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Articles **Family Law**

Lewis v. Lewis and Non-Married Partner Litigation
by Kim Willoughby

Family Law articles are sponsored by the CBA Family Law Section to provide information to family law practitioners. Articles focus on practice tips and discussions of current issues within the realm of family law.

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This article discusses how to litigate the issues of non-married partners at the time of a break-up, and highlights new case law that provides additional legal theories in this area.

The Colorado Supreme Court recently announced its decision in *Lewis v. Lewis*,¹ an unjust enrichment case. The ruling greatly expands remedies available to non-married partners² when their relationship ends. The Court held that when close family members or confidants act with a mutual purpose, unjust enrichment occurs when one party benefits from an action that significantly deviates from that mutual purpose.

This article provides an overview of pre-*Lewis* remedies available in Colorado to non-married partners at the end of a relationship, and briefly discusses how other states and nations grapple with the termination of non-married partner relationships. It also discusses *Lewis* and its application to non-married partners. Finally, it reflects on how Colorado courts treat same-sex couples who

were validly married in other states or countries, but who now wish to end their relationships.

The Issue

The lives of non-married partners often mirror those of married partners. They have children, they acquire and co-mingle assets, they incur joint debts, they make financial sacrifices for each other, they become economically interdependent, and they may choose to have one partner stay at home while the other is employed.

The number of non-married partners continues to increase. A 2003 U.S. Census Bureau Special Report stated that:³

1) approximately 10 percent of total coupled households in Colorado were comprised of non-married partners;

2) there were approximately 81,000 non-married opposite-sex partners sharing a household in Colorado; and

3) there were approximately 10,000 non-married same-sex partners sharing households.

An American Community Survey determined that in 2005, non-married adults headed up 50.3 percent of the nation's housing units.⁴ In 2007, the Census Bureau reported that in 2006, non-married Americans numbered 100 million.⁵

Non-married partners who have combined their finances or have become economically interdependent are faced with similar issues as married couples when their relationships end:

- what to do with the jointly owned house
- how to split the property that was purchased during the relationship
- how to divide the jointly titled brokerage accounts
- determining who pays off the debt
- determining whether and how to compensate the partner who quit his or her job and moved for the benefit of the other partner
- addressing the matter of one partner foregoing potentially significant career opportunities to stay at home with the kids.

Married couples have a statutory framework for answering these questions: the Uniform Dissolution of Marriage Act.⁶ When couples are not married and cannot resolve their own disputes, there is little law to give direction on how to disentangle their relationships.

Pre-Lewis Causes of Action for Non-Married Partners

Colorado has no statute governing rights or responsibilities of non-married partners or the dissolution of their relationships. Before *Lewis*, non-married partners had three basic common law avenues for addressing legal issues incident to a break-up:

- 1) a common law marriage claim;
- 2) an unjust enrichment claim under *Salzman v. Bachrach*;⁷ or
- 3) a suit made up of a hodgepodge of legal theories.

A brief discussion of each of these avenues follows.

Common Law Marriage

Colorado is one of the few states that still recognizes common law marriage.⁸ A common law marriage occurs when two people who are eligible to be married agree between themselves that they are married, and hold themselves out to the community as being married.⁹ A claim that a common law marriage exists is a factual claim.¹⁰

In the absence of an express agreement, the two most common factors used to determine the existence of a common law marriage are cohabitation and a general reputation in the community as husband and wife.¹¹ If the factual claim can be proven, then the couple is deemed married, the divorce statutes will apply to the termination of the relationship in the same fashion as for the dissolution of a ceremonial marriage. There is no "common law divorce."

However, often when a lawsuit alleges a common law marriage, it is because one of the partners denies there was a marriage. It is difficult to prove a common law marriage when the issue is contested.

Common law marriage is not an equitable remedy. Consequently, common law marriage cannot be used to provide equitable relief to partners whose relationship had the "quality" of a marriage. Rather, it is a question of fact that, if answered in the affirmative means the Uniform Dissolution of Marriage Act must be applied to the dissolution of the relationship. Additionally, common law marriage cannot be applied to same-sex couples, because Colorado does not recognize marriage between same-sex couples.¹²

Unjust Enrichment Under Salzman

The second avenue available is a claim brought under an unjust enrichment theory as outlined in *Salzman v. Bachrach*.¹³ *Salzman* involved an opposite-sex couple who shared a home. The male partner contributed approximately one-third of the total cost of a \$521,000 custom home, as well as his professional services during construction of the home. The female partner contributed approximately two-thirds of the cost of the home¹⁴ and held sole title. Eventually, the relationship ended and the female partner expelled the male partner from the home.¹⁵ The Colorado Supreme Court held that despite the fact that the parties were formerly cohabitating partners, the male partner could make a claim of unjust enrichment and was entitled to restitution.¹⁶ The Court stated that an unjust enrichment claim is made if the plaintiff proves: (1) at plaintiff's expense (2) defendant received a benefit (3) under circumstances that would make it unjust for defendant to retain the benefit without paying.¹⁷

Under a *Salzman* claim of unjust enrichment, a plaintiff has to show that a benefit was conferred on the defendant. To recover, the plaintiff has to prove what the benefit was worth to the defendant. In *Salzman*, the showing was fairly straightforward—plaintiff had contributed cash and professional services to a piece of real property. Therefore, defendant benefited by the amount of the added equity in the home. When the contribution to a relationship is more in the nature of household services and sweat equity, a recovery based on the value of the contribution is much more difficult to prove.

Application of Other Civil Claims

Numerous civil claims can be applied to the financial circumstances of non-married partners. Some of the more straightforward are:

- partition of real and personal property
- breach of express contract
- breach of implied contract
- joint venture
- constructive trust

- resulting trust.

Most of these claims will require a showing that the plaintiff has contributed financially to the property at issue.

Partition. A primary way to divide the real and personal property of non-married partners is partition. A partition suit is an equitable claim under co-ownership principles in which the court severs the multiple interests in a property and reaches an equitable result by calculating the contributions of each person.¹⁸ One problem for many partners establishing a partition claim is that the claimant must hold title to the property. In many situations, one partner was never on the title of the property in dispute. Another problem is that contributions that are credited to parties are often limited to monetary contributions to the property. In addition, the court's remedy is limited either to a partition in kind (which is impossible for residential property) or to a forced sale of the property and division of proceeds.¹⁹ Finally, although partition is helpful in dividing assets such as residential properties, financially interdependent couples usually have a broader range of financial disputes than simply who will get the house.

Express and implied contract. Contract claims are difficult because the machinations of intimate relationships are hard to break down into the elements of offer, acceptance, and consideration. Additionally, sufficiently specifying the terms of broken contracts is difficult in this context. Even though enforceable contracts need not be written, and may be implied, it still is difficult to discern whether the promises and actions of partners can be categorized as indicative of actual contracts or just how partners behave. However, contract principles are helpful when the couple entered into a written domestic partnership agreement.

Joint venture. A joint venture can be claimed if the following elements are present:

- (1) [t]here must be joint interest in the property by the parties sought to be held as partners; (2) there must be agreements, express or implied, to share in the profits and losses of the venture; and (3) there must be actions and conduct showing co-operation in the project.

[T]he pooling of property, money, assets, skill, or knowledge does not create the relationship of joint venture in the absence of intent as manifested from the facts and circumstances involved in each particular case.²⁰

Joint venture claims may be promising, particularly in the context of a business run by the partners; however, it can be difficult to prove intent of the parties regarding the sharing of profit and loss where there is a romantic relationship. Between romantic partners, there may be more than one motivation for contributing money or skill to an asset.

Constructive trust. A constructive trust theory can be used when one of the partners holds title to specific property, but in fairness, the property should be transferred to the other partner.²¹ A constructive trust is applied to property when it would unjustly enrich the title-holder to retain title to the property. Two of the elements required to find a constructive trust are: (1) a fiduciary relationship, and (2) fraud or wrong-doing.²² Following is an example.

Partner A convinced partner B to let him manage all of partner B's investment accounts. Partner A represented that the easiest way to manage the accounts was to transfer title on the accounts. Partner A then claimed the accounts as his own. In this scenario, a constructive trust might result. Constructive trusts are of little practical benefit in the context of the dissolution of a relationship. Although parties may feel wary of each other after a break-up, claims of fraud between partners are rare.

Resulting trust. A resulting trust theory can be applied where one person holds property for the benefit of another, but did not intend the other to have an equitable or beneficial interest in the property.²³ In the context of non-married partners, this can be a very useful tool where a partner has transferred title to property as an inexpensive method of estate planning, yet never intended to grant an interest in the property during lifetime. Although this is a very common scenario with non-

married partners, it addresses only one small part of a couple's financial interdependence.

Treatment in States Other Than Colorado

Unlike Colorado, several states address the dissolution of the partnerships of non-married persons through (1) palimony claims; (2) application of meretricious relationship/marriage by analogy doctrines; and (3) domestic partnership/civil union statutes. Many states, like Colorado, also employ a method that uses a hodge-podge of theories.

In 1976, the California Supreme Court handed down the first ruling in a palimony case. In *Marvin v. Marvin*,²⁴ the Court applied the theory of implied contracts to non-married cohabitants to divide property and to an alleged agreement for ongoing support. The contractual concepts of the case were well established.²⁵ In the 1960s and 1970s, many states would not enforce contracts between non-married couples, under the theory that all such contracts were a form of prostitution.²⁶

Under a palimony claim, a court may order support for the claiming party on termination of the relationship.²⁷ For a judgment to be entered, there must be a clear agreement, written or oral, by both partners regarding the extent of support.²⁸ Palimony cases are determined as a contract matter and are handled in civil court rather than in family court. Thus, these claims may be brought before juries. Support is awarded in a lump sum, generally in an amount sufficient to support the claimant for an actuarial life term, reduced to present value.²⁹

Today, the majority of states will enforce agreements, express and implied, between non-married parties regarding division of property.³⁰ However, the extent of states' willingness to stretch contract theory to look like relief available in a divorce differs widely.

Washington has developed the doctrine of meretricious relationships as one solution to disposition of property on separation of non-married partners.³¹ A "meretricious relationship" is a marital relationship where both parties cohabit, fully aware that a lawful marriage between them does not exist.³² Several nonexclusive factors used to establish such a relationship are: "continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties."³³ This doctrine enables the court to distribute property obtained during the relationship in a fashion similar to distribution of community property if the parties were married.³⁴ Non-monetary contributions to property have been recognized,³⁵ and the doctrine has been applied to same-sex partnerships.³⁶ Nevada employs a community property by analogy theory to non-married couples who hold their property as if they are married.³⁷

In a number of states, same-sex non-married partners are able to opt into domestic partnerships or civil unions that carry, to varying degrees, the same state rights and responsibilities granted to married couples. Washington,³⁸ Oregon,³⁹ California,⁴⁰ New Jersey,⁴¹ Hawaii,⁴² Maryland,⁴³ and the District of Columbia⁴⁴ have such statutes. The statutes usually contain provisions for the dissolution of these domestic partnerships and civil unions, many times by merely incorporating that state's dissolution of marriage laws. There is a complication for these couples if they dissolve their relationship in another state when the dissolving state has no laws or different laws regarding rights on dissolution of the partnership or civil union. However, it could be argued that the partners entered into a contract by opting into the joining state's domestic partnership or civil unions law, and that those statutes should apply to the couple in every state when determining the terms of the contract regarding dissolution of the relationship.⁴⁵

Treatment in Other Countries

New Zealand's Property Amendment Act (New Zealand Act) allows some non-married partners, either same-sex or opposite-sex, to apply divorce statutes to their break-ups.⁴⁶ The statutory scheme is based on the country's community property principles.⁴⁷ Community property principles allocate all property as either separate or relationship property.⁴⁸ "Separate property" is property a partner owned prior to the relationship and usually remains with that partner after

separation.⁴⁹ "Relationship property" is property acquired by either party during the relationship and, by presumption, must be divided equally.⁵⁰

For a relationship to fall under the New Zealand Act, it must last at least three years.⁵¹ Thus, determining precisely when a relationship begins and ends is crucial in suits between non-married partners.⁵² The New Zealand Act also contains a provision in which the partners may mutually opt out of the statutory scheme.⁵³

Countries that offer to same-sex couples most of the same rights and protections granted to married persons are: Denmark, Finland, Germany, Iceland, New Zealand, the United Kingdom, and Uruguay.⁵⁴ Many other countries offer recognition and have rules for same-sex non-married partners. They are: Andorra, Austria, Brazil, Colombia, Croatia, the Czech Republic, France, Hungary, Israel, Luxembourg, Portugal, Slovenia, and Switzerland.⁵⁵

Lewis v. Lewis

In August 2008, the Colorado Supreme Court handed down its opinion in *Lewis v. Lewis*.⁵⁶ The Court held:

[C]laims of unjust enrichment by close family members or confidants should be evaluated by considering the mutual purpose of the parties. To determine unjust enrichment in situations involving a failed gift or failed contract between close family members and confidants, trial courts must determine whether there existed a mutual purpose between the parties. If such a purpose did exist and one party profited from a significant deviation from this mutual purpose, the party is unjustly enriched.⁵⁷

Under *Lewis*, the plaintiff has no contribution requirement. However, there is a requirement of an unjust "profit" or "benefit"⁵⁸ to the defendant in deviating from the mutual purpose. The court also may look at whether plaintiff detrimentally relied on the gift or agreement⁵⁹ and consider the length of time that the parties acted in furtherance of the agreement.⁶⁰ The court also uses its equity powers to "fulfill (the) failed mutual purpose."⁶¹

This is a departure from previous unjust enrichment cases. The dominant unjust enrichment case before *Lewis* was *Salzman v. Bachrach*.⁶² In that case, a claimant had to prove that: (1) at plaintiff's expense (2) defendant received a benefit (3) under circumstances that would make it unjust for defendant to retain the benefit without paying.⁶³ As stated by the dissent in *Lewis*, the mutual purpose theory of unjust enrichment focuses on the intent of parties and the benefit received by defendant. Traditional unjust enrichment theory focuses on what the plaintiff contributed that is being unjustly retained by the defendant.⁶⁴

Lewis was not a case about non-married partners. Rather, it involved a claim by Cassandra Lewis (wife) against Frank and Lucy Lewis, wife's father-in-law and mother-in-law. Wife had been married to Sammy Lewis (husband), who was Frank and Lucy's son. Husband and wife divorced. The marital home was titled to Frank and Lucy, but husband and wife had made all payments on it for fourteen years. Wife argued that the agreement between the four had always been that title to the home would be transferred to husband and wife and that it was their house. However, when the parties began divorce proceedings, Sammy, Frank, and Lucy no longer acted according to that plan. The trial court ordered Frank and Lucy to pay wife the net proceeds from the sale of the house, minus what they had contributed as a down payment. In other words, wife assumed the position of a seller.

Lewis can be applied to non-married partners. Non-married partners are confidants.⁶⁵ Often, they will have a mutual purpose to financially and otherwise support the unit, take care of each other for life, and join their resources for the benefit of both parties. If one person in the partnership has all or most of the assets in his or her name, and excludes the other person from the benefit of those assets when the relationship dissolves and/or fails to support the other partner, it can be argued that such person has profited from a significant deviation from the mutual purpose. *Lewis* puts

Colorado more in line with those states with "marriage by analogy" law for non-married partners.

Dealing With Same-Sex Marriages From Other Jurisdictions

Currently, Belgium, Canada, the Netherlands, Norway, South Africa, Spain, and Sweden allow same-sex couples to marry.⁶⁶ Six states in the United States allow same-sex marriages: Connecticut,⁶⁷ Iowa,⁶⁸ Maine,⁶⁹ Massachusetts,⁷⁰ New Hampshire,⁷¹ and Vermont.⁷² In California, same-sex marriage is no longer allowed. However, same-sex couples married in California between the time the California Supreme Court mandated the allowance of same-sex marriage⁷³ and the passage of Proposition 8 still have valid marriages.⁷⁴ In these states, when same-sex spouses wish to divorce, the state's divorce statutes apply.

However, if these spouses come to Colorado, they cannot be divorced. Colorado has a statute that specifically states that a marriage is between one man and one woman, and that out-of-state marriages that are contrary to this definition of marriage will not be recognized as valid.⁷⁵ Further, the Colorado Constitution states that only a union of one man and one woman shall be valid or recognized as a marriage.⁷⁶

The Full Faith and Credit Clause of the U.S. Constitution⁷⁷ differentiates between the credit one state owes to another state's judgments and laws.⁷⁸ The Full Faith and Credit Clause does not compel a state to apply laws of another state in violation of its own legitimate public policy.⁷⁹ Thus, there is a long history of case law recognizing the ability of one state to refuse to recognize the validity of marriages—such as polygamous, under-age, and interracial marriages—contracted in another state that violate the receiving state's public policy. Further, the federal Defense of Marriage Act,⁸⁰ codified in 1996, states that "no state . . . needs to treat a relationship between person of the same sex as a marriage, even if the relationship is considered a marriage in another state." It defines marriage as between one man and one woman.⁸¹

However, Colorado can still invalidate the marriage,⁸² thus severing the marital relationship. The severance should be entitled to full faith and credit in every state, because there are no states with statutes declaring it a violation of public policy to recognize the invalidation of a marriage by another state.

In an invalidation case, the Colorado court may still divide the couple's property and debt, and address maintenance and child support as if the couple's marriage were recognized.⁸³ Alternatively, Colorado judges may decide to apply the marrying state's divorce statutes as contract terms to the couple.⁸⁴ Finally, the court may apply *Lewis*, and find that the mutual purpose of the parties was to be married, and therefore make an award to the couple derived from an application of divorce statutes.

Conclusion

A Colorado practitioner representing a client who is a non-married partner seeking assistance with dissolving a relationship now has a legal claim with broader range than previously available. Although the *Lewis* unjust enrichment claim falls short of some remedies available to non-married partners in other jurisdictions, it is another step toward providing legal framework for thousands of non-traditional couples and families.

Notes

1. *Lewis v. Lewis*, 189 P.3d 1134 (Colo. 2008).
2. Non-married partners can be same-sex partners or opposite-sex partners who do not marry.

3. U.S. Bureau of the Census, "Married-Couple and Unmarried-Partner Households: 2000" (Government Printing Office, 2003), available at www.census.gov/prod/2003pubs/censr-5.pdf.
4. See U.S. Census Bureau, American Community Survey, available at www.census.gov/acs/www/index.html.
5. See www.unmarriedamerica.org/column-one/09-17-07-census-report.htm.
6. CRS §§ 14-10-101 *et seq.*
7. *Salzman v. Bachrach*, 996 P.2d 1263 (Colo. 2000).
8. Rosenberg, "The Common Law Spouse in Colorado Estate Administration," 35 *The Colorado Lawyer* 85 (Sept. 2006).
9. *People v. Lucero*, 747 P.2d 660, 663 (Colo. 1987).
10. *Id.* See also Storey, "Defending Against A Common Law Marriage Claim," 34 *The Colorado Lawyer* 69 (March 2005).
11. *Id.*
12. CRS § 14-2-104.
13. *Salzman*, *supra* note 7.
14. *Id.* at 1265.
15. *Id.* at 1266.
16. *Id.*
17. *Id.* at 1265-66.
18. CRS §§ 38-28-101 *et seq.*; *Keith v. El-Kareh*, 729 P.2d 337 (Colo.App. 1986); *Martinez v. Martinez*, 638 P.2d 834 (Colo.App. 1981). See also 68 *Corpus Juris Secundum*, "Partition to Partnership" (2009).
19. CRS § 38-28-107.
20. *Sleeping Indian Ranch, Inc. v. West Ridge Group, LLC.*, 119 P.3d 1062, 1069 (Colo. 2005).
21. *Page v. Clark*, 592 P.2d 792 (Colo. 1976).
22. *Id.* at 797-98. See also *Bryant v. Community Choice Credit Union*, 160 P.3d 266 (Colo.App. 2007).
23. *Page*, *supra* note 21 at 797. See also *In re Marriage of Heinzman*, 596 P.2d 61 (Colo. 1979); Bogert *et al.*, *Bogert on Trusts* 287 (6th ed., Thomson Reuters, 1987).
24. *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976).
25. Estin, "Non-married Partners and the Legacy of *Marvin v. Marvin*: Ordinary Cohabitation,"

- 76*Notre Dame L.Rev.* 1381, 1408 (2001).
26. *See, e.g., Hewitt v. Hewitt*, 394 N.E.2d 1204, 1208 (Ill. 1979).
27. *Marvin, supra* note 24; *Kozlowski v. Kozlowski*, 403 A.2d 902 (N.J. 1979).
28. *Marvin, supra* note 24.
29. *Kozlowski, supra* note 27.
30. Blum, "Property Rights Arising from Relationship of Couple Cohabiting Without Marriage," 69 A.L.R. 5th 219 (originally published in 1999).
31. *Connell v. Francisco*, 898 P.2d 831 (Wash. 1995).
32. *Gormley v. Robertson*, 83 P.3d 1042, 1045 (Wash.Ct.App. 2004).
33. *Id.*
34. *Id.*
35. *Warden v. Warden*, 676 P.2d 1037 (Wash.App. 1984).
36. *Gormley, supra* note 32.
37. *Western States Const. Inc. v. Michoff*, 840 P.2d 1220 (Nev. 1992).
38. Wash. Rev. Code § 26.60.030 (2009).
39. Or. Rev. Stat. § 106.010 (2009).
40. Cal. Fam. Code § 297 (2009).
41. N.J. Stat. Ann. § 37:1-28 (2009).
42. Haw. Rev. Stat. § 572C-1 (2009).
43. Health Care Facility Visitation and Medical Visitation Decisions—Domestic Partnerships, 590 S.B. 566 (2008), available at mlis.state.md.us/2008RS/billfile/sb0566.htm. *See also* Recordation and Transfer Taxes—Exemptions—Domestic Partnerships, 599 S.B. 597 (2008), available at mlis.state.md.us/2008RS/billfile/SB0597.htm.
44. *See* Health Benefits Expansion Act of 1992, DC Law 9-114 (1992), dchr.dc.gov/dcop/cwp/view,A,1220,Q,529896.asp. *See also* Domestic Partnership Equality Amendment Act of 2006, DC Law 16-79 (2006), available at www.dccouncil.washington.dc.us/images/00001/20060113145021.pdf.
45. *Gonzalez v. Green*, 831 N.Y.S.2d 856 (N.Y. S.Ct. 2006).
46. Property (Relationships) Amendment Act, 2001 No.5 (N.Z.), available at www.legislation.govt.nz/act/public/2001/0005/latest/DLM86488.html. New Zealand subsequently adopted a civil union law. *See* Civil Union Act, 2004 No. 102 (N.Z.), available at www.legislation.govt.nz/act/public/2004/0102/latest/DLM323385.html.

47. Grainer, "What's Yours is Mine: Reform of the Property Division Regime for Non-married Couples in New Zealand," 11 *Pac. Rim L. & Pol'y* 285, 292 (2002), available at www.law.washington.edu/pacrim/abstracts/Default.aspx?a=20020301102.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 303.

52. *Id.*

53. *Id.* at 309.

54. Countries that recognize same-sex marriage are: Belgium, Canada, The Netherlands, Norway, South Africa, Spain, and Sweden. See www.freedomtomarry.org/get_informed/marriage_basics/history/international_progress.php.

55. See www.freedomtomarry.org/get_informed/marriage_basics/history/international_progress.php.

56. *Lewis, supra* note 1.

57. *Id.* at 1136.

58. *Id.* at 1143.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Salzman, supra* note 7.

63. *Salzman, supra* note 7 at 1265-66.

64. *Lewis, supra* note 1 at 1145-47.

65. *Id.* at 1142-43. A confidential relationship exists where one party justifiably reposes confidence in another such that the parties drop their guard under the assumption that each side is acting fairly.

66. See marriage.about.com/cs/samesexmarriage/a/samesex.htm.

67. Con. Gen. Stat. 46b-38bb (2009).

68. *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009). The ruling strikes the language from Iowa Code § 595.2 limiting civil marriage to a man and a woman, and directs that the remaining statutory language be interpreted and applied in a manner allowing same-sex couples full access to civil

marriage.

69. An Act To End Discrimination in Civil Marriage and Affirm Religious Freedom, L.D. 1020, S.P. 384 (2009) (effective Sept. 14, 2009), available at www.legislature.maine.gov/legis/bills/bills_124th/billpdfs/SP038401.pdf.

70. *Goodbridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003) (ruling held that restriction—marriage allowed only to heterosexual couples—was unconstitutional). See also Mass. Gen. Laws ch. 207 (2009) (the same laws and procedures applied to traditional marriages are also applied to same-sex marriages).

71. N.H. Rev. Stat. Ann. § 457-1-a (2009) (effective Jan. 1, 2010).

72. An Act to Protect Religious Freedom and Promote Equality in Civil Marriage, H.B. 275 (2007) (effective Sept. 1, 2009).

73. *In re the Marriage Cases*, 183 P.3d 384 (Cal. May 15, 2008).

74. *Strauss v. Horton*, No. S168047 (Cal. May 26, 2009), available at www.courtinfo.ca.gov/opinions/archive/S168047.PDF. California marriages entered into between May 15, 2008 and Nov. 4, 2008 are valid.

75. CRS § 14-2-104.

76. Colo. Const. art. II, § 31.

77. U.S. Const. art. IV, § 1.

78. *Baker v. General Motors Corp.*, 522 U.S. 222, 232 (1998).

79. *Franchise Tax Bd. of Cal. v. Hyatt*, 538 U.S. 488, 494 (2003).

80. Defense of Marriage Act, 1 U.S.C. § 7 (1996); 28 U.S.C. § 1738C (1996).

81. The constitutionality of the federal Defense of Marriage Act has been repeatedly questioned in academic literature. The state of Massachusetts currently is suing the federal government and alleging that the Act is unconstitutional. *Commonwealth v. United States Department of Health and Human Services* (Mass. Dist. Ct. July 8, 2009).

82. CRS § 14-10-111.

83. CRS § 14-10-111(6); *In re Dickson*, 983 P.2d 44 (Colo.App. 1998).

84. *Gonzalez*, *supra* note 45.