

Domestic Partnership Update: 882 Couples and Counting!

By Justin M. Sedell and Elizabeth A. Hershman-Greven

In March 2007, the Washington State Senate moved into the national spotlight when it passed SB 5336, which established a domestic partnership registry that grants unprecedented legal recognition of same-sex relationships. The House approved the bill (HB 1351) shortly thereafter, and Governor Gregoire signed the bill into law on April 21.

In a previous issue, we explained the eligibility requirements of the registry and its benefits and limitations. This article addresses the impact of the registry and many domestic partners' hopes for future changes.

Understanding the registry and its impact on Washington law is critical when advising clients in many areas of the law, including trusts and estates, family law, elder law, or even personal injury. It has become one of the most important tools in the lawyers' tool kit when representing gay, lesbian, bisexual or transgender (GLBT) clients and/or senior citizens.

Couples Flock to Register for Benefits

In order to register, couples must (1) share a common residence; (2) be at least 18 years of age; (3) not be married to, or in a registered partnership with, any other person; (4) be capable of consenting to the partnership; (5) not be nearer in kin than second cousins; and (6) be members of the same sex, or, if partners are male and female, then one partner must be at least 62 years of age.

After passage of the new law, many groups, including the ACLU, Equal Rights Washington, McKinley Irvin, PLLC, and others sponsored community forums to inform the public about who could register and the benefits and responsibilities that partners will share. Each forum was a sell out event whether it was in Seattle, Spokane, Tacoma, or Yakima. People were thrilled that their relationships were finally recognized by the government for the first time, and senior citizens were glad to be able to have their relationships acknowledged without being forced to lose important federal benefits upon their marriage.

As of August 8, 882 couples have registered as domestic partners.

Many others are preparing the Declaration of State Registered Domestic Partnership to file with the Secretary of State. By the time this article is published, it is likely that over 1,000 couples will be registered as domestic partners in Washington. As the Washington population grows, so do the numbers of self-identified members of the GLBT community. In fact, United States census data shows that between 2000 and 2005 the reported number of gay couples in Washington increased by 50%¹.

Seattle is second only to San Francisco in the number of self-identified members of the GLBT community; in Seattle 12.9% of residents identify as GLBT, while 15.4% of San Franciscans do². Meanwhile, the number of senior citizens in Washington also continues to grow. These two burgeoning populations will continue to register for the important rights granted by the registry, although many hope that these limited rights will multiply over time.

Benefits and Hopes for the Future

Currently, the rights conferred upon domestic partners mainly concern illness and dying. These rights include, but are not limited to, access to an ill or injured partner in the hospital; the ability to provide informed consent for medical procedures when a partner is incapacitated; the right to bring a civil action for wrongful death; the choice of authorizing an autopsy; the control over disposition of a partner's remains; and the ability to inherit from a partner who dies intestate. While these rights are enormously beneficial to same-sex couples and senior citizens registered as domestic partners, they do not begin to cover the cornucopia of rights granted by marriage.

The federal Defense of Marriage Act³, passed in 1996, precludes all of the approximately 1,050 federal rights that are granted to married couples from being applied to their same-sex counterparts. For example, federal law prohibits the extraordinarily beneficial tax laws that apply to married couples to be extended to same-sex unions. Another often overlooked right denied to same-sex couples is the ability to sponsor a foreign national partner, oftentimes leaving partners commuting between continents because the American citizen cannot bring the other partner to the United States. These federal laws are unavailable to Washington's GLBT residents no matter what actions the state government takes.

Nonetheless, each state has the discretion to apply its own state benefits to same-sex couples as it sees fit. California blazed the domestic partnership trail in many ways. In 1999 it adopted a registry remarkably similar to Washington's. Since that time, state rights were continually granted to domestic partnerships such that current domestic partnerships in California are difficult to differentiate from marriage.

¹ Lornet Turnbull, "12.9% in Seattle are gay or bisexual, second only to S.F., study says." *Seattle Times*, November 16, 2006.

² *Id.*

³ 1 U.S.C. § 7; 28 U.S.C. § 1738C.

Many domestic partners hope that Washington will follow California's lead and expand the many state benefits of marriage to their relationships. Although the Washington Supreme Court decided in *Andersen v. King County*⁴ that there is no right to gay marriage under the Washington Constitution, many hope that the legislature will see fit to expand the registry to apply all of the important state rights conferred upon married couples to their relationships as well.

Impact of the Registry

Although couples hope that the rights conferred by the registry will continue to grow, not all of the rights and responsibilities are clearly spelled out in the statute. For example, the fact that parties decided to register as domestic partners and that they met the eligibility requirements satisfies several elements of a meretricious relationship claim should the parties later break up⁵. This may result in the application of community property principles to domestic partners and the division of any community-like property between the domestic partners without any explicit agreement that they wish this to occur.

Personal injury lawyers will take note that domestic partners are now able to bring wrongful death actions, and lawyers preparing wills for their GLBT clients will have new avenues when structuring the estate. Countless areas of the law will be impacted by the registry, many of which have not yet come to light.

More importantly, however, is the significance of formalizing one's relationship, and many domestic partners are celebrating this aspect of the registry. For the first time, Washington is recognizing GLBT families in a positive, affirming way, and while the registry's benefits may seem limited, they are enormously important should one partner become ill or pass away. While many domestic partners hope for additional rights in the future, the registry will continue to provide peace of mind, which is, perhaps, the most important benefit of all.

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⁴ *Andersen v. King County*; 158 Wn.2d 1; 138 P.3d 963 (2006).

⁵ *See, e.g., In re Pennington*; 142 Wn.2d 592, 14 P.3d 764 (2000); *Gormley v. Robertson*; 120 Wn.App. 31, 83 P.3d 1042 (2004).