

Marriage

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Marriage has been defined through the ages as the union of a man and a woman into a distinct kind of social and legal relationship for the mutual purpose of founding and maintaining a family. The institution of marriage and its unique design for the procreation and rearing of children within the family unit is the essential foundation of a stable and healthy society. The power to define what constitutes "marriage" has always resided in the legislative branch of government

In Washington, marriage is statutorily defined as a civil contract between a male and a female who have each attained the age of 18 and who are otherwise capable. If either applicant for a marriage certificate is younger than 18, permission of one's father, mother or guardian is required. Applicants under the age of 17 must also have the consent of a superior court judge.

Overview

State law prohibits marriage when the parties are persons other than a male and a female. In other words, the law prohibits same-sex marriage, and a marriage between two persons that may be valid in another state is valid in this state only if it is not prohibited here in Washington. State law also prohibits marriages when either party is still married to another spouse and when the spouses are nearer of kin to each other than second cousins.

Community Property - Washington is a community property state. Under this system, the earnings of husband and wife and all real and personal property acquired from such earnings during marriage generally belongs equally to husband and wife, even when only one is employed. Similarly, both husband and wife are personally liable for certain debts, even if both did not agree to the particular obligation. Neither a husband nor wife may bequeath by will more than one-half the community assets and neither may give community property away without the consent of the other.

No-fault Divorce - Washington has a "no-fault" divorce system in that a spouse does not have to prove wrongdoing in order to obtain a divorce. One has to only claim the marriage is "irretrievably broken" in order to obtain a dissolution of the relationship. There is a waiting period of 90 days before a judge may sign the divorce decree in order to allow time for a possible reconciliation between the parties. In a dissolution proceeding, the court legally terminates the marriage and makes provisions for the parenting of minor children, family support, and division of property and liabilities.

Parenting Plan - Washington law requires a parenting plan in any proceeding for dissolution where minor children are involved. Every parenting plan must contain provisions regarding a schedule for residential care ("custody" and "visitation"), allocation of responsibility for parental decision making, and provisions for the resolution of disputes between the parents with respect to parenting decisions. The law includes provisions for the protection of children from parental abuse or neglect, exposure to domestic violence and parental conflict, and other conduct the court finds adverse to the child's "best interests." Both parents have a duty to support their children.

Child Support - When the marriage breaks up, the child support statute takes into account the income of both parents when establishing child support. The court considers the "best interests" of the children in determining how to provide for them. Child support is subject to periodic

modification to meet changes in the needs of the children, as well as changes in each parent's ability to pay. Child support payments are usually required until a child is 18 years old or graduates from high school, whichever occurs last. Support for post-secondary education may also be required for a dependent child's college or vocational education expenses. However, the court cannot order the payment of postsecondary educational expenses beyond the child's 23rd birthday, except in exceptional circumstances such as mental, physical, or emotional disabilities. A parent generally may seek to modify an existing child support order only upon a showing of a substantial change of circumstances. Parents who willfully refuse to comply with court orders may be held in contempt and jailed or fined. Child-support orders will be enforced by way of mandatory payroll deductions ("garnishments") paid to the Washington State Child Support Registry unless the court finds that there is good cause to believe that the support will be voluntarily paid directly to the other parent on a timely basis. Mandatory payroll deduction also is available if the obligated parent has fallen behind in support payments.

Alimony - Spousal maintenance, or "alimony," may be awarded where there is need on the part of one spouse and ability to pay by the other. As a community-property state, Washington laws provide for the "just and equitable" division of property acquired during the marriage, not necessarily an "equal" division of such property, and property division is generally made without regard to marital misconduct.

Legislative History

In 1998, responding to efforts in other states to legalize same-sex marriages, the Legislature enacted our state's Defense of Marriage Act, or "DOMA." This act found that marriage law is reserved to the sovereign states and that such matters should be determined by the people within each individual state and not by the people or courts of a different state. It further found that Washington has a compelling interest in reaffirming its historical commitment to the institution of marriage as a union between a man and a woman as husband and wife, and in protecting the institution of marriage. DOMA amended the marriage statute to specifically prohibit marriage when the parties are of the same sex.

In 2008, HB 1350 and SB 5335 were introduced which would have allowed persons of the same sex, as well as opposite sex couples, to obtain a marriage license and be lawfully married with all the legal incidents of traditional marriage. Neither bill received a public hearing.

Issues and Outlook

In 2004, two Washington state trial judges held that our state's DOMA law prohibiting "same-sex" marriage is unconstitutional. These two cases were consolidated to the state Supreme Court on appeal and were argued before the court in 2005. In 2006, the state Supreme Court, in a 5-4 decision, ruled to uphold DOMA. It is clear that the fight over marriage will continue to be waged in the Legislature. House Republicans have proposed constitutional amendments that fully protect the institution of marriage as between a man and a woman. A constitutional amendment must be passed by a two-thirds vote in both the House and Senate before being referred to the people, who can enact it by a simple majority of the popular vote. In order to bypass the two-thirds vote requirement, House Republicans have also proposed general legislation to protect marriage that requires just a simple majority vote in the House and Senate. This legislation included a referendum clause so the issue could be determined by the people themselves.