Unmarried Couples: Washington Property Law

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Section 1: Introduction

This covers basic info about Washington State law on what happens to property and debts when unmarried couples break up. You may also want to read these, also available at www.washingtonlawhelp.org:

- Washington Parenting Law for Unmarried Parents who are Separating - basic info.
- Questions and Answers Regarding Washington State’s Registered Domestic Partnership Law- requirements, procedures, and more info.
- Living Together Contracts - unmarried couples use these to show how they will own property and divide debts during their relationship.

This info is no substitute for individual legal advice. State law on this subject 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 for more advice. You may find out about important legal rights.

If you are 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.)

Section 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.

Washington state does allow couples where one partner is 62 or older to register as domestic partners. Questions and Answers Regarding Washington State’s Registered Domestic Partnership Law has more info.

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

Yes. A court that decides you have had a stable, “marriage-like” relationship can divide certain types of property and debts you acquired during your relationship. The court looks at the facts of each case.
We use the phrase “committed intimate relationship” here. We also call you and the other person in your relationship “domestic partners” or “partners.”

C. What relationships are “marriage-like”?

There are no exact standards. The court can consider:

- how long your relationship was
- the purpose of your relationship
- whether you lived together continuously
- whether your relationship was stable and committed
- whether you both pooled resources and services for joint goals and projects (example: joint debts and accounts)
- whether 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)
- whether you both knew you were not in a legal marriage
- whether one of you was married to someone else during your relationship
- whether your relationship was exclusive
- whether either one of you moved or made career choices because of your relationship

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

D. Can you give examples of a “marriage-like” relationship?

Looking at some court cases shows how the court has interpreted some relationships. Courts do not find all relationships to be marriage-like, even long-lasting ones.

In *In re Pennington*, 142 Wn. 2d 592, 605 (2000), the court examined 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 them). For the first several years, including some years the couple lived together, the man was married to another woman. The court found that their twelve-year relationship was long-term, BUT they did not live together continuously.

The couple had some shared living expenses. The man solely paid other major expenses, 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.

As to their intent, the couple functioned as a married couple but knew they were not married. They did not represent themselves to the community as married. They had a joint checking account used to pay 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 existed. The couple’s 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 other people 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/lesbian relationships be marriage-like?**


**Section 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 the property you got during the relationship in a way it believes is just and equitable. This may not mean 50-50.

In dividing the property, the court considers:

- 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

The court also considers non-financial contributions by one partner (examples: care for children; help with 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 the relationship or inherited or received as a gift during the relationship (separate property). Only that partner owns it. A court finding the relationship was marriage-like AND the other partner contributed significant labor or money could order the one to pay back the other for their contribution.

- The Washington state court cannot divide some pensions.

Get advice from 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(er) does under state law. Ch. 7.64 RCW. If you registered your partnership under Washington’s Registered Domestic Partnership Law, you may be able to inherit without a will. Questions and Answers: Washington State’s Registered Domestic Partnership Law has more info.

- 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 for individual advice.

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

Usually the focus will be more on whose name is on the property. You must prove you are the property’s 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, even if your relationship was not marriage-like and no exceptions apply. 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 bring a partition case to divide that property. Ch. 7.52 RCW. The court may award attorney’s fees in your case. RCW 7.52.480; RCW 7.64.035(3).

Section 4: Debts

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

In some cases, you can cancel joint credit cards/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 will
expect you to have acted fairly. The court may decide you did not act fairly if you deprived your partner of necessities/credit OR you used money you had no right to.

If you decide to cancel joint credit card/bank accounts, and you cannot get your ex’s consent where a creditor/bank requires it, write the creditor/bank a letter stating:

- 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 everyone who received the letter and how you sent it. **You must stop using the account after your send your request.**

**B. What if the creditor insists I pay a debt my ex promised to pay?**

Even if you divide your debts, or a court divides them for you, a creditor may be able to collect from either of you. A creditor may collect against whoever has promised to pay the debt. If both of you have promised to pay the debt then 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 the items you bought, or did not benefit from the services/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.

*Debtor’s Right with Collection Agencies* and *How to Claim Personal Property Exemptions* have more info on 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 for dividing property 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 a copy of the court order showing your ex’s responsibility for the debt. If your income is limited, you can also send a copy of your budget showing you cannot pay.
D. How does the court divide our debts if the relationship is not marriage-like?

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

- The written agreement with the creditor should say what your responsibility is.

Do not voluntarily pay your ex’s debt. If your relationship is not marriage-like, and you do not personally 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.

Section 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 in the Superior Court where the real property is located. RCW 2.08.210. You can file a case asking for the return of personal property in District Court or Superior Court, depending on the property’s value.

If you are bringing only a case for money, where you file depends on how much you claim. The Small Claims Court limit is $5,000. The District Court limit is $100,000. You must bring claims for more in Superior Court.

B. When can I go to Small Claims Court?

You can file a small claims action instead of a superior court action, in the county where your ex lives, if your claim is for only property valued at $5,000 or under, and you are okay with a judgment for money rather than return of the property. See Small Claims Court, available at www.washingtonlawhelp.org.

C. Can I bring up property/debt issues and issues relating to children in one case?

Not all counties allow this. 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 www.washingtonlawhelp.org.
If you file a lawsuit for property/debt division, the court may be able to enter temporary or restraining orders. **Example:** You file suit over a home you and your ex were buying. It was in only your ex’s name. The court may temporarily be able to prevent the sale of the home.

**E. Are there alternatives to a lawsuit?**

It may be best to reach an agreement with your ex. If you cannot do this on your own, try contacting a local agency that provides mediation or arbitration services before spending the time/money/effort a court case requires. [Mediation: Should I Use It](#) has more info.

**F. Are there forms and instructions I can use?**

The state has not developed any forms to ask the court to declare that you have had a marriage-like relationship and divide your property and debts. Ask a local attorney or the family law facilitator (if your county has one) if your court has local forms.

If not, [Unmarried Couples: Filing a Complaint to Divide Your Property and Debts](#) or other resources at [www.washingtonlawhelp.org](http://www.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
- evaluate the strength of your case
- identify claims you might make
- advise how to safeguard your interests (**examples:** handling any joint accounts; what to do about a specific item of property)

Some lawyers may 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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