

THE LEGAL RIGHTS OF REGISTERED DOMESTIC PARTNERS IN OREGON

Introduction

If you are in a committed same-sex relationship in Oregon, it may be important for you to register with the state as domestic partners.

This publication explains some of the rights and responsibilities the law provides for domestic partners, the legal differences between registering as domestic partners and getting married, who can register and how to do so.

It also answers common questions that many people have about domestic partners under Oregon law.

Please note: This publication is intended to provide general information, not legal advice. Registering as domestic partners in Oregon gives partners important rights and responsibilities, however, most registered domestic partners still need the protections offered by wills, powers of attorney, second-parent adoptions or other legal planning. You should consult an attorney for advice about the best ways to protect your family and ensure that your wishes are respected in the event of an emergency.

For more information or help in finding an attorney, contact Lambda Legal's Help Desk toll-free at 1-866-542-8336. You can find a list of questions to help you choose a lawyer on Lambda Legal's website at <http://www.lambdalegal.org/help/suggested-questions-to.html>.

What is a Domestic Partnership?

Oregon is one of several states that offer a form of legal relationship recognition for same-sex couples. In 2007 the Oregon Legislature passed, and the governor signed, the “Oregon Family Fairness Act,” establishing a domestic partner registry that gives same-sex couples the right to receive most — but not all — of the obligations and protections that married couples receive. Registration as domestic partners can protect you and your partner in times of family crisis and could save you thousands of dollars over the course of your relationship. It is important that you understand what protections your home state’s laws may provide and make an informed choice about whether to acquire that status.

When Will the Domestic Partnership Registry Be Available?

Oregon’s domestic partnership registry was scheduled to go into effect on January 1, 2008. An antigay group, however, filed a lawsuit in December 2007 and temporarily postponed the law from taking effect. The court rejected their lawsuit on February 1, 2008, and couples began registering on February 4, 2008. This antigay group has threatened to appeal the lawsuit, in an attempt to halt Oregon’s domestic partnership law again. For the most up-to-date information about the status of this law, contact Lambda Legal’s Help Desk at 1-866-542-8336.

Why Is It Important for Committed Same-Sex Couples to Register With the State as Domestic Partners?

Many lesbian and gay couples in Oregon celebrate religious weddings or public commitment ceremonies. Nevertheless, those in committed, same-sex relationships still are not allowed to marry in the state. As a result, lesbian and gay couples who do not register may be denied many of the rights and responsibilities that couples who can marry take for granted. The consequences of this inequality are often devastating. Lesbians and gay men have been prevented from seeing their partners in the hospital and excluded from decision making when their partners were sick. Although domestic partnership is not marriage, it alleviates a number of these terrible harms; BUT the laws help couples ONLY if they register as domestic partners. Registration with an employer or local government does NOT count for state law purposes. Thus, if you do not register with the state, you and your partner run the risk of being treated legally as nothing more than unrelated roommates with respect to the matters discussed below.

Registration can secure important rights, save money and may be the only way to protect your family from the legal tragedies that can occur in the absence of registration.

Registering may not be the right step for every couple, but it is an important option for every same-sex couple to consider.

What Rights Do Registered Domestic Partners Have in Oregon?

Domestic partners who have registered with the Oregon Department of Human Services through a local county clerk will enjoy nearly all the same rights and responsibilities as married spouses under state law.

Registered domestic partners do not have protection under many federal laws that protect spouses. Still the rights and responsibilities under Oregon law now are broad and include the following:

Rights in Times of Family Crisis

Hospital Visitation – Registered domestic partners have the same rights as legally married spouses to visit one another in the hospital.

Medical Decision Making – Registered domestic partners have the same right as spouses to make health care decisions for each other if one becomes incapacitated.

Health Care Information – Registered domestic partners have the same right as spouses to receive health care information about their partners from a medical provider in accordance with good medical practice.

Rights After Death of a Partner – If one registered domestic partner dies, the other has the right to authorize an autopsy, control the disposition of the remains when the deceased partner has not made pre-arrangements, consent to the removal of remains from a plot in a cemetery and make an anatomical gift. Registered domestic partners also have the right to administer a deceased partner's estate if the partner died without a will, or if the personal representative named in the will declined or was unable to administer the estate.

Compensation if a Partner Is Killed – If a person who is legally married is killed as the result of a wrongful act of another, that person's spouse can sue those responsible for "wrongful death" to recover damages for lost financial support and companionship. Registered domestic partners have the same legal right to sue for these losses.

Workers' Compensation Survivor Benefit – If one partner is killed in a work-related accident, the surviving partner may be entitled to compensation under the Oregon

workers' compensation plan. Registered domestic partners have the same rights under Oregon workers' compensation law as married couples.

Right to Inherit With or Without a Will – If a partner who dies had a will, the surviving partner can elect to take one quarter of the value of the estate if the will leaves less, or the surviving partner can elect to take what was provided under the will.

If a registered domestic partner dies without having a will, the surviving partner may inherit a portion or all of the deceased partner's property depending on whether or not the deceased partner leaves surviving children or other direct descendants, such as grandchildren. The surviving partner can be granted living expenses out of the assets of the estate in the same way as a spouse. Registration, however, does not mean that you will automatically inherit your partner's entire estate. A will is a clear expression of intent that can help all of your surviving family members by letting them know exactly how you intend your property to be distributed upon death. There is no substitute for the protection offered by a proper will, trust or other estate planning document. You should consult an attorney to make sure that your will reflects your current wishes for the distribution of your property.

Burial As A Couple – If one partner owns a burial plot with more than one space, registering as domestic partners allows the other partner to be buried in that plot with his or her partner. Partners also are entitled to inherit burial plots from each other. These rights may be revoked if the domestic partnership is terminated before either partner dies.

Revocation of Rights After Termination of Domestic Partnership – Either or both registered partners may end a domestic partnership registration by filing a dissolution proceeding in a circuit court of the state of Oregon. Termination ends the legal rights and duties that registered partners have by virtue of the registration. Termination also may revoke legal rights either partner has given the other by certain means other than registration, which is done to help ensure that those rights remain consistent with the donor's intentions. These rights include (1) gifts to a domestic partner made pursuant to a will or trust may be revoked upon termination of the partnership; (2) the appointment of one domestic partner as the other's "attorney in fact" under a power of attorney automatically is revoked upon dissolution; (3) provisions by one registered domestic partner that the other registered partner shall receive non-probate assets (such as money in a bank account or 401(k) retirement savings plan) upon the owning partner's death may be revoked upon termination provided the initial beneficiary designation is revocable.

Oregon Family Medical Leave Act – Oregon law provides employees who work with 25 or more people up to 12 weeks of leave for the purpose of a medical emergency or events related to the addition of a child to the home. This means that domestic partners can take up to almost three months (a) to care for a partner who is experiencing a serious health condition or (b) after the birth of a child, the adoption of a child or placement of a foster child in the couple’s home.

Property Rights and Duties to One Another

Ownership of Joint Property - Registered domestic partners who own property jointly may hold title as tenants by the entirety. This means that both partners are entitled to manage and control all jointly held property equally. Upon death of either partner, the jointly held property automatically transfers to the surviving partner without having to go through a costly and lengthy court action.

Exemption from Taxes on Transfers of Property - While spouses can give each other gifts and transfer real property between themselves without incurring federal liability on those gifts, domestic partners do not have similar protections under federal law. You should consult an attorney for advice about your potential federal tax liability, and for estate planning advice to protect your family’s financial stability.

Debt – Like spouses, domestic partners in Oregon are not responsible for the separate debts of their partners incurred before or after registration, nor can property of both partners be used to satisfy the separate debt of one partner alone. However domestic partners are responsible to each other for family expenses – that is, those expenses incurred for the benefit of a member of the family (partners and their children). These expenses include medical bills, family vehicles, necessities, the education of minor children, funeral expenses, or anything that includes the “immediate sustenance of the family.”

Employment Benefits for Employees

Public Employee Health Insurance Benefits – Domestic partners of public employees in Oregon are entitled to the employment benefits equal to those provided spouses of public employees under state law, including eligibility for continued health insurance coverage, even after the state employee or retiree dies (as long as the surviving partner was enrolled in the state health plan before the death) and death benefits.

Private Employer Health Insurance Benefits - The domestic partnership law does not require that domestic partners be treated the same as married couples for purposes of private employment-related health insurance policies. Private employers can, however,

choose to provide domestic partnership health insurance coverage for gay and lesbian employees. Many private employers recognize that providing domestic partner benefits is an important part of valuing their employees and treating them fairly, and offer health insurance coverage to domestic partners of employees. For more information about advocating for equal employment benefits please access Lambda Legal's "Out At Work Took Kit" available at <http://www.lambdalegal.org/take-action/tool-kits/out-at-work/oaw-chapter4.html>

If you do receive health insurance coverage from your employer for your domestic partner, be aware that your employer must report the value of the benefits you receive to cover your partner as additional income that will be taxable by the federal government, unless your domestic partner qualifies as a dependent under federal law. If you are considering enrolling for domestic partner benefits, you may wish to consult with your employer about the value of the benefits, and whether your partner will qualify as a dependent under the federal tax law, to determine how much more you will be required to pay in federal income taxes.

Rights and Duties Regarding Children

The legal parentage of children born to registered partners is determined using the same presumptions that apply to married spouses. For example if a female partner gives birth during the period of registration, via assisted insemination, and the non-biological partner gives written consent to the procedure, both partners are presumed to be legal parents of the child. Because this is an emerging area of the law and other states may not recognize these legal presumptions, it is strongly recommended that partners consult an attorney to obtain a court judgment of adoption to confirm the parental status of non-biological parents.

Adoption - Oregon law provides that any person may adopt another person. The state already allows married as well as unmarried couples to adopt. To the extent that married and unmarried couples in Oregon adopt children jointly, registered partners will also be able to adopt children jointly and registered partners may adopt each other's children using the same streamlined process available to stepparents.

Child Support, Custody and Visitation - If a registered couple legally separates or dissolves their domestic partnership, the former partner may seek and be awarded child support, custody and/or visitation with respect to their children in the same manner as former spouses.

Taxes

State Income Taxes - Registered domestic partners have the same options regarding state income taxes as spouses. When filing their state returns, registered partners must file their state income tax in the same manner as they would do on their federal return. This area of the law is still emerging and it is anticipated that the Oregon Department of Revenue will issue regulations instructing domestic partners how they should file their Oregon returns.

State Income Taxes on the Value of Domestic Partner Health Insurance Benefits - As referred to above, registered domestic partners, like spouses, do not owe state income tax on the insurance premiums paid on their behalf by their employers to cover their partners or their partners' children. This does not, however, change the federal tax rule that considers employers' payments to be taxable income.

Family housing - Domestic partners have a right to the same priority consideration for family housing at public universities and colleges as is provided to spouses.

Automotive benefits and insurance - Registered domestic partners are entitled to use a car rented by the other partner if licensed and at least 18 years of age. Registered domestic partners are covered under their partners automotive insurance, including uninsured motorist protection provided that both partners live together and the insurance policy covers the automobile being driven.

Evidentiary privileges - Confidential communications between registered domestic partners cannot be required to be disclosed in civil and criminal proceedings, and domestic partners generally cannot be forced to testify against each other in criminal proceedings.

How Do the Domestic Partner Laws Affect Transgender and Intersex People?

Current state law requires that registered partners be of the same sex. This means that some transgender and intersex people ("intersex" meaning those born with some combination of female and male genitalia or with genitalia that is ambiguous as to sex) will have to identify themselves as the gender assigned to them at birth in order to register with their domestic partner, even if that is not how they currently identify themselves. For those who have completed a sex reassignment and now are in a different-sex relationship, marriage may be an option. If either registered partner

undergoes sex reassignment during the period of registration such that partners no longer are of the same sex, the partnership may be subject to challenge. The couple may wish to marry at that point to ensure that they have a valid legal status. There is no need to terminate the registered partnership if the partners marry each other. A registered partner who has undergone sex reassignment may wish to obtain a court order changing their legal sex before marrying so there can be no question that the soon-to-be spouses are of different sexes. In Oregon, that process requires a surgical procedure changing gender, and a court order changing the sex marker. The State Registrar for the Center for Health Statistics will amend the birth certificate of anyone born in Oregon once they have the court order and the requisite information regarding the surgical procedure.

Are There Reasons Not to Register as Domestic Partners?

Yes. Just like the decision to marry, the decision whether to register as domestic partners raises questions about whether the partners wish to be financially responsible for each other, to authorize each to act for the other, and to make a serious legal, as well as emotional, commitment to each other.

Some couples have important additional reasons to think twice before registering. A state registration is considered a public record and the information in the application could be made available to government agencies and to members of the public upon request. Given the U.S. military's "Don't Ask, Don't Tell" policy of discharging service members who acknowledge being gay, registering one's same-sex partnership could result in dismissal from the military. Similarly, for foreign nationals who do not have permanent legal status in the United States, it may be unwise to attest in a public document to being in a committed partnership with a U.S. citizen or permanent resident. Anyone of limited financial means who depends on a public benefit program (such as Medicaid, the AIDS Drugs Assistance Program, subsidized housing, or certain types of student loans or grants) may become ineligible for that program when one's partner's assets are taken into account, just as happens for spouses. Couples may also want to consider whether registering would be wise if either partner wishes to adopt from a state or country that does not approve adoptions by lesbians, gay men or same-sex couples.

At the same time, the federal government generally does not recognize the legal status of domestic partners. As a result, domestic partners do not receive federal benefits (such as Social Security survivor benefits) as spouses do. Similarly, as noted above domestic partners are not currently permitted to file joint income tax returns at the federal level and must file their income tax returns as "single."

In addition, registered domestic partners may face challenges relating to bankruptcy. Although bankruptcy is governed by federal law (which presently does not recognize domestic partners), the bankruptcy system uses state law for some purposes. Limited case law, as of this writing, suggests that rules about discharging debt that apply to married couples may limit the ability of domestic partners to discharge debt. Thus, for example, registered partners seeking bankruptcy protection may be limited to a single homestead exemption, like spouses, instead of being able to claim two exemptions, as an unmarried couple can. Domestic partners should anticipate that other rules that limit the ability of spouses to discharge debt in bankruptcy may apply to domestic partners as the law in this area develops.

The body of law recognizing same-sex relationships and granting domestic partnership rights will continue to evolve in the legislature and the courts. These changes mean that couples must educate themselves continually to manage the legal and financial uncertainties of living together without marriage. Obtaining judgments of adoption (or parentage) and preparing wills, durable powers of attorney, and written agreements as to mutual financial support and property ownership remain important for domestic partners, particularly since many other states do not honor Oregon registered partnerships.

As long as the laws continue to change, unmarried couples, whether registered or not, will need to stay informed in order to make wise choices about how to protect themselves and their families. It is sensible to seek advice from an attorney to ensure that you are receiving current information about the laws and their application to your circumstances.

Who Can Register as Domestic Partners?

Same-sex couples are eligible to register as domestic partners provided they meet the following additional requirements:

1. Each partner must be 18 years of age or older.
2. One partner must be a resident of Oregon (living in Oregon for the past 6 months).
3. Both partners must consent to the jurisdiction of the circuit courts of Oregon for proceedings related to each partner's rights and obligations under the partnership, including for dissolution, nullity or legal separation, even if neither party lives in Oregon at the time.

4. Neither partner is married, or in a registered domestic partnership with someone else.
5. Domestic partners cannot be closely related by blood.
6. Both partners must have the capacity to consent to a domestic partnership.

How to Register as Domestic Partners

Registration costs \$25. You can obtain the Declaration of Domestic Partnership form from your local county clerk. The form must be signed by both partners before a notary public.

Please note: Registration with a city or county does NOT secure the legal rights conferred upon domestic partners by state law. Couples who have registered with a local government in Oregon or elsewhere, or enrolled with an employer for domestic partner benefits, also must register with the state of Oregon to obtain these rights. Same-sex couples that move to Oregon with a legal status from another state should consider registering in Oregon for the additional security that it is likely to bring.

How to Terminate a Domestic Partnership Registration

Registered domestic partners are required to terminate their partnership through the same court proceedings married couples use to obtain a divorce, legal separation or nullity. A registered domestic partnership is also terminated by the death of one partner.

Registered domestic partners may qualify to terminate their registered domestic partnership through a summary termination procedure in court if they meet all of the following requirements:

1. The domestic partners have not been registered for more than 10 years.

2. There are no children born to or adopted by the partners during or before the registration and neither domestic partner is presently pregnant.
3. The domestic partners do not have outstanding debts incurred by either or both parties totaling more than \$15,000.
4. Neither party has any interest in real property no matter where located.
5. The Total value of personal property of either partner, excluding encumbrances is less than \$30,000.
6. The person seeking summary termination agrees to waive any right to spousal support.
7. The person seeking summary termination knows of no other pending case involving the dissolution of the partnership.
8. The parties have signed the petition for summary dissolution agreeing how to divide the assets and debts acquired after registration and have executed all other documents necessary to carry out their agreement.

Registered partners who satisfy these requirements may terminate their partnership by filing a Petition for Summary Dissolution with the circuit court. The judge in, his or her discretion, may or may not require the parties to appear in court. The domestic partnership is dissolved as of the date the judge signs the judgment of dissolution of partnership.

Common Questions and Answers

Q My partner and I married in Multnomah County in 2004. Do we still need to register as domestic partners?

A Yes. The Oregon Supreme Court invalidated those marriages in Li v. State of Oregon. In order to receive the rights and benefits under Oregon law, those previously married couples must also register.

Q My partner and I married in Canada. Do we need to register as domestic partners in Oregon?

A Yes. Oregon law currently denies respect to the marriages same-sex couples celebrate in other states and countries. While we hope this will change in the future, same-sex couples who married outside Oregon and wish to be protected under Oregon law should register as domestic partners.

Q If my partner and I have entered a civil union in another state, or registered as domestic partners or reciprocal beneficiaries in another state, do we need to register in Oregon as well?

A It is a good idea to register with Oregon even if you entered into a civil union or registered as domestic partners or reciprocal beneficiaries in another state. We don't know yet how much respect Oregon will give to legal arrangements for same-sex couples entered outside Oregon.

Q If we register as domestic partners in Oregon, will we be protected when we travel to other states?

A Unfortunately, it is unclear the extent to which many states will respect Oregon's domestic partnership status and give Oregon's registered domestic partners legal protections as couples. It is likely that states such as California, Connecticut, Massachusetts, New Hampshire, New Jersey and Vermont will honor registered domestic partnerships at least in some circumstances, and that the states explicitly prohibiting statewide protection for same-sex couples will give little if any respect to the Oregon status. Because this area of the law is uncertain and changing rapidly in both positive and negative ways nationally, it is important that committed couples have wills, health care powers of attorney and other legal documents to protect them when they travel. Similarly, adoption judgments can provide critical protection to parent-child relationships when families travel.

Q Does registration affect the ownership of property belonging to my partner or me?

A Yes. If you elect to co-own property with your domestic partner, you can choose to own it as a tenancy by the entirety. This means that, like married couples, domestic partners may choose to hold property as both partners sharing an undivided interest in all rights connected with the property. Upon death of either partner, ownership of the property automatically vests entirely in the surviving partner.

Q If my partner and I register as domestic partners and we break up, might one of us have to pay support to the other?

A Yes. Registered domestic partnership status makes domestic partners eligible for spousal support the same way marriage does.

Q I'm on public assistance. Will my benefits be affected if my partner and I register as domestic partners?

A Maybe. Registered domestic partners are responsible for all family expenses incurred by members of the family so it is possible that a state agency may take domestic partnership status into consideration when determining eligibility for government benefits.

Q My partner is an American citizen and I'm undocumented. If we register as domestic partners will that help me adjust my immigration status?

A No. Federal law controls immigration and, unfortunately, the federal government does not treat same-sex couples the same as different-sex couples. Even with a valid marriage from Massachusetts or another country, a same-sex spouse is ineligible to adjust his or her immigration status. In fact, it may be unwise for couples to register if one partner is a foreign national who does not have legal status in the United States.

Q I'm currently in the military. Could registering as a same-sex domestic partner create a problem for me?

A It might. Oregon law requires that domestic partners be in a committed relationship with each other. Registering with a same-sex partner could be considered a "telling," warranting dismissal under the "Don't Ask, Don't Tell" policy. Those seeking advice on these issues should contact Servicemembers Legal Defense Network at 202-328-3244 or visit www.sldn.org.

Q My partner and I may wish to adopt a child from another state or country. Will registering as domestic partners affect our ability to do that?

A It might. Couples who wish to adopt a child from a state or country that disapproves of adoptions by gay people or same-sex couples should consider their decision to register carefully, and seek legal advice beforehand.

Q Is registration of a domestic partnership a public record that is accessible to others?

A Yes. Your domestic partnership registration is a public record and some of the details, including your registration date and the city in which you live, can be obtained by others by requesting records from the Oregon Center for Health Statistics on the Internet through the Center's website at <http://www.oregon.gov/ph/chs>.

Q My registered domestic partner and I broke up. Do we need to notify the state?

A Yes. It is very important to terminate the domestic partnership status in court after a breakup. Until you have terminated the status in court, you and your former partner still may have rights and responsibilities with respect to each other. For example, would you want your former partner to have the power to make medical decisions for you if you were incapacitated or to inherit your property should you die? In addition, you also cannot enter into a new registered domestic partnership until you have dissolved the existing one.

Q We want to protect our family the best we can. Are there other things we should do besides registering with the state as domestic partners?

A Yes. Even with registration, in most cases both partners should:

1. Prepare and execute a written will or trust.
2. Sign an "Advance Directive" (also called a health care power of attorney) regarding medical decisions.
3. Consult with an attorney as to how best to hold your property.



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4. Prior to registration, consider entering into a written agreement setting forth how you want to handle matters if you should split up.
5. Talk to a lawyer about signing general powers of attorney (which allow one partner to make legal and financial decisions affecting the other under specified circumstances, such as incapacity).
6. If you and your partner have children born prior to registration, and only one of you is the child's sole legal parent, you both also should consult with an attorney about the possibility of obtaining a second-parent adoption or taking other steps to ensure that both of you will be recognized as the legal parents of all of your children.
7. **Join in the struggle to end discrimination in the civil marriage laws!** While Oregon's domestic partnership laws provide many important protections and are likely to expand with time, they do not provide all of the protections that come with a civil marriage license nor the equal respect under law that every person deserves. Lambda Legal urges everyone who cares about lesbians and gay men and their families to join in the struggle for basic equality and fairness for ALL devoted couples.

This publication has been brought to you by:



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Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

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