or Conservator. However, whether these individuals have the legal authority to do so is dependent on what authorities they have been given by the legal documents and/or court orders. If there is a minor child in your life who is in need of a protection order, only a parent or guardian of that child can file a protection order. If there is an ongoing custody dispute over a child, you can obtain a protective order to restrain any parties from taking that child outside the state in which the custody proceedings are taking place.

There is also a law that provides additional protection from emotional abuse for people 60 years of age or older. It enables the court to issue an order protecting the person from the following kinds of abuse:

- ▶ Repeated acts of verbal threats or assaults;
- ▶ Repeated acts of verbal harassment;
- ▶ Repeated acts of inappropriate use or threat of inappropriate use of medications, physical restraints, or chemical restraints; or
- ▶ Repeated acts of the misuse of power or authority by a person through a Power of Attorney or in a guardianship or conservatorship proceeding, which results in a person being unreasonably confined, or his or her liberty being unreasonably restricted.

Protection orders are free and are valid either temporarily or permanently. You can get the necessary forms and instructions from the court clerk at your county courthouse or on the Colorado Court’s Judicial Branch Website – www.courts.state.co.us – Self Help Forms. If the abuser disobeys the court order and comes to your home or office or threatens you, you can get immediate help from the police.

The victim assistance program in your county district attorney's office can help you prepare the forms. It can also refer you to safe shelters and other services.

Keep in mind that certain professionals are required to report abuse or exploitation of the elderly to law enforcement. These include doctors, nurses, dentists, chiropractors, psychologists, pharmacists, clergy members, bank personnel, and social workers.

13-9. Common Law Marriage

Despite the common belief, common law marriage in Colorado is not determined by the length of time that you and your partner have lived together, been in a relationship together, or if you have children together. In Colorado, there are two factors that must be present to establish a common law marriage. First, there must be a mutual consent or agreement between you and your partner to enter into a marriage followed by conduct that demonstrates that mutual agreement. The question is whether you and your partner intended to enter into a marriage – that is to share a life together as spouses in a committed, intimate relationship of mutual support and obligation.

An agreement to marry in the future is not sufficient to prove a common law marriage. If there is no express agreement between you and your partner to be married, a common law marriage can be inferred from your conduct. There is no one determining factor whether you and your partner were in a common law marriage as it varies from case to case and is very dependent on specific and individualized factors.

Many times, after someone dies, a partner may allege that he or she was in a common law marriage with the Decedent. If contested, this must be proven to a court. One cannot just claim to be a common law spouse for purposes of probate or in seeking guardianship and/or conservatorship. Therefore, it can be helpful to your heirs if you put in writing that you either consider yourself in a common law marriage with your partner, or that you do not. Should you have any questions about whether you are in a common law marriage, or how to avoid your partner later claiming you were in one, you should seek legal counsel.

Same-sex couples can also enter into a common law marriage. Although ceremonial marriage for same-sex couples was legalized in 2015, the courts will now recognize any common law marriage entered into by a same-sex couple before or after 2015. However, a common law marriage entered into by a same-sex couple may not have the "public acknowledgement" of the marriage that is typically required to prove a common law marriage. In this scenario, some objective evidence of the relationship combined with the mutual consent of the parties to enter into a marriage will be sufficient to establish a common law marriage.

Common law marriage is real marriage. Common law spouses have all the same rights and responsibilities as ceremonially married people.

Be aware that there is no such thing as common law divorce. Once you are married, whether by ceremony or by common law, you can terminate the marriage only by formal divorce. If you do not get a divorce after a common law marriage, all future marriages will be void, and your common law spouse will have all the benefits of a spouse, including the right to take a portion of your estate against your will and to receive various survivor benefits from the government or even from your retirement plan.

If you have received a divorce from a partner but have reconciled the relationship, you may have entered into a "common law remarriage." The factors for proving a common law remarriage

are essentially the same as those proving a common law marriage; however, the standards for evidence of a common law remarriage, , are much lower for establishing a remarriage than they are for establishing a first marriage.

13-10. Resources

See general resource lists of Chapters 5, 11, and 15 for legal services offices, legal aid offices, and more.

Aging and Adult Services

Colorado Department of Human Services

1575 Sherman St.
Denver, CO 80203
(303) 866-5700
www.colorado.gov/pacific/cdhs/older-adults

Douglas County Adult & Senior Outreach Services

100 3rd St.
Castle Rock, CO 80104
(303) 660-7400
TTY: (303) 663-7791
www.douglas.co.us/community/senior-adult-services/

Colorado Center for Aging

P.O. Box 102662
Denver, CO 80250
(303) 832-4535
www.coloradocenterforaging.org

Disability Law Colorado (Formerly the Legal Center for People with Disabilities and Older People)

Denver Office:
455 Sherman St., Ste. 130
Denver, CO 80203
(303) 722-0300

Grand Junction Office:
322 North 8th St.
Grand Junction, CO 81501
(970) 241-6371

Family Law Services

Denver District Court Pro Se Center

1437 Bannock St., Room 281
Denver, CO 80202
(303) 606-2442
www.courts.state.co.us/denverselfhelp

Colorado Legal Services

www.coloradolegalservices.org

Offices are available at the following locations:

Alamosa: serves Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties

603 Main St.

Alamosa, CO 81101

(719) 589-4993

Boulder: serves Boulder and Broomfield counties

2935 Baseline Rd., Ste. 301

Boulder, CO 80303

(303) 449-5616

Colorado Springs: serves El Paso, Lincoln, Teller, Chaffee, Custer, Fremont, Lake, and Park counties

(719) 471-0380

Craig: serves Grand, Jackson, Moffat, Rio Balanco, and Routt counties

(800) 521-6968

Denver: serves Adams, Arapahoe, Denver, Douglas, Elbert, Gilpin, and Jefferson counties

1905 N. Sherman St., Ste. 400

Denver, CO 80203

(303) 837-1313

Dillon: serves Clear Creek, Eagle, Gunnison, Lake, Pitkin, and Summit counties

(800) 521-6968

Durango: serves Archuleta, Dolores, Hinsdale, LaPlata, Montezuma, Ouray, San Juan, and San Miguel counties; also serves Ute Mountain and Southern Ute reservations

835 E. 2nd Ave., Ste. 300

Durango, CO 81301

(970) 247-0266

(888) 298-8483

Ft. Collins: serves Larimer, Logan, Phillips, and Sedwick counties

215 W. Oak St., Ste. 800

Ft. Collins, CO 80521

(970) 243-7940

Grand Junction: serves Delta, Garfield, Mesa, and Montrose counties

422 White Ave., Ste. 300

Grand Junction, CO 81501

(970) 243-7940

Greeley: serves Morgan, Washington, Weld, and Yuma counties

912 8th Ave.

Greeley, CO 80631

(970) 353-7554

La Junta: serves Baca, Bent, Cheyenne, Crowley, Huerfano, Kiowa, Kit Carson, Las Animas, Otero, and Prowers counties

10 W. 3rd St.
La Junta, CO 81050
(719) 384-5438

Pueblo: serves Pueblo and Custer counties

1000 W. 6th St., Ste. I
Pueblo, CO 81003
(719) 545-6708

Salida: serves Chaffee, Custer, and Fremont counties

1604 H. St., Ste. 201
Salida, CO 81201
(719) 539-4251

Family Tree

Serving the Denver and Surrounding Areas

24-hour Domestic Violence Contact Line: (303) 420-6752
Parenting Time Program: (303) 462-1060
<https://www.thefamilytree.org/>

Family Law Legal Clinic

1200 Federal Blvd., Room 1018
Denver, CO 80204
(303) 860-1115
Third Tuesday of the month: 5:30–7:00 p.m.

Jewish Family Service

3201 S. Tamarac Dr.
Denver, CO 80231
(303) 597-5000
<http://jewishfamilyservice.org>

The Justice Center

P.O. Box 429
Colorado Springs, CO 80901
(719) 473-6212
www.justicecenterco.org

Metro Volunteer Lawyers

1905 N. Sherman St., Ste. 400
Denver, CO 80
(303) 830-8210
www.denbar.org

Colorado Lawyers for Colorado Veterans

Denver County Office

VA Community Resource and Referral Center

3836 York St.

Denver, CO 80205

Second Tuesday of the month: 12:30–3:00pm

Colorado Springs Office

PFC Floyd K. Linstrom VA Outreach Clinic

3141 Centennial Blvd.

Colorado Springs, CO 80907

Fourth Tuesday of the month: 12:30–3:00 pm