

DOMESTIC PARTNERSHIP IN NEVADA

INTRODUCTION

With the override of Governor Jim Gibbons veto of the proposed language, Nevada has recently adopted a law allowing for the registration of domestic partners. A close review of the language in S.B. 283 indicates that the intent of the legislature was to create an institution that applies to both different sex and same sex couples that mirrors marriage without calling it that.

REQUIREMENTS

Basically, *any* couple can register as a domestic partnership and receive the exact same protections, rights, and responsibilities of a legally married opposite sex couple. The requirements for entering into a domestic partnership are:

1. Both persons must have a common residence.
 - a. This does not mean that the residence has to be titled or leased in both parties' names,
 - b. It does not mean that each party can't own other property, and
 - c. It does not mean that both parties must reside full time in the common residence.
2. Neither party can be married or be a member of another domestic partnership.
3. The parties can't be related by blood in a way that would prevent them from being married to each other in Nevada.
 - a. Nothing closer than second cousins in relationship.
4. Both parties are at least 18 years of age.
 - a. This is different from a marriage, where children of 16 can be married in Nevada with at least one parent's permission and children younger than 16 can be married with the permission of a judge.
5. Both parties are competent to consent to the domestic partnership.

If the parties meet the above requirements, then by filing the approved form with the Secretary of State and paying the requisite filing fee, they can be registered as a domestic partnership. (See <http://sos.state.nv.us/licensing/securities/domesticpartnership.asp> for forms and fees)

According to the new law, "Domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses."

This of course means, that if any question as to how the law will treat a party to a domestic partnership, within a specific situation, the courts are to look to the laws affecting the rights of a spouse in a valid marriage.

This will have a direct impact on insurance coverage, rights of survivorship, community property distribution, probate and countless other situations in which a married couple (now a partnership couple) may find themselves.

DEATH

The law contemplates how a death within the partnership shall be viewed. Specifically, “A surviving domestic partner, following the death of the other partner, has the same rights, protections and benefits, and is subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon a widow or a widower.”

Thus, probate law, wills and trusts, and any others that apply to rights of survivorship apply equally to married couples and to domestic partners.

DISSOLUTION

Probably the most interesting provisions of the law concern former partners. The law specifically states, “Former domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon former spouses.”

This means that the laws associated with divorce, annulment, pre-marital agreements and post-marital agreements, (we expect they will be called pre-partnership and post-partnership agreements) will all apply. The only major difference, is a provision applying to the length of the partnership and how a short-term partnership can be dissolved. The law terms this a “simplified termination proceeding.” To accomplish this, the parties must have been in their partnership for less than five years and:

1. File a specific and approved notarized form declaring that both persons have chosen of their own free will to terminate the domestic partnership; and,
2. Paying the proscribed fee for filing this document.

There are other issues that must be contemplated before the partnership can be dissolved in this manner. Specifically:

1. There are no minor children of the relationship of the parties born before or during the domestic partnership or adopted by the parties during the domestic partnership and no female member of the domestic partnership, to her knowledge, is pregnant, or the parties have executed an agreement as to the custody of any children and setting forth the amount and manner of their support.
2. There is no community or joint property or the parties have executed an agreement setting forth the division of community property and the assumptions of liabilities of the

community, if any, and have executed deeds, certificates of title, bills of sale or other evidence of transfer necessary to effectuate the agreement.

3. The parties waive any rights to support or the parties have executed an agreement setting forth the amount and manner of support.
4. The parties waive any right to the conduct of more comprehensive proceedings pursuant to Chapter 125 of the Nevada Revised Statutes.

This is not unlike a joint petition of divorce which has the same basic requirements except that the filing fee with the Office of the Secretary of State is much lower than with the district courts. We expect that this benefit to domestic partnership dissolution will be equalized as the state realizes that fees – which are great sources of revenue – can be the same for both domestic partners and married couples.

Of course, if a domestic partnership lasts longer than five years, the parties are subject to the terms of dissolution under the Nevada Revised Statutes Chapter 125, which deals with divorce and annulment. If you have interest in these provisions, we suggest that you review our articles on the subject of divorce.

A MARRIAGE BY ANY OTHER NAME

The legislature was careful in its language to ensure that a domestic partnership was not deemed a marriage. The law specifically allows a domestic partnership that is valid in any other jurisdiction to be recognized by the State of Nevada. However, a marriage in another jurisdiction between a same sex couple, **will not be** recognized as valid or even as a domestic partnership in Nevada. Sorry, Vermont.

There are still some very basic issues that are not dealt with in the law or were purposely ignored to ensure that the new law would pass Constitutional muster. For instance, can either party be considered the husband or the wife of the other? These terms may be reserved just for marriages, but the language in the Nevada Revised Statutes Chapter 125, that now applies to the dissolution of domestic partnerships, uses this language throughout.

We expect that there will be plenty of opportunity within the next few years for a good portion of this law to be challenged or clarified in the high court. But for now, domestic partnerships are the law of the state.