

# Family Law QuickCites

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If you want to search for a name or key word, use the “find” feature of your word processor. It works better to search for *word roots* to find the variations of the word. For example, searching for “abus” will find both “abuse” and “abusive.”

When searching for precedent outside Washington State, as well as points of law not covered in this outline, the best sources are the WSBA's *Family Law Deskbook* and the *Washington Practice Manuals*, volumes 19–21.

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All of the [hyperlinks](#) connect to public Web sites, but those appearing as [\[link\]](#) connect to documents stored in the WSBA Family Law Section's Web site, which requires a membership for access. If hyperlinks fail to work for you, trying holding down the Ctrl key at the same time as clicking the link. In the *Table of Contents*, click the page number.

Use this form to cite cases waiting to be published: *In re Estate of Borghi*, No. 80925-9, 2009 WL 3648068, 2009 Wash LEXIS 982 (Wash. Nov. 5, 2009).

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## TREATISES

Cross, Harry M., *The Community Property Law in Washington (Revised 1985)*, 61 WALR 13 (1986)

Weber, Kenneth W., 19–21 WASHINGTON PRACTICE: FAMILY AND COMMUNITY PROPERTY LAW §1–57 (1997)

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Winsor, Robert W., “Guidelines for the Exercise of Judicial Discretion in Marriage Dissolutions,” *Washington State Bar News*, vol. 14, page 16 (Jan. 1982) [[link](#)]

Prochnau, Kimberly, “[The Authority of Superior Court Commissioners](#),” *Washington State Bar News*, vol. 56, page 34 (Oct. 2002)

Greenberg, Stuart A. and Shuman, Daniel W., “[Therapy vs. Forensics: Irreconcilable Conflict Between Therapeutic and Forensic Roles of Mental Health Professionals](#),” *Washington State Bar News*, vol. \_\_, page \_\_ (Oct. 1997)

Lye, Diane N., “[The Washington State Parenting Act Study](#).” A Report to the Gender and Justice Commission of the Washington State Supreme Court (June 1999)

maintenance.

RCW 26.09.090

*In re Marriage of Marzetta*, 129 Wn. App. 607, 120 P.3d 75, review denied 157 Wn.2d 1009, 139 P.3d 349 (2005);

*In re Marriage of Estes*, 84 Wn. App. 586, 929 P.2d 500 (1997)

The amount of maintenance is limited by **need versus ability to pay**.

*In re Marriage of Foley*, 84 Wn. App. 839, 930 P.2d 929 (1997)

**A demonstrated capacity for self-support** does not automatically preclude maintenance.

*In re Marriage of Washburn*, 101 Wn.2d 168, 178-79, 677 P.2d 152 (1984)

“[T]he court is not limited to assessing a **minimum amount** of maintenance to pay monthly expenses. It may also consider the standard of living attained during the marriage, the ability of one spouse to pay additional maintenance, and the other's ability to provide for himself or herself.” (*Barnett* at p. 388)

*In re Marriage of Barnett*, 63 Wn. App. 385, 818 P.2d 1382 (1991);

*In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984)

One factor in awarding maintenance is the **standard of living** experienced during the marriage (effectively overruling prior holdings that maintaining a lifestyle to which one has become accustomed is not a test of need, i.e. *Cleaver v. Cleaver*, 10 Wn. App. 14, 516 P.2d 508 (1973); *Friedlander v. Friedlander*, 80 Wn.2d 293, 297, 494 P.2d 208 (1972); *Morgan v. Morgan*, 59 Wn.2d 639, 369 P.2d 516 (1962)). An acceptable method is equalizing incomes for an appropriate period of time (*Estes*, *Washburn* and *Bulicek*).

RCW 26.09.090

Kenneth W. Weber, 20 Washington Practice, Family and Community Property Law, §34.6 (1997)

*In re Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997);

*In re Marriage of Williams*, 84 Wn. App. 263, 927 P.2d 679 (1996), review denied, 131 Wn.2d 1025 (1997);

*In re Marriage of Barnett*, 63 Wn. App. 385, 818 P.2d 1382 (1991);

*In re Marriage of Sheffer*, 60 Wn. App. 51, 802 P.2d 817 (1990);

*In re Marriage of Bulicek*, 59 Wn. App. 630, 633, 800 P.2d 394 (1990);

*In re Marriage of Morrow*, 53 Wn. App. 579, 586, 770 P.2d 197 (1989);

*In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984)

**Amount of property** may be considered when awarding maintenance.

*In re Marriage of Estes*, 84 Wn. App. 586, 929 P.2d 500 (1997);

*In re Marriage of Crosetto*, 82 Wn. App. 545, 918 P.2d 954 (1996);

*In re Marriage of Wright*, 78 Wn. App. 230, 234, 896 P.2d 735 (1995)

**Property that cannot be divided** (i.e. disability income incurred after separation in *Groves*, railroad pension in *Roark*, and military pension in *Roach* and *Mose*)

may be a basis for awarding maintenance.

*In re Marriage of Roark*, 34 Wn. App. 252, 659 P.2d 1133 (1983);  
*Mose v. Mose*, 4 Wn. App. 204, 480 P.2d 517 (1971);  
*Roach v. Roach*, 72 Wn.2d 144, 432 P.2d 579 (1967);  
*Groves v. Groves*, 70 Wn.2d 614, 424 P.2d 654 (1967)

**Hiding, transferring or wasting community assets** may be a basis for maintenance. (See same topic under *Property* above)

*In re Marriage of Mathews*, 70 Wn. App. 116, 124, 853 P.2d 462, *review denied*, 122 Wn.2d 1021 (1993);  
*In re Marriage of Morrow*, 53 Wn. App. 579, 770 P.2d 197 (1989)

The receipt of **Social Security benefits** may be a factor used in determining a maintenance award.

*In re Marriage of Zahm*, 138 Wn.2d 213, 218, 978 P.2d 498 (1999);  
*In re Marriage of Sanborn*, 55 Wn. App. 124, 125, 777 P.2d 4 (1989);  
*Hammond v. Hammond*, 26 Wn. App. 129, 130, 611 P.2d 1352 (1980)

It was error to treat a marriage as **short-term** for purposes of awarding maintenance where the couple lived in the same home, but had no children, apparently had no sexual relations, had separate bank accounts and seldom did things together for 21 of their 24 years of marriage.

*In re Marriage of Terry*, 79 Wn. App. 866, 905 P.2d 935 (1995)

Assistance in **putting a spouse through school** may be a factor for consideration.

*Washburn v. Washburn*, 101 Wn.2d 168, 677 P.2d 152 (1984);  
*Fernau v. Fernau*, 39 Wn. App. 695, 694 P.2d 1092 (1984)

**The availability of government assistance**, social services or charity (as distinguished from the actual receipt of such assistance) is not a factor used in determining a maintenance award.

*In re Marriage of Spreen*, 107 Wn. App. 341, 28 P.3d 769 (2001)

**Spouse abuse** may be a factor for consideration if it reduces the abused spouse's employability.

*In re Marriage of Foran*, 67 Wn. App. 242, 258, 834 P.2d 1081 (1992);  
*Brossman v. Brossman*, 32 Wn. App. 851, 650 P. 2d 246 (1982)

An award of maintenance cannot be based on speculation or conjecture. A court may not award **nominal maintenance** in most circumstances. To justify an award of nominal maintenance, the condition that would trigger an increase must be defined, foreseeable and not speculative. The potential of future employment or increased earnings does not, but itself, qualify.

*In re Marriage of Rouleau*, 36 Wn. App. 129, 672 P.2d 756 (1983)

"Nothing in RCW 26.09.090 requires the trial court to make specific **factual findings** on each of the factors listed in RCW 26.09.090(1). The statute merely