

# THE LEGAL RIGHTS OF REGISTERED DOMESTIC PARTNERS IN WASHINGTON STATE

## Introduction

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If you are in a committed same-sex relationship in Washington, or a committed different-sex relationship with at least one of you aged 62 years or older, it may be important for you to register with the state as domestic partners.

This publication explains some of the legal rights registered domestic partners receive under the law that took effect in July 2007. It also explains the legal differences between registering as domestic partners and getting married, who can register and how to do so. This publication also explains some of the reasons couples may not want to register as domestic partners to help you consider whether registering is the best way to protect your family. It also answers common questions that many people have about domestic partnership status under Washington law.

**Please note:** This publication is intended to provide general information, not legal advice. Registering as domestic partners with the State of Washington gives partners important rights and responsibilities, and will provide even more if the law expands as expected. However, most registered domestic partners still need the protections offered by wills, powers of attorney, second-parent adoptions or other legal planning. You should consult an attorney for advice about the best ways to protect your family and ensure that your wishes are respected in the event of an emergency.

For more information, contact Lambda Legal's Help Desk toll-free at 1-866-542-8336 or at [LegalHelpDesk@lambdalegal.org](mailto:LegalHelpDesk@lambdalegal.org). For help finding an attorney contact Lambda Legal's Help Desk, or search Q-Law's online attorney directory through [www.q-law.org](http://www.q-law.org). You can find a list of questions to help you choose a lawyer on Lambda Legal's website at <http://www.lambdalegal.org/help/suggested-questions-to.html>.

Washington is one of several states in the country to offer a form of legal relationship recognition for same-sex couples. While a few states offer same-sex couples comprehensive state law protection through civil unions or a broad domestic partnership law, and a few recognize marriages between same-sex couples under certain circumstances, Washington now has joined the ranks of states offering important but lesser protection through a state domestic partnership registry that gives same-sex couples the right to receive some, though not all, of the protections that married couples receive. Although the rights are far less than those that come with marriage, registration as domestic partners can provide some important protections for you and your partner in times of family crisis.

It is important to consider carefully whether registering as domestic partners is the best decision for your family. The law is expected to broaden significantly in the near future, so make sure you obtain the most current information about the law when making your decision, and then do your best to stay informed as the legal landscape for same-sex couples in Washington continues to evolve.

## **Why Is It Important For Committed Same-Sex Couples To Register With The State As Domestic Partners?**

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Many lesbian and gay couples in Washington celebrate religious weddings or public commitment ceremonies. Nevertheless, those in committed, same-sex relationships still are not allowed to marry in this state. As a result, lesbian and gay couples are denied access to many of the rights and responsibilities that those heterosexual couples who can marry take for granted. The consequences of this inequality often are devastating. Lesbians and gay men have been prevented from seeing their partners in the hospital and excluded from decision making when their partners were sick. If a partner was killed, the survivor could not bring a wrongful death claim. Although the domestic partnership law offers far less than the full protections marriage provides, it alleviates a number of these terrible harms. The law helps couples **ONLY** if they register with the State of Washington as domestic partners, however. Registration with an employer or local government does **NOT** count for state law purposes. Thus, if you do not register with the State, you and your partner run the risk of being treated legally as nothing more than unrelated roommates with respect to the matters discussed below.

Registration is easy, can secure important rights, and may be the only way to protect your family from legal tragedies that can occur in the absence of registration. Registering is not the right step for every couple, but it is an important option for every same-sex couple to consider.

## **What Rights Do Registered Domestic Partners Have In Washington?**

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### **Rights in Times of Family Crisis**

**Hospital Visitation** – Registered domestic partners have the same rights as legally married spouses to visit one another in the hospital.

**Medical Decision Making** – Registered domestic partners have the same right as spouses to make health care decisions for each other if one becomes incapacitated.

**Health Care Information** – Registered domestic partners have the same right as spouses to receive health care information about their partners from a medical provider in accordance with good medical practice.

**Rights After Death of a Partner** – If one registered domestic partner dies, the other has the right to authorize an autopsy, receive copies of the autopsy report, meet with the coroner to discuss the autopsy report, control the disposition of the remains when the deceased partner has not made pre-arrangements, consent to the removal of remains from a plot in a cemetery and make an anatomical gift. Registered domestic partners also have the right to administer a deceased partner's estate if the partner died without a will, or if the personal representative named in the will declined or was unable to administer the estate. A surviving registered domestic partner is listed on the death certificate of the deceased partner in the same way a spouse is listed.

**Compensation if a Partner is Killed** – If a person who is legally married is killed as the result of a wrongful act of another, that person's spouse can sue those responsible for "wrongful death" to recover damages for lost financial support and companionship. Registered domestic partners have the same legal right to sue for these losses.

**Right To Inherit Without a Will** – A will is a clear expression of intent that can help all surviving family members know exactly how a deceased person intended his or her property to be distributed upon death. While domestic partnership registration can provide important default instructions, it does not provide a substitute for the intentional directions given through a proper will, trust or other estate planning document. If a registered domestic partner dies without a will, however, the surviving registered partner can inherit some property of the estate in the same way as a spouse. Registration does not necessarily mean that the surviving partner will inherit the deceased partner's entire estate. It also is important to note that domestic partnership registration does not change the terms of a pre-existing will, nor provide a registered partner with any new or different rights to inherit under a will that his or her partner created before the couple registered. It is very important to consult with an attorney to make sure that any pre-

registration will be modified as necessary to reflect current wishes for the distribution of property.

**Burial As A Couple** – If one partner owns a burial plot with more than one space when a couple registers as domestic partners, registration allows the other partner to be buried in that plot with his or her partner. Partners also are entitled to inherit burial plots from each other. These rights are revoked if the domestic partnership is terminated before either partner dies.

**Revocation of Rights After Termination of Domestic Partnership** – Either or both registered partners may end a domestic partnership registration by filing a termination of domestic partnership form with the Secretary of State (see discussion below). Termination ends the legal rights and duties that registered partners have by virtue of the registration. Termination also automatically revokes legal rights either partner has given the other by certain means other than registration, which is done to help ensure that those rights remain consistent with the donor's intentions. These rights include: (1) the appointment of one domestic partner as the other's "attorney in fact" under a power of attorney; (2) provisions by one registered domestic partner that the other registered partner shall receive non-probate assets (such as money in a bank account or 401(k) retirement savings plan) upon the owning partner's death, although the grant of the non-probate assets will not be revoked automatically by termination of the partnership if an estate planning document (such as a will or trust) or a court order provides otherwise.

## **Employment Benefits for State Employees**

**Health Insurance Benefits** – Registered domestic partners of state and participating school district employees who receive health benefits through the Public Employment Benefits Board qualify for same-sex domestic partner health benefits. The 2007 domestic partnership law does not, however, cover retirement benefits for the registered domestic partners of these public employees.

## **What Rights and Responsibilities of Marriage Are Denied To Registered Domestic Partners In Washington?**

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Although registration as domestic partners gives couples many important protections, it is not equal to marriage and the law enacted in 2007 does not provide many of the most important rights and responsibilities given to different-sex couples under the marriage laws of Washington. It also does not provide ANY of the rights and duties of married spouses under federal law. The following is a short list of some of the important rights DENIED to registered domestic partners in Washington under the 2007 law.

**Community Property** – Married couples in Washington share ownership and control of property earned by either spouse during the marriage as “community property.” This means that married spouses each own one-half of the other’s earnings during marriage, and both are entitled to a fair and equitable distribution of the marital assets upon dissolution. Washington’s domestic partnership law does not currently provide community property rights to registered domestic partners, though that may change as the law continues to develop. At the same time, Washington courts have found that promises by same-sex partners to care for each other financially CAN be legally enforceable after separation. In disputes about property following the break-up of a couple’s relationship, the fact that they were in a registered domestic partnership may be taken by a court as evidence of the couple’s intent to make such commitments to each other. **You should consult with an attorney** if you have any questions about how to structure ownership of your property and whether to enter into written agreements describing whether or not you have made promises to each other about property ownership or other financial matters.

**Exemption From Taxes on Transfers of Property** – While spouses can give each other gifts and transfer real property between themselves without incurring federal or state tax liability on those gifts, neither state nor federal law provides the same exemption to registered domestic partners. While Washington’s law may change in the future to provide domestic partners with the same exemption that married couples receive under state law, **you should consult an attorney** for advice about your potential federal and state tax liability, and for estate planning advice to protect your family’s financial stability.

**Joint Adoption** – The Washington statutes allow “any person” to adopt a child but do not specifically provide for joint adoption by registered domestic partners. Some Washington courts have allowed same-sex couples to adopt children jointly. Washington courts also have allowed same-sex partners to adopt each other’s children in proceedings called “second-parent adoptions.” However, the law in this area is not yet confirmed in statute or published case law.

**Health Insurance And Other Employment Benefits** – Washington State, many municipal government entities, and many private employers offer their employees health insurance coverage for domestic partners as well as for spouses. Other municipal governments and private employers, however, choose to discriminate against workers with a registered domestic partner rather than a spouse with respect to employer-provided health insurance. With the exception of the federal government (which is not covered by Washington’s laws), public and private employers in Washington do NOT have to discriminate against their gay and lesbian employees by withholding health insurance coverage, spousal pension rights, and other family benefits from workers with a domestic partner rather than a spouse, however, and there may be legal reasons other than the 2007 domestic partnership law why a particular employer should provide

equal family benefits. These reasons will vary depending on whether an employer is public or private, as well as other factors. For more information, contact Lambda Legal's Help Desk toll free at 1-866-542-8336 or at LegalHelpDesk@lambdalegal.org.

If you do receive health insurance coverage from your employer for your domestic partner, be aware that your employer must report the value of the benefits you receive to cover your partner as additional income that will be taxable by the federal government, unless your domestic partner qualifies as a dependent under federal law. If you are considering enrolling for domestic partner benefits, you may wish to consult with your employer about the value of the benefits, and whether your partner will qualify as a dependent under the federal tax law, to determine how much more you will be required to pay in federal income taxes.

**Joint Tax Returns** – Registered domestic partners cannot file joint income tax returns at the federal level.

**Judicial Dissolution** – If registered domestic partners end their relationship, they most likely will not have access to the same structured dissolution proceedings that married couples have in divorce court. If either or both partners decide to fight about property in court, they probably will have to do so in a civil action as if their family breakup were a business dispute, which tends to be slow and expensive.

**Spousal Support** – A registered domestic partner does not have the right to claim spousal support (alimony) after a breakup based on the domestic partnership law. Any claims for such support must be based on actual promises made by the partners, by fairness doctrines in Washington common law, or a legal ground other than the domestic partnership law. Note however that a court may consider a couple's registration as evidence supporting one partner's argument that the other partner promised to provide support, absent a written agreement stating otherwise.

**Legal Privileges** – Married couples are entitled to keep their communications private and cannot be forced to testify against each other in court. Registered domestic partners do not have the same confidentiality protections.

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

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Same-sex couples and different-sex couples in which at least one of the partners is aged 62 years or older (the age of eligibility for Social Security benefits under federal law) are eligible to register as domestic partners if:

- Both partners are at least 18 years old;

- Both partners share a common residence;
- Neither partner is in a marriage or registered domestic partnership with any other person;
- Both partners are legally capable of consenting to the domestic partnership; and,
- The partners are not too closely related by blood.

## How To Register As Domestic Partners

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Partners who wish to register must complete a “Declaration of State Registered Domestic Partnership” form, which must be signed by both partners and notarized. The form is available from the offices of the Secretary of State, your local County Clerk, and on the Internet at <http://www.secstate.wa.gov/corps/domesticpartnerships/>. The form must be sent with the required fee of \$50.00 to the following address: Office of the Secretary of State, Corporations Division, P.O. Box 40234, Olympia, WA 98504.

The completed form also may be hand delivered to the Corporations Division at 801 Capitol Way South, Olympia, WA 98501-1226.

The Secretary of State will provide a certificate of state registered domestic partnership to each partner named on the declaration. The Secretary of State also will provide a wallet card to both partners, and both partners are strongly advised to carry this card with them at all times so that they can verify the status of their relationship if needed during an emergency. Visit <http://www.secstate.wa.gov/corps/domesticpartnerships/faq.aspx> for the Secretary of State’s answers to frequently asked questions.

**Please note:** You must register with the Washington Secretary of State to receive the benefits and protections of Washington’s domestic partnership law. Couples who have registered only with a city or county, with another state or country, or with an employer for employee benefits purposes, will not be protected under Washington law unless they register again with the Washington Secretary of State.

Some couples may wish to be registered with their city or county in addition to the state if, for example, their employers offer benefits to partners registered with the city or county. While registering with a city or county is not adequate to be recognized as domestic partners under state law, some cities and counties will recognize the state registration for purposes of their local registry and ordinances. A list of these cities and counties is posted on the Secretary of State’s website, and will be provided to each person who receives a certificate of state-registered domestic partnership. It also is

wise to ask questions directly of any local government that has a domestic partner registry and/or laws but does not appear on the state-issued list.

## **How To Terminate A Domestic Partnership Registration**

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Either or both registered partners may terminate the registration by completing a “Notice of Termination of State Registered Domestic Partnership” form, which must be signed by one or both parties and notarized. The form must then be sent to the Washington Secretary of State’s office with the required fee. The forms are available at the same offices and from the same website as registration forms.

If the notice is not signed by both partners, the partner seeking to terminate the partnership registration also must file with the Secretary of State an affidavit (a written statement signed under penalty of perjury) stating that the other partner has been served with the Notice of Termination in the same way Washington law requires service of notice of a lawsuit. Alternatively, the terminating partner may state that the other partner could not be located despite reasonable efforts to do so, and that notice has been made by publication. You should consult with an attorney if you have questions about the laws relating to service of legal documents.

The registered domestic partnership is deemed terminated 90 days after the filing of the notice of termination and payment of the filing fee. The Secretary of State then provides a certificate of termination to each partner named on the notice.

In addition, a registered domestic partnership is terminated automatically if either or both partners enter into a marriage that is valid or recognized by the State of Washington, or if either or both partners die.

## **Common Questions and Answers**

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**Q** My partner and I married in Canada. Do we need to register as domestic partners in Washington?

**A** Yes. Washington law currently denies respect to the marriages same-sex couples celebrate in other states and countries. While we hope this will change in the future, same-sex couples who married outside Washington and wish to be protected under Washington law should register as domestic partners, too.

**Q** If my partner and I have entered a civil union in another state, or registered as domestic partners or reciprocal beneficiaries in another state, do we need to register in Washington as well?

**A** It is a good idea to register with Washington even if you entered into a civil union or registered as domestic partners or reciprocal beneficiaries in another state. We don't know yet how much respect Washington will give to legal arrangements for same-sex couples from outside Washington.

**Q** If we register as domestic partners in Washington, will we be protected when we travel to other states?

**A** Unfortunately, it is unclear the extent to which many states will respect Washington's domestic partnership status and give Washington's registered domestic partners legal protections as couples. It is likely that states such as California, Connecticut, Massachusetts, New Hampshire, New Jersey, Oregon and Vermont will honor registered domestic partners at least in some circumstances, and that the states explicitly prohibiting statewide protection for same-sex couples will give little if any respect to the Washington status. Because this area of the law is uncertain and changing rapidly in both positive and negative ways nationally, it is important that committed couples have wills, health care powers of attorney and other legal documents to protect them when they travel. Similarly, adoption judgments can provide critical protection to parent-child relationships when families travel.

**Q** Does registration affect the ownership of property belonging to my partner or me?

**A** No. Registering as domestic partners does not alter rights to property owned by either party and domestic partners do not share community property as spouses do. Be aware, however, that the answer to this question, and many of the other questions in this publication, may change as the law evolves. Also, Washington courts have found that promises by same-sex couples to care for each other financially CAN be legally enforceable after separation, and the fact that a couple was in a registered domestic partnership may be taken by a court as evidence of the couple's intent to make such commitments to each other. It is best to consult an attorney for advice about how to structure ownership of your property.

**Q** If my partner and I register as domestic partners and we break up, might one of us have to pay support to the other?

**A** No. Registered domestic partnership status does not provide for spousal support the way marriage does. As noted above, however, registration may be taken as evidence that supports a claim that one partner promised to provide financial support to the other independently of the couple's registration.

**Q** I'm on public assistance. Will my benefits be affected if my partner and I register as domestic partners?

**A** Maybe. While registered domestic partners do not share income through community property in the same way spouses do, it is possible that a state agency may take domestic partnership status into consideration when determining eligibility for benefits. This may become more likely if Washington's domestic partnership laws evolve as is anticipated to happen in the coming years.

**Q** My partner is an American citizen and I'm undocumented. If we register as domestic partners will that help me adjust my immigration status?

**A** No. Federal law controls immigration and, unfortunately, the federal government does not treat same-sex couples the same as different-sex couples. Even with a valid marriage from Massachusetts or another country, a same-sex spouse is ineligible to adjust his or her immigration status. In fact, it may be unwise for couples to register if one partner is a foreign national who does not have legal status in the United States.

**Q** I'm currently in the military. Could registering as a same-sex domestic partner create a problem for me?

**A** It might. Although Washington law does not require that domestic partners be involved romantically, some military command staff have attempted to discharge service members who have had commitment ceremonies or who simply have lived quietly with a same-sex partner. Registering with a same-sex partner could be considered a "telling," warranting dismissal under the "Don't Ask, Don't Tell" policy. Those seeking advice on these issues should contact Servicemembers Legal Defense Network at 202-328-3244 or visit [www.sldn.org](http://www.sldn.org).

**Q** My partner and I may wish to adopt a child from another state or country. Will registering as domestic partners affect our ability to do that?

**A** Couples who wish to adopt a child from a state or country that disapproves of adoptions by gay people or same-sex couples should consider their decision to register carefully, and seek legal advice beforehand.

**Q** Is registration of a domestic partnership a public record that is accessible to others?

**A** Yes. Your domestic partnership registration is a public record and some of the details, including your registration date and the city in which you live, can be viewed by others on the Internet through a search function on the Secretary of State's website at <http://www.secstate.wa.gov/corps/domesticpartnerships/>.

**Q** My registered domestic partner and I broke up. Do we need to notify the state?

**A** Yes. It is very important to terminate the domestic partnership status after a breakup. Until you have terminated the status, you and your former partner still may have rights and responsibilities with respect to each other. For example, would you want your former partner to have the power to make medical decisions for you or to inherit your property? You also cannot enter into a new registered domestic partnership until you have dissolved the existing one.

**Q** We want to protect our family the best we can. Are there other things we should do besides registering with the state as domestic partners?

**A** Yes. Even with registration, in most cases both partners should:

- 1 Prepare and execute a written will or trust.
- 2 Sign an "Advance Directive" (also called a health care power of attorney) regarding medical decisions.
- 3 Consult with an attorney as to how best to hold your property.

- 4 Consider entering into a written agreement together setting forth how you want to handle matters if you should split up.
- 5 Talk to a lawyer about signing general powers of attorney (which allow one partner to make legal and financial decisions affecting the other under specified circumstances, such as incapacity).
- 6 If you and your partner have children and only one of you is any child's legal parent, you both also should consult with an attorney about the possibility of obtaining a second-parent adoption or taking other steps to ensure that both of you will be recognized as the legal parents of all of your children.
- 7 **Join in the struggle to end discrimination in the civil marriage laws!** While Washington's domestic partnership laws provide many important protections and are likely to expand with time, they do not provide all of the protections that come with a civil marriage license nor the equal respect under law that every person deserves. Lambda Legal and Q-Law urge everyone who cares about lesbians and gay men and their families to join in the struggle for basic equality and fairness for ALL devoted couples.

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