

Nevada Domestic Partnership Law

Frequently Asked Questions (Including New Tax Implications)

July 15, 2011

As of October 1, 2009, the State of Nevada allows two people to register as domestic partners. Below are answers to frequently asked questions about registered domestic partnerships.

Please note: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation. If you have additional questions, have encountered difficulty in obtaining appropriate recognition of your domestic partner status, or are looking for contact information for private attorneys who might advise you, contact Lambda Legal's help desk toll-free at (866) 542-8336 or our Los Angeles office at (213) 382-7600, or visit lambdalegal.org/help-form.

WHAT IS A DOMESTIC PARTNERSHIP?

Under Nevada law, a domestic partnership is a legally recognized relationship between two people that confers nearly all the same rights and responsibilities under state law as marriage. A domestic partnership is created by registering with the Nevada Secretary of State. Both same-sex and different-sex couples can register as domestic partners. However, a domestic partnership is not a marriage, and Nevada law continues to exclude gay and lesbian couples from marriage.

WHO CAN ENTER INTO A DOMESTIC PARTNERSHIP?

You may register as domestic partners with a same-sex or different-sex partner if:

- you both are at least 18 years old;
- you both share a common residence;
- neither of you is currently in a marriage, domestic partnership,
- or substantially equivalent legal relationship with someone else;
- you are not closely related to each other by blood; and
- you both are legally capable of consenting to the domestic partnership.

Same-sex couples who have already married each other or entered into a domestic partnership or substantially equivalent legal relationship must still register as domestic partners in Nevada if they want the State of Nevada to recognize them as domestic partners. You do not need to be an Nevada resident in order register as domestic partners with Nevada.

DO WE NEED TO REGISTER AS DOMESTIC PARTNERS IF WE ALREADY MARRIED IN ANOTHER JURISDICTION (SUCH AS CALIFORNIA, THE DISTRICT OF COLUMBIA, OR CANADA), OR REGISTERED AS DOMESTIC PARTNERS OR ENTERED INTO A CIVIL UNION ELSEWHERE?

Yes. The law creating domestic partnerships requires you to register with the Nevada Secretary of State if you want the State of Nevada to recognize your relationship as a domestic partnership. However, even though your relationship will be respected as a domestic partnership in Nevada, we still encourage you to work with private attorneys to perform adoptions and draw up legal documents such as wills and powers of attorney in case you travel to states that do not respect your legal relationship.

WHAT STEPS DO WE TAKE TO REGISTER AS DOMESTIC PARTNERS?

You and your partner must file a one-page Declaration of Domestic Partnership with the Nevada Secretary of State. The declaration must be signed by both of you and must also be notarized. The form must be provided to the Secretary of State's office in Las Vegas or Carson City, either by mail or in-person, along with a registration fee.

WHAT RIGHTS AND OBLIGATIONS DO REGISTERED DOMESTIC PARTNERS HAVE IN NEVADA?

Family Law Rights and Responsibilities

- Duties of joint financial support and liability for family debts arising during the relationship;

- Access to step-parent and joint adoption on the same terms and using the same procedures as different-sex married couples;
- Legal presumption that both partners are parents of children born into the domestic partnership;
- Dissolution of the domestic partnership by a family court, including access to equitable division of the relationship assets and debts;
- Right to seek financial support upon breakup;
- Access to custody, visitation and support orders concerning children upon breakup;
- Protection for domestic partners and their children under domestic violence and crime victim laws.

Medical and Death-Related Rights

- Automatic rights of hospital visitation, medical decision-making, and authority to receive information about a partner's medical condition or treatment. (However, we still encourage domestic partners to create wills, living wills, and health care powers of attorney, since you may travel to other states that will not automatically respect your domestic partnership or the rights it grants);
- Automatic ability to authorize anatomical gifts and to make funeral arrangements for a deceased partner;
- Right to seek money damages for a partner's wrongful death, lost financial support, and companionship; and
- Right to inherit in the absence of a will.

Other Rights and Responsibilities

- Right to hold real property as community property;
- Right not to testify against a domestic partner;
- Right of certain public employees to take family leave to care for a sick partner;
- Same veterans benefits that are available to spouses under state law; and
- Many other state law rights and duties too numerous to list here.

WHAT RIGHTS AND RESPONSIBILITIES OF MARRIAGE ARE NOT PROVIDED TO DOMESTIC PARTNERS?

- The law creating domestic partnerships does not require a government or private employer to provide domestic partner health care benefits for the partner of an employee, even if the employer provides these benefits to the different-sex spouse of an employee. However, an employer may choose to provide such benefits. If you work for a government employer that does not provide your domestic partner with

equal access to health care benefits, we encourage you to call our help desk so that we can help you determine your options. Many other employment-related benefits aside from health care (e.g., relocation benefits) should generally be provided on an equal basis to both domestic partners and spouses of employees, by both government and most private employers.

- All federal rights and responsibilities, including social security survivors' and spousal benefits, certain federal spousal employment benefits, the ability to file joint federal income tax returns; exemption from income tax on domestic partner health insurance if provided; exemption from federal inheritance tax; spousal protections in bankruptcy; federal veterans' spousal benefits; authority to sponsor a spouse to immigrate; and
- Automatic legal recognition of the relationship in many other states.

WILL REGISTERING AS DOMESTIC PARTNERS AFFECT HOW I COMPLETE MY FEDERAL TAX RETURNS?

Yes and no. You must continue to file as "single" or, if appropriate, "head of household." However, the amount of income you report on your federal tax return could change. Unless you both take certain steps to opt out of the community property system, you automatically begin to accrue community income upon registering as domestic partners, which means that each partner owns one-half of any community income earned (e.g., including salaries and wages). This will typically impact the amount of income each person reports on his or her federal tax return, because each partner's reported income will include half of the total income earned by the couple, plus any separate property he or she has earned. For further information about this issue, please visit www.lambdalegal.org/publications/factsheets/fs_the-irs-applies-income-splitting-community-property.html.

NOW THAT WE'RE IN A DOMESTIC PARTNERSHIP, DO WE STILL HAVE TO PERFORM A SECOND PARENT ADOPTION TO SECURE OUR CHILD'S PARENT-CHILD RELATIONSHIP TO THE NON-BIOLOGICAL PARENT?

Even though registered domestic partners are both presumed to be parents from birth of children born into the domestic partnership, we still strongly encourage parents to perform adoptions in addition to drawing up wills and powers of attorney, since you may travel to

other states that will not respect your domestic partnership or the legal presumption of parentage it creates.

WHY MIGHT A COUPLE BE ADVISED NOT TO REGISTER AS DOMESTIC PARTNERS?

- If you wish to adopt from a state or country that may not approve adoptions by lesbians, gay men, same-sex couples, or unmarried different-sex couples;
- If one or both same-sex partners are in the U.S. military (so long as “Don’t Ask, Don’t Tell” remains in effect);
- If either depends on public assistance;
- If either is a foreign national without permanent legal status in the U.S.;
- If either or both do not want the state law rights and mutual responsibilities the new law will provide domestic partners, or are concerned about the open questions about how state law will interact with federal laws that do not recognize same-sex couples or unmarried different-sex couples.

WHAT HAPPENS IF I WANT TO DISSOLVE MY DOMESTIC PARTNERSHIP?

You have two options. First, you may file a petition for termination of your relationship in family court using the same procedures that spouses use to file for divorce. Second, you may be eligible to file a one-page Termination of Domestic Partnership form if the following conditions are met: you both have been registered as domestic partners for less than five years, have no minor children or have entered agreements regarding custody and support, have no community property or have entered agreements dividing such property, waive any rights to support, and waive any right to more comprehensive proceedings under Nevada law governing dissolution of marriages.

For more information:

Visit our website: <http://www.lambdalegal.org/help-form/>; call our Help Desk toll-free at (866) 542-8336 or our Los Angeles office at (213) 382-7600; or write to us at 3325 Wilshire Blvd, Suite 1300, Los Angeles CA 90010.