

LIVING TOGETHER CONTRACTS: Things to Consider When Living Together

For couples in Washington who either cannot or choose not to marry or to register with the state as domestic partners, there are many things to consider regarding how to organize and document your relationship.



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When two people get married, state and federal law automatically grant rights and impose obligations on each partner. In Washington, same-sex couples and couples where one partner is 62 or older may also register with the state as domestic partners, which provides them with almost all of the same rights and obligations under state law as married spouses. But when a couple is not married or in a state registered domestic partnership, the law generally makes no provision for whether or how that couple will share their property, debts, or other responsibilities.

If you are in a committed relationship but are not married or in a state registered domestic partnership, you should consider drafting a living together contract (also referred to as a domestic partnership agreement) that spells out the contractual legal rights and responsibilities you and your partner want to have to each other. This type of document can help you clarify property ownership as well as help you determine how to divide your property and debt in the event you and your partner end your relationship.

While this memo provides you with basic information about living together contracts, we strongly recommend that you work with a qualified family law attorney who is familiar with these types of issues when drafting such an agreement. You may call the Legal Voice information line for referrals to attorneys and other legal services.

What is a "Living Together Contract"?

A "Living Together Contract" ("LTC") is a contractual agreement between partners in a committed relationship who are not married or in a state registered domestic partnership. It spells out how the couple wants to share their property, their debt and other responsibilities within the relationship. It is a way of memorializing (writing down) mutual expectations and understandings regarding the relationship.

Do I need an LTC?

The main purpose of an LTC is to establish how you will own property and divide debts during your relationship. As a result, an LTC is a good idea for couples in a long-term committed relationship; where there are significant financial differences between you and your partner (for example, one partner earns a lot more income than the other, or one partner entered the relationship with a lot of debt); or if you and your partner are planning to mix your assets or share expenses. By comparison, an LTC may not be necessary where you and your partner are in a casual relationship and you do not share your money/income.

Even if you do not have significant assets or you both plan on keeping your finances separate, you may still want to use an LTC to reflect how you plan to pay day-to-day expenses and divide day-to-day responsibilities.

Do we need to do an LTC if we have registered as domestic partners under Washington State's Domestic Partnership Registry?

You do not need an LTC to establish your rights and obligations to each other under Washington law if you register as domestic partners with the state. Registered domestic partners in Washington now have almost all of the same rights and obligations under state law as married spouses. For example, registered domestic partners have the same right as married spouses to a fair and equitable division of property if they end their relationship.

But if you and your partner plan to leave Washington, you may want to consider doing an LTC. This is because many other states do not legally recognize Washington registered domestic partnerships.

When should we draft an LTC?

It is important to put these protections into place early on, while your relationship is solid and intact. Discussing these issues at the beginning of a relationship or when you are happily living together may seem uncomfortable and unnecessary. But it is much easier to talk about these issues and reach a mutual agreement while you are both content with one another, rather than at a point when your relationship is strained and possibly ending.

What types of information should we include in an LTC?

If you have decided that you want a living together contract, the next thing to consider is what information you should include in this document. An LTC can be comprehensive, covering every aspect of your finances and the division of responsibility within your relationship; or it can be very specific, limited to just a few key issues, like the purchase of a new house or other large expense.

What are some of the specific issues we should consider including in a Living Together Contract?

The following is a list of things you may want to address in your LTC.

INCOME

You should include how you intend to deal with any income that either of you earn while living together. Is your salary your individual income or do you intend to share it with your partner? If

you intend to share it, does it belong in equal shares to both of you? What about income you receive from other sources?

PROPERTY AND OTHER ASSETS

You should make your best effort to address all property and assets owned by you and your partner. There are several different types of property/assets that you should consider and address, including:

- Property owned by each partner before you started your relationship and began living together.
- Property inherited or received as a gift by one or both partners during the relationship.
- Property bought during the relationship. This property should be further divided into several categories, such as:
 - Property purchased by one partner that he or she intends to own individually.
 - Property purchased jointly by both partners where you intend to own the property equally (50/50).
 - Property purchased jointly by both partners where you intend to own the property according to your actual contribution to the purchase price. For example, if you and your partner together purchase a microwave for \$100, and you contributed \$75 and your partner contributed \$25, relative ownership would be 75% by you and 25% by your partner.
 - Property purchased by one partner, but the other partner later contributed to it. For example, if your partner purchases a house with his or her savings or inheritance, but you agree to contribute a certain amount of time, labor and resources to improving the house, you and your partner should document in your LTC your understanding regarding each person's interest in the house. Will your partner continue to be the sole owner, or will you build "sweat equity" in the house through your labor? You should spell this out in your LTC.

DEBT

In addition to considering how you intend to own your property and divide your income/assets, you and your partner should also document your understanding regarding debts and expenses. As with property, there are several classifications of debts and expenses that you should address:

- Debts or other financial obligations (child support, car payments, credit card payments, etc.) incurred by one partner before you started your relationship and began living together.
- Debts incurred by one partner individually during the relationship.
- Debts incurred jointly during the relationship. Again, you will want to spell out in your LTC which partner is responsible for what proportion of any debts during the relationship.

BANK ACCOUNTS

Your LTC may address whether you and your partner will maintain separate bank accounts or whether you intend to put all of your money into one joint account. Be aware, if you decide to open a joint account, either partner can withdraw all of the funds from the account without the

knowledge or consent of the other partner. So before opening a joint account, you should consider whether you trust your partner with your money and whether you two think alike about spending and saving money.

CREDIT CARDS

Your LTC may spell out how you intend to hold credit card accounts (individually or jointly), and which partner is responsible for which expenses and charges. As with joint bank accounts, each partner to a joint credit card account is personally responsible for 100% of the charges incurred on the card. So, for example, if your partner runs up a bill of \$1000 without telling you, the credit card company can hold you responsible for repaying the entire amount, even though you did not participate in or authorize the purchases.

GENERAL EXPENSES

You may also want to include some of the following:

- Who will pay what living expenses such as utilities, groceries, homeowners or rental insurance?
- Who is responsible for paying what personal expenses such as medical/dental, car insurance, and clothing?
- If you and your partner live in a rental apartment or house, you may use your LTC to spell out your understanding regarding the rental. Decide if both of your names will appear on the lease, or if just one of you is renting the apartment; how you intend to divide responsibility for the rental payment and any repairs; and which partner, if either, will retain the rental in case of a breakup.¹

Will an LTC help us if we end our relationship?

Yes, if you include information in your agreement spelling out how you and your partner intend to divide up your assets and debts in the case of a breakup. Discussing these issues at the beginning of a relationship or when you are happily living together may seem uncomfortable and unnecessary. But it is much easier to talk about these issues and reach a mutual agreement while you are both content with one another, rather than at a point when your relationship is strained and possibly ending.

Should we include language in the agreement that addresses what happens if we break-up?

Yes. This is sometimes the main reason for having an LTC. Each section of your LTC should have language explaining how you will divide your assets/debts in the case of a break up. For example, how will you divide the money in any joint bank accounts? How will you divide the charges on any joint credit cards? By specifying how you intend to divide your property and debts at the end of your relationship, you can save yourself a lot of confusion and disagreement during an already difficult time.

¹ Before one partner moves into the other partner's rental, be sure to review the lease/rental agreement. The lease/rental agreement usually requires that you notify your landlord before another person may move into the rental. It may also allow the landlord to demand changes to the lease, such as increased rent or security deposit. It may even authorize the landlord to terminate the lease.

Your LTC should also include how you and your partner intend to handle any disagreements, about matters addressed in your LTC. One option is to ask a court to resolve any disagreements, but the court process is quite uncertain and is usually costly and time-consuming. It might cost several thousand dollars and take many months or even years to get a decision from a court resolving a dispute between you and your partner. You may want to consider including a provision in your agreement stating that both of you agree to use an alternative dispute resolution mechanism, like mediation, to help you resolve your disputes.

Are any formal procedures necessary to ensure that our agreement is valid?

Both you and your partner must sign and date your LTC. If your LTC covers real estate, you should also have it notarized.

Once both of you have signed it, make sure that both of you have a signed copy. In Washington, photocopied signatures on LTC's are as effective as original signatures.

What if we don't have an LTC and our relationship is ending. Can the courts help us divide our property and debt?

Yes, however the court must first decide whether you are in a marriage-like relationship before it will determine how to divide your property and debts. Courts sometimes call a marriage-like relationship a "meretricious relationship" or a "committed intimate relationship." While this type of relationship does not allow a couple to have all the legal benefits and responsibilities of a marriage, it does give couples a way to have property that they acquired during their relationship divided. However, filing a court action is expensive and it can take many months to have a judge hear your case.

Can we modify our LTC once we've signed it?

Yes. It is best if your LTC makes clear that it reflects everything you and your partner have agreed to regarding your living together and that it replaces any and all earlier agreements. A common example of such a provision reads: "This agreement contains the entire understanding between the parties with regard to the matters addressed herein, and cannot be modified except in writing signed by both parties." The reason for including this kind of language is to make sure that one partner doesn't, at some point down the road, claim that the two of you verbally agreed to change the terms of the written contract.

If, however, you and your partner do decide that you want to change some aspect of the agreement, you should change the written LTC as soon as possible. Do not just orally agree to a change. This will only create confusion and lead to potential disputes down the road. Be sure to put the change in writing and sign it.

Also, when you modify your LTC, be sure to say whether the modification replaces your original agreement, or just changes particular parts of the original agreement. If you and your partner make major changes, it is probably worth starting from scratch with a new written document. You can copy any provisions from your original agreement into your new agreement.

Are there any things that my partner and I should not include in our LTC?

Your LTC should not include any discussion of your sexual relationship or sexual responsibilities to one another. For example, even if you have agreed with your partner that you will do the dishes every night in exchange for sexual favors on Sunday mornings, do not include that in your written agreement. A reviewing court could void your entire agreement if you include any language that could be interpreted as an exchange of sex for some other benefit. You should also not include any requirement that your partner be “faithful” to you. Doing that could also result in a court voiding your agreement.

Also, it is probably not appropriate to include non-financial, personal obligations, like who will clean the house or take the kids to school. If you do want to document these personal commitments, do this in a separate written agreement. There are several reasons not to include both your financial arrangements and personal arrangements in one contract. First, if you and your partner do get into a dispute regarding the division of your assets or other financial obligations, you may need to file your agreement in court. In that case, everything that is included in the agreement will become public record and can be reviewed by anyone. To protect your privacy, it is worth using a separate LTC to cover personal issues. Second, if you do find yourself in court arguing over a financial provision in your LTC, you do not want the court to be distracted or confused by the personal obligation provisions in your contract.

What other documents can I use to give my partner access to my finances?

You can complete a "Power of Attorney for Finances" giving your partner access to your income and assets, (bank accounts, stock certificates, property deeds, etc). A power of attorney allows your partner - as your “attorney in fact” - to conduct financial matters on your behalf with third parties, such as your bank, mortgage lender, utility company, etc. Like an LTC, a Power of Attorney can be comprehensive, covering all of your financial matters, or it can be narrow, limited to one or a few matters.

It is important to specify when your Power of Attorney is effective (when your partner has this power). Also specify when it is revoked or no long effective. For example, you may specify that your Power of Attorney is effective immediately with no expiration date. Alternatively, you may decide that you want your Power of Attorney to be effective only when you are incapacitated. Also, you may decide that you want it only to be effective for a year or two.

The law allows third parties (other people, for example bank or store employees) to rely on the actions and decisions of your partner acting under a Power of Attorney. This means that you will be bound by whatever your partner does while acting under your Power of Attorney. As a result, it is critical that you carefully consider just how much power you want to give your partner regarding your finances.

Because a Power of Attorney authorizes your partner to act on your behalf, a Power of Attorney is not appropriate in a short term or uncommitted relationship. Even if you and your partner have been together for years, a Power of Attorney still may not be right for you. You and your partner may instead decide to have one or more joint bank accounts from which you pay your joint expenses.

We therefore recommend you consult with a qualified attorney to explain what you want to accomplish and what legal documents will be most appropriate for you and your partner.

Are there any potential tax consequences to sharing my assets with my partner?

Sharing your assets with your partner might have a major effect on your taxes. This could happen whether or not you decide to use an LTC.

Again, we strongly recommend that you work with a knowledgeable attorney to help you determine the best way to purchase, hold, or transfer your property for tax purposes.

Are there any potential effects on public benefits if we share assets?

Yes. Sharing assets will definitely affect some public benefits, such as TANF, and may affect others, like SSI and SSDI.

RESOURCES

- Related Legal Voice Publications:

“Questions and Answers regarding Washington State’s Registered Domestic Partnership Law”
“Mediation: Should I Use It?”

- LGBT Legal Clinic, Seattle

Call 206-235-7235 (Tuesdays, 12 to 3 PM) to make an appointment)

For referral to LGBT-friendly attorneys:

- Legal Voice Information and Referral Line: (206) 621-7691, Toll-free: 1-866-259-7720
- QLaw <http://qlaw.roundtablelive.org/legalresources>, click on Member directory

- Self Help materials on www.washingtonlawhelp.org, click on Family Law, then click on Unmarried couples/same-sex couples:

- “Washington Property Law for Unmarried Couples Who Are Separating”
- “Filing a Complaint to Divide Property and Debts of an Unmarried Couple”

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