

Questions and Answers: Washington's Domestic Partnership Law



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This memo gives general information about some of the legal rights of registered domestic partners in Washington. It also tells you how to register. It is a good idea to talk to a lawyer about whether registering is right for you.

Registered domestic partners in Washington now have almost all of the same rights and responsibilities under state law as married couples. However, a registered domestic partnership is not the same as a marriage.

Who can register as domestic partners?

Same-sex couples, and different-sex couples where one person is at least 62 years old, may register if:

- Both partners are at least 18 years old;
- They are both legally capable of consenting to the domestic partnership;
- Neither partner is already married or in a domestic partnership;
- They are not too closely related by blood; and
- They are living together.

Why should we consider registering as domestic partners?

Unfortunately, Washington State does not allow same-sex couples to marry legally. But registering as domestic partners is a way for same-sex couples to get almost all of the legal rights and responsibilities married couples get under state law.

If you are a different-sex couple and one of you is 62 or older, you may have reasons to consider registering as domestic partners. For example, one of you might lose pension benefits or other benefits if you got married.

What benefits and protections will we get if we register?

There are about 500 different Washington laws that provide rights or responsibilities to registered domestic partners. We can't list them all here, but some of the most important are:

- Right to visit your partner in the hospital.
- Right to make health care decisions for your partner if she or he is unable to do so.

- Right to make funeral arrangements for your partner; to approve an autopsy and to get copies of the autopsy; to approve organ donation; to be named on your partner's death certificate; and to remove your partner's remains from a cemetery plot.
- Right to be buried in a burial plot together if the plot has more than one space.
- Right of a surviving partner to inherit some property or assets if there is no will. (You should still have a will to make sure that your partner receives all or some of your assets.)
- Right to use any paid sick leave to take time off from work to care for a seriously ill partner. You may also take unpaid leave if your job is covered by the Family Leave Act.¹
- Right to workers' compensation benefits if one partner dies in a work-related incident.
- Right to community property. All property you buy with money earned during the domestic partnership (real estate, cars, furniture, etc.) belongs equally to both of you.
- Responsibility for community debts. Both you and your partner may be responsible for debts that either of you incur after you register as domestic partners.
- Right to seek maintenance (alimony) if you end your domestic partnership.

Is there anything married couples get under Washington state law that registered domestic partners do not?

Yes. Some rights and responsibilities for domestic partners will not go into effect until 2014. Many of these concern pension and survivor benefits for domestic partners of government employees. Also, the parts of the law that provide equal treatment for domestic partners under the state estate tax and Basic Health Plan have been delayed until 2014.

It is also important to remember that registering as domestic partners in Washington does not give you the same rights and responsibilities under **federal** law as married, different-sex couples.

Will registering as domestic partners affect how we must file our federal income taxes?

Yes, in most cases.

The Internal Revenue Service requires registered domestic partners in Washington to report half of the couple's "community income" on each partner's individual tax return. This policy is sometimes called "income splitting."

¹ You may be eligible for unpaid leave under Washington's Family Leave Act if: (1) your employer has at least 50 employees within 75 miles of your worksite; (2) you have worked for your employer for at least 12 months (those months do not need to be consecutive); and (3) you worked at least 1,250 hours for the employer in the past 12 months.

The income splitting policy is based on the fact that Washington's community property laws apply to registered domestic partners. With some exceptions, community property laws normally mean that income earned by either registered domestic partner is treated as community income.

The income splitting policy may not apply if you and your partner have a legally enforceable agreement that makes it clear you both do not want to have community property laws apply to your relationship. You should consult an attorney if you are interested in creating this kind of legal agreement.

In many cases, the income splitting policy will lower the total amount of federal taxes that a couple must pay. However, this policy can make filing federal taxes more complicated for registered domestic partners. It is a good idea to consult a tax professional who is knowledgeable about how registered domestic partners are treated under federal tax law.

How do we register?

You must register with the Secretary of State's office. Both of you must sign a "Declaration of State Registered Domestic Partnership" form in front of a public notary, and pay a \$50 filing fee.

You can mail the signed and notarized form with the filing fee, or hand deliver your forms to the Secretary of State's Office in Olympia, Washington. These forms are available from the Secretary of State's website or Olympia office, and from county court clerks' offices.

Even if we register as domestic partners, is there anything else we should do?

Yes. You and your partner should prepare important legal documents such as a will, durable power of attorney, and health care directive even if you decide to register as domestic partners. It is especially important to prepare these documents to protect your rights if you travel to a state that does not recognize domestic partnerships.

When you travel outside of Washington, you should always carry these documents with you to make sure your wishes will be honored no matter where you are.

Are there any reasons why we shouldn't register as domestic partners?

Yes. You should know that registering as domestic partners could:

- Have negative immigration consequences if one of you is not a U.S. citizen. You should consult with an immigration attorney before registering your domestic partnership, as the treatment of same-sex couples under immigration law is rapidly changing.
- Affect your ability to adopt a child from another state or country that doesn't approve of adoptions by same-sex couples.
- Affect your eligibility for public assistance.

We were legally married outside of Washington. Do we still need to register as domestic partners in Washington?

Probably not, if you are a same-sex couple. Under Washington law, same-sex couples who are legally married in another state or country should be treated the same as registered domestic partners when the couple is in Washington. That should mean that same-sex couples who are legally married in another state or country do not need to register as domestic partners in Washington in order to have the rights and responsibilities of registered domestic partners.

However, this provision of the law has not been interpreted by courts. As a result, you may still want to consider registering as domestic partners in Washington to help avoid confusion about your legal rights.

We entered a civil union or domestic partnership in another state or country. Do we have to register again in Washington to receive protections under Washington’s law?

Probably not, but you still may want to register as domestic partners in Washington. The domestic partnership law provides that Washington will recognize domestic partnerships or civil unions from other jurisdictions that are “substantially equivalent” to a domestic partnership in Washington. However, this provision of the law has not been interpreted by courts. As a result, you may want to consider registering as domestic partners in Washington to be sure that your rights will be protected.

We registered as domestic partners with the City of Seattle. Do we need to register with the state if we want to receive protections under the state law?

Yes. But you may still want to register with the City to get possible benefits from your employer that you will not get from the state law.

If we register as domestic partners in Washington, will other states recognize our relationship?

Some states will, but many will not. Therefore, it is important that both of you prepare wills, health care directives, durable powers of attorney, and other legal documents, and take them with you when you travel outside of Washington.

We’re planning to have children. How does the domestic partnership law affect our rights as parents?

If you are a same-sex couple and you are planning to have children, it is always a good idea to consult with a lawyer beforehand. The law regarding your parental rights can be complicated, and it is very important to take legal steps to protect your relationship with your children.

If you and your partner have a child while you are registered domestic partners, both of you should be legally presumed to be parents of the child under Washington law. But it is still important for a parent who is not biologically related to the child to adopt the child through a court process called a second-parent adoption. A second-parent adoption is especially important

to make sure that both parents' rights are protected if you move or travel to another state that may not recognize your parental rights.

If you and your registered domestic partner adopt a child who is not biologically related to either one of you, both of you must agree to the adoption. If you are thinking of adopting a child from another country, keep in mind that not all countries allow same-sex couples to adopt.

Is my employer required to offer health insurance to my domestic partner?

Maybe. It depends on how your employer offers health insurance benefits to its employees.

The first question to ask is whether your employer's health plan offers benefits to spouses of employees. If the plan does not cover spouses, then it does not have to cover domestic partners.

If your employer's health plan does cover spouses, in most cases the law requires the health plan to offer equal coverage to registered domestic partners if the health plan is issued in Washington. However, the law may not require coverage of domestic partners if an employer's health plan is "self-insured." A health plan is self-insured if the employer has created a fund to pay health care costs, instead of buying a health plan from a private insurance company.

If you work for a state or local government in Washington State, your employer must offer the same coverage to your partner that it offers to spouses. Federal employees, however, do not get coverage for partners.

Even if your employer is not required to provide coverage to domestic partners of employees, employers can choose to offer such benefits voluntarily.

NOTE: An employer's contribution to the health insurance benefits of an employee's domestic partner will be seen by the IRS as taxable income to the employee.

Will people be able to see that we registered as domestic partners?

Yes. Domestic partner registrations are public records. The Washington Secretary of State's website lets anyone search for names in the state's domestic partnership registry.

What if we end our relationship?

To end a domestic partnership, you must follow the same procedures as ending a marriage. That means filing a dissolution action in state Superior Court and getting a court order dissolving your domestic partnership. If you and your partner have children together, the court will also be able to set a parenting plan and child support for the children.

Is there anything else we should do if we end our relationship?

Yes. You should update all legal documents – your will, for example – that name your partner.

Resources:

Related Legal Voice publications, www.legalvoice.org

Basic Estate Planning for Unmarried Couples
Community Debt and Bankruptcy Issues
Legal Rights of Registered Domestic Partners in Washington State
Marriage and Transgender Couples
Family Leave Laws

Washington Secretary of State: www.sos.wa.gov; (360) 725-0377; Location: Dolliver Building
801 Capitol Way South, Olympia, WA; Mail: PO Box 40234, Olympia, WA, 98504-0234

Family Law Handbook: Understanding the legal implications of domestic partnerships and dissolution in Washington State. 2009, <http://www.courts.wa.gov/>, click on Resources, Publications and Reports, then under Resources, click on Family Law Handbook-Domestic Partners

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

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