

Family Law Handbook



WASHINGTON
COURTS

**Understanding the legal implications of
MARRIAGE AND DIVORCE
in Washington State**

July 2014

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INTRODUCTION

This handbook has been developed to help you understand family law in Washington State. While getting married or getting divorced may be very personal to individuals, there are laws that govern marriage and divorce. The Legislature directed the Washington State Administrative Office of the Courts to create this handbook for distribution to individuals getting a marriage license, and to those who are seeking a dissolution of marriage (divorce) or responding to a divorce action. The handbook may help you understand the rights and responsibilities spouses have to each other and any children during and after marriage.

Throughout this handbook, you will find answers to questions often asked about marriage, divorce, moving with children, parentage, court orders, domestic violence, child abuse and neglect, as well as the effects of divorce on children. While this publication is not designed to provide legal advice, it will provide general information about the marriage contract, marital laws, and laws about divorce in Washington State. It is always a good idea to consult with an attorney about your rights and responsibilities regarding any legal issue, including marriage and divorce.

CHAPTER 1 MARRIAGE IN WASHINGTON STATE



The laws that govern marriage are found in Chapter 26.04 of the Revised Code of Washington. You can find a copy of those laws at the Washington Legislature's Web site at www.leg.wa.gov, under "Laws and Agency Rules." Under Washington law, marriage is a civil contract between two persons who are each at least eighteen years old and who are otherwise capable of getting married. If the couple meet certain requirements about age, marital status, consanguinity (whether and how closely two people are related) and competency, they may marry. Individuals who want to marry must obtain a marriage license from the county auditor. Only qualified individuals may solemnize a marriage. The law also governs marriages that do not meet the legal requirements and that are not valid at all (void) and marriages that may be voidable. If you have any doubts about meeting legal requirements for getting married in Washington, you should consult an attorney.

The fact that a person is married can affect many aspects of life, such as insurance coverage, income tax status, property ownership, responsibility for debt, inheritance, and rights about that person's children. When you get married, you may need to make changes to insurance policies, your will, financial accounts, benefits (like Social Security), or other arrangements you have regarding your living situation, business, or finances. Sometimes changes to such arrangements become effective just by getting married or divorced. You should make sure you know if you need to inform your bank, government agencies, mortgage holder, landlord, employer, or others about your marriage so that they can make any necessary changes to agreements or records. Sometimes either or both spouses 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 marriage for financial institutions or government agencies to change their records.

If you or your intended spouse have children from a previous relationship, own a business or other property, have debt, or have unresolved legal responsibilities, getting legal advice can be very important. An attorney experienced in family law will give you important information about your rights and responsibilities.

It is important to note that while as of December 6, 2012, Washington State permits same-sex couples to marry in Washington, not all states do, and some states may not recognize same-sex marriages performed in Washington. Additionally, federal tax laws may treat same sex couples differently from heterosexual couples. Certain federal rights, such as being able to file a federal income tax return jointly as a married couple, can be affected. It can also affect the rights of a couple when one or both spouses is in the military. A knowledgeable attorney can provide important advice about the rights of same-sex married couples.

It is also important to note that on June 30, 2014, some state-registered domestic partnerships were merged to marriage. If one of the partners was not at least 62 years of age on that date, the parties are the same sex, and no annulment, legal separation, or dissolution action was pending in superior court as of June 30, 2014, then that partnership was merged to marriage, with the date of marriage being set as the date the domestic partnership was filed at the Secretary of State's Office. The merger from state-registered domestic partnership to marriage happened automatically, by operation of law. No marriage ceremony was necessary to make the marriage happen. If you are in this situation and do not want to remain married, you will need to file a dissolution of marriage action in superior court.

Those state-registered domestic partnerships where at least one partner was 62 years of age or older on June 30, 2014, remained as state-registered domestic partnerships, regardless of the gender of the partners. If those persons wish to be married, they need to obtain a marriage license and proceed with the marriage.

The merger from state-registered domestic partnership to marriage is part of legislation that was passed during the 2012 legislative session (ESSB 6239) and ratified by the people November 6, 2012, by Referendum 74 in the general election. The specific provision of the law is RCW 26.60.100. Note that while cities may offer domestic partnerships, only state-registered partnerships are affected by the marriage merger laws.

CHAPTER 2 PRENUPTIAL AGREEMENTS



What is a prenuptial agreement?

A prenuptial agreement is a contract entered into by two people before their marriage. They decide how their property will be divided if they get a divorce, legal separation, or annulment, or when one of them dies. The contract contains all of these agreements. Sometimes couples wait until they are married to make these agreements – then the contract is a “marital agreement.”

What makes the agreement enforceable?

In general, a prenuptial or marital agreement is more likely to be enforced by a court if the contract is fair and if both spouses 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 married, and this can make the agreement unenforceable.

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

Prenuptial and marital 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 spouse or intended spouse) and help drafting such a contract.

CHAPTER 3 ENDING A MARRIAGE



How can a marriage end?

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

What is an annulment?

An annulment is a court order that says a marriage is invalid. In Washington, an annulment is called a decree of invalidity. Annulments are rare and are only granted in situations where there was some legal defect from the start of the marriage that makes it invalid. Even if the marriage 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.

What is a legal separation?

A legal separation means that the spouses are separating but not ending their marriage. It means more than living in separate homes. Spouses may file a legal action known as a petition for legal separation. Spouses may choose to separate rather than divorce for religious, economic, or other reasons. There is no requirement that a couple be separated before getting a divorce. A legal separation action can be converted into an action for dissolution, with proper 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 of marriage. Further court action is necessary to convert the decree.

What is dissolution of marriage?

A dissolution of marriage is a divorce and legally ends the marriage. In Washington, one or both spouses can file for dissolution if a marriage falls apart. The law uses the term “irretrievably broken” to describe a failed marriage. A marriage is “irretrievably broken” if one of the spouses says it is. The other spouse does not have to agree that the marriage is irretrievably broken in order for one spouse to file for a divorce. The court will enter orders for parenting arrangements, how children will be supported, dividing the couple’s property and debts, and possibly for spousal support (alimony). In Washington, a spouse does not have to prove wrongdoing (such as cruelty or adultery) to get a divorce. This no-fault system is intended to help spouses settle matters without unnecessary bitterness or resentment.

Are there residency requirements for filing a divorce in Washington?

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

How does a spouse file for divorce?

To start a divorce, one spouse (called the "petitioner") must file with the court a summons and petition for dissolution of marriage. If both spouses agree to the divorce, 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. These documents are filed in the County Clerk's office. Information about filing fees and other filing requirements is available at the Clerk's office.

These documents must be served on the other spouse (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." 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 spouse to reply to the petition. The petition sets out basic facts about the marriage, such as ages of children, date of the marriage, and date of separation. It also explains what the petitioning spouse wants in the way of a parenting plan, property division, and spousal support. Getting legal advice about what should be included in these documents is very important.

Once served, and depending on the recipient's location (whether in Washington or elsewhere), the responding spouse has from 20 to 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 spousal support. 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 divorce is filed?

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

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

The waiting period to finalize a divorce in Washington is 90 days. This means the summons and petition must be filed with the court and served upon the other spouse for more than 90 days before the judge signs the decree. 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 spouse will not respond at all to a petition after it is served. In that case, the decree of dissolution can be entered after the waiting period, subject to the conditions noted above.

When does a divorce case end?

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

The final stage occurs when the court signs a "Decree of Dissolution of Marriage." This happens after the spouses agree to everything, after a trial, or after the waiting period has passed and there has been no response from the other spouse. If there are children of the marriage, a final parenting plan and final order of child support must also be signed by the court. A marriage is not ended until the court signs the final orders.

Can spouses legally change their names during a divorce?

Yes. 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 divorce?

Yes. You must use the proper forms in legal separation cases, annulments, and dissolutions. These forms can often be purchased at your county courthouse. They can also be found free of charge 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 divorce?

Only attorneys can give legal advice. Although an individual has the right to get a divorce 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 divorce, legal separation, or annulment proceeding.

How can courthouse facilitators help with a divorce?

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 need and explain court procedures. The facilitator is not your attorney. Courthouse facilitator services are available only to family law parties who do not have lawyers. Many facilitator programs sell do-it-yourself dissolution kits with instructions tailored for their respective court. 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.

CHAPTER 4 PROPERTY RIGHTS—DIVIDING ASSETS AND DEBT



How does a separating couple divide property and debt?

When a married couple divorces, legally separates, or their marriage is declared invalid (commonly known as an annulment), legal responsibility for property and debts must be divided. Property means more than land – it can also mean 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 spouses have in their property and their debts. The division of assets and debt must be just and equitable under the circumstances.

What is “community property”?

Washington is a “community property” state. Generally all property acquired during marriage is presumed to be community property with both parties having an equal but undivided interest in the property. Community property laws can be complicated. Couples who have been married a long time, who have significant property, or who own a business will probably need legal advice.

What is “separate property”?

Sometimes one or both spouses may have separate property. “Separate property” means possessions or real estate that was owned before the marriage, or that was received during the marriage as a gift or as an inheritance, or that was bought with separate property. Determining what property is separate and community can be complex, and 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 spouses in a manner that is just and equitable. To do this, the court uses a series of factors under Washington law, such as how long the couple was married, 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 spouse less than 50 percent of the assets if that spouse can recover from the economic setback of the divorce faster than the other.

What if a spouse has misbehaved during the marriage?

Bad behavior does not usually affect how property and debts are divided. This means that the court will not award one spouse more of the property just because the other spouse misbehaved or was at fault. An exception to this general rule is when the misbehavior was intended to and resulted in the waste or destruction of property. A court may give one spouse more property when the other spouse 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 serious tax consequences to one or both spouses. Tax-filing status may be affected by a decree of dissolution, annulment, or legal separation. 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. Federal laws, including the tax code, may affect heterosexual married couples differently from same sex married couples. Getting the advice of an experienced attorney is very important.

CHAPTER 5 SPOUSAL MAINTENANCE (ALIMONY)



What is spousal maintenance?

Spousal maintenance (alimony) is financial support provided by one spouse to the other during or after a divorce, separation, or invalidity proceeding.

How does the court decide about spousal maintenance?

If you file for divorce, legal separation, or request that your marriage be declared invalid, you have a right to ask for spousal maintenance. Maintenance is generally based on financial and economic factors, not whether one of the spouses is at fault. Instead, if there is a big economic difference between the spouses, 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 marriage, health and ages of the spouses, and employment history), but there is not a formula like there is for child support. If maintenance has been ordered, a spouse can later ask that the order be changed under certain situations. Maintenance can greatly affect your tax situation. Some federal laws, including the tax code, may treat heterosexual married couples differently than same-sex married couples. Getting advice from a tax attorney or qualified financial planner is important.

CHAPTER 6 EFFECTS OF DIVORCE ON CHILDREN



How does divorce affect children?

How divorce affects children is a complicated issue. Divorce puts adults and children under a great deal of stress. Some experts believe, because of the stress and changes that come with divorce, parenting skills can decline. Some studies report children of divorce may be more likely to have poorer physical health, perform poorly in school, or abuse alcohol and drugs. Not all children suffer such adverse affects, however, and about 75 percent of children of divorce are reasonably well adjusted after an initial period of discomfort.

Research has reached differing conclusions about the effects of divorce on children. Books about the effect of divorce on children and other related issues about marriage, divorce, and parenting are available at the public library and at bookstores.

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

Before you get married, make sure you and your intended spouse 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 get married 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 spouse 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 divorce, more decisions must be made at a time when you may have bad feelings about your spouse. 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 spouse 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 divorce or separate, make sure you have a support system and encourage your spouse to have one, too. You and your spouse 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 spouse will communicate and resolve conflicts regarding the children after the divorce 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 divorce.

If you separate or divorce, make sure there is an adequate child support order in place so the children have sufficient 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.

Many 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

SHARED PARENTING FOR DIVORCING PARENTS—PARENTING PLANS



What is a parenting plan?

A parenting plan is a legal document that explains 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 in the best interests of 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 a married couple has children together and then separates, a court orders a parenting plan as part of their divorce, legal separation, annulment, or parenting plan modification.

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 children’s best interests. When separating parents cannot agree, a 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 parents, 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 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 choice. Generally, courts do not want children to be involved in these decisions.

What does a guardian ad litem do in a divorce?

A court may appoint a qualified person to represent the children's best interests in a divorce or legal separation. 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 divorces, 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 "Court Directory" or under "Programs & Organizations," or on the Washington Law Help Web site at <http://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 courts' Web site page 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 and asking that the parenting plan be enforced.

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 lost 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 with which parent the child lives.

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 parent's home). 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 8 PRESUMPTIONS OF PARENTAGE AND MARRIAGE



In most marriages, there is little doubt about who a child's parents are. In almost all cases, the parents are the spouses in the marriage. The law even makes a presumption that this is so. RCW 26.26.116 discusses the presumptions that apply in the context of marriage, that is, before, during, or after a marriage, and in other situations.

The first presumption is that a person is presumed to be the parent of a child if that person and the mother or father of the child are married to each other or are in a state-registered domestic partnership with each other and the child is born during the marriage or domestic partnership. For more information about state-registered domestic partnerships, see Chapter 13.

The second presumption is that a person is presumed to be the parent of a child if that person and the mother or father of the child were married to each other or were in a state-registered domestic partnership with each other and the child is born within three hundred days after the marriage or domestic partnership ends by death, annulment, dissolution (divorce), legal separation, or declaration of invalidity. In Washington, the term "declaration of invalidity" is used instead of annulment. Because it is possible to obtain an annulment in another state, that term is included in this statute.

The third presumption is that a person is presumed to be the parent of a child if before the child was born, the person and the mother or father of the child married each other or entered into a state-registered domestic partnership in apparent compliance with law (that is, they reasonably believed that their marriage or domestic partnership was legal and valid under the law), even if the attempted marriage or domestic partnership is, or could be, declared invalid and the child is born during the invalid marriage or invalid domestic partnership or within three hundred days after the marriage or domestic partnership ends by death, annulment, dissolution (divorce), legal separation, or declaration of invalidity.

The fourth presumption is that a person is presumed to be the parent of a child if after the child is born the person and the mother or father of the child married each other or entered into a state-registered domestic partnership with each other, whether or not the marriage or domestic partnership is, or could be declared invalid, and the person voluntarily asserted parentage of the child (said in a document that the child is hers or his), and:

1. The assertion is in a record filed with the state registrar of vital statistics;
2. The person agreed to be and is named as the child's parent on the child's birth certificate;
or
3. The person promised in a record to support the child as his or her own.

Another presumption is that a person is presumed to be the parent of the child if, for the first two years of the child's life, the person resided in the same household with the child and openly held out the child as his or her own. This presumption applies even if the person and the other parent

are not married to each other or are not in a state-registered domestic partnership with each other.

These presumptions can be rebutted (challenged) only in very specific circumstances and by using legal procedures spelled out in laws codified at RCW 26.26.500 through RCW 26.26.630. Very strict timelines apply to challenging parentage. An attorney can give you valuable advice about how to proceed if you want to challenge parentage of a child.

If you and your spouse were in a state-registered domestic partnership before you were married to each other, and a presumption applied to you in the domestic partnership, that same presumption carries over to your marriage. The presumption can be rebutted only by the methods outlined in the laws mentioned in the paragraph above.

If you have any concerns or questions about whether you are a child's parent, you should seek legal advice immediately. Being a child's parent has life-long consequences, rights, and responsibilities.

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 beginning at RCW 26.09.405. Adults have a constitutional right to move their place of residence. Courts can, however, order adults not to move their minor children.

This law only applies 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 wants to move with the children, that parent must notify the other parent and others who have court-ordered time with the children. 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 with each parent, 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 custodial 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 divorce or legal separation, a court must order one or both parents to pay support for their children. Sometimes parents were not married to each other when the children were born. They may have signed a paternity affidavit naming the father. If not, parentage can be established in court. In other situations, one parent may be declared by the court to be a “de facto” parent, giving that parent all the rights and responsibilities that the other parent has. In these circumstances, the court may order that one or both parents pay child support just as if they had been married when the children were born.

What does a child support order do?

Payment of child support and other expenses for children is a required part of a divorce, 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 divorce, legal separation, or a parentage action, 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 children from other relationships), 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 in many situations, 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 been found to be dependent. 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 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 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 or both.

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. 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 1-800-562-6025.

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 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 found to be dependent, Child Welfare Services workers become involved to provide services to the family and the child. Those services provide for the child’s safety and are designed to achieve a permanent plan for the child, including reunification of the child with the parents where 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. To learn more about these procedures, contact your local juvenile court or an attorney experienced in juvenile law.

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. 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 DOMESTIC PARTNERSHIPS



What is a State-Registered Domestic Partnership?

Under Washington law, a state-registered domestic partnership is a civil contract between two adults who meet statutory requirements and who register their domestic partnership with the Washington Secretary of State's Office. Washington's laws regarding state-registered domestic partnerships changed significantly on June 30, 2014.

As of June 30, 2014, couples will be able to register as domestic partners only if one person is 62 years of age or older; both persons are at least 18 years old; both persons share a common residence; neither person is married to someone else and neither person is in a state-registered domestic partnership with someone else; both persons are capable of consenting to the domestic partnership; 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 the civil law; and neither person is a sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person. Domestic partners may be the same sex or heterosexual.

Effective December 6, 2012, same-sex couples who are adults and otherwise capable of getting married (see chapter one of this handbook) may marry in Washington. Some couples, when one of them is at least 62 years old, however, do not wish to marry because of the possibility of losing retirement or other benefits. For them, as noted above, the option of entering into a state-registered domestic partnership still exists. To learn more about domestic partnerships, see the Family Law Handbook Domestic Partnership Edition, at www.courts.wa.gov, under "Resources."

It is important to note that if a same-sex domestic partnership couple does not marry, or does not institute legal proceedings to dissolve their partnership, seek a legal separation, or seek a declaration of invalidity (annulment) before June 30, 2014, their domestic partnership will automatically be merged by law into marriage on that date unless one of the partners is 62 or older on June 30, 2014.

If such proceedings are finalized *without* entry of a decree of dissolution, annulment, or legal separation, the domestic partnership will be automatically merged into a marriage and will be deemed a marriage as of June 30, 2014. That situation could occur if the partners agree to and do dismiss their legal proceedings, or if the court issues an order of dismissal.

For the purposes of determining the rights and responsibilities of individuals who had a domestic partnership and have been issued a marriage license, or are deemed married under the provisions discussed above, the date of the original state-registered domestic partnership is the legal date of the marriage. The couple, however, may choose a different date on the marriage license.

CHAPTER 14 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 many issues, such as dealing with divorce 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 or divorcing parents. Many religious organizations sponsor support groups or ministries that address issues faced by divorcing or separating families.

Legal Services

There is a variety of ways you can find legal resources in your community:

- 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 <http://www.washingtonlawhelp.org>.
- Court forms and instructions can be downloaded from the Washington Courts Web site at www.courts.wa.gov and from <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.