Common Law Marriage in Colorado
"Am I or am I not married?"

The concept of common law marriage has been recognized for many years in Colorado. Essentially, in a common law marriage, two parties create a valid marital relationship without the benefit of a legal marriage ceremony performed according to the statutory requirements of C.R.S. §14-2-106. The foundation for a common law marriage is mutual consent or agreement of the parties to be husband and wife, and thereafter a mutual and open assumption of a marital relationship.

There are many misconceptions about the requirements for a valid common law marriage. A present contract of marriage must exist to create a relationship of husband and wife. An agreement to marry in the future does not create a common law marriage. Frequently, a problem arises after the breakup of two people who have been living together and one party claims they have a common law marriage. In other situations, a death, injury or disability may occur, creating problems for the alleged common law spouse.

This article discusses the requirements for establishing a common law marriage in Colorado.

ELEMENTS OF PROOF
COHABITATION AND REPUTATION

In establishing the existence of a common law marriage, it is difficult to prove that an actual contract or agreement to marry existed between the parties. Colorado does not require a fixed period of time of cohabitation to establish common law marriage. However, evidence of cohabitation and reputation as husband and wife generally will constitute proof of a common law marriage. While cohabitation and reputation as a married couple are not essential elements of a common law marriage, they create an inference that the parties have consented to a marriage contract.

The parties must cohabit as husband and wife and claim to be such. However, cohabitation alone is not sufficient to establish common law marriage; they must do more than merely live together in the same house. In order for a presumption of marriage to arise, the parties must intend to be married as evidenced by their conduct and general reputation. General reputation as a husband and wife includes social conduct and recognition giving character to a marital relationship, understanding among neighbors and acquaintances that they are living together as husband and wife, and other attendant circumstances which would provide recognition of the parties as husband and wife.

If one party believes that the parties are living as husband and wife but the other party does not and there is not other affirmative conduct as husband and wife, there cannot be a common law marriage. The parties essentially must act, perform and do everything as if they were married but without a valid Colorado ceremony. Further, a common law marriage cannot exist while one party is still married to a third party.
OTHER ELEMENTS OF PROOF

The existence of a common law marriage may be shown by facts other than general reputation. Where a woman has taken the surname of the man with whom she cohabits, the courts have found a general reputation necessary to imply a contract of marriage. The fact that a woman continues to use her maiden name after a purported common law marriage may negate a general reputation of the parties as husband and wife. If no contrary evidence is presented to refute an inference of marriage by cohabitation and repute, a claim of common law marriage may be sustained.

Situations may exist where one party mistakenly believes he or she is available to enter into a common law marriage but is legally prohibited from doing so because of a legal impediment such as an invalid prior divorce. Where the two parties in good faith agree to become husband and wife, hold themselves out as such and, in good faith, mistakenly believe neither is married, the intended marriage will be effective the moment the legal disability to marry no longer exists. Removal of a disability to be married may also create a common law marriage where the parties to an illicit relationship consent to be married and evidence of cohabitation and repute as husband and wife is established after the disability is removed.

Common law marriages also have been found to exist where previously married and divorced spouses subsequently cohabit as husband and wife. A lesser degree of proof may be required in this instance.

Some factors that might be considered proof of the existence of a common law marriage include the following:

1. introduction of each other to neighbors, friends, acquaintances or business partners as husband and wife;
2. cohabitation of the parties as husband and wife;
3. maintenance of joint accounts;
4. purchase and joint ownership of property;
5. mutual financial support of each other;
6. registration as husband and wife on applications, leases, contract forms and hotel registers;
7. use of the man’s surname by the woman; and
8. filing of joint tax returns.

CONCLUSION

Once a common law marriage is established, to terminate the relationship the parties must conform to the requirements of the Uniform Dissolution of Marriage Act in Colorado. In addition, the benefits received by one party as the legal spouse of another must also be applied without discrimination to a common law spouse. Therefore, practitioners should advise clients that when parties do not intend for a marriage to exist, they should clearly make such information known to the general public. Counsel also may want to recommend that the parties sign a cohabitation agreement.