



THE STATE BAR OF CALIFORNIA

Committee on Sexual Orientation and Gender Identity Discrimination



# Registered Domestic in Partners California

2006 Edition

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This brochure was funded entirely by voluntary contributions. No mandatory dues paid to The State Bar were used to publish this brochure.



*The State Bar  
of California*

Office of Legal Services,  
Access & Fairness Programs

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# **The Legal Rights of Registered Domestic Partners in California**

This pamphlet is a brief informational summary of pertinent California law concerning the legal rights and duties of registered domestic partners in California. In particular, it addresses how the law affects those in the lesbian, gay, bisexual, and transgender (“LGBT”) communities, and those different-sex couples who may register because at least one partner is over the age of 62. You can find more information and download the official forms from the California Secretary of State’s “Domestic Partners Registry” website: <http://www.ss.ca.gov/dpreistry>.

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# Registering as Domestic Partners



## >> Who can register as domestic partners?

Same-sex couples and different-sex couples in which at least one of the partners is over the age of 62 (and thus qualifies for Social Security benefits under federal law) may be eligible to register as domestic partners. Such couples must meet the following additional requirements:

- Both partners must share a common residence, though the legal right to possess the common residence need not be in both partners' names, and partners can have additional residences.
- Neither partner is married, in a civil union or registered as a domestic partner with anyone else.
- Registered domestic partners may not be too closely related by blood.
- Each partner must be at least 18 years of age.
- Each partner must have the capacity to consent to a domestic partnership.
- Both partners must consent to the jurisdiction of the superior courts of California for proceedings related to each partner's rights and obligations under the partnership, including for dissolution, nullity or legal separation, even if neither partner lives in California at the time.

**Important Note:** Proof of joint bank accounts, jointly owned property or shared bills is not necessary.

## >> How do I register?

Registration costs \$10. You can obtain the Declaration of Domestic Partnership form from your local county registrar's office or from any office of the California Secretary of State. It also is available online at:

<http://www.ss.ca.gov/dpregistry/forms/sf-dp1.pdf>.

The form must be signed by both partners in front of a notary public and then mailed to the Office of the Secretary of State. You can submit your form in person at any office of the Secretary of State for an additional \$15 fee.

**Important 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 California or elsewhere, or enrolled with an employer for domestic partner benefits, also must register with the State of California to obtain these rights. Having entered a civil union or another substantially equivalent non-marriage status conferred by another state entitles you to protection under California's domestic partnership laws. More limited laws (such as the current domestic partnership laws of Maine and New Jersey, and Hawaii's reciprocal beneficiary status) may be recognized for limited purposes in California; however, California's domestic partnership law does not require such protection explicitly. Same-sex couples that move to California with a legal status from another state should consider registering in California anyway for the additional security that is likely to bring.



# Legal Benefits



## >> What are the legal benefits of domestic partnership registration?

California law generally treats unregistered domestic partners merely as roommates. As of January 1, 2005, domestic partners who have registered with the California Secretary of State enjoy nearly all the same rights and responsibilities as married spouses under state law. Couples registered before January 1, 2005 did not need to register again to receive these benefits and protections and to have these duties.

Registered partners do not have protection under the many federal laws that protect spouses and, as of this writing, cannot file their state income tax returns jointly (a 2006 bill may change this for 2007). Still, the rights and duties under California law now are comprehensive and include the following:

### Property Rights and Duties to One Another

- **Community property** — All wages earned by a registered domestic partner while living in California is community property, as is any real or personal property acquired with such wages or existing community property or community debt. Both partners are entitled equally to manage and control all community property.

- **Debt** — Domestic partners' community property may be taken to satisfy debts incurred by either partner before and during the partnership in the same manner that married spouses' community property may be taken to satisfy such debts. Debt incurred by either partner during the registration generally is considered community debt whether it is acquired jointly or not; thus, if the partnership terminates, the debt usually will be divided equally unless the circumstances warrant a different division. Registered domestic partners also enjoy the same homestead protections against creditors after the death of either partner, and protections under local rent control laws.
- **Spousal support** — Registered domestic partners assume a duty to support each other during the registered partnership, and each may be required to pay support to the other upon dissolution or separation.
- **Fiduciary duty** — Registered domestic partners have a duty of loyalty toward each other, which includes a heightened duty to treat each other fairly regarding financial matters.

## 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, both partners are presumed to be legal parents of the child. When partners create a child with the help of a gestational surrogate, the parentage of the child is determined using the same rules that apply to spouses. Because other states may not recognize these legal presumptions, it is strongly recommended that partners consult an



attorney to obtain a court judgment of adoption or parentage to confirm the parental status of non-biological parents.

- **Adoption** — Registered domestic partners may adopt each other's children using the simpler process available to stepparents.
- **Child support, custody and visitation** — If a registered couple separates or dissolves their domestic partnership, the former partners may seek and be awarded child support, custody and/or visitation with respect to their children in the same manner as former spouses.

## Managing Illness, Incapacity and Death

- **Hospital visitation** — Registered domestic partners have the same rights as spouses to visit each other in the hospital.
- **Medical decision-making** — Registered domestic partners have the same right as spouses to make health care decisions for each other if either becomes incapacitated.

**Important Note:** The rights conferred by California on couples that register as domestic partners will not necessarily be respected by other states, the federal government, or other countries. Thus, it remains important to prepare and carry with you an Advance Health Care Directive (also called a power of attorney or proxy for health care), especially when traveling.

- **Appointment as conservator to make financial and other decisions** — When a mental or physical disability renders a person unable to care for himself or herself, a judge may appoint a “conservator” to manage the person’s affairs either temporarily or permanently. Registered domestic partners of such incapacitated individuals now have the same legal rights as spouses and blood relatives to be notified about conservatorship proceedings, to be considered for appointment as conservator, and to object to the appointment of someone else to serve in that role.
- **Estate planning** — Registered domestic partners have the same priority as spouses to be appointed administrator of a deceased partner’s estate, to collect and distribute the assets of the estate according to the will or the inheritance laws, and to pay debts/taxes. And registered domestic partners now can simply check a box on California’s statutory will form (an official, fill-in-the-blanks form for preparing a basic will) to leave property to a domestic partner. In addition, if a registered domestic partner dies without a will, trust or other estate plan, the surviving partner has the same inheritance rights as a surviving spouse (all of the couple’s community property and one third, half or all of the deceased partner’s separate property, depending upon whether the deceased partner had surviving children, parents, siblings, or other close relatives). Because many adults do have close relatives, it is important for most couples to prepare estate-planning documents setting forth their

wishes. Although the domestic partner laws guarantee a surviving partner's interest in the couple's community property and, in the absence of a will or trust, a specified share of the separate property, in many cases a duty to divide the separate property with relatives can mean selling the couple's house and liquidating other assets the survivor may need. The law that prohibits a will or other estate-planning document from transferring property to the person who drafted the document exempts domestic partners as it exempts spouses.

- **Inheritance of jointly owned property** — Registered domestic partners may avoid probate of jointly owned property, and the survivor's interest in such property is protected upon the other's death. Registered partners also are protected against being disinherited by each other to the same extent as spouses.
- **After-death decisions** — Registered domestic partners, like spouses, may authorize an autopsy, the making of anatomical gifts and other decisions regarding a deceased partner's remains, and may make funeral arrangements for the deceased partner. A registered partner is entitled to be listed on the death certificate.
- **Filing and obtaining certain official forms** — A registered domestic partner may file a claim, and may obtain certified copies of the birth or death record of the partner from the state or a county registrar-recorder.

- **Seeking compensation for death or injury** — A registered domestic partner may sue for “wrongful death” compensation if her or his partner is killed due to the wrongful act of another and also may be eligible for other death benefits. Additionally, registered partners may sue for their own emotional injuries if they witness their partner being brutally harmed by another and are eligible for compensation as spouses are from programs that assist victims of crime.

## Employment Benefits

- **Private employer health insurance** — If health insurance companies and managed health care plans offer employers the opportunity to purchase coverage for employees’ spouses, they must offer coverage for employees’ domestic partners on comparable terms. Although the state domestic partnership laws do not require private employers to offer domestic partner benefits, the laws requiring insurers and health plans to offer equal coverage means that most employers will have to choose between covering both spouses and domestic partners, or covering neither.
- **Public employer benefits** — With the lone exception of long-term care insurance, government workers in California are entitled to fully equal employment benefits, 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.

- **Unpaid and paid sick leave** — If an employer offers its employees paid or unpaid sick leave to care for an ill spouse, parent, or child, such leave must be offered similarly to care for an ill domestic partner or the child of a domestic partner. Since July 1, 2004, registered domestic partners, like spouses, have been entitled to take paid leave to care for a seriously ill domestic partner or a child of a domestic partner, as well as to care for a newly born or adopted child, or a newly received foster child. Employees are entitled to receive 55 percent of their salary while on leave (up to the maximum weekly benefit amount for that particular year) for up to six weeks.
- **Unemployment insurance** — A registered domestic partner is eligible for unemployment compensation if he or she loses a job because he or she has to relocate due to the other partner's employment.

## **Insurance**

- Insurers who offer health, homeowners, auto, life or other types of insurance within California must not discriminate between spouses and domestic partners. This means that insurers who offer policies covering spouses must offer equal rates and terms of coverage for domestic partners. Managed health care plans that cover spouses likewise must include registered domestic partners on equal terms.

## Taxes

- **State income taxes** — The 2003 domestic partner law excluded state income taxes from its general rule that registered domestic partners should have the same rights and duties as spouses under California law. As of 2006, registered domestic partners cannot file their state income tax returns jointly, and their wages are not treated as community property for income tax purposes. (As of this writing, a bill is pending in the legislature to repeal this exclusion and provide that domestic partners shall have the same options regarding state income taxes as spouses. If this bill is enacted, registered domestic partners still will be required to file their federal income taxes as “single.”)
- **State income taxes on the value of domestic partner health insurance benefits** — 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 to employees.
- **Protection against property tax increases due to reassessment** — Like spouses, registered domestic partners now are protected against having their real property reassessed, and their property taxes increased, when one partner dies or the couple ends their partnership and one partner’s ownership is transferred to the other partner. (As of this writing, a legal challenge to this property tax protection law is underway in the courts. The law was upheld by the trial court and domestic partners remain entitled to the same protection as spouses, but a different decision in the appellate courts could eliminate this protection.)

- Registered domestic partners are exempt from transfer taxes for transfers of property between partners upon dissolution of the partnership.

## **Non-Tax Financial Matters**

- Registered domestic partners are protected against acceleration of a mortgage upon transfer to a partner.
- Registered domestic partners of veterans are eligible for tuition waivers. In determining one partner's eligibility for student financial aid, the other's income and need for support are considered.
- The income and assets of one partner may be considered when determining the other's eligibility for various need-based public benefits programs, such as housing subsidies, the AIDS Drug Assistance Program (ADAP), and publicly funded health care programs. Many of these programs involve both federal and state law, and treatment of registered domestic partners remains uncertain.

## State Legal Proceedings and Interactions with State Government

- In state legal proceedings, confidential communications between registered domestic partners are legally privileged, and domestic partners cannot be forced to testify against each other. Although federal courts routinely use state evidentiary privilege rules, it is unclear at present the extent to which federal courts will honor these.
- Registered domestic partners may obtain absentee ballots, appear in small claims court, and defend in certain civil actions on each other's behalf.
- **Licenses** — A domestic partner may inherit a deceased partner's franchise license, license to operate a driving school, interest in a fishing permit or commercial fishing license, special license plates or other licenses. A veteran's surviving domestic partner may succeed to the deceased veteran's application for a farm or home purchase, and may inherit a veteran's partial license fee exemption for a primary residence mobile home.

## Miscellaneous

- **Protections against discrimination** — Registered domestic partners are protected under the many state laws forbidding discrimination based on being, or not being, in a legally recognized relationship. Businesses may not offer benefits or special treatment to spouses that are not offered equally to domestic partners.
- Registered domestic partners may use a car rented by the other partner if licensed and of age.



- **Senior citizen housing** — A senior citizen living in designated senior housing may have his or her registered domestic partner live in the same dwelling whether or not the partner would qualify to live there independently. The registered partner may remain in the residence after the death of the qualified partner on the same terms as a surviving spouse.
- Registered domestic partners are eligible for married student housing, and for overnight visitation with a partner who is in prison, on the same terms as spouses.
- Registered domestic partners may sue for loss of companionship (called “consortium”) and for violation of a deceased partner’s right of publicity (which is the right to prevent others from using one’s name, voice, signature, photograph, or likeness to advertise or sell goods or services).
- **Conflicts of interest** — Domestic partners generally are covered by laws prohibiting government officials from granting preferential treatment to those with whom the officials have certain personal relationships.



## Domestic Partnership- Same as Marriage?



### >> Is domestic partnership the same as marriage?

No. While California law provides registered domestic partners with nearly all the rights and responsibilities provided to spouses, there are several exceptions. Notably, registration creates no rights or duties under federal law, such as favorable income and estate tax treatment, Social Security survivor benefits, or the opportunity to adjust the immigration status of a foreign-born partner. As noted above, registered domestic partners currently cannot file income taxes jointly (although this may change regarding state income taxes as of 2007). Finally, the rights and duties of California domestic partners may not be respected by other states. It is wise for registered domestic partners to carry copies of their domestic partnership registration form, wills or trust documents, and documents showing mutual authority to make medical decisions, such as the California Advance Health Care Directive form, when they leave the State.

### >> What happens if registered domestic partners break up?

Most 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.

Domestic partners only qualify to terminate their registered partnership without court approval (through a summary termination procedure) if they meet all of the following requirements:



- The domestic partners have not been registered for more than five years.
- There are no children of the partners' relationship and neither domestic partner, to the knowledge of either partner, is pregnant.
- Neither party has any interest in real property aside from the lease for a residence which does not include an option to purchase and ends within one year of the filing of the Notice of Termination of Domestic Partnership.
- The domestic partners do not have outstanding debts (excluding automobile loans) incurred after registration totaling more than \$5,000.
- The total fair market value of all assets acquired by either partner after registration (excluding automobiles and encumbrances) is less than \$33,000, and neither partner has separate property assets (excluding automobiles and encumbrances) greater than \$33,000.

- Both parties agree to terminate the partnership and sign the Notice of Termination of Domestic Partnership.
- Each partner waives all rights to financial support from the other.
- The parties have signed an agreement dividing the assets and debts acquired after registration and have executed all other documents necessary to carry out the agreement.
- The partners have read and understood the brochure published by the Secretary of State describing the requirements, nature and effect of terminating a domestic partnership, which is available at:  
[http://www.ss.ca.gov/dpregistry/forms/sf-dp\\_termbrochure.pdf](http://www.ss.ca.gov/dpregistry/forms/sf-dp_termbrochure.pdf)

Registered partners who satisfy these requirements may terminate their partnership by filing a Notice of Termination of Domestic Partnership with the Secretary of State. This form is available at [http://www.ss.ca.gov/dpregistry/forms/sf-dp\\_termbrochure.pdf](http://www.ss.ca.gov/dpregistry/forms/sf-dp_termbrochure.pdf). The termination will be effective six months after the filing of the form unless either partner files a notice of revocation in the form required by the Secretary of State. The Notice of Revocation form also is available from the Secretary of State's website.

All domestic partners who do not qualify for the summary termination procedure must file an action in court to dissolve their partnership. A registered domestic partnership also is terminated by the death of one partner.

## >> **How do the domestic partner laws affect transgender and intersex people?**

Current state law requires that registered partners be of the same sex if they are both age 62 or younger. This means that some transgender and intersex people (“intersex” meaning those born with both 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 the 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.

## >> **Are there reasons not to register as domestic partners?**

Yes. Just like the decision whether to marry, the decision whether to register as domestic partners now 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 may 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 or in a relationship with someone of the same sex, registering one's same-sex partnership could be considered a "telling," warranting 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. Finally, anyone of limited financial means who depends on a public benefit program (such as MediCal, 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.

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 state or federal level. While California may amend its law in 2006 to permit joint filing of state income tax returns, such a change would not change the federal requirement to file one's income tax return 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 apply similarly and 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 apply to domestic partners as the law in this area develops.

The body of law recognizing same-sex relationships and granting domestic partnership rights is continuing 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 recognize California registered domestic 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.



## FINDING MORE INFORMATION & ASSISTANCE

Many legal resources are available at the California State Bar's website: <http://www.calbar.ca.gov>, "Consumer Pamphlets". You may find particularly helpful the pamphlet entitled "Your Rights and Resources," a guide for lesbian, gay, bisexual and transgender (LGBT) people in California, which is posted at

[http://calbar.ca.gov/calbar/pdfs/comcom/CSOGID\\_Rights-Resources.pdf](http://calbar.ca.gov/calbar/pdfs/comcom/CSOGID_Rights-Resources.pdf).

Copies also are available from the State Bar Office of Legal Services, Access & Fairness Programs (OLSAFP) by email request to: [programdevelopment@calbar.ca.gov](mailto:programdevelopment@calbar.ca.gov) or by telephone: (415) 538-2328.

The California Statutory Advance Health Care Directive forms also can be obtained online at:

<http://www.ss.ca.gov/ahcdr/index.htm>.

The State Bar of California provides the California Statutory Will form at:

<http://www.calbar.ca.gov/calbar/pdfs/publications/Will-Form.pdf>

If you need an attorney, your local city or county bar association may provide referrals. It is a good idea to start by reading the California State Bar's pamphlet entitled "How Can I Find and Hire the Right Lawyer?" Call (415) 538-2280 to request a copy by mail or obtain it from the Consumer Pamphlets page of the State Bar website:

<http://www.calbar.ca.gov>.

Also, to locate the State Bar Certified Lawyer Referral Service nearest you, call the toll-free number at 1-866-442-2529.

Finding the right lawyer can be a bit harder for LGBT people, including those in domestic partnerships. A study by the California Judicial Council confirmed that even members of the legal system sometimes discriminate against members of the LGBT community. But help is available. For more information, contact:

Lambda Legal  
Western Regional Office  
3325 Wilshire Boulevard, Suite 1300  
Los Angeles, California 90010  
(213) 382-7600 ext. 249 (para Español tambien)  
<http://www.lambdalegal.org>

Specifically, Lambda Legal's resource "California's Domestic Partnership Laws: An Overview", at <http://www.lambdalegal.org/cgi-bin/iowa/news/fact.html?record=1320> has more information on Registered Domestic Partnerships.

## Acknowledgments

The Committee would like to thank Jennifer Pizer and Tara Borelli of Lambda Legal for their extensive contributions to this brochure. Thanks also to Krista Glaser, Communications Committee Chair, for her insight and leadership.

We are pleased to provide this brochure as a service to those seeking a very basic description of current domestic partnership laws in California. This brochure should in no way be construed as a substitute for reviewing the actual laws governing a California domestic partnership, or for the always-recommended advice and counsel of an attorney who is familiar with your personal needs and circumstances.

Accordingly, nothing in this brochure should be construed as legal advice for any particular individual. Resources are available through the State Bar of California and many local bar associations to help you find an attorney.

Opinions expressed herein are those of the authors. They have not been adopted or endorsed by the State Bar Board of Governors and do not necessarily constitute the official position of the State Bar.

The seal of the State Bar of California is a circular emblem. It features a central shield with a scale of justice, a book, and a laurel wreath. The shield is flanked by two figures, likely representing law and equity. The text "THE STATE BAR OF CALIFORNIA" is inscribed around the perimeter of the seal.

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