

# Questions and Answers: Washington's Domestic Partnership Law



[www.legalvoice.org](http://www.legalvoice.org)

This memo gives general information about some of the legal rights of registered domestic partners in Washington. It also explains how the law is changing for registered domestic partners.

In 2012, Washington voters approved Referendum 74. This referendum allowed same-sex couples to legally marry in Washington. It also made important changes to Washington's domestic partnership law.

It is a good idea to talk to a lawyer if you have any questions about how the changes in the domestic partnership law have affected you and your partner.

## For Couples Who Are Already Registered

### How Did Referendum 74 Affect our Domestic Partnership?

It depends. If you and your partner were both under 64 years old on June 30, 2014, your domestic partnership was converted to a legal marriage on that day. That is because Referendum 74 phased out domestic partnerships, except for senior couples.

If *at least* one of you was 62 years old or older on June 30, 2014, your domestic partnership was unaffected by Referendum 74. The law made sure seniors still have the option of a domestic partnership because, for some older couples, getting re-married can mean a loss of social security or pension benefits. Many seniors rely on these benefits.

### Do We Need to Confirm that We Want to Keep Our Domestic Partnership As-Is?

No. Because you shared your date of birth when you registered as domestic partners, the State knew back in 2014 which domestic partnerships to convert to marriage and which to leave alone. However, you should carefully read any notices that you get from the Secretary of State's office about changes to the domestic partnership law and follow their instructions.

NOTE: If you have moved since you registered as domestic partners, you should share your new address with the Secretary of State's office so they can send you important notices. You can update your records by using the "Domestic Partnership Statement of Change" form that is available on the

Secretary of State's website. Contact information and web links for the Washington Secretary of State is listed under "Other Legal Resources" in Resources at the end of this memo.

### **If Our Domestic Partnership Converted to a Marriage, What Is the Legal Date of Our Marriage?**

The legal date of your marriage under Washington law will be the date of your original registered domestic partnership.

## **What to Know Before You Register**

### **Who Can Register as Domestic Partners?**

As of June 30, 2014, you can register as domestic partners in Washington state *only if*:

- You or your partner is at least 62 years old;
- The other partner is at least 18 years old;
- You are both legally capable of consenting to the domestic partnership;
- Neither of you is already married or in a domestic partnership;
- You are not too closely related by blood; and
- You are living together.

Both same-sex couples and different-sex couples can register as domestic partners.

Domestic partnerships registered with the City of Seattle are discussed later in this memo under "Special Situations."

### **Why Should We Consider Registering as Domestic Partners?**

Registering as domestic partners is a way for couples to get all of the legal rights and responsibilities married couples get under *state* law. It is important to note that state-registered domestic partners do NOT get the same rights and responsibilities under *federal* law as married couples.

If one or both of you is 62 or older, you may have reasons to register as domestic partners instead of getting married. 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?**

State-registered domestic partners receive all the same benefits and protections as married couples do under Washington state law. There are about 500 different Washington laws that provide rights or responsibilities to married couples and 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 cannot.
- 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.)
- 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. See the Legal Voice publication *Family Leave Laws* listed in Resources below.
- 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. See the Northwest Justice Project's publication *Community Debt and Bankruptcy Issues* listed in Resources below.
- Right to seek maintenance (alimony) if you end your domestic partnership.

### **Will Federal Laws Apply to Our Domestic Partnership?**

State-registered domestic partners in Washington do NOT get any of the rights and responsibilities married couples get under federal law. It may change your federal taxes, however. See below.

### **Will Registering as Domestic Partners Change Our Federal Income Taxes?**

Yes, in most cases.

With some exceptions, Washington community property laws treat income earned by both domestic partners as community income. You must report half of your community income on each of your individual tax returns. This is sometimes called "income splitting."

You might not have to do this if you and your partner have a legal agreement that makes it clear you both do not want to have Washington community property laws apply to your relationship. You should talk to a lawyer if you want this kind of legal agreement.

In many cases, income splitting will lower the total amount of federal taxes that you have to pay. However, it can make filing federal taxes more complicated for you. It is a good idea to talk to a tax professional who has experience with domestic partnerships.

## **Will Other States Recognize Our Domestic Partnership?**

Some states will, but many will not. Therefore, as mentioned above, 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.

## **Are There Any Reasons Why We Should Not Register As Domestic Partners?**

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

- Put immigration status at risk if one of you is not a U.S. citizen. You should talk to an immigration lawyer before registering your domestic partnership, as immigration law is changing.
- Change your income-based public assistance benefits, like food stamps and utility assistance.

## **If We Have a Child, Will Domestic Partnership Affect Our Rights as Parents?**

If you and/or your partner give birth to a child while you are registered domestic partners or while you are married, both of you will be legally presumed to be parents of the child under Washington law. The same is true for married couples.

For same-sex domestic partners, there are things to consider. It is a good idea to talk to a lawyer about your legal rights as parents. The law can be complicated, and it is very important to take legal steps to protect your relationship with your children. For example, you might want to go through a court process called a second-parent adoption. A second-parent adoption can ensure that both parents' rights are protected if you move or travel to another state that may not recognize your parental rights. For more information, see the Legal Voice publication *Parenting Issues for Same-Sex Couples* listed in Resources at the end of this memo.

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

## **Does My Employer Have 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 health plan must offer equal coverage to registered domestic partners if the health plan is issued in Washington. However, domestic partners may not have to be included 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 domestic partner that it offers to married couples. Federal employees, however, do not get coverage for partners.

Even if your employer is not required to offer 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.

## **Registering**

### **How Do We Register as Domestic Partners with the State?**

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. You can get the forms from the Secretary of State's website or Olympia office, and from county court clerks' offices. See listing under "Other Legal Resources" in the Resources section below.

### **Is There Anything Else We Should Do?**

Yes. Even if you decide to register as domestic partners, you should prepare important legal documents such as a will, durable power of attorney, and health care directive. 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.

## Ending a Domestic Partnership

### How Do We End Our Domestic Partnership?

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. If you and/or your partner are pregnant at the time your domestic partnership is dissolved, the laws of parentage apply to you. See the Legal Voice memo *Pregnancy and Divorce* listed in Resources at the end of this memo.

### Is There Anything Else We Should Do?

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

## Special Situations

### We Are a Same-Sex Couple with a Legal Union from Outside Washington. Will Our Union Be Recognized in Washington?

Out-of-state marriages: Yes. If you were legally married in another state or country, your marriage will be recognized in Washington and everywhere else in the U.S.

Out-of-state civil unions and domestic partnerships: It depends. If your out-of-state civil union or domestic partnership gives you many of the same rights and responsibilities as marriage, then you have the same rights and responsibilities as married people while you are in Washington. However, if you and your partner move to Washington and live here for more than a year, you will have to register as domestic partners or get married if you want to continue to have these rights and responsibilities.

### We Registered as Domestic Partners with the City of Seattle. Do We Need to Get Married or Register as Domestic Partners with the State, Too?

If you want to have the same rights and responsibilities as marriage or state-registered domestic partnership, then yes, you must get married or register as domestic partners with the state. 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. See listing for Seattle Office of City Clerk under “Other Legal Resources” in Resources below.

## **We Already Had a Legal, Out-Of-State Marriage when We Registered as Domestic Partners in Washington. What Should We Do?**

Your out-of-state marriage became legally recognized in Washington on December 6, 2012. It will not be affected by the fact that you also registered as domestic partners in Washington. You do not need to do anything to dissolve your registered domestic partnership in this situation.

However, it is not clear at this point how your registered domestic partnership in Washington will be treated. It is possible that your Washington registered domestic partnership was automatically *dissolved* when your out-of-state marriage became recognized in Washington. It is also possible that your registered domestic partnership was automatically *converted* into a Washington marriage on June 30, 2014 (unless one of you is 62 years old or older.) If your domestic partnership was *converted* to marriage, you might have marriage certificates from two different states. In either case, there may be questions about the legal date of your marriage under Washington law. See the information from the Washington Secretary of State's office, linked in Resources below, and talk to an experienced lawyer about your specific situation if you think this may be a problem for you.

## **Resources**

### Publications

- Related Legal Voice publications:  
Online: [www.legalvoice.org](http://www.legalvoice.org)
  - Click on "Family Law" for
    - *Basic Estate Planning for Unmarried Couples*
    - *Family Leave Laws*
    - *Parenting Issues for Same-Sex Couples*
  
  - Click on "Court Procedures & Lawyers" for
    - *How to Find a Lawyer and Other Legal Resources in Washington State*
    - *Working With a Lawyer*
  
  - Click on "Senior Legal Wellness" for
    - *Handbook for Washington Seniors: Legal Rights and Resources*
  
- Related Northwest Justice Project publications:  
Online: [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org)
  - *Community Debt and Bankruptcy Issues*
  - *Living Together Contracts*
  - *Washington Property Law for Unmarried Couples Who Are Separating*

- *Family Law Handbook Domestic Partnership Edition* (2014), by Washington Courts  
Online: [www.courts.wa.gov](http://www.courts.wa.gov), click on “Resources” (located at upper right on a desktop computer)

#### Other Legal Resources

- LGBT Legal Clinic, Seattle: The clinic is held on the 3rd Thursday of each month from 7:00 p.m. to 9:00 p.m. Call to make an appointment.  
By phone: 206-235-7235  
Online: [www qlawfoundation.org/lgbtq-legal-clinic.html](http://www qlawfoundation.org/lgbtq-legal-clinic.html)
- QLaw: For referral to LGBT-friendly lawyers:  
Online: [www qlaw.roundtablelive.org/directory](http://www qlaw.roundtablelive.org/directory)
- Seattle Office of the City Clerk: For information about Seattle’s Domestic Partnership registration  
By phone: 206-684-8344  
By mail/In person: 600 4<sup>th</sup> Ave, 3<sup>rd</sup> Floor, Seattle, WA 98104  
By email: [clerk@seattle.gov](mailto:clerk@seattle.gov)  
Online: [www.seattle.gov/cityclerk/services-and-programs/domestic-partnership-registration](http://www.seattle.gov/cityclerk/services-and-programs/domestic-partnership-registration)
- Washington Secretary of State: Information about State Registered Domestic Partnerships and same-sex marriage. Links to forms at the right of the page.  
By phone: 360-725-0377  
By mail: P.O. Box 40234, Olympia, WA, 98504-0234  
Location: Dolliver Building, 801 Capitol Way South, Olympia, WA  
By email: [corps@sos.wa.gov](mailto:corps@sos.wa.gov)  
Online: [www.sos.wa.gov/corps/domesticpartnerships/](http://www.sos.wa.gov/corps/domesticpartnerships/)
- Washington State Courts: To find your county court clerk’s office.  
Online at: [www.courts.wa.gov/court\\_dir/?fa=court\\_dir.countycityref](http://www.courts.wa.gov/court_dir/?fa=court_dir.countycityref)

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of March 2016.

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