



# POPPING THE BIG QUESTION: WILL YOU BE MY CALIFORNIA DOMESTIC PARTNER?

— ALMA SOONGI BECK

Registering as domestic partners in California is not nearly as romantic as getting a marriage license at City Hall. But will it at least give you and your sweetie the same rights as married people?

Well, yes and no. Under California State law, your status as a domestic partners gives you and your partner close to the same rights as married people under state law. But your domestic partner will not be recognized outside of California, or under federal law, thus making the decision of whether to “get hitched” as domestic partners far more complicated than most couples realize.

Here are some tips that can help you and your partner navigate the complexities of whether to register as domestic partners.

1. Do you both have your estate plan documents in place?

An estate plan should include a Will, Power of Attorney for Finances and (in California) an Advance Health Care Directive. You may also want to set up Revocable Living Trusts, to help avoid the need for a full probate proceeding, to avoid property tax reassessment of

co-owned property, or to reduce or eliminate the federal estate taxes that could be owed to the Internal Revenue Service.

Having these documents in place might actually address your primary concerns about legally protecting your partner, without the need to register as domestic partners. A complete estate plan allows you to name your partner to inherit, to serve as your executor at death, to serve as your financial and health care agents in the case of incapacity, and to have priority with hospital visitation.

If you have any concerns that the rest of your family might contest your will or revocable trust, domestic partnership registration can help, but only partially. Since 2003, a surviving domestic partner has the same legal status as surviving spouses for inheritance, which includes all of the deceased domestic partner’s community property and one-third, one-half or all of the deceased partner’s separate property, depending on whether she also has surviving children, parents, siblings or nieces and nephews. So, even if a contest by your other family members succeeds, your surviving domestic partnership would still be entitled to at least part of your estate.

2. Do you own real property outside of San Francisco County?

In 2006, a new law took effect exempting domestic partnership from property tax reassessment. This law can prevent dramatic and financially crippling increases to property taxes of your domestic partner property or your joint property upon his or her death.

Registration as a domestic partner may not be necessary for property tax protection if; –

- You own property in San Francisco County and register in San Francisco for the local city/county domestic partnership.
- You co-own property as tenants and common and then transfer the property to yourselves as joint tenants.
- You co-own property as joint tenants and then transfer your property into your revocable trusts, naming each other to inherit the property.

3. How do you feel about uncertainty, at least for your federal taxes?

Since 2005, when domestic partnership registration became equivalent to marriage under

California state law, domestic partners were suddenly faced with community property, a state property principle that applies to married couples in only a handful of states in the U.S. Under community property rules, all earned income, generally from one’s job and not from investments, from date of marriage is considered part of “the community,” which is owned half and half by each spouse.

While community property can actually be advantageous for married couples under federal tax laws, the federal government’s unwillingness to recognize domestic partner registration has led to uncertainty and confusion, particularly in the federal tax arena.

4. Reasons to register now as domestic partners.

- The right to sue for wrongful death or emotional distress. Fortunately, the situation of witnessing your partner, oh, let’s say, unexpectedly and brutally mauled by your neighbor’s dog, is not a common one. But should such tragic situation occur, and should you want to sue your neighbor for damages, you will be very glad that you were registered.

- The right not to testify against your partner in state court. Again, not a common situation for domestic partners. But should it occur, and should you ever be subpoenaed to testify against your partner in court, you would not be able to retroactively claim the privilege by registering later. You have to have been registered on the date of the privileged communication.
5. Reasons to register later as domestic partners.
- The right to use the step-parent / domestic partnership adoption process. Since 2002, domestic partners are allowed to adopt their partner's child through this simpler, less expensive and less invasive process. Bear in mind that several types of parenting situations do not require a domestic partner adoption, such as adoptions done jointly by both partners through the local counties. Moreover, should the need for an adoption arise in the future, you could always register at that time.
  - The right to paid leave to care for your domestic partner. In 2004, California State implemented a new paid leave program, giving Californians the right to take paid time off work to care for spouses and domestic partners. Should this situation ever occur, however, you can always register at the time the need arises.
6. Reasons not to register as domestic partners.
- If one of you is in the U.S. on a non-immigrant visa. Immigration rights are federal rights. The potential issue for a person in the U.S. on a non-immigrant visa (e.g., tourist, student and some work visas) is the concern that CA DP registration with a U.S. person could be interpreted by the Immigration and Naturalization Service (INS) as an intent to reside permanently in the U.S. And the consequence could be deportation. If you are concerned that this situation might apply to you or your partner, make sure to consult with a licensed immigration attorney before registration.
  - If one of you is concerned about the other one's creditors, if one is applying for student loan applications or one is receiving needs-based government benefits. As for married couples, registration ties a couple together financially. Accordingly, registration can impact a person's ability to qualify for student loans or for needs-based government benefits, such as Supplemental Security Income (SSI) and Medicaid. Moreover, if one or the other has issues with creditors, all of the couple's community property, including that in the name of the non-debtor partner, can be reached by creditors, both during life and at death of the debtor spouse.

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