Washington Property Law for Unmarried Couples

Northwest Justice Project
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Part 1.  Should I read this?

Read this to learn what Washington State law says happens to property and debts when unmarried couples break up. You may also want to read these, also available at WashingtonLawHelp.org:

- **Washington Parenting Law for Unmarried Parents**
- **Questions and Answers Regarding Washington State’s Registered Domestic Partnership Law**
- **Living Together Contracts** - you can use this contract to show how you will own property and divide debts during your relationship

This is not a substitute for legal advice. The law is still developing. Understanding your rights, and what to do, is complicated. We cannot tell you how a court will rule in your case. Talk to a lawyer.

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- If you have a low income and live outside King County, call CLEAR at 1-888-201-1014. If you live in King County, 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.)

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Part 2.  Basic Standards

A.  Does Washington State have common law marriage?

No. To have a valid marriage here, you must have a marriage license (RCW 26.04.140) and valid marriage ceremony (RCW 26.04.070). Washington will recognize common law marriages from another state if that state authorizes them.

Where one partner is 62 or older, you can register as domestic partners here. Read **Questions and Answers Regarding Washington State’s Registered Domestic Partnership Law** at legalvoice.org.
B. Can a court divide our property and debts?

Yes. A court that decides you have had a stable, “marriage-like” relationship can divide certain property and debts you got during your relationship. The court looks at the facts of each case.

- We use the phrase committed intimate relationship here. We also call you domestic partners or partners.

C. What relationships are “marriage-like”?  

There is no one definition. The court can consider:

- how long your relationship was
- why you were together
- if you lived together continuously
- if your relationship was stable and committed
- if you combined resources and services for joint goals and projects (example: joint debts and accounts)
- if you both intended to act like a married couple, yet decided not to marry (example: you planned to have a family, named each other in your wills, or retired together)
- if you both knew you were not in a legal marriage
- if one of you was married to someone else during your relationship
- if either of you saw other people
- if one of you moved or made career choices because of your relationship

This is not a complete list. You should give the court any facts that show you had a marriage-like relationship.

D. Examples of a “marriage-like” relationship:

Here are some court decisions. Courts do not find all relationships marriage-like, even long-lasting ones.
In *In re Pennington*, 142 Wn. 2d 592, 605 (2000), the court looked at two relationships. It found neither was “marriage-like.”

**Relationship 1**: One partner wanted marriage. The other refused to marry. They lived together off and on for twelve years (continuously for five and a half of those). For the first several years, including some years they lived together, the man was married to another woman. The court found their twelve-year relationship was long-term, but they did not live together continuously.

The couple had some shared living expenses. The man alone paid others, like the mortgage on their home. The man gave the woman cars and paid for her car insurance. His business paid her a salary and provided health insurance. There was no proof of continuous payment or contribution of time to a specific item of property. One partner was absent from the home for long periods and had another relationship during those absences.

**Relationship 2**: The couple lived together for four years but then had periods of separation and unsuccessful efforts to reconcile. Before they moved in together, the man dated other women. The woman was married to someone else when the couple started dating. The court found the relationship was not continuous.

The couple functioned as a married couple but knew they were not married. They did not hold themselves out to the community as married. They had a joint checking account for paying living expenses. Both made deposits into the account. They also had separate accounts. They did not buy any property together. They helped each other with work-related activities.

The court in *Connell v. Francisco* (127 Wn. 2d 339 (1995)) did find a marriage-like relationship. That relationship lasted seven years. They lived together almost all that time. One partner moved across the county at the other’s request. There was an engagement ring. Many thought they were married. One partner’s will left the other most of his property. One partner worked in businesses the other owned and used the partner’s last name in business affairs.

E. Can gay relationships be marriage-like?

Part 3. Property

A. How does the court divide property if it decides our relationship is marriage-like?

The court will assume you owned together property you got during the relationship. If one of you cannot show otherwise, the court will divide this property in a way it believes is just and equitable (fair). This may not mean 50-50.

The court will consider:

- The nature and extent of the property
- How long you were together
- Each person’s financial situation at the time the court divides the property
- Non-financial contributions by one partner (examples: care for children; help starting a business)

❖ One of you should not benefit at the other’s expense.

B. Is there property the court cannot divide?

The court cannot divide property one of you owned before, or inherited or got as a gift during the relationship. That is separate property. Only that partner owns it.

If the court finds the relationship was marriage-like and the other partner contributed a lot of labor or money, it could order one to pay back the other for their contribution.

❖ The Washington state court cannot divide some pensions.

Talk to a lawyer about a particular type of property, interest, or claim.

C. How else is a Committed Intimate Relationship different from a marriage?

If one of you dies without a will, the other does not inherit the way a widow or widower does under state law. Ch. 7.64 RCW. If you have a registered domestic partnership, you may
be able to inherit without a will. Read Questions and Answers: Washington State’s Registered Domestic Partnership Law.

- An unmarried domestic partner has no claim to the other’s Social Security benefits.

This is not a complete list of differences. Talk to a lawyer.

**D. Our relationship is probably not marriage-like. How will the court divide our property?**

Usually the focus will be on whose name is on the property. You must prove you are the legal owner (example: your name on the title). Otherwise, it may be very hard to get the property back if your ex also claims ownership.

There are some exceptions. The law is complicated. Talk to a lawyer.

General property laws may help. **Example 1**: Your name is on the title to a car. Your ex currently has the car. You may be able to file a replevin case to get the car back. Ch. 7.64 RCW. **Example 2**: You own a home together. You may be able to file a partition case to divide the home. Ch. 7.52 RCW. The court might award attorney’s fees. RCW 7.52.480; RCW 7.64.035(3).

**Part 4. Debts**

**A. What happens to our joint credit cards and bank accounts?**

In some cases, you can cancel joint credit cards and bank accounts. **This may not be wise in your case.** Talk to a lawyer first. In a court case for division of property and debts, the court may decide you did not act fairly if you deprived your partner of necessities or credit or you used money when you had no right to.

If you decide to cancel joint credit card or bank accounts, and you cannot get your ex’s consent where a creditor or bank needs it, write the creditor or bank a letter. Say:

- You no longer want the account.

- You will not be responsible for any debts made after the date of the letter.
Send copies of the letter to anyone else authorized to use the account. Keep one for yourself. Keep a record of who got the letter and how you sent it. **Stop using the account after your send your request.**

**B. The creditor is coming after me for a debt my ex promised to pay.**

It does not matter if you divide your debts, or a court divides them for you. A creditor may still be able to collect from either of you. A creditor can collect against whoever promised to pay the debt. If you both have promised, the creditor can require payment from either or both of you. The creditor does not care if you had a particular relationship, did not keep items you bought, or did not get the services or money the creditor provided. **Example:** Your name is on a credit card. The credit card company can ask you to pay the debt even if the court orders your ex to pay it.

Read [Debtor's Rights: Dealing with Collection Agencies](#) and [How to Claim Personal Property Exemptions](#) to learn about income and assets you can protect from debt collection.

**C. Can a court order my ex to pay some of the debts?**

If your relationship is marriage-like, the court will use the "fair and equitable" standard to divide debts. The court will then order one or both of you to pay each creditor. **The court's division does not limit the creditor's rights.** (See B, above.)

If a creditor forces you to pay a debt that is your ex's court-ordered responsibility, you can go back to court to get your ex to pay you back. If you already paid a debt before any court order dividing debts, and then the court decides that debt is your ex's responsibility, you should get a judgment for that amount in the court order.

- **With a judgment against your ex, you can try to collect from your ex. Talk to a lawyer.**

If a creditor contacts you about a debt your ex should pay, mail the creditor a letter and copy of the court order showing your ex is responsible. If you have a low income, you can also send a copy of your budget showing you cannot pay.
D. Our relationship is probably not marriage-like. How will a court divide our debts?

You will be responsible for any debts in your name only. If a debt is in both names, you will probably be "jointly and severally" liable. The creditor can collect from each of you in any portion it chooses. If you earn more than your ex, they may try to collect only from you.

- The written agreement with the creditor should explain your responsibility.

Do not voluntarily pay your ex’s debt. If you do not benefit from paying the debt off, the court may call this a gift. The ex does not have to pay you back unless you can show it would be unjust to let your ex keep the benefit of your payment.

Part 5. Procedure

A. Where should I file my court case?

In general, you should file a case to divide property and debts in the county in Washington State where your ex lives. RCW 4.12.025. You must file a case involving ownership of real property (land and buildings on the land) in Superior Court, in the county where the property is. RCW 2.08.210.

You can file a case asking for the return of personal property in District Court or Superior Court. It depends on the property’s value.

If you are filing only a case for money, the Small Claims Court limit is $10,000. The District Court limit is $100,000. You must file a claim for more in Superior Court.

B. When can I go to Small Claims Court?

You can file a small claims case in the county where your ex lives if your claim is for only property valued at $10,000 or under, and you are okay with a judgment for money rather than return of the property. Read How do I Sue in Small Claims Court, at WashingtonLawHelp.org.

C. Can I bring up child custody and visitation in a court case about property and debt?

It depends. Talk to a local attorney about local procedures.
D. What if I have an emergency?

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 resources at WashingtonLawHelp.org.

If you file a lawsuit for property or debt division, you can ask for helpful temporary or restraining orders. Example: You file over a home you and your ex were buying. It was in only your ex’s name. The court may temporarily be able to stop the sale of the home.

E. I would rather not go to court.

It may be best to reach an agreement with your ex. If you cannot on your own, contact a local agency that provides mediation services. Mediation could be cheaper and faster than a court case. Read Mediation: Should I Use It.

F. Are there forms and instructions I can use?

Ask a local attorney or the family law facilitator (if your county has one) if your court has local forms.

If not, Unmarried Couples: File a Complaint to Divide Your Property and Debts or other resources at WashingtonLawHelp.org might help.

G. Should I talk with a lawyer?

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

- explain local procedures
- tell you if you have a strong case
- help you see what claims you might make
- advise how to protect your interests (examples: handling joint accounts; what to do about an item of property)

A lawyer might take your case on a contingent fee basis. The lawyer would collect fees only if you win. Some types of cases, such as replevin or partition, may allow for attorneys fees.

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