

Family Law Handbook



WASHINGTON
COURTS

**Understanding the legal implications of
DOMESTIC PARTNERSHIPS
AND DISSOLUTION
in Washington State**

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INTRODUCTION

This handbook has been developed to help you understand family law in Washington State. While starting or ending a domestic partnership may be very personal to individuals, there are laws that govern domestic partnerships. The Legislature directed the Washington State Administrative Office of the Courts to create this handbook for distribution to individuals seeking to terminate their domestic partnership or responding to a dissolution action. The Secretary of State's Office also distributes information about domestic partnerships to individuals entering into a state-registered domestic partnership. The handbook may help you understand the rights and responsibilities partners have to each other and any children during their partnership and after it is dissolved.

Throughout this handbook, you will find answers to questions often asked about domestic partnership, dissolution, moving with children, parentage, court orders, domestic violence, child abuse and neglect, as well as the effects on children from separation of their parents. While this publication is not designed to provide legal advice, it will provide general information about the partnership contract, applicable laws about property and debts, and laws about dissolution of partnerships in Washington State. This handbook is not intended to take the place of an attorney, who can explain laws and give advice for a specific situation. It is always a good idea to consult with an attorney about your rights and responsibilities regarding any legal issue, including legal implications of domestic partnerships.

It is important to remember that this handbook discusses only family law in Washington. Different laws may apply in other states. An attorney can fully explain your rights and responsibilities and how they can be affected by situations such as having lived in another state.

CHAPTER 1 WASHINGTON STATE-REGISTERED DOMESTIC PARTNERSHIPS



The laws that govern domestic partnerships are found primarily in Chapter 26.60 of the Revised Code of Washington (RCW). You can find a copy of those laws at the Washington Legislature's Web site at www.leg.wa.gov. Throughout this handbook, the terms "domestic partnership" and "partnership" mean "state-registered domestic partnership," and the terms "domestic partner" and "partner" mean "state-registered domestic partner." (RCW 26.60.020 & 26.60.025.) Under Washington law, domestic partnership is a civil contract between two adults who meet statutory requirements.

Those requirements are: 1) both persons share a common residence; 2) both persons are at least eighteen years old and at least one person is sixty-two years of age or older; 3) neither person is married to someone other than the party to the domestic partnership and neither person is in a domestic partnership with another person; 4) both persons are capable of consenting to the domestic partnership; 5) the persons are not nearer of kin to each other than second cousins, whether of the whole or half blood computing by the rules of civil law; and 6) neither person is a sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person. The gender of either person is immaterial.

Individuals who want to enter into a domestic partnership must file a "Declaration of State Registered Domestic Partnership" with the Secretary of State and pay a filing fee. Chapter 26.09 RCW governs domestic partnerships that do not meet the legal requirements and that are not valid at all (void) and domestic partnerships that may be voidable. If you have any doubts about meeting legal requirements for entering into a domestic partnership in Washington, you should consult an attorney. For more information about the filing process, visit the Secretary of State Web site at <http://www.sos.wa.gov/corps/domesticpartnerships/>.

Because domestic partnership law is relatively new and evolving, it is very important to know all you can about the legal implications about entering or leaving a domestic partnership. Only a lawyer can give you legal advice about your rights and responsibilities to your partner, children of the partnership, and others.

The fact that a person is in a domestic partnership can affect many aspects of life, such as insurance coverage, property ownership, responsibility for debt, inheritance, decisions about one's personal health care, disposal of his or her remains, and rights about that person's children. When you enter a domestic partnership, you may need to make changes to insurance policies, your will, financial accounts, benefits (like retirement), or other arrangements you have regarding your living situation, business, or finances. Sometimes changes to such arrangements become effective just by filing a valid domestic partnership declaration. You should make sure you know whether you need to inform your bank, government agencies, landlord, employer, health care provider, or others about your partnership so that they can make any necessary changes to agreements or records. Sometimes one or both partners choose to change their last name. This is a social or cultural custom, not a legal requirement. If a name change is made, however, you should be aware that you may need to provide proof of your partnership for financial institutions or government agencies to change their records. The Social Security Administration will require

that a domestic partner get a court-ordered name change to change the Social Security records to the new name.

Federal laws may affect the rights and responsibilities of domestic partners. Those laws may differ significantly from our state laws. To make sure you fully understand all of your rights and responsibilities under both state and federal laws, you should consult an attorney with experience in domestic partnership law.

If you or your prospective partner have children from a previous relationship, plan to have children together, own a business or other property, have debt, or have unresolved legal responsibilities, getting legal advice can be very important. You may also want to discuss with an attorney how Washington domestic partnership law affects you if you are in a registered domestic partnership in another state. An attorney will give you important information about your rights and responsibilities.

New changes to domestic partnership and marriage laws can affect you. These new laws became effective December 6, 2012, as a result of passage of Referendum 74. Referendum 74 made valid, by a vote of the people, the provisions that the Legislature passed in ESSB 6239. Some of those changes include these provisions:

- If you are in a domestic partnership and neither one of you is 62 years or older as of June 30, 2014, and no proceedings for a legal separation, declaration of invalidity, or legal separation are pending, on that date your domestic partnership will have been merged into marriage. If you don't want to remain married, one of you must file a petition for dissolution of marriage in superior court.
- If you are in a domestic partnership and one or both of you is 62 years or older as of June 30, 2014, your partnership will not have been automatically merged into marriage. If you want to be married, you will need to get a marriage license and proceed with the marriage.
- If you are in a domestic partnership and dissolution, invalidity, or separation proceedings are pending (not yet finalized) as of June 30, 2014, and a decree is entered after June 30, 2014, your partnership will be dissolved (ended) as of the date of the decree, and your partnership will not have been merged into marriage.
- If, as of June 30, 2014, you have proceedings pending for dissolution, annulment, or legal separation, and the proceedings are later finalized *without* obtaining a decree (final order granting the requested relief), the domestic partnership will be merged into marriage, with the date of marriage corresponding to the date the domestic partnership was created. This situation can occur if the proceedings are dismissed voluntarily, or because of want of prosecution of the proceedings (dismissal because of no action being taken in the case for one year or longer). Should this occur, you would need to start a new proceeding in superior court to dissolve your marriage, if you no longer wish to be married.
- If you and your partner entered a legal union in another state or country that is not a marriage (such as a civil union or a domestic partnership), you should consult a lawyer about how your relationship may be treated in under Washington law. The rules regarding such relationships can be complicated and have not yet been interpreted by courts. Washington law provides that if a couple has entered a legal union in another state or country that is "substantially equivalent" to a Washington domestic partnership, it will be recognized as a domestic partnership in Washington. For example, if a couple in which at least one partner is 62 or older has entered a civil union in another state that is substantially the same as a Washington domestic partnership, the civil union would be recognized as a domestic partnership under Washington law.

The new laws about domestic partnerships and marriage are complex and can have lasting consequences. There may be situations not discussed above that may affect your rights and responsibilities. A knowledgeable attorney can provide important information and advice.

CHAPTER 2 PRE-PARTNERSHIP AGREEMENTS



What is a pre-partnership agreement?

A prenuptial agreement is a contract entered into by two people before their marriage. Similarly, persons entering a domestic partnership may want to enter an agreement to decide how their property will be divided if they terminate their partnership, get a legal separation or an annulment, or when one of them dies. For the purposes of this handbook, we will refer to these agreements as pre-partnership agreements if they are executed before the domestic partnership is established, and post-partnership agreements if they are executed after. You should see a lawyer about what kind of agreement and what terms of the agreement are best for you.

What makes the agreement enforceable?

In general, a pre- or post-partnership agreement is more likely to be enforced by a court if the contract is fair and if both partners are honest and clear about their finances, including salary, other income, possessions and property, and debts. Sometimes a couple will not follow the agreement while they are in the partnership or forget its terms when they acquire new assets or liabilities. Either of these circumstances could affect how a court might rule on the enforceability of the agreement.

Do you need an attorney to make these kinds of agreements?

Pre-and post-partnership agreements are very complicated and are often not enforced by a court if they are not carefully written. Attorneys can help make sure an agreement will be enforced. It is a good idea for both of you to have independent legal advice (that means different attorneys for you and your prospective partner) for help drafting such a contract. You should allow plenty of time to consult with an attorney for advice and to think about the agreement before you sign it.

CHAPTER 3 ENDING A DOMESTIC PARTNERSHIP



How can a domestic partnership end?

A partnership ends when one partner dies. It can also end by a court order, such as a “decree of invalidity” (annulment) or a “decree of dissolution of domestic partnership.” A “decree of legal separation” does not end the partnership, but it can affect property, finances, and raising children just like dissolution of the partnership would. An attorney can help you decide what is best for you and give important advice about your rights and responsibilities if your domestic partnership is ending.

As of December 6, 2012, a domestic partnership can end when the partners marry one another. In that case, the partnership end date is the same as the date in the marriage certificate. If you are in a domestic partnership as of June 30, 2014, and neither one of you is at least sixty-two years of age and there is no pending proceeding for a dissolution, legal separation, or annulment, your domestic partnership will be merged into a marriage, with the marriage effective date the same date as the creation of your domestic partnership.

If parties to a domestic partnership have proceedings for dissolution, annulment, or legal separation pending as of June 30, 2014, and the proceedings are finalized *without* a decree (final order granting the requested relief), the domestic partnership will be automatically merged into a marriage and will be deemed a marriage as of June 30, 2014. The domestic partnership will cease to exist by operation of law as of June 30, 2014. In that case, if either of the now married spouses wants to end the marriage, that person will need to start proceedings to dissolve the marriage.

For purposes of determining the legal rights and responsibilities involving individuals who previously had a state-registered domestic partnership and who later marry or who have their domestic partnership merged into a marriage, the date of the original state-registered domestic partnership is the legal date of the marriage.

What is an annulment?

Although many people use the term “annulment,” in Washington it is called a “Decree Concerning Validity” which is a court order that says a domestic partnership is either valid or invalid, if either partner brings an action for that determination. Decrees of invalidity are rare, and are only granted in situations where there was some legal defect from the start of the partnership that makes it invalid. Even if the partnership was not valid from the beginning, the court still has the power to divide the property, enter a parenting plan for children, and make financial orders. The laws about invalidity of domestic partnership are evolving and can be complex. Only an attorney can give you legal advice about the validity of your partnership.

What is a legal separation?

A legal separation means that the partners are separating but not ending their partnership. It means more than living in separate homes. Partners may file a legal action, known as a Petition for Legal Separation. They also can make a formal legal separation contract without going to court. Partners may choose to separate rather than dissolve their partnership for personal, religious, economic, or other reasons. There is no requirement that a couple be separated before dissolving their partnership. A legal separation action can be converted into an action for dissolution at the request of either party, with appropriate notice. After six months have passed since the Decree of Legal Separation is entered, either party may convert the decree to a Decree of Dissolution. Further court action is necessary to convert the decree.

What is dissolution of domestic partnership?

In Washington, a dissolution of marriage, which many people refer to as a divorce, is a legal procedure in superior court that ends the marriage. Washington law provides that domestic partnerships be dissolved through an identical court action. Before December 2009, some domestic partnerships could be dissolved or terminated by filing documents with the Secretary of State; after December 2009, this procedure is no longer available. Court action is necessary to dissolve a domestic partnership in Washington, except as noted below.

There are exceptions to the requirement of a legal action to dissolve the domestic partnership, as discussed above. First, if parties to a domestic partnership marry one another, the domestic partnership is dissolved by operation of law as of the date in the marriage certificate. Same-sex domestic partners may marry one another as of December 6, 2012. Second, any domestic partnership in which neither party is sixty-two years or older by June 30, 2014, that has not been converted into a marriage by the parties or dissolved by June 30, 2014, will be automatically merged into a marriage and is deemed a marriage as of June 30, 2014, and the domestic partnership is dissolved that same date, unless there is a legal proceeding for dissolution, annulment, or legal separation pending in court on that date. Third, if legal proceedings for dissolution, annulment, or legal separation are pending as of June 30, 2014, but those proceedings are finalized *without* a decree being issued, the domestic partnership is merged into a marriage as of June 30, 2014, and the domestic partnership is dissolved that same date.

One or both partners can file for dissolution if a partnership falls apart. The law uses the term "irretrievably broken" to describe this situation. A partnership is "irretrievably broken" if one of the partners says it is. The other partner does not have to agree that the partnership is irretrievably broken in order for one partner to file for dissolution. A partner does not have to prove wrongdoing (such as cruelty or adultery) to dissolve the partnership. This no-fault system is intended to help partners settle matters without unnecessary bitterness or resentment. The court will enter orders for parenting arrangements, how children will be supported, dividing the couple's property and debts, and possibly for maintenance (alimony).

Are there residency requirements for filing a dissolution action?

You need only to reside in Washington on the date that your petition for dissolution of domestic partnership is filed. There is no requirement that you reside in Washington for any specific amount of time before filing the petition.

How does a partner file for dissolution?

To start a dissolution action, one partner (called the "petitioner") must file with the court a summons and petition for dissolution of domestic partnership. If both partners agree to the dissolution, they may file the petition jointly. If that is the case, a summons is not needed. Sometimes additional documents, such as a proposed parenting plan or proposed child support

worksheets, may also be filed, if there are children under the age of eighteen. These documents are filed in the County Clerk's office. Information about filing fees and other filing requirements is available at the County Clerk's office.

These documents must be served on the other partner (known as the "respondent"), usually by having copies delivered to him or her, unless the petition is filed jointly. The legal term for delivery of legal documents is called "service of process." It is important to carefully follow the laws and rules about service of process. The laws and court rules about serving a petition and summons, and about responding, must be followed carefully. It is a good idea to get legal advice from an attorney to make sure you fully understand those rules.

The purpose of the summons is to command the responding partner to reply to the petition. The petition sets out basic facts about the partnership, such as ages of children, date of the commencement of the partnership, and date of separation. It also explains what the petitioning partner wants in the way of a parenting plan, property and debt division, and support. Getting legal advice about what should be included in these documents is very important.

Once served, and depending on the respondent's location (whether in Washington or elsewhere) and how the respondent was served, the responding partner has either 20 days or 60 days to reply in writing to the petition. This reply, called a "response," may include a "counter-petition," and states the respondent's position on children, property, and maintenance (sometimes referred to as alimony). If the respondent does not timely file a response, the petitioner may ask the court for an order of default. The court will grant by default only those requests that were filed in the initial documents, so it is very important to make sure those documents are complete and correct before they are filed. An attorney can give important guidance in making sure everything is included in the paperwork.

What happens after the dissolution action is filed?

In some situations, the next step is to arrange temporary court orders to guide the conduct of the parties. Either partner may obtain temporary orders. Typically, temporary orders cover such subjects as residential arrangements for the children and child support, maintenance, occupancy of the family home, payment of bills, and other concerns for protecting people or preserving property. If the partners cannot agree, a judge or court commissioner will decide temporary orders at a hearing.

When does a dissolution case end?

All of the issues, such as property division and arrangements for children, must be settled in order to finish a case and have the court enter a decree. If partners cannot agree to everything, a trial will be held and the court will decide any disputes. If partners agree on everything in a settlement, there is no need for a trial, but the court must still approve the partners' agreements.

The final stage occurs when the court signs a "Decree of Dissolution of Domestic Partnership." This happens after the partners agree to everything, after a trial, or after the waiting period has passed and there has been no response from the other partner. If there are children of the partnership, a final parenting plan and final order of child support must also be signed by the court. A domestic partnership is not ended until the court signs the final orders, unless the partnership has ended by operation of law, as described above. If a domestic partnership ends by operation of law and merges into a marriage, and if one or both of the spouses no longer wants to be married, then one or both of them need to file a proceeding to dissolve the partnership.

Is there a waiting period before a dissolution can be final?

The waiting period to finalize a domestic partnership dissolution in Washington is 90 days. This means the summons and petition must be filed with the court and served upon the other partner more than 90 days before the court signs the decree. Even in agreed cases, the 90-day waiting period cannot be waived. This is a minimum period and is intended to allow time for reconciliation between parties, or for the parties to “cool down,” because often emotions are highest at the beginning of a dissolution action. The process could take much longer if the parties have difficulty reaching an agreement. Sometimes a partner will not respond at all to a petition after it is served. In that case, the decree of dissolution can be entered by default after the waiting period.

Can partners legally change their names during a dissolution?

Yes, if either party requests a name change for herself or himself. This most commonly occurs when a partner requests to a change back to his or her former name. At the court’s discretion, the court may order a change to another name for either party.

Are there special court forms to use in a dissolution?

Yes. You must use the proper forms in legal separation cases, declarations of invalidity, and dissolutions. These forms can often be purchased at your county courthouse. They can also be found on the Washington Courts Web site at www.courts.wa.gov/forms/. Some stores and online services sell form kits that say they can be used in all states, but Washington has its own forms that MUST be used in most family law court actions.

How can an attorney help with a dissolution?

Only attorneys can give legal advice. Although an individual has the right to get a dissolution without being represented by an attorney, sometimes the help of an attorney is essential. Not knowing the right procedures, which paperwork to file, how to present evidence, or what is best in your situation can have serious and sometimes lasting consequences. It is always a good idea to at least consult with an attorney before you start any legal action, including a dissolution, legal separation, or annulment proceeding. Because domestic partnership law is new and evolving, the help of an attorney can be especially valuable.

How can courthouse facilitators help with a dissolution?

Washington’s superior courts handle family law matters, and most of them have “courthouse facilitators.” Courthouse facilitators cannot give you legal advice, but they can tell you which forms you are likely to need and explain court procedures. The facilitator is not your attorney and will not represent you in court. Courthouse facilitator services are available only to individuals who are not represented by an attorney. Additional information about the facilitator in your county (office hours, appointments, fees, etc.) is available at the County Clerk’s office, superior court, or the Washington Courts Web site at www.courts.wa.gov under “Court Directory” or under “Programs & Organizations.” Most facilitators charge a fee for their services. Many facilitator programs sell “do-it-yourself” dissolution kits with instructions tailored for their respective court.

CHAPTER 4 PROPERTY RIGHTS—DIVIDING ASSETS AND DEBT



How does a separating couple divide property and debt?

When a couple dissolves their domestic partnership, legally separates, or their partnership is declared invalid (commonly known as an annulment), legal responsibility for property and debts must be divided. Property means more than land – it means all assets and includes real property, possessions, bank accounts, retirement funds, and business and contract rights. The couple can agree on the division, or if they cannot agree, the court must divide the respective rights partners have in their property and their debts. The division of assets and debt must be just and equitable under the circumstances.

NOTE: If a domestic partnership has dissolved by operation of law and has been merged into marriage, then marriage laws apply to ownership of property and responsibility for debt.

What is “community property”?

Washington is a “community property” state. Community property laws apply to domestic partnerships from the initial registration date of the partnership or June 12, 2008, whichever date is later. Generally all property acquired during a domestic partnership after June 12, 2008, is presumed to be community property belonging to both partners. Community property law for domestic partners is relatively new and can be complicated. Couples who have been together a long time, who have significant property, or who own a business may have complex community property issues and will probably need legal advice.

What is “separate property”?

Sometimes one or both partners may have separate property. “Separate property” may include all assets that were owned before the domestic partnership, or that were received during the partnership as a gift or as an inheritance, or that were bought with separate property, or that were acquired after the parties separated. Determining what property is “separate” and “community” can be complex. Getting legal advice can be important.

How does a court divide property and debts?

In Washington, a court is required to determine what is separate property, what is community property, and then divide the property and debts between the partners justly and equitably. To do this, the court uses a series of factors under Washington law, such as how long the couple was in the partnership, employment history, how much property the couple has, and other factors. The court must also consider whether a parent should be allowed to continue living in the family home so the children do not have to be moved.

Does the court divide property and debts 50/50?

When a court divides property and debts justly and equitably, this does not necessarily mean that the property will be divided 50/50. This is because an “equitable” division is not always an “equal” division. The court may divide property and debts unequally for a number of reasons. For example, the court might give one partner less than 50 percent of the assets if that partner can recover from the economic setback of the dissolution faster than the other.

What if a partner has misbehaved during the partnership?

Bad behavior does not usually affect how property and debts are divided. This means that the court will not award one partner more of the property just because the other partner misbehaved or was at fault. An exception to this general rule is when the misbehavior was intended to and resulted in the destruction of property. A court may give one partner more property when the other partner did something to waste or destroy their community property.

What about taxes and other financial considerations?

Property division, property settlements, and family support arrangements can have tax consequences to one or both partners. Federal tax laws may treat marriages differently from state-registered domestic partnerships. A knowledgeable attorney can help you determine how taxes and property and debt division will affect your entire financial situation. Property and debt divisions are final and cannot be modified later, except under extremely limited and unusual circumstances. It is important to consult with a lawyer before any agreements are made or court orders are entered regarding division of property and debt.

CHAPTER 5 MAINTENANCE (ALIMONY)



What is maintenance?

Maintenance (commonly known as alimony) is financial support provided by one partner to the other during or after a dissolution, separation, or invalidity proceeding.

How does the court decide about maintenance?

If you file for dissolution, legal separation, or request that your partnership be declared invalid, you have a right to ask for maintenance. Maintenance is generally based on financial and economic factors, not whether one of the partners is at fault. Instead, if there is a big economic difference between the partners, maintenance may be ordered to help achieve financial independence. The court has a great deal of discretion to decide how much and for how long maintenance will be paid. The court considers many factors (such as the length of the partnership, health and ages of the partners, and employment history), but there is not a formula like there is for child support. If maintenance has been ordered, a partner can later ask that the order be changed, but the court will change that order only under specific and limited situations. Maintenance can greatly affect your tax situation. Getting advice from a tax attorney or qualified financial planner is important, especially as federal tax laws may treat marriages and state-registered domestic partnerships differently.

CHAPTER 6 EFFECTS OF DISSOLUTION ON CHILDREN



How does dissolution affect children?

How dissolution affects children is a complicated issue. Separation and dissolution put adults and children under a great deal of stress. Some experts believe because of the stress and changes that come with dissolution, parenting skills can decline. Information about same-sex parenting research can be found on the American Psychological Association online Web site at www.apa.org/pi/lgbt/resources/parenting.aspx and from the American Academy of Pediatrics at <http://pediatrics.aappublications.org/cgi/reprint/118/1/349>.

Research on how children of same-sex domestic partnerships are affected by the dissolution of their parents' partnership is in its early stages. More research has been done on the effects of divorce on children. Studies of those children report that children of divorce may be more likely to have poorer physical health, perform poorly in school, and abuse alcohol and drugs. Not all children suffer such adverse affects; about 75 percent of children of divorce are reasonably well adjusted after an initial period of discomfort. Books on relationships, separation, and parenting are available at the public library.

What can parents do about the effects of dissolution and conflict on children?

Before you enter into a partnership, make sure you and your partner have talked about parenting issues, including whether and when you want to have children, values about raising children, ideas about parenting, and how to divide responsibility for parenting. If you disagree on those issues, before you enter into a partnership and have children, decide how you will work out parenting and other conflicts. Are you able to work them out by sitting down and talking together? Is family counseling helpful? Is there a clergy member who can help you address those issues? **(Note:** If there is domestic violence involved in your relationship, these methods of resolving conflict may not be appropriate. Please read Chapter 11: Domestic Violence of this handbook to obtain information about how to protect yourself and your children.)

Before you have children, make sure your relationship with your partner is healthy and stable and you have good skills in place for resolving conflict. Having children means more decisions to be made and more chances for disagreement. If you separate or dissolve your partnership, more decisions must be made at a time when you may have bad feelings about your partner. Being prepared with good conflict-resolution skills and knowing how to find help if you can't resolve the conflict on your own will make things easier for your children.

Work with your partner to make sure that both of you have strong, positive relationships with your children and that both of you are involved in parenting while you are together. Make it a priority to maintain the children's relationship with both of you. **(Note:** Washington law supports children having strong, continued relationships with both parents. But it also recognizes there may be

circumstances where, because of domestic violence, substance abuse, a parent's abusive use of conflict, or other parenting problems, a parent's time with a child may need to be limited.)

If you separate or dissolve your partnership, make sure you have a support system and encourage your partner to have one, too. You and your partner should not use your children as a source of support. Remember your children's well-being is tied to the well-being of both of their parents. Anything you do that harms the other parent also harms your children.

Decide how you and your partner will communicate and resolve conflicts regarding the children after the dissolution or separation. Do not use the children as go-betweens or messengers or involve them in adult conflicts about parenting, child support, or other issues related to your dissolution.

If you separate or dissolve your partnership, make sure there is an adequate child support order in place so the children have adequate support in the home(s) where they are residing. And, if you are the parent paying child support, make sure you pay your child support regularly and on time.

Most courts require separating couples to take a class on reducing conflict and how separation affects children. More information about these classes can be obtained from your local County Clerk's office or courthouse facilitator program. Family law attorneys can also provide information about them.

CHAPTER 7 CHILDREN OF DOMESTIC PARTNERS



Parentage laws are included in Chapter 26.26 RCW, the Uniform Parentage Act. One of the presumptions under the law of the Uniform Parentage Act is that a person is presumed to be the parent of a child if the person and the mother or father of the child are in a domestic partnership with each other and the child is born during the domestic partnership or within three hundred days after the domestic partnership is terminated by death, annulment, dissolution, legal separation, or declaration of invalidity. There are other presumptions as well. The law regarding presumptions of parentage has changed in recent years and can be complicated. An attorney can help explain whether any of the presumptions apply in your situation.

A child of a domestic partnership can be the biological child of one, both, or neither of the partners. If one of the partners is a biological parent, and a presumption of parentage does not apply, the other partner can establish a parent-child relationship by adoption or by *de facto* parentage. Adoption accords a parent all of the legal rights of a biological parent. A *de facto* parent has the same legal status as a legal parent, whether biological, adoptive, or otherwise.

De facto parentage is established by a person who is not the child's biological parent, when certain strict requirements are met, as proven in a family law proceeding in court. Those requirements were set by the Washington State Supreme Court in *In re the Parentage of L.B.*, 155 Wn.2d 679 (2005). Those requirements are that the natural or legal parent consented to and helped create and maintain the other person's parent-like relationship with the child, that the person and the child lived together in the same household, that the person took on the obligations of parenthood and did not expect to be paid back, and that the person has been in a parental role long enough for the person and the child to have a bonded, dependent relationship that is like a parent-child relationship. If a *de facto* parent-child relationship is in the best interests of the child and these requirements are met, the person can be declared to be the child's *de facto* parent and will have full parental rights and responsibilities.

Establishing a parent-child relationship is very important if the partner who is not the child's legal parent wants to have a relationship protected by and enforceable through a court order such as a parenting plan (discussed in the next chapter). If the partner does not adopt the child, and does not meet the requirements of *de facto* parentage or presumption of parentage, it may be very difficult for the partner to have an ongoing relationship with the child after the partnership is dissolved, if the legal parent does not want such a relationship between his or her child and the other partner. It is very important to get legal advice about your rights and responsibilities with regard to any children as soon as possible.

It is also important to know that other states might not recognize the parental rights provided to domestic partners under Washington law. It is a good idea to consult with an attorney to discuss what steps you can take to help ensure that your parental rights will be recognized in other states.

CHAPTER 8

SHARED PARENTING FOR PARENTS DISSOLVING THEIR PARTNERSHIP — PARENTING PLANS



What is a parenting plan?

A parenting plan is a legal document that provides for the basic arrangements for caring for children, including where the children will live, who will make decisions for the children, and how disputes about the parenting arrangements will be resolved. The term “custody” is not used in Washington State. Instead, both parents usually share responsibility for their children. Typically, the children will live with one parent for the majority of time. Sometimes the children will live with each parent for equal amounts of time. The parenting arrangements depend upon what is best for the children. In Washington, the law requires that parenting arrangements encourage each parent to maintain a loving, stable, and nurturing relationship with the children, taking into account each child’s developmental level and the family’s social and economic circumstances. *There is no one parenting plan that is best for all children.*

When do parents need a parenting plan?

If both domestic partners are the children’s legal parents and then separate, a court orders a parenting plan as part of the dissolution of their partnership, legal separation, invalidity proceeding, or parenting plan modification. The court can make a determination of *de facto* parentage in a dissolution, legal separation, or invalidity proceeding.

How does a court decide where the children will live?

Most separating parents agree on parenting arrangements for their children. If separating parents voluntarily agree on arrangements, the court will usually approve their agreement. Agreed parenting arrangements still have to be in the child’s best interests. When separating parents cannot agree, the court will make the decision. The general standard the court uses to make that decision is “the best interests of the child.” Other factors include the relationship of the child to each parent, the agreements made by the parties, the emotional and developmental needs of the child, the child’s relationships with siblings and other adults plus the child’s involvement with places like school, past performance of parenting functions by each parent, the potential for each parent to perform parenting functions in the future, each parent’s employment schedule, the wishes of the parents and of the child if the child is mature enough, and whether there have been any serious parenting problems. If there are no serious problems, the factor that is given the greatest weight by the court is the relative strength, nature, and stability of the child’s relationship with each parent.

What if there have been serious parenting problems?

If one or both parents have serious problems that affect their ability to parent, the court must consider these problems when making parenting arrangements for the children. These problems

include child abuse or neglect, domestic violence, substance abuse, impairments that interfere with a parent's ability to care for a child, withholding the child from the other parent without good cause, or abandonment of the children. Sometimes the court has to restrict a parent's time with the children. These restrictions can include limiting the time a parent can spend with a child, and often include requiring a treatment or educational program to help the parent with the problem. If a parent is a convicted sex offender, the court almost always has to prohibit that parent from having time with the children.

Can children decide where they want to live?

In Washington, adults decide where children will live. A court may consider a child's wishes only if the child is old enough and mature enough. There is no magic age for a child to be mature enough to state his or her preferences. Generally, courts do not want children to be involved in these decisions.

What does a guardian ad litem do in a dissolution?

A court may appoint a qualified person to represent the children's best interests in a dissolution action or parenting plan modification. That person, called a guardian ad litem, investigates the situation and makes a recommendation to the court about what would be best for the children. Each court keeps a registry of individuals who are qualified to serve as guardians ad litem in that county. A court order spells out the duties, responsibilities, and fee arrangements for a guardian ad litem. In most cases, a guardian ad litem is not needed. Information about guardians ad litem can be found on the Washington Courts Web site at www.courts.wa.gov under "Programs & Organizations" or on the Washington Law Help Web site at www.washingtonlawhelp.org under "Family Law." In addition, statutes that apply to guardians ad litem can be found in Chapter 26.12 RCW, downloadable at www.leg.wa.gov. Local and state court rules that apply to guardians ad litem can be found under "Rules" on the Washington Courts Web site at www.courts.wa.gov.

What if there is disagreement about how to follow a parenting plan?

Once the court signs a parenting plan, both parents are required to follow it. For example, a parent may not refuse to allow the other parent to see the children just because that parent has not paid child support. A parenting plan usually includes the method parents are to use to resolve disputes about parenting issues. That method may be arbitration, mediation, counseling, or court action. It is often best, and sometimes required, to use the specified dispute resolution method before going to court to ask the court to enforce the parenting plan.

Mediation to resolve parenting plan issues is usually not appropriate if there has been a history of domestic violence. Mediation may be ordered as the dispute resolution method, but only if the victim requests it and the court finds it is appropriate under the circumstances. That parent is permitted to have a supporting person present during the mediation session. If you are a victim of domestic violence, please refer to Chapter 11 for more information.

What about contempt of court?

If a parent interferes with the other parent's rights to see the children, the parent may be found in contempt of court. If a parent is found in contempt, the court could order make up of residential time, jail time, fines, or some other type of sanction. It is important to know that if a parent is found in contempt more than once in a three-year period, the court can use that as grounds to change the parenting arrangements, including which parent the child lives with.

How do parents change a parenting plan?

Sometimes one or both of the parents want to modify (change) the final parenting plan. It is often not easy to make a major change to a parenting plan, especially if both parents do not agree. An example of a major modification is changing where the children live the majority of the time (changing from one parent's home to the other). If both parents agree to the major modification and the court finds that the modification is in the best interests of the children, the court will grant the request. Without such an agreement, the court will allow a major modification only in limited instances. It is not enough that the parent wanting the change thinks that his or her life has improved so much that the children should now live with him or her. Because major modifications of parenting plans are complicated and difficult, advice from an attorney can be helpful and is often needed.

Minor changes can be made more easily, but only if the court finds it to be in the children's best interests. Parents often agree on minor changes, such as the length of vacations or when the children's time with the other parent will start or end.

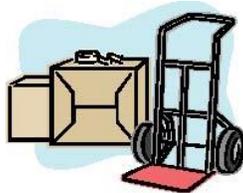
What if one of the parents is in the military?

A law governing parenting plan modifications for parents who serve in the military took effect July 26, 2009. The law is codified at RCW 26.09.10(7).

In brief, if a parent is in the military and receives orders that may affect parenting responsibilities under the parenting plan, that parent may request that a hearing be held on the temporary change to the parenting plan that is needed to accommodate that parent's orders. If necessary, such a hearing can be held electronically at that parent's request. At the military parent's request, while that parent is away, the court may award part or all of his or her residential time with the child to another suitable adult with whom the child has a significant relationship, if doing so is in the child's best interests. No rights to visitation are created by this temporary delegation of residential time.

When the parent returns, the former parenting plan can be restored by the parent giving notice to the other parent and filing an appropriate motion and presenting an order no later than ten days after the parent returns, unless the other parent files a motion alleging immediate danger to the child. The court may not count any time the parent did not use residential time with the child because of the effect of the parent's military duties, for the purpose of determining whether the parent failed to use the residential time for a year or more. Also, the effect of a parent's military duties shall not by itself be a substantial change of circumstances that alone would be the reason for a permanent modification.

CHAPTER 9 RELOCATION OF CHILDREN



What is the Relocation Act?

A parent with whom the children live most of the time must follow laws, called the Relocation Act, when the parent wants to relocate children to a different residence (changing where children live). The Relocation Act is codified at RCW 26.09.405-.560 and can be found at the Legislature's Web site www.leg.wa.gov. Adults have a constitutional right to move their place of residence. Courts can, however, order adults not to move their minor children.

This law applies only to parents who are no longer together and have a court-ordered parenting plan and to others who have court-ordered residential time with a child (such as a nonparental custody decree). The Relocation Act has many requirements and is complicated. It is important to understand your rights and responsibilities under the Relocation Act. It is a good idea to get legal advice from an attorney before a parent moves with the children.

How can a parent move with children?

If a parent with whom a child lives the majority of the time wants to move with the children, that parent must notify the other parent. How and when notice of the move is given depends on many things, including when the move will take place, how long the parent has known about the move, whether domestic violence or other dangerous situations exist, and many other factors. If the move is outside of the children's current school district, the other parent can object to the move. There is a presumption that the move will be allowed, but the decision is made by the court based on many factors. The court will also decide what changes are needed to the parenting plan if the move is allowed.

How does the other parent object to the move?

If the other parent objects to a move, that parent must file an objection within 30 days of the date the notice is received. That objection is a request for a parenting plan modification. Then the court will decide whether the move will be allowed. The objecting parent can't simply ask that the move not be allowed. A relocation case is usually also a parenting plan modification if the move is to a different school district.

What if the other parent does not object to the move?

If the other parent does not object to the relocation, and both parents agree on a new schedule for residential time, then the issue is resolved and the moving parent can relocate with the children. Either parent may present the new agreed parenting plan to the court, with an appropriate petition. If the other parent does not object to the move, but the parents disagree on a new residential time schedule, the parent can move with the children and either parent may file a court action to change the parenting plan.

What if the move is due to violence or threat of violence?

The Relocation Act has different requirements for notice if violence or the threat of violence is the reason for the move. The safety of the children is the main concern in these situations, but if the other parent objects, the court will decide if the move will be allowed or if it will be permanent if the move has already taken place.

What if a parent doesn't follow the Relocation Law?

Failure to give proper notice or failure to properly object will usually have very serious consequences. The court may order the return of the children. The other parent can lose the right to object if that parent misses the deadline for objecting. It is very important to get legal advice about relocation or objecting to relocation as soon as you learn about the situation.

CHAPTER 10 CHILD SUPPORT



When will a court order a parent to pay child support?

Both parents have legal duties under Washington law to financially support their children. In a domestic partnership dissolution, legal separation, or declaration of invalidity, a court must order one or both parents to pay support for their children. If the children belong to only one partner, and the other partner neither adopted the children nor established *de facto* parentage and presumption of parentage does not apply, then the obligation to support any children who lived in the household usually ends when the decree is signed. It is a good idea to get legal advice from an attorney about financial obligations toward children in a domestic partnership household.

What does a child support order do?

Payment of child support and other expenses for children is a required part of a dissolution, legal separation, or parentage action. A child support order includes which parent will pay support, who will pay other expenses such as day care and transportation, who will provide health insurance for the children, how long child support will be paid, and even arrangements for college expenses, and of course, how much will be paid.

Can separating parents agree not to pay child support?

If parents are involved in a legal action, such as dissolution of their domestic partnership, the court is required to set a child support amount. Child support is meant to provide for the needs of children, so parents are not allowed to opt out of paying child support, even if they both agree.

How does a court determine the child support amount?

In Washington, courts use the Washington State Child Support Schedule. The Schedule takes into account each parent's income, the age of the children, and other expenses such as childcare expenses. The Schedule must be used in every county, in both judicial and administrative proceedings, and in all kinds of proceedings where child support is determined, adjusted, or modified.

The basic child support obligation is based on the combined family income after taxes, ages of the children, and the number of children in the family. The actual amount of support required is also based on the special circumstances of each family. In limited situations (such as low income), the amount of child support can be different from the Child Support Schedule, but only with court approval.

Can child support amounts be changed later?

Washington law allows child support amounts to be changed after a set period of time for a variety of reasons, including change in a child's age, changes in income, and changes in the needs of the children.

When does child support end?

Child support usually ends when a child turns 18 or graduates from high school, whichever happens later. Sometimes support can be ordered past that time if the child has disabilities. Support for college or vocational education expenses can be ordered.

How does a parent enforce a child support order?

There are different ways to enforce a child support order. A parent who is not receiving court-ordered child support can file a contempt motion in court. The Washington State Division of Child Support can help a parent with child support enforcement, including wage assignment (garnishment) and revoking driver and other licenses.

Where can more information about child support be found?

For more information about child support, see the Washington State Division of Child Support Child Support Resource Center at <http://www1.dshs.wa.gov/dcs/> or call your local child support office.

CHAPTER 11 DOMESTIC VIOLENCE



What is domestic violence?

Domestic violence is a pattern of physical and/or emotional abuse used to control another person with whom the abusive person has an intimate or family relationship. Domestic violence is serious, and help is available for both victims and those who abuse.

Is domestic violence a crime?

Many forms of domestic violence are against the law in Washington. Domestic violence can be charged as a felony or misdemeanor assault, punishable by confinement in jail or imprisonment.

How can I protect myself and/or my children from domestic violence?

Both the criminal legal system and the civil legal system can help you protect yourself and your children from domestic violence with court orders. Household pets may be included in a domestic violence protection order. If you are a victim of domestic violence, you can also seek help from your local domestic violence shelter. Shelters provide services such as safety planning, temporary shelter, legal advocacy, and counseling. To find the program nearest you, call the Statewide Domestic Violence Hotline at 800-562-6025.

A person who has domestic violence in their relationship may need special protections when requesting any mediation of contested issues in a family law proceeding. It may be appropriate to opt out of mediation and exclusively use the court to resolve all issues in dispute. If the victim wants to participate in mediation, the court must find it is appropriate, and the victim may have a supporting person attend the mediation sessions with him or her.

How can I get help if I am or might be an abuser?

A list of certified treatment agencies for domestic violence abusers is available on the Department of Social and Health Services (DSHS) Web site at <http://www1.dshs.wa.gov/>. Use the A-Z index to find “domestic violence services.”

CHAPTER 12 CHILD ABUSE AND NEGLECT



When will the state step in to protect children from harm?

Generally, the government does not interfere in family matters, but there are laws that allow the government to step in to protect a child from harm within the family. Sometimes this will result in a legal action called a “dependency.” A dependency proceeding is usually, but not always, started by the state after an investigation by a Child Protective Services social worker. The goals of such legal actions are safety of children and reunification and preservation of families.

What is Child Protective Services?

Child Protective Services (CPS) is a division of the Washington State Department of Social and Health Services (DSHS). CPS investigates allegations of abuse and neglect, assigns social workers to help parents overcome problems that are harmful to their children, and participates in certain legal actions regarding children and youth. If a child has been removed from the home and found to be dependent, Child Welfare Services workers become involved to provide services to the family and the child. These services provide for the child’s safety and are designed to achieve a permanent plan for the child, including reunification with the parents when appropriate.

Are there different procedures for youth?

While older youth can be the subject of a dependency proceeding, there are two other types of proceedings that can be used. They are “Child in Need of Services” and “At Risk Youth” proceedings. The court, the child, the family, and sometimes DSHS work together to help families and youth resolve their problems, with services and court orders. You can get more information about these kinds of proceedings from your local juvenile court.

What about criminal penalties?

In addition to the civil legal actions explained above, after a police investigation, the state may also file criminal charges against parents for assault or criminal mistreatment of their children. A parent convicted of a crime against a child can face imprisonment, jail, and/or fines, depending on the nature of the crime. It is also criminal to make a false report of alleged abuse or neglect. Such false reports are misdemeanors, punishable by imprisonment in the county jail, or by fines, or both.

CHAPTER 13 COMMUNITY RESOURCES



Community Health Departments

The health department (sometimes called health district) that serves your community may offer clinics, classes, and other services for you and your children. Some health departments host online bulletin boards on topics such as child care, parenting strategies, and dealing with stress. The Washington State Department of Health's Web site includes a directory of community health departments and districts. For more information, go to www.doh.wa.gov/ and click on "Local Health Departments" under Partners, or call the health department or district listed in your local telephone directory.

DSHS

The Department of Social and Health Services offers an array of services, such as substance abuse treatment, child support enforcement, medical assistance, housing costs, child care financing, and many others. For assistance, go to www1.dshs.wa.gov or call your local DSHS Community Services Office.

Support Groups

Many communities have support groups that can help with a variety of issues, such as dealing with dissolution or separation, alcohol or drug addiction, families in crisis, health issues, and many others. A list of local, state, and national resources for families can be found at <http://parenting.wsu.edu/resources/>. Your doctor, counselor, or health department may also be a good resource for finding an appropriate support group. Schools sometimes offer peer counseling or support groups such as "Banana Splits" for children of separating parents. Many religious organizations sponsor support groups or ministries that address issues faced by separating families.

Legal Services

These tips may help you find legal resources in your community:

- Information about domestic partnerships, rights, and responsibilities may be found at Legal Voice, <http://www.legalvoice.org/tools/lgbt.html>.
- The Secretary of State's Office has information about domestic partnerships at www.sos.wa.gov/corps/domesticpartnerships/.
- Ask a family member, friend, or co-worker for a referral to an attorney.
- Consult the Washington State Bar Association's Web site at www.wsba.org, under "Resources."
- Self-help legal information on a variety of topics is available on the Northwest Justice Project's Web site at www.nwjustice.org.
- A list of legal service providers for those with low income who live *within King County* can be found online at www.nwjustice.org or by calling **211**. The local number is 206-461-3200. The toll-free number is 1-877-211-9274, from King County only.
- Northwest Justice Project's legal education, referral, and advice service is called CLEAR and is available toll-free for those with low income who live *outside King County* at **1-888-201-1014**. Persons 60 or over may call CLEAR*Sr at 1-888-387-7111, regardless of income.
- Legal help on a variety of topics, including family law, may be found at www.washingtonlawhelp.org.
- Court forms and instructions can be downloaded from the Washington Courts Web site at www.courts.wa.gov and <http://www.washingtonlawhelp.org/>.
- Information about courthouse facilitator programs are listed on the Washington Courts Web site at www.courts.wa.gov, on the "Court Directory" page under Other Directories, or on the "Programs & Organizations" page under Programs.
- Guardian ad litem information is included on the Washington Courts Web site at www.courts.wa.gov, on the "Programs & Organizations" page under Programs.
- Domestic violence advocacy groups can help with protection orders and other related matters. For a directory of resources near you, call the Domestic Violence Hotline at **1-800-562-6025** or check the Web site for the Washington State Coalition Against Domestic Violence at www.wscadv.org. Forms and instructions for domestic violence protection orders can be found on the Washington Courts Web site at www.courts.wa.gov/forms/, and your County Clerk's office has a domestic violence clerk who can help you apply for a protection order.