

## **COMMON-LAW MARRIAGE IN COLORADO**

**By Timothy R.J. Mehrtens**

Colorado's history with common-law marriage can be traced back to 1897, where a Court of Appeals case first mentioned the concept. *Taylor v. Taylor*, 50 P. 1040 (Colo. App. 1897). However, it was not until a 1907 Colorado Supreme Court case that common-law marriage was officially recognized as a legitimate means to establish a marriage in Colorado. *Klipfels Estate v. Klipfel*, 92 P. 26 (Colo. 1907). Colorado's hallmark common-law marriage case did not arise until 1987, and, oddly, in a criminal matter. Defining common-law marriage in Colorado as we know it today, *People v. Lucero*, establish that common-law marriage requires "the mutual consent or agreement of the parties to be husband and wife, followed by a mutual and open assumption of a marital relationship." 747 P.2d 660, (Colo. 1987).

There are a number of myths and old wives' tales that surround people's beliefs as to how a common-law marriage can be established in Colorado. Some of those, but not all, inclusively fall into the following areas:

- "If I live with somebody for six months, I am common-law married;"
- "If I move to a residence and begin living with them, I am common-law married;"
- "If we have a child together, we are married."

These three beliefs may be factors to be considered in a court's determination of whether a couple is common-law married; however, they do not conclusively make a common-law marriage. As stated in *People v. Lucero*, in order for a court to find a common-law marriage, it must find a mutual consent or agreement of the parties that can either be explicit or implicit and there must be a holding out to the community-at-large that the parties are married to one another. The concept of holding one's self out as a married couple cannot be unilateral: both parties must participate in the community-at-large, such as friends, family, and third parties (like life insurance companies and health insurance companies).

In short, common-law-marriage in Colorado is fact based. To establish a common-law-marriage to the satisfaction of the Court, a significant amount evidence needs to be provided to establish the elements of agreement to be married and a holding out to the community-at-large.

Litvak Litvak Mehrtens and Carlton, P.C. have significant experience in handling cases involving proving common-law-marriage and defending against a claim of common-law marriage. If you have questions regarding common-law-marriage, please call for a consultation.