

Chapter 26

Family Relationships

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SYNOPSIS

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Family relationships are always changing, whether it be because of marriage, divorce, death, or birth. Grandparents often are affected by these changes. *See* Chapter 11, “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 grandparent’s role and legal rights with respect to their grandchild can change when that grandparent’s child has lost his or her parental rights to the minor child or when the minor child has been in the care of their grandparent for an extended period of time.

This chapter will discuss what options there are for individuals who are grandparents, for individuals who may not be considered a legal grandparent under the law, and for other individuals who may have interests and/or legal rights over a minor by virtue of having cared for the 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.

26-1. Grandparents' and Great-Grandparents' Visitation Rights¹

If you have a dispute with your adult children, or if one of your children gets a divorce, you could be denied contact with your grandchildren. While grandparents have no inherent rights over their grandchildren, you may have remedies in court if a parent does not let you visit your grandchildren in certain situations. *See* Chapter 11, "Grandparent Custody and Visitation Issues."

26-2. Allocation of Parental Responsibilities of Others over a Child

An individual who does not meet the legal definition of parent (biological or adoptive) or legal guardian of a child cannot, under normal circumstances, seek the allocation of parental rights (parenting time/decision-making responsibilities) for that child as they have no legal right to parent. That said, a non-parent may be considered a "psychological parent" if they have stepped into a parental role with respect to their caretaking of a child or children. For the purposes of this section, psychological parents can include grandparents, stepparents, great-grandparents, or similar individuals who may be related to a child or children but who are not the biological or adoptive parents. Psychological parents may also include individuals who have no biological relationship with the children they care for, but who have stepped into a caretaking role that is similar to that of a child's parent(s).

A "non-parent" must first determine if they have the legal right (*i.e.*, standing) to seek 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 this 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) may have 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 necessarily mean that the "non-parent" lacks standing to bring the matter to court. The "physical care" test is situation specific in terms of analyzing the

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

frequency, length, and nature of the child's contacts with the non-parent versus with their parent(s) during the requisite 182-day time period.

A "non-parent" does not have to prove to a judge that the legal parent(s) is unfit or otherwise acting against a minor's best interest like they would in an adoption proceeding, as standing to file for parental responsibilities through an allocation of parental responsibilities action does not require the permanent termination of the parental rights of the child's biological or adoptive parents. The "non-parent" is only required to meet the standing requirements to file the petition and subsequently has to prove that they have assumed a parent-like role in the minor's life over a significant period of time such that they have stepped into the role of a psychological parent.

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

- ✦ File a Petition for Allocation of Parental Responsibilities or a motion into an existing case involving the child and the legal parent(s), such as a divorce or parental responsibilities matter. If no case concerning the minor child or children yet exists, then the non-parent should file the Petition for Allocation of Parental Responsibilities in the county where the minor is a permanent resident or where the minor is found at the time of filing.
- ✦ The Petition can be filed without either legal parent's consent or signature, although the legal parent(s) must be provided with notice of the filing as described below so that they have the opportunity to participate in the action.
- ✦ Notice of all legal proceedings must be sent to the minor's legal parents, guardian(s), custodian(s), or other person(s) who have already been granted parental responsibilities over the minor. These individuals have the right to file a response pleading within 21 days of service.
- ✦ Unless a parental responsibilities action concerning this child or children already exists, the initiating Petition and Summons must be personally served on the interested parties listed above, typically the child's legal parent(s) or guardian(s). Service is often completed by a process server or by the local sheriff's office. Alternatively, the interested party or parties can sign a waiver and acceptance of service form, which the non-parent must then file with the court in lieu of completing personal service of the Petition and Summons.
- ✦ Once the case is filed and service is complete, a temporary injunction will be in effect against all parties to the case. This temporary injunction states:
 - ✦ Neither party can "disturb or molest" the peace of the other party or parties;
 - ✦ Neither party can remove the child from the state in which the action is filed without either the consent of all parties or a court order permitting the travel/removal; and
 - ✦ Neither party can cancel, modify, terminate, or allow any policy of health or life insurance that provides coverage to the child lapse for non-payment of premiums absent receiving the written consent of all parties or order of the court.

The determination of whether an individual is able to successfully obtain parental rights over a child or children, which may include parenting time and/or decision-making authority over that child or children, is based upon whether the "non-parent" has developed a significant 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 normally would. This determination is heavily based upon the best interests of the child and the child's attachment to the non-parent such

that they have become the child's psychological parent. Again, both non-parent relatives such as stepparents or grandparents of a minor child and individuals who are not related to the child can obtain parental rights as a psychological parent should they meet the standing requirements and other findings described herein.

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 financially support the child and/or even pay child support to the child's legal parents. This determination is up to the court and varies depending upon the facts and circumstances of each situation.

26-3. 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 case will move forward even if one party does not consent to the divorce and wishes to stay married, and even if one spouse refuses to sign any legal paperwork or otherwise participate in the process.

A divorce decree restores your status to that of a single person. Once a divorce case has been finalized, you no longer have the right to inherit under your former spouse's estate. You should update any estate planning documents and beneficiary designations on your accounts as soon as possible following your divorce.

In a divorce proceeding, the court will divide all marital property and debts between the divorcing spouses and provide for maintenance (formerly referred to as alimony or spousal support) when appropriate. The court will look at several different factors in deciding whether and how much maintenance to award. The court will not order spousal support if neither party needs it, nor will a judge order spousal support unless certain threshold requirements are met. Spousal support can also be modified or terminated after the divorce is finalized if the supporting spouse can prove a substantial change in circumstance that has affected his or her ability to pay, unless it is explicitly stated in a written agreement between the parties that spousal support is contractual and modifiable, in which case the court loses the authority to make any such future modifications.

For couples with minor children, a divorce proceeding will also resolve custody (now called the allocation of parental responsibilities, or parenting time and decision-making responsibilities) and child support issues. In Colorado, child support ends when a child turns 19 years old except in certain circumstances (including but not limited to when the child has special medical or mental health needs that require ongoing financial support by one or both of their legal parents). A court cannot order either parent to pay college costs or other post-secondary education expenses for children over that parent's objection; however, both parties may provide for this in a written agreement that each of them sign, which is then enforceable.

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 in a divorce or allocation of parental responsibilities proceeding, but you may decide to hire or consult with one. One lawyer cannot ethically represent both spouses. Courts will require all divorcing spouses to attend mediation before allowing a divorce trial to proceed in front of a judge.

You can get a divorce in Colorado if either you or your spouse has been domiciled in Colorado for at least 91 days prior to filing for divorce. This is true even if you have been domiciled in Colorado for at least 91 days before filing and your spouse has not, as long as the court can obtain personal jurisdiction over your spouse. If you move to Colorado and leave your spouse behind in another state, a Colorado court may not be able to enter orders allocating all property, child custody, and support issues. A family law attorney can help you determine in which state you should file your case.

The same laws and requirements apply to an action when filing for a legal separation. A legal separation action permanently decides all of the same issues a divorce determines in terms of a permanent division of assets and debts and an award of spousal maintenance, except that a Decree of Legal Separation does not free you to remarry, you may be able to continue to cover your spouse on your health insurance depending on the policy, and each spouse may 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, regardless of whether the other party objects to the conversion.

Colorado is not a community property state; the law requires a fair and equitable (but not necessarily equal) division of marital property. As a result, you must decide three things: (1) which of your assets are considered marital property such that they are subject to division by the court, (2) what is each asset worth, and (3) what is a fair division of the estate. In Colorado, the court usually assumes that each party contributed to the marriage and to the acquisition of property such that an equal or substantially equal division of marital property is fair. Property owned by either spouse prior to the date of marriage is generally treated as separate property (not marital property subject to division), except that any increase in value of that property during the marriage is considered marital. Property acquired during the marriage by gift or inheritance is also considered one spouse's separate property, providing that it is not commingled with marital funds or otherwise gifted to the marriage. The court can still consider the value of the separate property that each spouse has when determining how to equitably divide the marital assets. If one spouse has substantially more separate property than the other, the court might not divide marital property equally.

You may have more property than you realize. Property is not limited to your home, cars, and household items. Property also includes limited partnerships, business interests, investments, the cash value of life insurance, bank account balances, cash reserves, 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 or possessed. If part of a pension was earned during the marriage, that portion of your pension is property the court can divide. If your divorce involves a pension or business interests, you should seek legal advice as typically further expert valuations are required, and you will often need special documentation (a Qualified Domestic Relations Order) to divide retirement assets in order to avoid incurring tax consequences and early withdrawal penalties.

26-4. 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 handle your own divorce without a lawyer representing you or your spouse. Some legal aid offices may be able to help you complete the necessary forms. For example, Colorado Legal

Services is a nonprofit agency that provides free legal services to eligible low-income Coloradans and seniors. Metro Volunteer Lawyers is another group that offers volunteer attorneys to help lower-income parties with certain steps of the divorce proceeding. Each of the district courts has a *pro se* resource center that provides packets of forms with lengthy filing instructions and offers volunteer attorneys to assist with the paperwork. Some counties also offer programs such as call-a-lawyer and email-a-lawyer. Check with your local county bar association as most offer pro bono programs.

Remember that any agreements that are not signed by both parties and filed with the court are not legally binding and cannot be enforced later. You can obtain instructions and template forms online at www.coloradojudicial.gov and should reduce all agreements to writing that can be signed by both parties and filed with the court in your case.

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.coloradojudicial.gov — click on Self-Help and Forms, or you may be able to get them from your local legal services or legal aid office.

26-5. Use of Former Name

When you marry, you may keep your own name or legally adopt your spouse's name. When you divorce, your maiden name may be restored upon request. You may request the change of name as part of your divorce proceedings, and the court will grant it so long as you are not trying to defraud anyone through the name change.

26-6. 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 of their marriage, what rights each of them will retain over certain property if a divorce were to occur. 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 and accurate disclosure of their respective financial circumstances to each other, including all of their incomes, assets, and debts. The couple can revoke or change the agreement later only by a signed written agreement. It is good practice for both parties to be represented by separate attorneys in connection with the drafting of these agreements in order to avoid future challenges of the validity of the prenuptial agreement.

People who want such an agreement should hire their own separate lawyers well before the wedding date. An agreement may not be considered valid and legally binding if both parties did not have the time and opportunity to retain or to at least consult with an attorney. If there is a divorce or legal separation action where property rights are at issue, a valid marital agreement will govern the matter, as public policy in Colorado generally supports the enforcement of prenuptial agreements.

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 is contemplated at the time of creating the agreement. Such agreements entered into during the

course of the marriage are referred to as postnuptial agreements and are subject to many of the same requirements as prenuptial agreements as described above. Couples cannot determine matters that relate to their children, such as parenting time or child support, in advance through prenuptial or postnuptial agreements. Maintenance provisions included in pre- or postnuptial agreements are also reviewed by the court and can be overturned if unconscionable.

26-7. 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 a common law marriage, which lasts for at least 10 years. 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 regarding qualifications and claims.

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 may be entitled to benefits in these situations, there are no equivalent benefits for the disabled spouse of the worker. 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 as 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.

26-8. Protection from Family Violence

If a family member or household member has abused you physically or verbally, or stalked, harassed, threatened, or coerced you, you may request a protection order (formerly referred to as a restraining 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. Threats that provide grounds to obtain a protection order include threats towards you directly and can also include threats of harm that are directed towards persons or property that you love, such as your children or your pets. You may also be entitled to a protection order when you are over 60 years of age or an at-risk adult and are being verbally harassed, assaulted, or physically restrained. The court can issue an order against someone you used to live with, are related to, or with whom you are or used to be in a romantic relationship.

Under the law, you can get an order to keep the abuser from threatening or injuring you, contacting you, or coming within 100 yards of your home, school, or workplace. A protection order also prevents the restrained party from trying to contact you through third parties. Civil protection orders are enforceable by law enforcement in that any violations will lead to the immediate arrest of the restrained party, in the same way that criminal protection orders are enforceable. 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.

You cannot file a protection order on behalf of someone else unless you are a parent or legal guardian acting on behalf of a minor, an agent acting under a valid General Durable Power of Attorney, or a guardian, and/or conservator. Whether these individuals have the legal authority to seek a protection order on behalf of a third party is dependent on what powers and authority they have been given by the relevant legal documents and/or court orders. If there is an ongoing custody dispute over a child who you believe is in imminent danger of physical harm or significant emotional impairment, you can file a motion to restrict parenting time into the custody case, which will immediately restrain the alleged abuser from taking that child outside of the state or from otherwise exercising parenting time with that child while the motion is pending.

There is also a law that provides additional protection from emotional abuse for people 60 years of age or older, as well as other at-risk adults. 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 the threat of inappropriate use of medications, physical restraints, or chemical restraints; or
- ◆ Repeated acts that result in the misuse of power or authority by a person who was granted authority through a Power of Attorney or in a guardianship or conservatorship proceeding that result in the elderly or at-risk person being unreasonably confined or his or her liberty being unreasonably restricted.

Civil protection orders are free and are valid either temporarily (for up to 14 days, or longer if both parties consent) or permanently if you can prove to the court through a contested evidentiary hearing that there is an ongoing risk of harm. You can obtain the necessary forms and instructions from the court clerk at your county courthouse or on the Colorado Judicial Branch website — www.coloradojudicial.gov — click on Self-Help and 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 police will automatically make an arrest if they determine that the other party's conduct has violated the protection order.

The victim assistance program in your county district attorney's office can help you prepare the forms if there is a concurrent domestic violence proceeding or other criminal action in which you are listed as a victim. 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, counselors, pharmacists, clergy members, bank personnel, and social workers.

26-9. Common Law Marriage

Despite the widespread misconception, common law marriage in Colorado is not automatically established by the length of time that you and your partner have lived together or been in a relationship together. It also is not determined by whether you have children together. In Colorado, the court will examine all of the relevant factors at play in determining whether a common law marriage was formed. To establish a common law marriage, there must be a mutual consent, agreement, or understanding between you and your partner to enter into a marriage that is followed by conduct that demonstrates that mutual agreement and intent. The integral 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. Even if there is no express agreement between you and your partner that you are married, the existence of a common law marriage can be inferred from your conduct. There is no single determining factor that establishes a common law marriage as it varies from case to case and is very dependent on specific and individualized factors. The more ways in which you acted as a married couple, such as by wearing rings, participating in some sort of formal or informal marriage ceremony or celebration, referring to each other as husband and wife in written communications or when speaking with third parties, filing taxes

jointly, holding financial accounts and policies jointly, owning property jointly, etc.), the more likely the court is to find that you considered yourselves to be married.

After an individual dies, a partner may allege that he or she was in a common law marriage with the decedent in order to inherit or otherwise benefit from the decedent's estate. If contested, the existence of a common law marriage must be determined by a court following an evidentiary hearing. One cannot simply 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 to be 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 to have rights as a spouse based on a common law marriage, 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. In this scenario, objective evidence of the relationship combined with the mutual consent of the parties to enter into a marriage could be sufficient to establish a common law marriage.

Common law marriage, once established, is a legitimate marriage that is indistinguishable from a formal marriage. Common law spouses have all of 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 to dissolve your common law marriage, all future marriages will be void, and your common law spouse will have all the benefits of a spouse. This may include the right to take a portion of your estate and to receive various survivor benefits from the government or from your retirement plan. Similarly, if you have divorced a partner but have reconciled the relationship, you risk entering into a "common law remarriage" with that individual. The factors for proving a common law remarriage are essentially the same as those proving a common law marriage.

26-10. Resources

Aging and Adult Services

Colorado Department of Human Services: *See* section 14-11, "Resources"

Douglas County Adult & Senior Outreach Services

100 3rd St.

Castle Rock, CO 80104

(303) 660-7400

(303) 663-7791 (TTY)

www.douglasco.gov/community-services/services/senior-services/

Colorado Center for Aging

P.O. Box 102662
Denver, CO 80250
www.coloradocenterforaging.org

Disability Law Colorado: *See* section 7-5, “Resources”

Family Law Services

Denver District Court Pro Se Center

1437 Bannock St., Room 281
Denver, CO 80202
(303) 606-2442
www.coloradojudicial.gov/courts/trial-courts/denver-district/denver-district-court-pro-seself-help-center

Colorado Legal Services: *See* section 7-5, “Resources”

Family Tree

Serving the Denver and Surrounding Areas
24-hour Domestic Violence Contact Line: (303) 420-6752
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.justicecentercos.org

Metro Volunteer Lawyers

1905 N. Sherman St., Ste. 400
Denver, CO 80203
(303) 830-8210
www.denbar.org

