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## Domestic partnership registry sparks new issues

Puget Sound Business Journal (Seattle) - August 24, 2007 by [Robert Celaschi](#) Contributing Writer

A new Washington law extends some marriage rights to same-sex couples, but issues remain and pressure is building to add many more rights.

Lawyers have identified 425 codified rights in marriage law, but only 23 are included in the new domestic registry for same-sex couples.

"I think there is little question that we viewed the initial domestic partner law as only a start. We are discussing right now how we are going to expand it," said Jamie Pedersen, an attorney at Kirkpatrick & Lockhart Preston Gates Ellis LLP, who also represents a Seattle district in the state House.

If supporters can hold a majority through the 2008 and 2010 elections, he said, it would take only a few years to bring same-sex couples to parity with current marriage laws.

On July 23, the Secretary of State's office began accepting domestic partner registrations.

By filling out the form, having it notarized and paying \$50 to the state, domestic partners qualify for new rights:

- Hospital visitation.
- Participation in medical care.
- Administering the estate of a deceased partner.
- Recognition as a domestic partner on a deceased partner's death certificate.
- Authority to order autopsies and receive the results.
- The right to sue for wrongful death of a partner.
- Inheriting property from the partner.
- Burial in a plot owned by a domestic partner.

In some cases, registration also may make one partner eligible for coverage under the other partner's health insurance benefits.

And if one partner is older than 62, the two partners don't even have to be of the same sex.

To get those same protections previously, same-sex couples had to draw up wills, powers of attorney and other legal documents.

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"We had probably 10 different instruments that we traditionally use, and now we have the registry," said Elizabeth Hershman-Greven, senior associate attorney with McKinley Irvin PLLC, in Seattle.

The bad news for domestic partners is that the registry doesn't convey all the rights of a married couple, and it doesn't convey identical rights even in the areas it does cover.

Married partners, for instance, can transfer property to each other without worrying about gift taxes, said Hershman-Greven. Domestic partners can't.

For intestacy -- dying without a will -- the registry doesn't recognize community property. The surviving partner may end up having to split property with the deceased partner's parents, siblings or children, said Wendy Goffe, a shareholder with Graham & Dunn PC in Seattle.

What's a same-sex couple to do?

"It's a very easy answer, and that's to plan as if you haven't registered," Goffe said.

"There needs to be a backup. If I were to rely on a default law that said my husband could make certain decisions, and he wasn't available, there is no protection," she said.

Inheritance, spousal maintenance, adoption of children -- all fall through the cracks of the registry.

"One way you can deal with that is a domestic partnership agreement," said Hershman-Greven. Similar to a prenuptial agreement, it gives the final say to the partners rather than a court.

For some same-sex couples, though, it's better not to register at all, attorneys say. If one of the partners is in the military, the registry could run afoul of the "don't ask, don't tell" policy of the U.S. armed forces.

Another red flag is when a partner has a nonimmigrant visa. To get such a visa, the immigrant must declare that she or he has no intention of remaining in the United States permanently. Registering as domestic partners implies a long-term stay.

Then there are questions about public assistance. The state will look at the combined incomes of registered partners to determine eligibility.

"That's not going to get you kicked out of your career, but it could have ramifications if you are not expecting it," said Hershman-Greven.

Whatever its implications, the registry might not stay in its current form for long.

Pedersen and other activists plan to push for more same-sex couple rights.

The list could be expanded incrementally or in one shot. One option would be to pass a bill that says whenever "spouse" appears in law, it also can be read as "domestic partner," Pedersen said.

Another key addition, he said, would be a reciprocity provision, so other states would recognize Washington's law, and vice versa. That's complicated by terminology, however. If one state calls them "domestic partnerships" and another calls them "civil unions," it might prevent the rights from moving with a couple that moves from, say, Washington to Vermont.

"It's a difficult situation because you can't count on having your relationship recognized, but you also can't count on it not being recognized," Pedersen said.

Issues aside, the registry is still worth the \$50 fee, Pedersen said.

It includes rights that aren't otherwise available no matter how much a couple pays a lawyer, including the right to sue for a wrongful death of a partner.

But no matter what happens with the registry in the future, it covers only state rights.

It has no effect on federal law, such as the right to sponsor a foreign spouse for citizenship, or marital tax exemptions.

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