

Chapter 13

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. This chapter discusses issues that grandparents often must deal with, such as the right to visit grandchildren, and taking custody of or becoming a guardian to grandchildren. See also Chapter 4, "Grandparent Custody and Visitation Issues."

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 restraining orders.

13-1. Grandparents' Visitation Rights

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 the following situations:

- ▶ When the marriage of the grandchild's parents has been declared invalid or dissolved, or the court has entered a decree of legal separation;
- ▶ When the legal custody of the grandchild has been given to a party other than the parent, or the child has been placed outside of and does not reside in the home of the parent (but this does not cover a child who has been placed for adoption or whose adoption has been legally finalized);
- ▶ When the grandchild's parent, who is the child of the grandparent, has died;
- ▶ When the grandchild has lived with the grandparent for six months within the last six months; or
- ▶ When you have been appointed the legal guardian of your grandchild.

Grandparents have no recourse if the child and his or her parents are an intact family; they can seek a court order allowing grandparent visitation if, and only if, one of the above situations is present. If this basic criterion is met, the grandparent must file a motion and accompanying affidavit for grandparent visitation with the district court for the district in which there has been or is a child custody case. The motion and affidavit must set forth the facts supporting the requested order — that is, facts showing why it is in the child's best interests to spend time with the grandparent. Notice must be given to the party (or parties) who has legal custody of the grandchild. The court may make an order, with or without a hearing, granting (or denying) visitation rights whenever such an order would be in the best interest of the grandchild.

In order to determine that spending time with the child is in the child's best interest, some courts will order you to meet with a trained mediator and the child's parents or custodian to try to reach an agreement before the court listens to your case.

If the court gives you visitation rights, your rights continue even if the parents divorce or legally separate, or if one or both of the parents die. Your rights can end if the parents lose their rights over the child or if your grandchild is adopted. However, if your grandchild is adopted by his or her natural parent's new spouse (that is, a stepparent), you are entitled to seek grandparenting time so long as the child still remains with and in the legal custody of his natural parent. Ask a lawyer for advice about seeking visitation.

A motion for grandparent visitation cannot be filed more than once every two years unless there is a showing of good cause.

If the grandchild's custodial parent does not comply with court-ordered visitation, the law provides various remedies. Under the grandparent visitation law, you may file a motion asking the court to enforce such visitation. If you prove that the grandchild's custodian has not complied with the visitation order, the court has some tools to remedy the situation and can:

- ▶ Impose additional terms and conditions consistent with the court's previous order;
- ▶ Modify the previous order;
- ▶ Require the violator to post bond or security to ensure future compliance;
- ▶ Require that missed visitations be made up;
- ▶ Hold the violator in contempt of court and impose a jail sentence or bond; or
- ▶ Award the person denied visitation his or her attorney fees.

Grandparents' rights vary by state. All states now have laws enabling grandparents to petition for visitation rights with their grandchildren, but there are great variations from state to state. Therefore, you will need to research grandparents' rights under the law of another state if your grandchildren live in another state and are subject to that state's laws.

13-2. Custody of Grandchildren

Sometimes grandparents may have to care for grandchildren permanently or temporarily. Seniors caring for grandchildren for a brief time should get written permission from at least one parent to authorize emergency medical care for the child. A simple signed and dated note will work. If a grandchild will be with the grandparent for more than a brief time, the grandparent should have authority to protect the child, especially if the parents will be difficult to reach. There is a general provision in Colorado law governing people with disabilities that allows the child's parents to delegate "any of his powers regarding care, custody and property" of the child. This includes, but is not limited to, the power to make health care decisions and may be effective for up to 12 months. However, the grandparent cannot consent to the marriage or adoption of the grandchild. Legal stationery stores, some legal aid offices, law firms, and some senior centers have forms for this purpose. The form is generally titled "Parent's or Guardian's Delegation of Powers by Power of Attorney."

If you expect to care for your grandchild for an extended time, you may want legal guardianship of the child. A legal guardianship gives you ultimate authority over the child's care and well-being. You may apply to a district court to become your grandchild's guardian. If the parents do not agree to the guardianship, you must show the court why the child needs a guardian. Once you are appointed as a guardian, only the court may terminate the appointment.

With or without a guardianship, you may qualify for Temporary Aid to Needy Families (TANF) and Medicaid coverage for a grandchild in your care. In unusual circumstances, grandparents may seek full legal custody of a grandchild. To win such a case, you must show that it is in the child's best interest to transfer custody to you.

To be able to request custody of your grandchild, your grandchild must no longer be in the custody of either of his or her natural parents, or you must have had physical custody of your grandchild for six months continuously. If you had physical custody of your grandchild for six months, then you must have filed a petition for custody within six months of the termination of such physical custody. The court also can order the child's parents to pay child support and your legal fees.

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. Also, it divides marital property and debts and provides for maintenance (also called alimony or spousal support) when appropriate. For couples with minor children, divorce settles custody, which is now called allocation of parental responsibility; visitation (also called parenting time); and child support issues. In Colorado, child support ends at age 19, and there is no provision for college in orders entered after July 1, 1997. Either spouse may receive temporary or permanent maintenance/spousal support, if he or she cannot support himself or herself through employment or assets. After need is established, the law considers the length and standard of living of the marriage and each person's job skills, income, resources, age, and health in deciding whether and how much maintenance (spousal support) to award.

You can get a divorce in Colorado if you or your spouse have been living in Colorado for at least 90 days prior to filing for divorce. This is true if you have been living in Colorado for at least 90 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. No less than six months 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 or practically protect the interests of both spouses.

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: what is marital property, what is it worth, and 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 in the future. In the absence of a marital or prenuptial agreement, all property acquired during the marriage is subject to division regardless of the name on the title. 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.

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, Denver District Court has an "Information and Referral Office," which sells packets of forms with lengthy instructions, and has a paralegal and volunteer attorneys to assist with the paperwork. 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 waiver of fees called "*In Forma Pauperis*." 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, 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. 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 ask their own separate lawyers well before the wedding. 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, as explained above, 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 or household member has threatened you with violence or abused you verbally or physically, you may request a restraining order to prevent domestic abuse. 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 restraining order, you must convince the court that there is imminent danger to the life or health of one or more people.

There also is a law that provides additional protection from emotional abuse for people 60 years of age or older, by allowing 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.

These restraining orders are free. You can get the necessary forms and instructions from the court clerk at your county courthouse. If your abuser disobeys the court order and comes to your home or office, or threatens you, you can get immediate help from the police. These orders are valid either temporarily or permanently.

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

13-9. Common Law Marriage

In Colorado, there are three factors that must be present to establish a common law marriage. First, you must live together. There is no minimum amount of time — it can be for as little as one night. Second, you must hold yourselves out to be married — that is, you must tell other people you are married or represent to other people that you are married by owning property in joint tenancy or filing joint tax returns or health insurance forms, etc. Third, you must have an agreement that you are married. Without holding yourselves out as being married and the intent to be married, you are not common law married, regardless of how long you have lived together and whether you have children together.

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 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.

13-10. Glossary

Alimony. Now called maintenance or spousal support. Financial support provided by one spouse to the other spouse after divorce or legal separation.

Dissolution of Marriage. Divorce. A legal action seeking a divorce decree.

Guardianship. See Chapter 26, "Guardianship of Adults."

In Forma Pauperis. A procedure to request that the filing fee be waived because you cannot afford to pay it.

Legal Separation. A court order that divides property and debts and provides for maintenance when appropriate. It does not free spouses to remarry.

Maintenance. Also called alimony or spousal support. Financial support provided by one spouse to the other spouse after divorce or legal separation.

Marital Agreement. An agreement, in writing, between two people before or during marriage on what rights each of them will keep over certain property if a divorce or death occurs.

No-Fault Divorce. A divorce granted to a couple based on their inability to get along with each another.

Pro Se Divorce. A do-it-yourself divorce where you do the work without hiring an attorney.

Restraining Order/Protective Order. An order that keeps an abuser in your family or household from contacting you or coming to your home, school, or work place, on either a temporary or permanent basis.

Temporary Power of Attorney. A notarized form giving you authority to make health care and other decisions for minor children for up to nine months.

13-11. 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., 10th Floor
Denver, CO 80203
(303) 866-2800
www.cdhs.state.co.us/aas

Jewish Family Service

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

Douglas County Adult & Senior Outreach Services

4400 Castleton Ct.
Castle Rock, CO 80109
(303) 668-4825
http://douglas.co.us/humanservices/Senior_Services.html

Elder Care Network of Larimer County

P.O. Box 272687
Fort Collins, CO 80527-2687
(970) 495-3442
www.eldercarenet.org