

The Nevada Domestic Partnership Act

The Nevada Legislature recently passed legislation which permits unmarried couples - opposite or same sex - to register a domestic partnership agreement with the Nevada Secretary of State. The law went into effect October 1, 2009. While the law specifically denies such domestic partners the right to call such an agreement a marriage, the net effect of the legislation is that for most purposes, a domestic partnership agreement in Nevada will be treated similarly to a marriage.

Procedurally, two people who wish to enter into a Domestic Partnership Agreement will need to submit to the Nevada Secretary of State a form indicating that they have chosen to share their lives in an intimate and committed relationship of mutual caring, and desire of their own free will to enter into a domestic partnership.

To be eligible for a domestic partnership under Nevada law, both parties to the contract need to live together, must not be married or in another domestic partnership at the time they enter into such an agreement, may not be so closely related that Nevada law would not recognize a marriage between the parties (first cousins or closer in relation), be at least 18 years old, and competent to consent to a domestic partnership.

If the parties meet the foregoing criteria, and pay the appropriate amount to the Nevada Secretary of State, a "Certificate of Registered Domestic Partnership" will be issued to the parties. There is no requirement of solemnization (in other words, you need not participate in a domestic partnership ceremony). The date the Certificate of Registered Domestic Partnership is issued is the date rights and responsibilities begin under such an agreement.

Domestic partners will have the same rights, protections and benefits, and are under the same responsibilities, obligations and duties under law as between spouses. This includes the right to inherit just as if the surviving partner was a spouse, the right to seek post-dissolution support, including child support (under certain circumstances), and the right to have property accumulated during the partnership divided in the manner provided for through a divorce between spouses.

In the event of a dissolution of a domestic partnership, there are effectively two options: If all issues are resolved, then the parties may submit a form which indicates how the parties have resolved any potential issues between them with the Nevada Secretary of State. However, in the event there is no such agreement, the dissolution will be handled using NRS 125, which covers the manner in which divorces are handled. In Clark County, there is a specialty court - the Family Court - which will almost certainly handle such disputes, though the relevant domestic partnership law here in Nevada does not specifically assign that duty to the Family Court. It is by virtue of the reference to NRS 125 - which is Family Court specific in Clark County - that it is expected the Family Court will handle such dissolutions.

On first blush, the legislation seems to indicate that if either party to a domestic partnership agreement has a child or children, the other domestic partner may have custodial

rights and/or the obligation to support the child or children. However, the language used actually says that the (non-parent) partner has the same rights as a spouse. Keep in mind there are many spouses who have neither the right to custody to, nor an obligation of support for, their step-children. Thus, the language, at best, provides the non-parent partner the authority to make decisions like a step-parent during the existence of a domestic partnership agreement. Perhaps an argument could be made by the non-parent as to visitation rights, but that would be covered under NRS 125C.050, and even then, it would most likely require a separate lawsuit to be filed.

The most interesting aspects of domestic partnership agreements are the manner in which property can be divided upon dissolution of the partnership, and the rights of the respective parties to inherit from the other party upon death as if the surviving partner is a spouse.

Prior to this domestic partnership law, people who owned property together who were not married would divide property accumulated between them on a “contribution” analysis, regardless of whether the property was held in joint tenancy with right of survivorship or as tenants in common. Since NRS 125 will now apply to the dissolution of these partnership agreements, joint tenancy property will more likely be treated as if it were community property, and divided equally, unless there is some compelling reason to do otherwise, under NRS 125.150. Property held as tenants in common, which is quite rare, would not be treated as community property under NRS 125.150, and will be more likely to be subject to the old “contribution” analysis.

Similarly, prior to domestic partnerships being recognized by Nevada, in the absence of a will or trust, the surviving domestic partner was left out in the cold. Now, with the implementation of the right to inherit, the surviving partner would be treated as a surviving spouse. Thus, in the absence of a will or trust, such a surviving partner would be entitled to at least one third of the deceased partner’s estate, and possibly as much as one half, as well as potentially qualify for a family allowance.

It also appears that some form of pre-partnership agreement may be viable as well, since both the divorce and intestacy statutes refer to how they may be impacted by a premarital agreement. However, there is a specific section in the Nevada Revised Statutes related to premarital agreements, while there is no such specific section for pre-partnership agreements, so this is an uncharted area of law at present.

Before entering into a domestic partnership agreement, it is important to discuss and resolve issues related to inheritance so that there is no misunderstanding going into the partnership as to what each partner should expect in the event of the other’s untimely demise. Furthermore, it is important to consider whether or not the partners wish to enter into some form of pre-partnership agreement providing for the resolution of any and all issues which may come into dispute should the domestic partnership require dissolution.

For the foregoing reasons, we strongly urge partners considering entering into a domestic partnership agreement to come in and consult with us, so we can go over any questions you may have, and provide services in anticipation of entering into such an agreement.