# Chapter 28
# 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 12, "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.

## 28-1. Grandparents' and Great-Grandparents' Visitation Rights[1]

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 12, "Grandparent Custody and Visitation Issues."

## 28-2. Allocation of Parental Responsibilities of Others Over a Child

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 or legal guardian, 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. For the purposes of this section, non-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.

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 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) 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 mean that the "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 like they would in an adoption proceeding. The "non-parent" just has to prove that they have assumed a parent-like role in the minor's life over a significant period of time.

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

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

- 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 concerning the minor child or children yet exists, then file the Petition 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, although the legal parent(s) must be provided notice of the filing as described below.
- 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. These individuals have the right to file a response pleading.
- The Petition and Summons must be personally served on the interested parties listed above, typically the child's legal parent(s) or guardian(s). 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 without consent of all parties or without a Court order; and
  - Neither party can, 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.

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 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. And again, other non-parent relatives such as stepparents or grandparents of a minor child can obtain parental rights as a psychological parent should they meet the standing requirements 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.

## 28-3. 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 to otherwise participate in the process.

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 then 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 they order spousal support unless certain threshold requirements are met. 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, unless it is specifically stated that spousal support is contractual and modifiable, in which case the Court loses the authority to make any such modifications.

For couples with minor children, a divorce proceeding will also resolve custody (now called the allocation of parental 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 if the child has special medical or mental health needs which require ongoing financial support). A court cannot order a parent to pay college costs.

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.

You can get a divorce in Colorado if either you or your spouse has been living primarily 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 decide all 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.

The same laws and requirements apply to an action when filing for a legal separation. A legal separation permanently decides all of the same issues a divorce determines, except that it 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.

Colorado is not a community property state; the law requires an equitable (but not necessarily equal) division of marital property. As a result, you have to decide three things: (1) which of your assets are considered marital property, (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 the acquisition of property and that an equal or substantially equal division of marital property is fair. Property owned by either spouse at the time they were married 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. The court can still consider the value of the separate property that each spouse has when determining how to divide the marital 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 or business interests, you should seek legal advice as typically further valuations are required.

## 28-4. 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 non-profit agency that provides free legal services to eligible low-income Coloradoans and seniors. Each of the District Courts has a *pro se* resource center which 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 not included in your court papers, signed by both parties, and filed with the Court cannot be enforced later. You can obtain instructions and template 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.

## 28-5. 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. 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.

## 28-6. 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 incomes. 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 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 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.

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.

## 28-7. 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, which lasts for at least ten 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.

### 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 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.

## 28-8. 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. 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 but can also include threats that are directed towards persons or property that you love such as your children or your pets. 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 anorder 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 to keep the abuser from threatening or injuring you, contacting you, or coming to your home, school, or workplace. A protection order also prevents the restrained party from contacting you through third parties. Civil protection orders are enforceable by law enforcement in that any violations will lead to 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. 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.

You cannot file a protection order on behalf of someone else unless you are a parent acting on behalf of a minor or an agent under a valid General Durable Power of Attorney, Medical Power of Attorney, Guardian, and/or Conservator. 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 legal 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 of 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.

Civil protection orders are free and are valid either temporarily (for up to 14 days, or longer if both parties consent) or permanently. You can obtain 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 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.

## 28-9. 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 or been in a relationship together. It also is not determined by whether or not 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. There must be a mutual consent or agreement between you and your partner to enter into a marriage which 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, a common law marriage can be inferred from your conduct. There is no one 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 (wearing rings, referring to each other as husband and wife, filing taxes jointly, holding accounts jointly, owning property jointly, etc.), the more likely the Court is to find that you intended to be married.

Many times, after someone 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. 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, 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 is legitimate 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 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 and to receive various survivor benefits from the government or from your retirement plan.

Note also that if you have divorced a partner but have reconciled the relationship, you risk entering into a "common law remarriage." The factors for proving a common law remarriage are essentially the same as those proving a common law marriage.

## 28-10. More Information

See Appendix A: Resources of Chapters 5, 9, and 24 for legal services offices, legal aid offices, and more.