

Family Law Handbook



**WASHINGTON
COURTS**

**Understanding the legal implications
of marriage and divorce
in Washington State**

2008

**This handbook is available in electronic format at
www.courts.wa.gov, under "News & Info"**

Family Law
Handbook
for
Washington State

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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 state Legislature directed the Washington State Administrative Office of the Courts (AOC) 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, paternity, court orders, domestic violence, child abuse and neglect, as well as the effects of divorce on children.

While this publication is not designed to give legal advice, it will provide general information about the marriage contract, marital laws, and laws about divorce in Washington State. This handbook is not intended to take the place of an attorney, who can explain laws and give advice for a specific situation. It is always a good idea to consult with an attorney about your rights and responsibilities regarding any legal issue, including marriage and divorce.

It is important to remember that this handbook discusses only family law in Washington. Different laws may apply in other states. If you lived outside Washington during your marriage or after you and your spouse separated, the laws of that state could affect your rights and responsibilities if you should be divorced in Washington. An attorney can fully explain your rights and responsibilities and how they can be affected by situations such as having lived in another state.

Chapter 1

Marriage in Washington State



The laws that govern marriage are found in Chapter 26.09 of the Revised Code of Washington (RCW). You can find a copy of those laws at the Washington Legislature's Web site at www.leg.wa.gov. Under Washington law, marriage is a civil contract between a woman and a man. If the man and the woman 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

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 postnuptial agreement and is sometimes called 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 or forget its terms when

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?

Although many people use the term “annulment,” in Washington it is called a “Decree of Invalidity” which is a court order that says a marriage is invalid. Declarations of invalidity 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. The laws about invalidity of marriage are complex. Only an

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.

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. 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. The legal term for delivery of legal documents is called "service of process." It is important to carefully follow the laws and rules about 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 support. Getting legal advice about what should be included in these documents is very important.

plan and final order of child support must also be signed by the judge. A marriage is not ended until a judge signs the final orders.

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.

Can spouses legally change their names during a divorce?

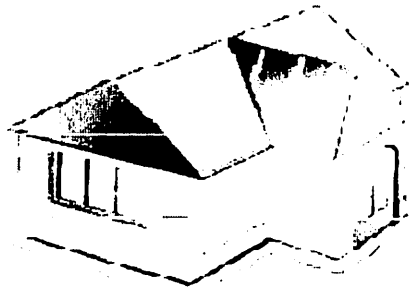
Yes, if either party requests a name change. This most commonly occurs when the wife requests to change her name back to her former or maiden name. At the court’s discretion, the court may order a change to another name for either party.

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

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 means all assets and includes real property, 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.

What is “community property”?

Washington is a “community property” state. Generally all property acquired during marriage is presumed to be