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Planning Considerations for Domestic Partners



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Special Considerations for Gay and Lesbian Couples

What is it?

Lack of legal same-sex marriage

As a gay or lesbian couple, legal marriage is currently not available to you in most states. While opposite sex couples may choose not to marry, you actually don't have a choice. As a legally unmarried couple, you lack many of the protections and benefits the law extends to married couples. You must create your own safeguards, like any other unmarried couple. A domestic partner agreement supplemented with other legal documents, such as a will or living trust, durable powers of attorney for health care and finances, and parental rights agreements, may currently be the best approach to protect your rights.

Tip: Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, and the District of Columbia currently authorize same-sex marriages between residents. New Jersey allows gay and lesbian couples to "marry" in civil union ceremonies. Partners in these relationships gain all the benefits and protections of marriage that these states confer (e.g., inheritance, property ownership rights), but benefits and protections governed by federal law (e.g., Social Security) aren't affected.

Possible need to plan for a higher level of financial resources

In addition to the usual financial planning challenges all couples encounter, if you lack familial or community support you may face some additional concerns. You may want to plan for a higher level of financial resources to see you through a crisis, a period of disability, or to cover co-payments and deductibles in case of a serious long-term illness. You may also want to consider purchasing disability insurance that replaces a higher-than-average proportion of income, although the tradeoff may be a longer waiting period before benefits start.

Health insurance considerations

A growing number of employers now offer domestic partner benefits to the domestic partners of their unmarried employees. One of the most important of these is health insurance. However, the value of benefits your employer offers to your partner is taxable to you as income, unless your partner qualifies as your dependent for federal income tax purposes. You need to weigh the costs versus the benefits to see if a domestic partner benefit plan is a good deal for you and your partner.

Estate planning considerations

As a partner in a gay or lesbian couple, you may have reason to be concerned about whether your wishes will be respected after death. Even good people act strangely and unpredictably when confronted with death. Your family members may experience added ambivalence or even hostility about your sexual orientation and your same-sex relationship. You might want to keep as much of your estate as possible out of the court system. You may also wish to take steps to minimize the risk of a will challenge. A domestic partner agreement can support your estate planning documents by clarifying your wishes.

Parental rights considerations

You must take extra legal precautions to protect your parenting rights. You can protect your parenting rights with key legal documents and bolster them by discussing your arrangements with the significant adults in your child's daily life.

Tax considerations

Tax laws involving dependents, filing status, credits, and deductions may apply to you and your relationship in some unique ways.

You lack the protections and benefits of legal same-sex marriage

Most states do not recognize same-sex marriages or civil unions

One of the most significant issues you face as a gay or lesbian couple is that you lack the rights and protections of legal marriage. Because marriage is a state-sanctioned contract, the lack of legal marriage means you are ineligible for the many protections and benefits the state extends to married couples. On the state level there are anywhere from 160 to more than 250 laws per state that govern and protect married partners. However, there are many laws that prohibit same-sex relationships. Although opposite-sex couples may choose to remain unmarried, you and your same-sex partner generally don't have any other option. You may only marry in Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, or the District of Columbia, or you may enter into a civil union in New Jersey.

The federal government doesn't recognize same-sex marriage

You're also ineligible for the many benefits the federal government grants to married federal employees and military personnel. In addition, the Defense of Marriage Act (DOMA) prevents the federal government from recognizing same-sex unions for federal purposes, such as taxes, job benefits, and immigration. This law also allows a state to ignore a same-sex marriage that is approved in another state. Although proponents of same-sex marriage believe the DOMA is unconstitutional, the legal and political maneuvering on both the federal and state levels could go on for years.

Rights and protections you lack

If you're unable to marry or enter into a civil union, you lack some of the rights and protections that married persons have in nearly every aspect of life, including the following:

- Property ownership
- Separation or termination of a relationship
- Parental rights
- Inheritance and estate planning
- Illness and incapacity
- Retirement
- Death

What you can do until legal marriage becomes available

In general

There is no adequate replacement for legal marriage. Substitutes, such as domestic partner registration and ceremonial marriage, don't come close to offering the advantages of legal marriage. Common law marriage is not available to same-sex couples. Your best approach is to prepare a domestic partner agreement supplemented with other legal documents.

Domestic partner agreement supplemented with other legal documents

You and your partner can prepare a domestic partner agreement supplemented by other legal documents. A domestic partner agreement primarily addresses the sharing of income, expenses, and property. It can also delegate responsibility for nonfinancial matters, such as who will handle various household duties (although courts tend to provide only limited remedies for personal service agreements).

Caution: Because a domestic partner agreement primarily covers the sharing of income, expenses, and property, it doesn't address the many other areas requiring protection. In order to provide more complete legal coverage, you should supplement it with the following documents:

- Durable power of attorney for health care (DPAHC), also called a health-care proxy
- Durable power of attorney for finances

- Will or living trust
- Parental rights documents
- Living will, may also be called a Declaration of Desires

Caution: This approach of combining a domestic partner agreement with other legal documents is your best option, although it doesn't begin to provide the benefits and protections of legal marriage. Preparing these documents can cost hundreds of dollars in legal fees, possibly more for trust-based plans, and they must be periodically reviewed and updated as your circumstances change. Seek the help of an attorney in drafting these documents. They may need to be notarized or witnessed, and all can be contested in court.

Domestic partnership registration

A domestic partnership registration provides official recognition of your union. A growing number of cities allow domestic partner registrations, and a few states have begun to recognize them. They generally require you and your partner to sign an affidavit declaring your relationship and to pay a small fee of perhaps \$35 or \$45--approximately the same cost as a marriage license.

Apart from the satisfaction of publicly announcing your relationship, a domestic partner registration offers few if any benefits. Moreover, it may expose you to liability for your partner's debts. Be sure to examine your rights and responsibilities before registering. Because of their relatively recent introduction, it's unclear how domestic partner registrations will fare legally.

Ceremonial marriage

Many churches marry same-sex couples. However, while these ceremonies may be personally gratifying, they confer no legal rights or responsibilities.

Common law marriage

Common law marriage, currently recognized in certain states, is specifically not available to same-sex couples.

General financial planning considerations

Need to plan for greater financial resources

In addition to the usual financial planning challenges all couples encounter, if you lack familial or community support you may face some additional concerns. If you're estranged from your families, lack children, or have no community to turn to in times of need, you may want to plan for a higher level of financial resources to see you through a crisis or an extended period of disability.

It's generally recommended that everyone set aside three to six months of cash in an emergency fund. If you have limited sources of support to draw on in a crisis, you may want to consider setting your cash reserves at the high end of the range.

In case of disability

A disability insurance policy replaces a portion of your income if you're unable to work due to a serious medical condition. The percentage it replaces varies from policy to policy. In estimating how much income you would need to replace, consider the other sources of support you could rely on if you become disabled. If you're not sure where you'd turn in a crisis, you may want to purchase disability insurance that replaces a higher-than-average proportion of income to pay for the support you may need, although the tradeoff may be a longer waiting period before benefits start.

Health insurance considerations

Domestic partner benefits are taxable

A growing number of employers now offer domestic partner benefits to the unmarried partners of their employees. For many people, the most important benefit is health insurance. Before your partner signs up, there is one big drawback to consider: The value of the benefits your employer offers to your partner, unlike those offered to a spouse, is generally taxable (unless your partner qualifies as your dependent for federal income tax purposes). It shows up as income on your pay stub and also on your year-end W-2 Form.

Comparing costs of coverage under a domestic partner benefits plan to your own employer's plan

If you have access to health insurance through your own employer and you can obtain coverage through your partner's domestic partner benefits plan, which is the better deal? In this case, compare the annual costs of each plan before selecting coverage. You may find that the additional tax on the domestic partner coverage prompts you to select your own employer's plan.

Example(s): Terry's employer, Ace Company, has just begun to offer health benefits to its employees. Terry compares the annual cost of health benefits at Ace to the yearly cost under Chris's domestic partner benefits plan at Progressive Inc., as follows:

	Ace	Progressive	
Terry's annual share of the premiums	\$800	\$600	
+ Est. deductibles/co-payments for doctors	\$60	\$60	
+ Est. deductibles/co-payments for medication	\$30	\$30	
= Total est. annual out-of-pocket cost for Terry	\$890	\$690	
+ Total additional tax per year for Chris	\$0	\$372	
= Total est. annual cost of Terry's benefits	\$890	\$1,062	
Total annual savings under Ace's plan	\$172		

Example(s): Although Terry's annual premiums are higher at Ace Company (\$800 compared to \$600), the total yearly cost is \$172 lower because he and Chris avoid the tax on the domestic partner benefits. Since the coverage under both plans is comparable, it's a better deal for Terry to join Ace's health insurance plan.

Estate planning considerations

Don't take anything for granted

Estate planning is an important activity for any couple. As a partner in a same-sex couple, you may have even more reason than a partner in an opposite-sex couple has to be concerned about whether your wishes will be respected after death. Even good people act strangely and unpredictably when confronted with death. Your family members may experience added ambivalence or even hostility about your sexual orientation and your same-sex relationship. Without the proper protections, your surviving partner could be ordered out of a house you share, your next of kin could dispose of your estate in a way you would not approve, and your family might not honor wishes they had agreed to before your death. Don't take anything for granted. Get your estate plan in order now. You owe it to yourself and your partner to ensure that your estate is transferred according to your wishes.

Planning for illness and incapacity

You should also take the time now to plan for possible illness or incapacity. If you are seriously ill or injured and can't express your wishes or make your own medical decisions, who would you want to represent you? Medical personnel often look to immediate family members for authority to act. Your unmarried partner may be forced to stand on the sidelines while medical decisions are made. He or she may even be barred from visiting you if you're in intensive care. If you want your partner to represent you in case of serious illness or incapacity, you should prepare a DPAHC (also called a health-care proxy) and a living will.

Transferring your estate

There are four ways in which you can transfer your estate to your surviving partner:

- Automatically, by holding property in joint tenancy with rights of survivorship (JTWROS). This can apply to any property with a title, such as real estate, vehicles, bank accounts, stocks and bonds, and mutual funds.
- By designating your partner as the beneficiary of your life insurance policy and/or retirement account.
- Through the provisions of a living trust.
- Through a will using the probate laws of your state. For more information, refer to Probate.

Any property that isn't transferred through joint ownership, a beneficiary designation, or a trust passes through probate. The probate court handles estates that have wills, as well as those without wills that pass according to the intestacy laws of your state.

Avoiding probate

Although probate courts today are more apt to honor bequests from one gay person to another, it wasn't that long ago that there was a risk that they would be invalidated on the grounds of "undue influence." If you're concerned about the court system having jurisdiction over the distribution of your assets, you might want to keep as much of your estate as possible out of probate. You can do this by using joint ownerships, beneficiary designations, and trusts to transfer assets. Another reason to avoid probate is that the proceedings are a matter of public record, open to anyone who inquires.

Will challenges

Any assets that cannot be transferred through joint ownership, a beneficiary designation, or a trust should be covered by a will. Otherwise, they will pass to your next of kin according to the intestacy laws of your state. Probate courts generally respect wishes outlined in a properly executed will. A successful will challenge is hard to mount. Someone contesting your will must prove that it was executed incorrectly, that you were unduly influenced or not of sound mind when you made it, or that it was the result of fraud. However, since your estate is already in court when it enters probate, the threat of a will challenge from a hostile or disapproving family member can cause a lot of anxiety for your loved ones.

Reducing the risk of a will challenge

If you are seriously concerned about a will challenge, pass as much of your estate through the probate-avoiding mechanisms discussed above--JTWROS, beneficiary designations, and living trusts. For your remaining assets, you can take the following steps to reduce the risk of a will challenge:

- Mention every member of your family in your will. If you're disinheriting someone, state the reason. However, this must be carefully worded to prevent a challenge or a defamation suit. A will challenge is most likely to come from a disinherited family member.
- Add an "in terrorem" ("no contest") provision to your will. This means that anyone who contests your will gets nothing at all.
- If you have a debilitating illness, prepare your will early to ensure that there's no question that you're "of sound mind and body."
- Make sure that your will is executed properly. If your surviving partner is inheriting the bulk of your estate, he or she should not be present when you execute the will. This prevents a disgruntled family member from later having grounds to claim undue influence.
- Share your plans with your family in advance. Avoid having your death be the occasion on which you "come out" to them. The shock of your death combined with the surprise of learning about your lifestyle can be doubly difficult for unsuspecting family members to handle. Communication now can prevent problems in the future when you're no longer here to explain your wishes for the disposition of your estate. If you can't come out to key family members, try to find at least one member in whom you can

confide and who will verify your wishes if your will is contested.

Support your estate plans with a domestic partner agreement

A domestic partner agreement can support your estate planning documents, whether they are joint ownership property titles, beneficiary designations, trusts, or a will. By referencing these documents and restating your intentions for the distribution of your estate, you clarify your wishes in case they're questioned.

Parental rights considerations

In general

As an unmarried parent, you must take extra legal precautions to protect your rights. Parenting rights that are automatically conferred on married couples don't necessarily apply to unmarried parents. For example, you may not be allowed to authorize emergency medical treatment for your partner's child. You're not automatically granted custody or visitation rights to your partner's child if the relationship ends. You don't automatically become the legal guardian of your partner's child if your partner dies, no matter how long you've raised the child. If you're an unmarried father, you may not even be recognized as your biological child's legal parent.

Child custody concerns

Many states now allow same-sex couples to share custody of a biological child as long as one of you is the custodial parent. You can also share custody of an adopted child, although most states require one of you to have custody before the other can apply for it. Unfortunately, this prevents you both from adopting at the same time and requires you to go through the costly and lengthy adoption process twice.

Key legal documents

You can protect your parenting rights with key legal documents. These include your child's birth certificate, a paternity statement, a co-parenting agreement, a nomination of guardianship clause in a will, and a form authorizing consent to medical treatment. Bolster these legal documents by discussing your arrangements with the teachers, medical-care workers, recreation leaders, and others in your child's day-to-day life.

Tax considerations

In general

In many ways, the federal tax code treats you, as an unmarried couple, differently from a married couple. In addition, some other situations may be of special interest to you.

Claiming your partner as a dependent for the personal exemption

Although it's possible to claim your partner as a dependent for purposes of the personal exemption, this is generally difficult to do because in addition to other requirements, he or she must earn less than the personal exemption amount (\$3,650 for tax years 2009 and 2010).

Also, this strategy penalizes your partner. By claiming your partner as a dependent, he or she is then ineligible to claim a personal exemption when filing his or her tax return. Further, if your partner claims the standard deduction in 2010, it may not exceed the greater of \$950 or his or her actual earnings plus \$300.

Qualifying as head of household

The head of household filing status can be advantageous for those who qualify. However, you may find it difficult to qualify, even if you can claim your partner as a dependent for purposes of the personal exemption. Heads of household must generally be related to their dependents by blood, marriage, or adoption. The qualifications are fairly strict, and because of the beneficial tax treatment, the IRS monitors this closely.

Domestic partner health benefits are taxable

The value of health insurance your employer provides to your partner under a domestic partner benefit plan is taxable to you as income (unless your partner qualifies as your dependent for federal income tax purposes). In

contrast, benefits provided to a spouse are not taxable.

Deducting your partner's medical expenses

You cannot claim deductions for your partner's medical expenses unless he or she qualifies as your dependent.

Domestic Partner Agreements

What is it?

Addresses the sharing of income, expenses, and property

A domestic partner agreement can be used by all unmarried couples, whether of the opposite or same sex. It is a written contract between you and your partner that is primarily used to address the sharing of income, expenses, and property. It supports your ownership rights and clarifies your intentions for the distribution of your property if you die or your relationship ends. Although it needn't address concerns that are covered by other legal instruments (such as deeds of title, wills, living trusts, durable powers of attorney for health care and finances, parental rights documents, and living wills or Declarations of Desire), it can provide a valuable supporting document for them. You can also use a domestic partner agreement to identify responsibility for nonfinancial matters (e.g., who will handle household duties), although courts tend to provide only limited remedies for these so-called personal service agreements.

Provides protection you otherwise lack

Few, if any, laws specifically govern the rights and responsibilities of unmarried partners regarding the sharing of property and finances. Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, and the District of Columbia currently authorize same-sex marriages between residents, and New Jersey has enacted statutes regarding civil unions that afford homosexual married partners the same rights as heterosexual married partners. If your relationship ends, there are no uniform guidelines for sorting commingled finances and dividing shared property. Because you can't turn to a divorce court as a married couple can to effectuate property division, costly and emotionally draining legal battles may ensue, leaving it to a judge to rule on your intentions and to determine the disposition of your shared property.

Sets clear ground rules up front

By setting clear ground rules, a domestic partner agreement can help your relationship run more smoothly and ease the handling of disputes in case of separation or death. It can, however, be a delicate subject to broach with your partner.

When can you use it?

You might wish to consider a domestic partner agreement if any of the following apply:

- You want to protect your income and property rights in case of separation or death
- You have more than a minimum of assets
- You expect to commingle your finances, perhaps by purchasing household goods or other property together, sharing income, or holding joint bank accounts or credit cards
- You want your relationship to run smoothly with a clear understanding of your financial rights and responsibilities

What does it cover?

In general

A domestic partner agreement primarily addresses the sharing of income, expenses, and property. You can also use it to support other legal documents, such as your will or the title to jointly owned property. Some couples use it to identify responsibility for various household duties, although courts tend to provide only limited remedies for so-called personal service agreements. The following questions and comments can guide you in identifying areas to address in a domestic partner agreement.

Shared income

What rights, if any, do you and your partner have to each other's income now--and in the future--if you separate?

Although you enter a relationship with the sole right to your personal income, a spoken or implied agreement to share the income with your partner may permit him or her to assert a claim for support against you. Without a written understanding to the contrary, you can spend a lot of time and money contesting this in court. Your right to your partner's income is especially important to clarify if you depend on your partner's income (e.g., if you're a homemaker or the parent primarily responsible for child rearing).

Shared expenses

How will you share household expenses--equally, according to income, or according to use? Will you share a joint bank account? If so, how much money will you keep in it, and what is it earmarked for? If you maintain separate bank accounts, what expenses will these cover? A candid discussion of your financial values, priorities, and goals will provide a solid foundation for planning your finances. Clarifying values, goals, and priorities now can ease your financial decision making and activities, including managing household expenses, deciding whether to open joint accounts, and developing a budget.

Shared property ownership

How will you own property--separately or together? There are four categories of property to consider:

- Property you each individually bring into the relationship--Usually, this remains the property of the partner who originally owned it.
- Property you each individually receive during the relationship through gifts or inheritances--Generally, this remains the property of the partner who received it.
- Property without titles you acquire during the relationship, either separately or together--Possessions you purchase separately during the relationship are best kept separate, documenting your ownership with receipts in case the relationship ends. Property you acquire together is usually owned equally, or in proportion to each partner's contribution. It's especially important to document what share of jointly held property you each own. A written agreement strengthens your ownership claim if the relationship ends.
- Property with titles you acquire during the relationship, either separately or together--Ownership of this property depends on how it is listed on the title, whether as a sole ownership, a joint tenancy with rights of survivorship (JTWROS), or a tenancy in common.

If you jointly hold property, identify what share you each own. If the ownership is not split equally, specify the terms. Outline any arrangement you have for the minority owner to equalize his or her share.

Caution: If you list your partner on a title without a fair exchange of value, the IRS could consider this a gift subject to gift tax. Describe how you'll divide jointly held property if your relationship ends. Will one of you have the right of first refusal, that is, the first right to remain in a jointly owned house and buy the other out? If so, how will you determine the value, and over what period of time will the buyout take place? Or, will you sell the property and divide the proceeds?

Supports other legal documents

A domestic partner agreement needn't address concerns that are covered by other legal documents, such as deeds of title, wills, living trusts, and durable powers of attorney for health care and finances. However, it can provide an important supporting document for them. Suppose the title to your home was not properly recorded as a JTWROS, and at your death, it is discovered that it was drafted and recorded as a tenancy in common. Your legal next of kin could lay claim to your share. A written agreement declaring your intention to leave sole ownership of the property to your partner will support your partner's claim to the property. It can also bolster your will in case disapproving relatives contest it.

Other nonfinancial concerns

You can use a domestic partner agreement to delegate responsibility for nonfinancial matters, such as who will wash the dishes and who will cut the grass. These are called personal service agreements. Although a court may

uphold these agreements, don't expect a judge to dispatch the sheriff if your partner fails to mow the lawn. The most you're likely to receive is a cash award reimbursing you for the cost of the lawn service you hired to do the job.

What are the strengths of a domestic partner agreement?

Helps prevent disagreements before they occur

By setting clear ground rules, a domestic partner agreement can ultimately help your relationship run more smoothly. Many relationships break down over differing expectations about the handling of money and finances. These differences are often only discovered when dissension occurs.

Helps settle disagreements if the relationship ends

If your relationship ends, a well-written domestic partner agreement can protect you, helping you avoid emotionally draining and costly legal battles.

Supports your wishes after your death

In case of death, it can support your will and your partner's right to jointly held property by stating your wishes and intentions for the disposition of your property.

What are the tradeoffs of a domestic partner agreement?

Can be a sensitive subject to broach

A domestic partner agreement can be a delicate subject to broach with your partner, especially if your relationship is young or you've never held candid discussions of financial matters. You need to consider whether attempting to address these matters legally will help or hurt your relationship.

Requires periodic updating

If you decide to proceed with a domestic partner agreement, be prepared to update it periodically as you acquire possessions together.

Will your domestic partner agreement hold up in court?

Courts generally recognize contracts between unmarried partners

Courts generally recognize contracts between unmarried partners as long as they violate no laws or public policy, are consistent with contract law, and are entered into willingly. However, there are no guarantees--contracts can be contested in court. Have an attorney draft your agreement or at least review it.

What happens if your relationship ends and you don't have a domestic partner agreement?

No uniform guidelines exist to divide shared property and finances

If your relationship ends, no specific guidelines exist to divide shared property and finances other than the general principles of contract law. Because you cannot turn to a divorce court or to specific statutes regarding cohabitation and domestic partner arrangements, costly and emotionally draining legal battles may ensue. Your fate will be left to a judge who must rule on your intentions and those of your partner and must determine the disposition of your shared property.

Does a domestic partner agreement provide all the legal protection you need?

Should be supplemented with other legal documents

Because a domestic partner agreement primarily covers the sharing of income, expenses, and property, it doesn't address the many other areas requiring protection. In order to provide more complete legal coverage, you should supplement it with the following documents:

- Durable power of attorney for health care, also called a health-care proxy
- Durable power of attorney
- Will or living trust
- Key documents to protect your parental rights

Caution: Taken together, these documents, plus a domestic partner agreement, still don't provide the numerous benefits and protections conferred by legal marriage. Preparing them can cost thousands of dollars in legal fees, and they need to be periodically reviewed and updated as your circumstances change. Consult an attorney to draft these documents. They may need to be notarized or witnessed, and all of them can be contested in court.

What if you still don't want a domestic partner agreement?

If you're young (or old) and in love or you simply don't choose to base your relationship on a legal contract with the ongoing tension it could create, there are still some things you can do to prevent problems and protect your rights.

Own property separately

Consider owning household goods and other personal property separately. Make it a practice to keep receipts showing who owns what.

Clarify ownership with deeds of title

For titled property, such as a house or a car, the name(s) listed on the title determines who owns the property. Titles supersede any written documents to the contrary, including a domestic partner agreement or even a will.

Maintain separate finances

Keep your finances separate. Avoid holding joint bank accounts and credit cards. Either divide up the household bills or reimburse your share to each other from individual checking accounts.

Hope for the best

Some relationships endure for decades with hardly any problems. However, many couples require extensive legal action to resolve issues once they arise.

Questions & Answers

Is a domestic partner agreement similar to a prenuptial agreement?

A domestic partner agreement is similar to a prenuptial agreement and covers many of the same concerns. It is different in that it is not followed by a marriage and may not have the same status in court.

How does a domestic partner agreement differ from a domestic partnership?

A domestic partnership is a registered relationship between unmarried partners that provides official recognition of your union. A growing number of cities allow domestic partner registrations, although a few states have begun to recognize them. They generally require you and your partner to sign an affidavit declaring your relationship and to pay a small fee of perhaps \$35 to \$45, approximately the same cost as a marriage license.

Some believe that these registrations offer few if any benefits while possibly exposing you to liability for your

partner's debts. Be sure to examine your rights and obligations before registering your relationship. Because of their relatively recent introduction, it's unclear how domestic partner registrations will fare legally. You don't need to have a registered domestic partnership to sign a domestic partner agreement. Nor do you need a domestic partner agreement to register a domestic partnership. The two operate independently of each other.

Massachusetts, Connecticut, Iowa, Vermont, and New Hampshire are currently the only states that allow same-sex marriages between residents. The District of Columbia also allows same-sex marriage. New Jersey is the only state that permits civil unions between two persons of the same sex. Parties to a civil union are responsible for the support of one another to the same degree and in the same manner as prescribed by law for married persons. In addition, parties to a civil union are entitled to all of the same benefits, protections, and responsibilities under state law as are granted to spouses in a marriage. Several other states have passed legislation that accords domestic partners some of the special rights accorded to married persons. Note, however, that these protections generally do not extend to heterosexual couples who live together but choose not to marry.

What are domestic partner benefits?

Domestic partner benefits refer to a wide variety of fringe benefits employers offer the unmarried partners of employees. These can include health insurance, family medical leave to care for an ailing partner, and bereavement leave at the death of a partner. Often, the most important benefit is health insurance. Unfortunately, the value of health insurance provided to your domestic partner is taxable to you as income.

Caution: The laws regarding domestic partner benefits generally apply only to same-sex partners. However, some employers restrict domestic partner benefits to same-sex partners, while others offer benefits to both same-sex and opposite-sex partners.

How do you know if your relationship is protected as a common law marriage?

To be valid, a common law marriage must meet the following conditions:

- You must be an opposite-sex couple
- You must reside in a state that recognizes common law marriage (Alabama, Colorado, Iowa, Kansas, Montana, New Hampshire (for inheritance only), Oklahoma (though the law is somewhat unsettled), Rhode Island, South Carolina, Texas, Utah, and the District of Columbia)
- You must live together for a significant period of time, although no state defines the exact length of time
- You must present yourselves as a married couple, typically by using the same last name, referring to each other as husband and wife, or filing a joint tax return
- You must intend to be recognized by others as a married couple

When a common law marriage exists, the relationship can only be ended through a formal divorce.



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