

Washington Property Law for Unmarried Couples Who Are Separating

January 2008

Table of Contents

Introduction	1
<i>BASIC STANDARDS APPLYING TO PROPERTY AND DEBTS</i>	<i>1</i>
My domestic partner and I have been together for many years, but we have never been married. Does Washington State have common law marriage?	1
Can a court divide our property and debts if we are not married?	2
What relationships are considered “marriage-like”?	2
Can you give examples of whether a particular relationship is “marriage-like”?	3
Are gay/lesbian relationships considered marriage like?	4
<i>PROPERTY</i>	<i>4</i>
How does the court divide property if our relationship is considered marriage-like?	4
Is there some property of a marriage-like relationship that the court cannot divide?	5
What are some other ways affecting property that a marriage-like relationship may be treated differently than a marriage?	5
How does the court divide our property if the relationship is not considered marriage-like?	6
<i>DEBTS</i>	<i>6</i>
What happens with joint credit cards and bank accounts when a couple separates?	6
My former partner promised to pay a debt but now the creditor insists that I pay it. Can the creditor do this? ..	7
Can a court require my former partner to pay some of the debts?	7
How does the court divide our debts if the relationship is not considered marriage-like?	8
<i>QUESTIONS ABOUT PROCEDURE</i>	<i>8</i>
I do want to file a court case. Where should it be filed?	8
Can I go to Small Claims Court?	9
I want to bring up property and debt issues and also issues relating to children. Can this be done in one case? ..	9
I have an emergency. Is there anything I can do?	9
Are there alternatives to a lawsuit?	9
Are there forms and instructions that I can use?	9
Should I talk with an attorney?	10

Washington Property Law for Unmarried Couples Who Are Separating

Introduction

This publication gives basic information about Washington State law that applies to the division of property and debts when unmarried couples separate. The following questions and answers give an overview of some common issues. A separate publication at www.washingtonlawhelp.org, *Washington Parenting Law for Unmarried Parents Who are Separating*, gives basic information about issues concerning children of unmarried couples who separate.

Other publications describe some options for unmarried couples who are still living together and want to take legal steps to share their property, their debt and other responsibilities within the relationship. *Questions and Answers Regarding Washington State's Registered Domestic Partnership Law*, available at www.washingtonlawhelp.org, explains the requirements, procedures, and considerations governing the decision to register as domestic partners. *Living Together Contracts*, on the same website, explains how unmarried couples can establish how they will own property and divide debts during their relationship.

This information is not a substitute for individual legal advice and cannot tell you how the law will be applied in your individual case. You should contact an attorney for further advice. The law about unmarried couples in Washington is still developing, not settled, and understanding your rights and what action to pursue is complicated. Even if you cannot afford to pay an attorney to handle your whole case for you, a meeting with an attorney may inform you about important legal rights affecting you.

If you have additional questions and you are low-income and do not live in King County, call CLEAR at 1-888-201-1014. If you live in King County, you may contact the King County Bar Association's Neighborhood Legal Clinics (206) 267-7070 to ask for a free half-hour of legal advice (ask for the family law clinic).

BASIC STANDARDS APPLYING TO PROPERTY AND DEBTS

My domestic partner and I have been together for many years, but we have never been married. Does Washington State have common law marriage?

No. To obtain a valid marriage in the state of Washington, the couple must have a marriage

license and a valid marriage ceremony.¹ Washington will recognize common law marriages from another state if that state authorizes such marriages.²

Washington state does allow same-sex couples and couples where one partner is 62 years of age or older to register as domestic partners. (See the separate publication [Questions and Answers Regarding Washington State's Registered Domestic Partnership Law](#) for an explanation of the requirements and procedure for registering.)

Can a court divide our property and debts if we are not married?

Yes, if the court decides that you have had a **stable, marriage-like relationship**, it can make a “fair and equitable” division of certain types of property and debts acquired during your relationship.³

Courts sometimes call a stable, marriage-like relationship a “meretricious” relationship, but we will refer to it as a “marriage-like” relationship and to its members as “domestic partners” or “partners”. While a marriage-like relationship does not allow a couple to have all the legal benefits and responsibilities of a marriage, it does provide a way to have some types of property and debts accumulated during the relationship fairly divided. The court will look at the facts of each case.

If your relationship is not considered “marriage-like,” different rules apply to the division of property and debts.

The following questions and answers give more details.

What relationships are considered “marriage-like”?

A marriage-like relationship is defined “as a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage does not exist.”⁴ Although there are no exact standards, the court may consider the following factors in determining whether a relationship is marriage-like:

- the duration of the relationship;
- the purpose of the relationship;

¹ [RCW 26.04.140](#) (procurement of a marriage license) and [RCW 26.04.070](#) (a valid ceremony). In this packet, you will see footnotes, like this one. These footnotes will tell you the law or court case that supports the statement that comes before the footnote. RCW stands for [Revised Code of Washington](#), which is the law of Washington State. Court cases have names, such as *In re the Parentage of _____*. You may use the footnotes to look up the law at your local law library, or to tell the court when you are trying to make a legal argument. Keep in mind that the references to the law are up to date as of the date this packet is published. The law sometimes changes before the packet can be updated.

² *In re Pennington*, 142 Wn. 2d 592, 602 (2000)

³ *In re Pennington*, 142 Wn. 2d 592, 602 (2000), *Connell v. Francisco*, 127 Wn. 2d 339 (1995)

⁴ *Connell v. Francisco*, 127 Wn.2d 339, 346 (1995).

- whether cohabitation was continuous;
- whether the relationship was stable and committed;
- whether both domestic partners pooled resources and services for joint goals and projects (for instance, were there joint debts and accounts?);
- whether the domestic partners intended to function like a married couple, yet decided not to marry, (for example, did they plan to have a family, name each other in their wills, or plan to retire together);
- Whether the partners knew that they were not in a legal marriage.

This is not a complete list, and the court can look at all of the facts and circumstances surrounding the relationship. Other factors might include whether a domestic partner was married to another person during the relationship, whether the relationship was monogamous and exclusive, and whether either domestic partner moved or made career choices based upon the relationship. Any additional facts that might help show that a marriage-like relationship existed should be presented to the court.

Can you give examples of whether a particular relationship is “marriage-like”?

It is difficult to predict the outcome of a particular case. However, the facts in recent court cases illustrate how the court has interpreted certain relationships and show that the court does not find all relationships to be marriage-like, even when they have lasted for years.

In *In re Pennington*⁵, the court examined two relationships and found that neither one was “marriage-like.”

In one relationship considered by the Pennington court, one domestic partner wanted marriage and the other refused to marry. They lived together off and on for twelve years (and continuously for 5 ½ of those years). For the first several years of their relationship, including some of the years they lived together, the man domestic partner was married to another woman. The court found although a 12 year relationship was long term, the domestic partners’ cohabitation was not continuous and stable. Next, although the couple had some shared living expenses, other major expenses, like the mortgage on the home they lived in, were paid entirely by the man. The man provided the woman with cars and paid for her car insurance. The man’s business paid the woman a salary and provided health insurance. The court decided there were “gaps where no expenses were shared.”⁶ Also, there was no evidence of continuous payment or contribution of time into a specific item of property that would create any unfairness in refusing to find a marriage-like relationship. Finally, one person was absent from the home for periods of time and, during those absences, had another relationship.

In the second relationship discussed in the Pennington decision, the domestic partners lived together for four years but then had periods of separation and unsuccessful efforts to reconcile. In addition, before they moved in together, the man dated other women. The woman herself was

⁵ The court opinion in *In re Pennington*, 142 Wn. 2d 592, 605 (2000) contains many additional facts not detailed here and should be read carefully if you are thinking of filing a case.

⁶ *In re Pennington*, 142 Wn. 2d 592, 605 (2000).

married to another at the time the parties began to date. The court found that the relationship was not continuous. As to their intent, the domestic partners functioned as a married couple but knew they were not married, and did not represent themselves to the community as married. They had a joint checking account used to pay living expenses, and both domestic partners made deposits into the account. However, they also had separate accounts, and they did not buy any property together. They helped each other with work-related activities. The court decided that although the domestic partners' period of living together and the length of their relationship were some evidence of a marriage-like relationship, the overall evidence of their mutual intent to have a marriage-like relationship was not so clear. The facts showed that they had some separate accounts and did not buy assets together or so "significantly or substantially pool their time and effort to justify the equitable division of property acquired during the course of their relationship."⁷

In contrast to Pennington, the court in *Connell v. Francisco*, (127 Wn. 2d 339 (1995)) did order a fair and equitable division of property acquired during the relationship. The Connell parties' relationship had lasted seven years, and they had lived together almost all of this time. One partner moved across the county at the other's request, an engagement ring was given, many community members thought of the couple as married, and one partner wrote a will leaving most property to the other. In addition, one partner worked in businesses owned by the other and used the partner's last name in business affairs.

Are gay/lesbian relationships considered marriage like?

They can be.⁸ A court may fairly divide property accumulated by a same-sex couple during their relationship. The court would first look to the same factors listed above to determine if a marriage-like relationship existed.

PROPERTY

How does the court divide property if our relationship is considered marriage-like?

If your relationship was marriage-like, the court will assume that property **acquired during the relationship** was owned together. If one domestic partner does not overcome this presumption (by showing that the property was not joint), then the court will divide the property acquired during the relationship in a just and equitable way. The court has discretion in deciding what is just and equitable. "Just and equitable" does not necessarily mean a 50-50 division.

In dividing the property, the court considers the nature and extent of the property, the length of the relationship, and the economic circumstances of each person at the time the property is divided. In addition, the court will consider non-financial contributions by one of the parties

⁷ *In re Pennington*, 142 Wn. 2d 592, 607 (2000).

⁸ *Gormley v. Robertson*, 120 Wn. App. 31, 38 (2004).

when making its decision (such as care for children, help with starting a business, etc.).⁹ One domestic partner should not unfairly benefit at the expense of the other.¹⁰

Is there some property of a marriage-like relationship that the court cannot divide?

Yes. The court cannot divide separate property.¹¹ Separate property, meaning property that belonged to one domestic partner before the relationship or that one domestic partner received during the relationship as a gift or through inheritance, is owned by that partner only and will not be divided by a court.¹² However, if the court finds that the relationship was marriage-like, and if the other partner contributed significant labor or money, then a court could order that his/her contribution be reimbursed.¹³

Likewise, the Washington state court cannot divide some pensions.

This is not a complete list. Consult an attorney for individual advice about a particular type of property, interest, or claim.

What are some other ways affecting property that a marriage-like relationship may be treated differently than a marriage?

An unmarried domestic partner does not inherit as a surviving spouse under the intestacy statute if his/her domestic partner dies without a will.¹⁴ However, if domestic partners have registered their partnership under Washington's Registered Domestic Partnership Law, then the surviving partner *may* be able to inherit without a will. (For a more detailed explanation of this law, see the separate pamphlet [*Questions and Answers Regarding Washington State's Registered Domestic Partnership Law.*](#))

An unmarried domestic partner does not have a claim to the domestic partner's Social Security benefits.

This is not a complete list. Consult an attorney for individual advice about a particular issue in your case.

⁹ *Connell v. Francisco*, 127 Wn. 2d 339 (1995), *Soltero v. Wimer*, ___ Wn. App. ___ (2005)

¹⁰ *Connell v. Francisco*, 127 Wn. 2d 339 (1995).

¹¹ *Soltero v. Wimer*, ___ Wn.2d ___ (1/18/07).

¹² *Peffley-Warner v. Bowen*, 113 Wn. 2nd 243, 251 (1989). No case has resolved the question of whether meretricious relationship principles can be applied after the death of a partner. See *Vasquez v. Hawthorne*, 145 Wn. 2d 103 (2001).

Also see 21 Washington Practice Section 57.15- .34 for a list of other ways the courts have decided how a marriage-like relationship compares to a marriage.

¹³ *Soltero v. Wimer*, ___ Wn. App. ___ (2005)

¹⁴ Ch. 7.64 RCW.

How does the court divide our property if the relationship is not considered marriage-like?

If the court finds that your relationship is not marriage-like, then usually the property from the relationship is divided according to more general property division laws. Although you may raise "equitable" or fairness arguments, these general laws focus less on what is "just and equitable" and more on whose name is on the property. If you decide to bring a legal action, you will need to present evidence to the court that you are the legal owner of the property (for example, your name on the title). Otherwise, it may be extremely difficult to regain the property if the other party also claims ownership.

There are some exceptions, based upon other specific legal theories.¹⁵ However, those legal theories are too specific to explain here. If you want individual advice about whether those theories apply to you, contact an attorney.

The general property laws may help you in certain situations, even if your relationship was not marriage-like and even if one of the special theories in footnote 15 does not apply. For example, if your name is on the title to personal property (such as a car) but that property is in the possession of your former partner, a replevin case may be available to recover possession of the property.¹⁶ Or, if you own real estate together, such as a home, you may be able to bring a partition case to divide that property.¹⁷ Sometimes attorney's fees may be awarded in replevin or partition cases.¹⁸

DEBTS

What happens with joint credit cards and bank accounts when a couple separates?

In some cases, it may be appropriate to cancel joint credit cards or bank accounts. However, this action may not be wise in every case. If you bring a court case asking for division of property and debts, you are asking the court to treat you fairly. In turn, the court will expect you to have acted fairly. The court may decide you did not act fairly if you deprived your partner of necessities or credit, or if you used money you had no right to. So talk to an attorney before canceling joint credit cards or bank accounts.

¹⁵ Tracing source of funds, *West v. Knowles*, 50 Wn.2d 311, 313, 311 P.2d 689 (1957); Implied domestic partnership/joint venture, *In re Estate of Thornton*, 81 Wn.2d 72, 78-81, 499 P.2d 864 (1972); Resulting trusts, *Walberg v. Mattson*, 38 Wn.2d 808, 812-14, 232 P.2d 827 (1951); Constructive trusts, *Humphries v. Riveland*, 67 Wn.2d 376, 389-90, 407 P.2d 967 (1965); Tenancy in common, *Shull v. Shepherd*, 63 Wn.2d 503, 506, 387 P.2d 767 (1963); and Contract theory, *Dahlgren v. Blomeen*, 49 Wn.2d 47, 50-52, 298 P.2d 479 (1956).

¹⁶ [Ch. 7.64 RCW](#).

¹⁷ [Ch. 7.52 RCW](#).

¹⁸ [RCW 7.52.480](#), [RCW 7.64.035\(3\)](#).

If you do decide to cancel joint credit card or bank accounts, and a particular creditor or bank requires the other person's consent but you cannot get consent, you should write to the creditor or bank. In your letter, you should state that you no longer want the account and will not be responsible for any debts made after the date of the letter. Send a copy of the letter to anyone else authorized to use the account. Save a copy for yourself; keep a record of everyone who received the letter and a record of how you sent it. You must also stop using the account after you send your request.

My former partner promised to pay a debt but now the creditor insists that I pay it. Can the creditor do this?

Even if you and your former partner divide your debts, or a court divides them for you, a creditor may be able to collect from either of you, depending upon the original promise made to the creditor. A creditor may collect against whoever has promised to pay the debt. Whether or not your relationship was marriage-like, if both partners have promised to pay the debt then the creditor can require payment from either or both of you. In such a case, it does not matter to the creditor whether you had a particular relationship, whether you kept possession of the items purchased, or whether you benefited from the services or money the creditor provided. For example, if your name is on a credit card, the credit card company can still ask you to pay the debt even if the court tells your domestic partner the credit card is his/her responsibility.

See the publications [Debtor's Right with Collection Agencies](#) and [How to Claim Personal Property Exemptions](#) available at www.washingtonlawhelp.org for more information on which income and assets can be protected from collection of a debt that you owe.

Can a court require my former partner to pay some of the debts?

As between you and your former partner, if your relationship is considered marriage-like (or if you prove one of the other theories in footnote 14), the courts will use the same "fair and equitable" standard to divide debts acquired during the relationship as it used to divide property; the court will then order one or both parties to pay each creditor. However, the court's division does not limit the rights the creditor already has (see previous question and answer).

If a creditor forces you to pay a debt that the court has decided is the responsibility of your domestic partner, you may go back to court in the same case and try to recover payment from your former partner. Or, if you have already paid a debt before you get a court decision about division of debts, and then the court finds that debt is the responsibility of your domestic partner, you should obtain a judgment for that amount in the final court order dividing your property and debts.

A judgment against your ex-domestic partner will allow you to begin a collection proceeding against him/her. Talk to a lawyer for further advice on how to collect a debt after receiving a judgment.

If you are contacted by a creditor about a debt that your former partner should pay, you can try mailing a letter to the creditor, with a copy of the court order, explaining your former partner's responsibility for the debt. If your income is limited, you may also want to send a copy of your budget to show your inability to pay. If the creditor or collection agency knows that it cannot collect from you because of limited income, and that the other party is responsible under court orders, it may choose to drop collection efforts against you.

How does the court divide our debts if the relationship is not considered marriage-like?

If your relationship is not considered marriage-like, you will be responsible for any debts that have only your name on them.¹⁹ In addition, if a debt is in both of your names, you will most likely be "jointly and severally" liable. This means that the creditor may choose to collect the debt from each of you in any portion it chooses (i.e. if you have a greater income than your domestic partner, a creditor may choose to collect the entire debt from you).

You should read the written agreement with the creditor to determine your responsibility.

If you voluntarily pay your partner's debt without any personal benefit and the relationship is not marriage-like, then you will be deemed to have given a gift to your partner, unless there is fraud, coercion, breach of contract, or other circumstances where it would be unjust to let your partner keep the benefit of your payment.

QUESTIONS ABOUT PROCEDURE

I do want to file a court case. Where should it be filed?

In general, a case to divide property and debts should be filed in the county in Washington State where your former domestic partner (the defendant in the lawsuit) lives.²⁰

Cases involving ownership of real property must be filed in the Superior Court where the real property is located²¹. Cases asking for the return of personal property may be brought in District Court or Superior Court depending upon the value of the property.

If you are bringing only a case for money, you may also have a choice of courts depending upon the amount you claim. The Small Claims Court limit is \$4,000. The District Court limit is \$50,000. Requests for money above these limits must be brought in Superior Court.

¹⁹ unless you can show that a special theory applies, as listed in footnote 16.

²⁰ [RCW 4.12.025](#). See *In re Catton*, 69 Wash. 130 (1912) and *DeLaGarza v. Rennebohm*, 24 Wn. App. 575 (1979).

²¹ [RCW 2.08.210](#)

Can I go to Small Claims Court?

You may consider bringing a small claims instead of a superior court action, in the county where your former partner lives, if your claim concerns only property valued at \$4000 or under, and if you will be satisfied with a judgment for money rather than return of the property. See our publication titled *Small Claims Court*.

I want to bring up property and debt issues and also issues relating to children. Can this be done in one case?

The law on this is not completely clear. Some counties permit it; others do not. Try to talk to an attorney in your community to find out about local procedures.

I have an emergency. Is there anything I can do?

If you are a domestic violence victim, you may be able to get a Domestic Violence Protection Order containing emergency protection. See the list of domestic violence related publications at www.washingtonlawhelp.org.

If you file a lawsuit for property/debt division, the court may be able to enter temporary or restraining orders. For example, if you file suit over a home you and your domestic partner were buying, but which was in only your domestic partner's name, the court may be able to prevent the sale of the home pending hearing. However, practice around the state varies as to whether a money bond must be paid before a temporary order can be put into effect.

Are there alternatives to a lawsuit?

In some cases concerning property and debts, your best alternative may be to reach an agreement with your former domestic partner. If you are unable to accomplish this on your own, you may want to consider contacting a local agency that provides mediation or arbitration services before becoming involved with the time, expense and formalities of a court proceeding. For basic information about mediation, read the Northwest Women's Law Center publication [Mediation: Should I Use It?](#) available at www.nwwlc.org.

Are there forms and instructions that I can use?

So far, there are no specific forms required state-wide that you can use to ask the court to declare that domestic partners have had a marriage-like relationship and to divide property and debts fairly and equitably. Ask a local attorney or the Family Law Facilitator at the courthouse (if your county has a facilitator), whether the court in your county requires specific local forms.

If there are no locally required forms and you decide to represent yourself in issues affecting property and debts, the following materials are among those that might be helpful:

- [*Filing a Complaint to Divide Property and Debts of an Unmarried Couple \(no children\)*](#)

However, these forms and instructions may not be suitable in every county because procedures differ. Other self-help law materials are available on-line at www.washingtonlawhelp.org.

Should I talk with an attorney?

Yes. Even if you cannot afford to hire an attorney for full representation, an experienced family law attorney can

- explain local procedures,
- evaluate the strength of your case
- identify the claims you might make, including claims listed in footnote 14 and any claims under general property law
- advise you how to take practical steps to safeguard your interests (such as how to handle any joint accounts or what to do about a specific item of property).

In addition, some attorneys may be willing to take a case to divide property on a contingent fee basis (that is, to collect attorney's fees only if the case succeeds). (WSBA Informal Opinion #732). Finally, certain types of cases such as replevin or partition may allow for attorneys fees. A family law attorney experienced in handling marriage-like relationship cases can advise you in all these areas.

The Northwest Justice Project would like to thank attorney Ron Steingold and Deborah Dowd for their generous assistance in creating and updating this publication. Excerpts from the publication "Nonmarital Relationships: Property and Debt Division" were incorporated with the permission of the Northwest Women's Law Center.

3913EN

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, January 2008.

© 2008 Northwest Justice Project — 1-888-201-1014, TTY 1-888-201-9737
(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)