

Price & Farrington's Estate and Tax Planning FastFacts

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Estate, Tax, Business and Wealth Planning for Advisors and Clients

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Washington's New Domestic Partnership Law: Estate Planning Opportunities

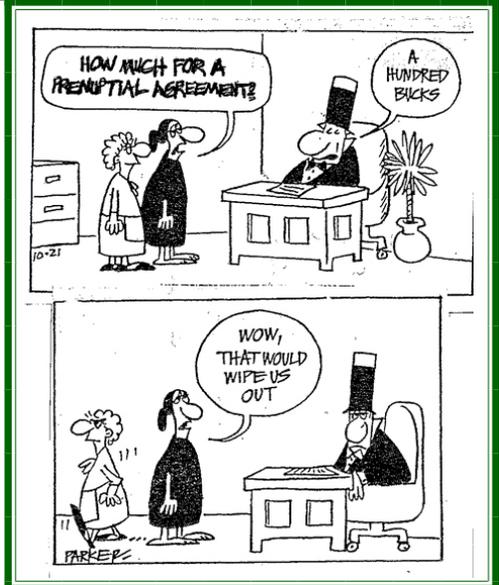
On March 1, The Washington Senate (SB 5336) followed by the House in April (HB 1351) passed a domestic partnership bill which Governor Christine Gregoire signed into law on April 21. The term “domestic partnership” refers to persons in an “intimate, committed and exclusive relationship with another person,” who aren’t married. The legislation, which

establishes a **domestic partnership registry**, poses new planning opportunities for gay and lesbian couples and for unmarried heterosexual couples where one partner is over age 62.

The new act provides legal protections under Washington law to eligible couples who register their relationships. This legislation arrives in a complex and evolving legal and social environment that currently surrounds same-sex couples and their families.

DOMA. In 1996, Congress passed the federal **Defense of Marriage Act (DOMA)**, which defines marriage as “the union between one man and one woman”. By adopting this definition of marriage, Congress blocked the extension of more than 1,000 federal rights to same-sex couples. These include: numerous tax benefits; the right to bring a foreign partner to the U.S.; the right to rollover a spouse’s 401(k) plan upon his or her death; the right to care for an ill spouse under the federal Family Medical Leave Act; and the right to receive family and death benefits from Social Security or a spouse’s pension plan. Because of DOMA, even same-sex couples who marry under Massachusetts law (currently the only state that allows gay marriage.) are not entitled to the many rights granted to their heterosexual counterparts under federal law.

Mini-DOMAs. After the passage of DOMA, the majority of states passed “mini-DOMAs” that prohibit same sex marriages and the recognition of such marriages performed in other states. In 1998, Washington passed its own mini-DOMA (RCW 26.04.010), which disallows the extension of approximately 500 state rights to same-sex couples. The Washington Supreme Court recently upheld the constitution-



ality of this law in *Anderson v. King County* (2006) and basically punted the question of legal rights for same-sex couples to the Legislature.

The Washington Act. This is where the domestic partnership law comes into play. Following on the heels of *Anderson*, the Legislature took a hard look at the inequalities faced by couples who cannot marry. In addition to protecting the rights of same-sex couples, the Legislature opted to grant the same benefits to opposite-sex couples where one partner is over 62 years of age. This allows these “older” couples to have legally recognized unions without losing important benefits, such as Social Security or pension payments.

The law provides eligible partners who register their relationship with the State with several critical legal protections, including, but not limited to, the rights to:

- ☑ Visit an ill or injured part-

Notes on the Washington Domestic Partnership Act

- ☞ **Effective July 22, 2007**
- ☞ **The Legislature states:** These relationships [domestic partnerships] “benefit the public by providing a private source of mutual support for the financial, physical and emotional health of those individuals and their families”.
- ☞ **The act covers different sex couples where one or both of the partners is at least 62, even though they could legally marry, because “some social security and pension laws...make it impractical for these couples to marry”.**
- ☞ **The Act states:** “This act does not affect marriage or any other ways in which legal rights and responsibilities between two adults may be created, recognized, or given effect in Washington”.
- ☞ **To terminate such a partnership, all that needs to be done is to file a form, “Notice of Termination of State Registered Domestic Partnership” and notify the other partner if both didn’t sign.**
- ☞ **Question (among many):** If one partner supports the other, or makes payments on a home held in both names, are gift tax returns necessary? **GDP**

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ner in a health care facility;

☑ Provide informed consent for certain medical procedures for an incapacitated partner;

☑ Be involved in end-of-life decisions;

☑ Bring a civil action for the wrongful death of a partner;

☑ Authorize an autopsy on a deceased partner;

☑ Control the disposition of a deceased partner's remains;

☑ Consent to organ donations;

☑ Inherit from a partner in the absence of a will; and

☑ Administer a partner's estate in the absence of a will.

(*Remember: these rights can always be superseded by a will, deed, power of attorney or other legal instrument.)

How it works. The domestic partnership registry would be operated by the Office of the Secretary of State. To be eligible for the registry, couples would need to:

▶ Share a common residence;

▶ Be at least 18 years of age;

▶ Not be married to, or in a registered domestic partnership with, any other person;

▶ Be capable of consenting to the partnership;

▶ Not be nearer of kin than second cousins;

▶ Be members of the same sex, or one of the persons must be at least 62 years of age;

▶ Sign a written declaration and have it "notarized"; and

▶ Pay a fee and receive a certificate from the Secretary of State.

How the states stack up. By passing this legislation, Washington joins a handful of states that provide

limited legal benefits for domestic partners, including Maine, Vermont, Connecticut, Rhode Island, New Jersey, New York, Iowa, Illinois, New Mexico, Oregon, California and Hawaii.

The nature and extent of these benefits vary greatly among the states. Vermont, New Jersey and Connecticut authorize "civil unions", which provide same-sex couples with the same state rights afforded to married couples. Hawaii has a Reciprocal Beneficiaries Law, which provides domestic partners with approximately 60 state-conferred rights. California has the country's most comprehensive domestic partnership act. Like a civil union, it provides same-sex couples the same state-conferred rights as married couples. Washington's legislation is more akin to Maine's domestic partnership act, which provides a handful of state-conferred rights to same-sex couples. Other states grant only a few protections, while still others provide none at all.

The impact. Washington's new law will have a significant impact on legal representation of same-sex couples and their families. Many of the rights couples will gain can already be provided through private contracts, but others, such as the ability to sue for the wrongful death of a partner, cannot.

Many of the legal instruments lawyers traditionally use to protect same-sex couples — including **Durable Powers of Attorney, Healthcare Directives, Wills** and other estate planning documents — can provide clients with more rights than would be afforded under the new law. While other states are likely to recognize contractual agreements made by domestic partners in Washington, they might not recognize rights conferred by Washington's domestic partnership law.

The law also offers no protections for same-sex couples who separate. It allows domestic partners to dissolve their domestic partnership, but it does not extend community property laws to domestic partnerships, so it does not provide guidance on the distribution of



property that was obtained during the partnership.

The law specifically says that it will not affect any common law remedies. This means that the uncertain world of so-called "meretricious relationship" law (the evolving law in Washington relating to unmarried partners) will continue to govern. Because of this, we recommend that all couples who register as domestic partners should also enter into domestic partnership agreements and other contracts that allow domestic partners to decide their own futures instead of leaving them for the courts to decide. Also, if domestic partners raise children together, they will continue to need the protections offered by **co-parenting agreements** and adoptions.

Washington's new domestic partnership law is a significant step forward for same-sex couples. But, just as with estate planning in general, new laws create opportunities that can be used or misused. **Always plan wisely: there is no substitute for competent professional guidance and advice tailored to meet your goals. We are happy to help. GDP ■**



"There is far too much law for those who can afford it and far too little for those who cannot." Derek Bok

"Behold the turtle. He only makes progress when he sticks his neck out." James Bryant Conant

"If you think education is expensive, try ignorance." A. Lawrence Lowell