



STATE BAR OF MONTANA

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LEGISLATIVE JUDICIARY
Exhibit No. 4
Date 3-13-07
Bill No. HB 361

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MEMO TO: Legislative Committee Members

**FROM: Marie Connolly, State Bar Staff and
Program Director for Lawyer Referral Service**

DATE: March 12, 2007

RE: MARRIAGE BY PROXY LAWS OF MONTANA

NOTE: This Memo is informational only and is not intended to express an opinion on behalf of the State Bar of Montana as to the current or any proposed amendments to the proxy marriage laws. However, the State Bar operates the "Lawyer Referral and Information Service" which receives phone calls and e-mails from parties interested in retaining lawyers to assist them with proxy marriages. The purpose of this Memo is to inform legislators who should be aware of how these laws are currently being implemented both inside and outside the State of Montana.

A **proxy marriage** is a marriage in which either the bride or the groom is not physically present for the wedding. During the solemnization of the marriage, based upon a power of attorney, a stand-in, or proxy, acts on behalf of one of the parties. If neither party is present, it is called a **Double-proxy Marriage**. Proxy marriages are illegal in all US states except California, Colorado, Texas and Montana. Montana is the only state that allows double-proxy marriage. Not all states fully recognize proxy marriages, but legal precedent dictates that the marriage is presumed valid if it is valid in the state or country that performs the ceremony. A proxy marriage is generally not accepted under immigration laws unless it is subsequently consummated. However, a party of a unconsummated proxy marriage may enjoy immigration benefit as a fiancé if the opposite party is a U.S. citizen, such as applying for a K-1 visa.

Only a few states in the United States allow proxy marriages, but Montana, while not specifically allowing for a double proxy marriage, leaves the door open for either or both parties to be married through a representative agent. A summary of those laws are as follows:

Texas has affidavits of absence forms if one of the parties is not able to come in the office. There is also a Prison Proxy form for those who are incarcerated and unable to be present for ceremony.

Colorado also has an absentee application for its residents. If one party cannot appear due to illness, is out of state, or incarcerated, he or she must obtain an absentee application from the Clerk and Recorder's office. The party applying must bring the absentee application along with identification for the absent party. Applicants need not be residents of Colorado. Absentee application must be notarized.

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In California, proxy marriage was legalized in 2004 and is only available to members of Armed Forces currently deployed and unable to attend a service.

Montana In summary, § 40-1-301 MCA allows for solemnization by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or ... a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court. If a party to a marriage is unable to be present, he may authorize a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

Currently, the law is being interpreted differently by clerks and judges across the State, some of whom assist in proxy marriages and others who choose not to. The law allowing for proxy marriages has been on the books for decades, but not widely known or used until recently. The issue of proxy marriages has become more widely known thanks to the internet and the number of active duty military currently serving overseas. We've referred several people to volunteer attorneys for the LAMP (Legal Assistance to Military Personnel) Program who wanted to take advantage of this law and where at least one of the parties involved included an active duty soldier. For that reason, it could be argued that the Montana law is serving a legitimate and helpful purpose, although as you'll see from examples of some of the e-mail requests received by the Montana Bar, this law is quickly creating a cottage industry offering internet marriages in Montana:

Dear Sir/Madam,

I found an article over the web published in Montana Lawyer Magazine in August 2004 in which Montana is referred to as the only US state where double proxy marriage is legal. This e-mail was given as a reference at the end of the article.

Our Tel-Aviv based firm specializes in family law. Civil marriage does not exist in Israel and we get regular enquiries about the possibility of legal proxy marriage, and are always looking for better options.

Would you kindly confirm that double proxy marriage is legal in Montana and state whether there are any citizenship as well as residency requirements. In particular, could an Israeli citizen and a non-US citizen living in Israel marry in a double proxy marriage in Montana? Could an American citizen who also has Israeli citizenship marry someone who is neither an Israeli or American citizen in Montana in a double proxy marriage?

If there are any contacts in Montana that you could recommend so that we can explore the possibility of working together on this, I would appreciate it. Our contact details are above.

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Yours sincerely,

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www.inheritance-law.co.il

From: Naed Strenner [mailto:under_achiever42@hotmail.com]
Sent: Thursday, February 02, 2006 8:44 AM
To: mailbox@montanabar.org
Cc: under_achiever42@hotmail.com
Subject: Proxy marriage

Dear Sirs,

I was wondering if you would be able to point me in the right direction regarding an attorney the does proxy marriages. My wife to be is Chinese and I'm an American living in China. We have no future plans of ever going to the U.S. to live.

Thank you. Naed

Hello,

I am a Soldier in the U.S. Army deployed to Iraq. My fiancée and I would like to get married but she is in GA where they do not allow proxy marriages. I am trying to find an inexpensive lawyer or firm that can do this for us. The only place I have found is S&B Inc and they charge \$900. My fiancée will not let me spend that much. Can you assist me in finding someone who can do this for less?

Thank you for your assistance,
Terry Chapman
Sergeant, U.S. Army

Finally, there are internet services out there offering proxy marriage assistance and others that are just selling the forms without any oversight at all. When searching the internet using the search words 'double proxy marriage Montana', 169,000 sites come up with several offering 'insta-marriages' that have just appeared in the past few months ...

www.marriagebyproxy.com

http://marriagetogo.com/text_content_page2.html

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<http://www.weddingvendors.com/marriage-license-laws/united-states/montana/http://www.nawoonline.com/marriagelaws/montana.htm>

<http://www.montanabride.com/montana%20marriage%20laws.htm>

<http://marriages.itgo.com/>

[Green Card Through Marriage - Easily Apply Online-http://usimmigration.visapro.com/Marriage-US-Citizen.asp](http://usimmigration.visapro.com/Marriage-US-Citizen.asp)

[AAA Fast Quick Proxy Marriage Weddings](#)

[ABC News: Marine To Marry Fiancee in Videoconference Wedding](#)

I would be happy to provide whatever additional information or assistance is requested and can be reached by e-mail at mconnolly@montanabar.org or by phone at 447-2204.