



NATIONAL CENTER FOR LESBIAN RIGHTS



**Equality California** | [eqca.org](http://eqca.org)

## **THE CALIFORNIA DOMESTIC PARTNERSHIP LAW: WHAT IT MEANS FOR YOU AND YOUR FAMILY**

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## Introduction

This document explains who can register as domestic partners, how to register, how to dissolve a partnership, and what rights, benefits, protections and responsibilities will be provided to registered domestic partners in California.

Registered domestic partners in California are provided with most – although not all – of the rights and responsibilities of married couples under California law. However, registered domestic partners still do not receive any of the 1,138 rights and benefits of married couples under federal law. Registered domestic partners also continue to have less security than married couples when they travel or move outside of California.

### **Major areas of change with regard to the rights and responsibilities of registered domestic partnership include:**

- Creating and dissolving registered domestic partnerships
- Community property and financial obligations
- Parental rights and responsibilities
- Public benefits
- Health care and end of life issues
- Taxes

For more information contact the National Center for Lesbian Rights or Equality California.

### **Couples who should be particularly cautious before registering:**

Because the federal government does not recognize domestic partnerships, there are several groups of people who should be particularly careful before deciding to register as domestic partners. These include:

- binational couples (in which one of the partners is not a United States citizen and is in the United States either without documentation or on a non-immigrant visa);
- couples in which one or both of the partners are receiving benefits, such as SSI or Medi-Cal;
- individuals considering adopting a child from another country; and
- couples where one or both partners are in the military.

For couples and individuals in this situation, it is highly advisable to **consult legal counsel** before deciding to register as domestic partners.

## General Questions about AB 205

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### What is AB 205?

A.B. 205 — which is short for Assembly Bill 205 — is the California Domestic Partner Rights and Responsibilities Act of 2003. This law was authored by Assemblymember Jackie Goldberg and sponsored by Equality California.

**The substantive provisions of AB 205 provide:** “Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under [California state] law, whether they derive 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.” Cal. Fam. Code § 297.5(a). These protections apply as of the date a couple registered as domestic partners with the State of California.

Registered domestic partners are still denied all of the 1,138 federal rights and responsibilities that are offered to opposite-sex couples and have less security than married couples if they travel or move out of state.

### Which laws are affected by AB 205?

AB 205 affects almost every *California* law, regulation, court rule, or court decision that provides rights and responsibilities to spouses. The primary exceptions are: (1) the means of entering and exiting registered domestic partnerships will be different than those for entering and existing marriages; (2) AB 205 does not affect statutes or constitutional provisions that were enacted through the initiative process.

This publication provides a general overview of the hundreds of new rights and responsibilities that are now provided to registered domestic partners as a result of AB 205. Because laws and legal procedures are subject to frequent change and differing interpretations, NCLR and EQCA cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency.

## Questions about Registering as Domestic Partners

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### Who is eligible to register as domestic partners?

You must meet the following criteria to register as domestic partners:

- Both persons have a common residence;<sup>1</sup>
- Neither person is married to someone else or in a domestic partnership with someone else;<sup>2</sup>
- The two persons are not related by blood in a way that would prevent them from being married to each other in California;
- Both persons are at least 18 years of age;
- Both persons are capable of consenting to the domestic partnership;

#### *And either.*

- Both persons are members of the same sex; or
- One or both of the persons are over the age of 62.

### How do we register as domestic partners with the State of California?

To register, download the declaration of domestic partnership form at <http://www.ss.ca.gov/dpreistry/> or pick up the domestic partnership form at any local county registrar's office or at any office of the California Secretary of State.

Both parties must sign the form in the presence of a notary and have the form notarized. You then mail the signed, notarized form to the Secretary of State along with the \$33 fee. A list of notaries in your area can be found by consulting the yellow pages under "Notaries Public."

In signing the form, you must provide your mailing address and you must attest that:

- You meet the requirements of domestic partners, listed above;
- You agree to have your case heard in a California court if you need to go to court for a separation or dissolution of your partnership, even if one or both of you no longer reside in California;<sup>3</sup> **and**

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<sup>1</sup> "Have a common residence' means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return." Cal. Fam. Code § 297(c).

<sup>2</sup> This requirement clarifies the eligibility requirements for entering into a registered domestic partnership. Prior to January 1, 2005, the law provided: "Neither person is married or a member of another domestic partnership." AB 205 makes absolutely clear that a person is eligible to register as a domestic partner even if he or she is also married to the same person.

In addition to clarifying this point, AB 205 eliminates the prior requirement that "[b]oth persons agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership." Fam. Code § 297(b)(2). This provision was removed because registered domestic partners will be legally responsible for each other in the same way that spouses are so there was no longer a need to state this as an eligibility requirement.

- The representations made on the form are true, correct, and contain no material omissions of fact to the best of your knowledge and belief.

Filing an intentionally and materially false Declaration of Domestic Partnership is punishable as a misdemeanor.

**If my partner and I registered as domestic partners prior to January 1, 2005 with the state of California, do we need to re-register?**

No. Couples who registered as domestic partners prior to January 1, 2005 automatically gained the new rights and responsibilities provided by AB 205. In other words, if you did not terminate your relationship prior to January 1, 2005, you are now subject to the new rights and responsibilities of AB 205.

***Note, however, that being registered with a county or city, or with your employer, does NOT mean that you are registered domestic partners with the State of California.*** You are only entitled to the legal benefits and protections of the state domestic partnership law if you have registered as domestic partners with the Secretary of State.

It is important that all currently registered domestic partners have their current address updated with the Secretary of State. If you have moved since you and your partner registered as domestic partner with the state of California, you should update your address on-line at: [www.ss.ca.gov](http://www.ss.ca.gov).

**Do my partner and I both need to be residents of California to register as domestic partners with the state of California?**

No. It is not necessary for you or your partner to be legal residents of California to register as domestic partners with the state of California. However, while NCLR believes that other jurisdictions should respect a domestic partner registration from California, there is no guarantee this will be the case. Accordingly, even if you are registered as domestic partners in California, you should take whatever other steps are available to you to protect your relationship in your home state.

**If I am registered as a domestic partner in another state, do I need to reregister in California?**

AB 205 provides that a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in California, will be recognized as a valid domestic partnership. This is true regardless of whether it is called a “domestic partnership,” “civil union,” or some other name. To ensure that you are protected, however, it may be advisable to register as domestic partners in California, even if you are already registered with another state.

**Will other states or the federal government respect our domestic partnership status?**

There are 1,138 federal rights and protections that are given only to federally-recognized spouses. The federal government does not currently respect domestic partnerships. This is one of the reasons that domestic partnership is not equal to marriage and does not provide adequate protection for our families.

We are hopeful that other states will honor your domestic partnership. Depending on the law of each state, however, it is possible that public and private entities in other states will not respect your domestic partnership status. In some states, where the law is extremely hostile to lesbian and gay couples, this is almost certain to be

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<sup>3</sup> This requirement – of consenting to the jurisdiction of California courts for purposes of a dissolution or similar proceeding – is a new requirement added by AB 205. This provision was added to ensure that couples who never did or who no longer reside in California would have at least one jurisdiction in which to dissolve their domestic partnership, should their state of domicile refuse to provide a legal forum for doing so.

the case. For this reason, it is extremely important that you and your partner have wills, powers of attorney for health care and finance, and a written agreement about how you will divide your assets if you separate, and – for couples with children – that you obtain an adoption or parentage decree or take whatever other steps are available in your state to protect your children.

## Terminating a Domestic Partnership

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### How do I terminate my domestic partnership?

In most cases, couples wishing to terminate their registered domestic partnership will be required to go through *a court dissolution proceeding*, just as most different-sex married couples must do to terminate their marriage. This is an area of significant change. Prior to January 1, 2005, registered domestic partners could terminate their relationships simply by mailing in a form to the Secretary of State's Office.

There is a small subset of people who may be able to terminate their domestic partnership without court approval. You are only eligible to use this process if you and your partner meet *all* of the requirements. Some of these requirements are: you have been registered for less than 5 years, neither you nor your partner children or are pregnant, and neither of you own any real property. You can find a complete list of the requirements for using this "summary termination" procedure on the Notice of Termination of Domestic Partnership form on the Secretary of State's website, [www.sos.ca.gov](http://www.sos.ca.gov).

People who fulfill **all** of the requirements can terminate their domestic partnership by filing the Notice of Termination of Domestic Partnership with the Secretary of State. In these circumstances, the domestic partnership shall be terminated effective six months after the filing of the termination form with the Secretary of State. The effect of termination of a domestic partnership by this means shall be the same as the entry of a judgment of dissolution of a domestic partnership.

For most people, however, as mentioned above, it will be necessary to go through a court proceeding to terminate a registered domestic partnership. In this proceeding, the court will separate the parties' assets and make custody determinations for couples with children, as well as determine whether child and spousal support are required.

### How do we terminate our domestic partnership if we no longer live in California?

In order to register as domestic partners in California, individuals now must agree to allow California courts to have jurisdiction over dissolution and other proceedings regarding their domestic partner status. Therefore, you will be able to terminate your domestic partnership in California even if you do not live in California. If you are in this situation, we advise you to consult an attorney knowledgeable about LGBT issues in the state where you live, to determine whether you should terminate your domestic partnership where you live or whether you should return to California to do so.

## Questions Regarding Bi-National Couples

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**I am a U.S. citizen, but my partner is not. Can we register as domestic partners? If we do, can I petition for my partner to become a legal resident?**

You can register as domestic partners regardless of either partner's immigration status. Unfortunately, however, doing so will *not* allow you to sponsor your partner for permanent residence. In addition, for some non-U.S. citizens, registering as a domestic partner *might* be used as evidence of an intent to stay in the U.S. on a permanent basis, which can be a problem for people who are here on non-immigrant visas.

***Generally speaking, if you are not a U.S. citizen or legal permanent resident, you should consult an immigration attorney before registering as a domestic partner.*** For information about NCLR's free monthly immigration clinics, contact Noemi Calonje at: 415-392-6257 x304 or [ncalonje@nclrights.org](mailto:ncalonje@nclrights.org).



## Questions about Property, Financial Assets, and Debt

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The way that your and your domestic partner's property, financial assets, and debt are treated by the state of California has changed substantially. We strongly suggest that you seek the advice of a knowledgeable attorney if you or your partner, individually or jointly, have or acquire any assets or debts.

### **Is it true that I am responsible for my partner's debts?**

You could be responsible for any debts *incurred by your domestic partner from the date you first registered as domestic partners with the State of California*. For example, if you and your partner registered as domestic partners on February 1, 2001 and your partner has incurred \$10,000 of debt since that time and the present, you could be held responsible for the \$10,000 of debt in a lawsuit to dissolve the domestic partnership. Whether you will be held responsible depends on several factors, including why the debt was incurred and whether there is other property or debt to divide in the dissolution action. Similarly, if your partner dies, you may be fully responsible for her/his debts.<sup>4</sup> You cannot contract out of this joint responsibility for debt acquired during the domestic partnership.

The way that your and your domestic partner's property, financial assets, and debt is treated by the state of California has changed substantially. We strongly suggest that you seek the advice of a knowledgeable attorney if you or your partner, individually or jointly, have or acquire any assets or debts.

### **Is it true that half of my wages are my partner's?**

Yes. Half of all of the wages that you earn — or have earned *from the date that you first registered your domestic partnership* — are considered to be your domestic partner's property. However, any unearned income (interest, dividends, rents, royalties, etc.) from separately-owned property (property acquired prior to registering as domestic partners and/or inherited property) remains separate property, unless it is commingled with community property. See description of community property below.

### **Is it true that any money that I inherit will have to be split with my partner?**

No, so long as the inheritance funds are kept separate and are not commingled with your partner's money or assets. Any money or property that you inherit or are gifted after the date you first registered as domestic partners will *not* be considered "community property" and your partner will not be entitled to any portion of it so long as it is kept separate and not commingled.

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<sup>4</sup> However, the California Homestead Act generally protects your family home against debts.

## **What can my partner and I do if we do not want our property to be treated as community property?**

If you and your partner have not yet registered and would like to define how your assets are divided in a manner other than how state law would divide them you can enter into a pre-registration agreement. Any such pre-registration agreement must meet the requirements for a valid pre-nuptial agreement to be enforceable. If you do not enter into a pre-registration prior to registration, but still want to enter into an agreement that divides your assets in a manner other than how a court would divide them, you will have to enter into a post-registration agreement, which has stricter requirements than a pre-registration agreement. Regardless of whether you enter into a pre- or post-registration agreement, however, it is not possible to create a contract that dissolves your responsibility to pay child support upon dissolution. Similarly, even if you specify in the registration agreement that you do not accept responsibility for your partner's debt acquired during the domestic partnership, third party creditors may be able to hold you responsible for your partner's debt.

While you may want to consult “do-it-yourself” guides, such as Nolo Press' e-guide, *Prenups for Partners: Essential Agreements for California Domestic Partners* and the companion book, *Prenuptial Agreements: How to Make a Fair & Lasting Contract*, to begin thinking about whether you need a pre-registration agreement and to discuss what you might want to include in such an agreement, you should consult an attorney to finalize your agreement.

## **What can my partner and I do if we do not want our wages to be community property?**

Generally speaking, wages, like any form of earned income or compensation, can be kept as separate property only if there is a valid written pre- or post-registration agreement that complies with the relevant requirements for such agreements.

## **How does the law treat property owned by registered domestic partners?**

Registered domestic partners have the right to own real estate as community property or as community property with the right of survivorship. Community property with the right of survivorship, like joint tenancy with the right of survivorship, has the benefit of passing the property to the surviving partner without having to go through probate. Unfortunately, however, it is likely that domestic partners will not receive many of the important federal tax benefits associated with holding property as community property – benefits including double stepped-up basis for capital gains when the survivor sells the property – because of the lack of federal recognition of domestic partnerships. If you are considering purchasing property with your registered domestic partner, NCLR strongly encourages you to speak to a knowledgeable attorney about which form of ownership is best for you and your situation.

**WARNING:** Because the federal government currently does not recognize registered domestic partnerships for any federal purpose, and because federal tax laws give special protections to married couples that are not available to unmarried couples, it is possible that transfers of assets between domestic partners will be taxed either as income or as a gift by the federal government, even if the transfer is part of or related to a dissolution proceeding. By way of contrast, transfers between spouses during a marriage or as part of a divorce proceeding are not taxable events.

## **Do I have to share control over our community property with my partner?**

Yes. Each registered domestic partner has a right to equal management and control of community property acquired during the registered partnership.

## **How will our property and assets be divided if we decide to dissolve our domestic partnership in the future?**

This situation will be treated the same as it is for married couples who are divorcing. A judge will oversee the dissolution to make sure there is a fair division of property between the two domestic partners. For example, if one partner has been working while the other has been the primary caregiver for children, the court will divide the total partnership assets evenly between the two partners, even if the primary care giver did not earn any income. In dividing your assets, a court will take into account the provisions of any pre-or post-registration agreements.

## **What will happen to our property and assets if one of us dies?**

Registered domestic partners are entitled to inherit through their domestic partner even if their domestic partner does not leave a will (this is called intestate succession). If your partner dies without a will, you will be entitled to the same share to which a surviving spouse would be.

## **What affect does AB 205 have on property owned separately by each partner before entering the domestic partnership?**

None, if you keep the property separate and do not contribute any community assets or earnings to the separate property. Property owned by each partner before registering as domestic partners remains separate property. While no agreement is necessary to achieve this result, it is always advisable to have an agreement which spells out which assets are to be kept as separate property and which as community property. If you use community property funds to pay the mortgage on property that one of you purchased prior to your registration, or to pay for improvements on the property, that portion of the property will be considered community property and treated accordingly.

We strongly recommend that you seek the assistance of a knowledgeable attorney in order to help you determine the best way to purchase, hold, transfer, or will your property for tax purposes.

## Questions about Taxes

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### **Will I be taxed if my partner gives me some of his or her separately owned property?**

You will not be taxed under state law; however, domestic partners will *not* be entitled to all of the same tax protections given to married couples under federal tax law. Federal tax laws allow married spouses to transfer unlimited amounts of property between themselves, without any tax penalty. However, because domestic partnerships are not marriages, the IRS likely will not apply these rules of unlimited transfers to transfers between registered domestic partners. Thus, a transfer of over \$13,000 in any given year may be considered a “gift” and taxed as a gift. For example, if a wife owns a beach house and transfers the title to her husband, the property is *not* taxed. However, if one domestic partner owns a beach house and transfers the title to his or her partner, the value of the property, over \$13,000 *might* be taxed as a gift by the federal government.

### **Will our property be reassessed if my partner dies and leaves me the house that we had owned jointly?**

The state of California will not reassess the value of property that is jointly owned by registered domestic partners when the property is transferred from one partner to the other because of dissolution or death.

### **How should my partner and I file our state and federal income taxes?**

Beginning with the tax year 2007, registered domestic partners must file their state taxes jointly (or as married filing separately),<sup>5</sup> just as married couples are required to do. For federal tax purposes, however, registered domestic partners must file as single. For more information, visit the Franchise Tax Board website at: <http://www.ftb.ca.gov/individuals/faq/dompart.html>.

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<sup>5</sup> Couples should be aware that not all registered domestic partners/spouses are eligible to file their taxes as “married filing separately.”

## Questions about Parenting and Adoption

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### **Will my partner and I both be legal parents of children born to us during our registered domestic partnership?**

The law now provides that “[t]he rights and obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses.” This means, among other things, that a child born to registered domestic partners automatically will be considered the legal child of both partners, regardless of their biological connection to the child.

For lesbians who are using artificial insemination to have a child, both partners can be included on the child’s original birth certificate at the hospital. Gay men who are using a surrogate, however, will need to obtain a court judgment of parentage *before* both partners can be included on the child’s birth certificate, which is also true for a different-sex married couple who uses a surrogate.

Despite this automatic legal protection for children born to registered domestic partners, NCLR is strongly recommending that *all* couples obtain a court judgment declaring both partners to be their child’s legal parents, either an adoption or a parentage judgment. Having a court judgment is extremely important to ensure that the child’s legal relationship to each parent will be respected by other states and the federal government. It is also important to help eliminate the possibility of conflict and litigation over this issue in the event the parents ever separate.

There are several options for obtaining a court judgment, including completing an adoption or obtaining a judgment of parentage. It is not yet clear which will be the best option, and the answer may vary depending on the family’s particular circumstances. Therefore, it is critically important for couples who have or are going to have children to consult with an experienced family law attorney to discuss their options.

### **What about children born before January 1, 2005?**

The protections apply to children born to registered domestic partners before January 1, 2005 unless the domestic partnership was terminated before January 1, 2005. To protect your children and your own rights as a parent, however, it is critically important that you contact a family law attorney who is familiar with LGBT parenting issues and obtain a court judgment declaring that both partners are the child’s legal parents.

### **What is the difference between a second-parent adoption and a stepparent or domestic partner adoption?**

Domestic partner adoptions are available only to registered domestic partners; in contrast, second-parent adoptions are available to all couples, regardless of their sexual orientation, and regardless of whether they are married or in a registered domestic partnership. Both of these forms of adoption provide an opportunity for a non-biological or non-legal parent to adopt his or her partner’s biological or adoptive child. Neither requires the original, legal parent to give up any of his or her rights to the child in order for the partner to adopt. After the adoption is complete, both partners are recognized as equal parents with equal rights and responsibilities.

Both procedures lead to the same result – legal adoption and equal parenting rights and responsibilities. However, there are significant differences in the amount of time and money it costs to do these procedures. Second-parent adoptions cost more, involve more invasive home studies, and generally take more time to complete than a stepparent/domestic partner adoption.

The stepparent/domestic partner adoption process is more streamlined because it recognizes that the child already is residing in the home of the person adopting, and that that person has been chosen as the second parent by a fit, custodial parent. Stepparent/domestic partner adoptions are usually faster and less expensive than second parent adoptions. To take advantage of the more streamlined stepparent/domestic partner procedure, you must provide proof that you are registered domestic partners.

Partners who do not want to register can still use the second-parent adoption procedure. Contact an adoption attorney to find out how to proceed.

### **What does it mean to be a legal parent?**

Legal parents have a duty to support and care for their children. They also enjoy certain rights and privileges with regard to their children. For example, they can make important decisions about their children's education, healthcare, religion, recreation, etc. When there are two legal parents, they share equally in the rights, privileges, and responsibilities both during the relationship and after a break-up. This means that after a break-up, both parents will have the right to ask a court for custody or visitation. It also means that both parents can be ordered by the court to pay child support.

### **Is my insurance plan required to cover my fertility treatment?**

Healthcare options for registered domestic partners should be equivalent to the options available to married spouses. However, some insurance companies have defined infertility in a way that makes it difficult for lesbians to receive coverage for fertility treatment. For example, an insurance provider may define "infertility" as having tried to get pregnant through traditional intercourse for more than 6 months without success. Therefore, lesbians may not appear to qualify for infertility treatments under the terms of their insurance policies.

NCLR believes that defining "infertility" in a way that excludes lesbians constitutes discrimination, and encourages anyone encountering this issue to challenge their insurance companies or to contact an attorney knowledgeable on these issues.

### **Will my partner and I both be able to become legal parents if we use a surrogate?**

Yes, you both should be able to become the legal parents of a child born to a surrogate; however, because surrogacy is a complicated legal area, we strongly recommend that you contact a family law attorney who is familiar with LGBT issues and surrogacy before attempting to create a family in this manner.

## Questions about Public Assistance and Federal Benefits

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### **What if my child, my partner or I receive public assistance?**

Domestic partners are not currently recognized as married for purposes of federal benefits, such as Social Security or “federal” Medi-Cal. Registered domestic partners are recognized for the purposes of some public assistance benefits, such as “state-only” Medi-Cal. Depending on your situation, registering as domestic partners can have a negative or positive effect on your eligibility for certain benefits. If you are receiving public benefits, NCLR strongly encourages you to speak to an attorney or contact the specific program administrator to find out more information. Generally speaking, people who are receiving public assistance should be cautious about registering as domestic partners, because in some instances there may be a greater likelihood that you will lose your benefits.

### **Am I entitled to any Social Security or other federal benefits through my partner, such as Social Security survivor benefits?**

No. Unfortunately, the federal government provides Social Security benefits only to spouses; the federal government does not recognize registered domestic partnerships. Therefore, any federal benefits that are provided to different-sex spouses because of their marital status will not be provided to registered domestic partners. For example, a surviving domestic partner will not be entitled to Social Security survivor’s benefits.

### **Do I get any benefits if my registered domestic partner is a veteran?**

You will be entitled to the benefits that the state of California provides to spouses. For example, you will be entitled to the state-conferred hiring preference for surviving partners of veterans and partners of totally disabled veterans. Further, if your partner is killed or injured while in active service, you are entitled to several state tax benefits.

## Questions about Healthcare and End of Life Issues

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### **Can I visit my partner in the hospital or live in senior citizen housing?**

California law provides that registered domestic partners automatically are entitled to visit their partners in the hospital. California law also provides that registered domestic partners are included in the definition of persons who are qualified to obtain housing in specially designed accessible housing for senior citizens. Because it is likely that other states will continue to discriminate against registered domestic partners, you may not be entitled to these rights in other states. For this reason, NCLR encourages registered domestic partners to complete a hospital visitation authorization in the event that one or both of you are in a hospital in another state. You should carry a copy of your hospital visitation authorization with you at all times, especially when traveling out of state.

### **Can I make medical decisions for my incapacitated partner?**

California law provides that registered domestic partners automatically are entitled to make medical, legal, and financial decisions for their incapacitated partners. Because it is likely that other states will continue to discriminate against registered domestic partners, you may be denied these rights in other states. For this reason, NCLR encourages registered domestic partners to complete a medical directive, and durable powers of attorney for health care and finances. You should carry copies of these documents with you at all times when you travel out-of-state.

### **Can I make decisions about my partner's remains?**

Registered domestic partners automatically are now entitled to make decisions about their partner's remains. Again, however, because of the likelihood of discrimination by other states, should something happen to one of you outside of California, NCLR encourages registered domestic partners to complete an autopsy and disposition of remains authorization.

For more information about these issues can be found in NCLR's Life Lines publication, which is available at: <http://www.nclrights.org/lifelines.htm>.



## Questions about Employment and Insurance

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### **Does my employer have to provide domestic partner benefits?**

Under the California Insurance Equality Act (A.B. 2208), all health, auto, rental, disability, life, and all other insurance plans regulated by the California Department of Insurance are prohibited from treating registered domestic partners and spouses differently. Therefore, all covered policies and plans must provide identical coverage to registered domestic partners and spouses. So, for example, unless your employer is self-insured, if your employer provides health benefits to the spouses of its employees, it will also have to provide the same coverage to the registered domestic partners of its employees. The California Insurance Equality Act went into effect on January 2, 2005 for group health insurance plans and on January 1, 2005 for other types of insurance. For more information about the California Insurance Equality Act, see [http://www.nclrights.org/site/DocServer/ab2208\\_faq\\_0904.pdf?docID=1261](http://www.nclrights.org/site/DocServer/ab2208_faq_0904.pdf?docID=1261). In addition, failure on the part of businesses or employers to provide equal benefits to domestic partners may constitute unlawful discrimination on the basis of sexual orientation, sex, or marital status, depending on the circumstances.

### **Will I be able to put our child on my benefits at work?**

As discussed above, both partners automatically are considered the legal parents of a child born during a domestic partnership. Therefore, if your employer provides benefits to employees' children, your employer must provide benefits to your child, even if you were not the birth parent or the biological parent.

### **Will I be able to take leave from my job to care for our child?**

As discussed above, both partners automatically are considered the legal parents of a child born during a domestic partnership. Therefore, both partners are entitled to take leave to care for their child, to the same extent that other parents are entitled to take leave. The Federal Medical Leave Act also allows people who are "in loco parentis" to take leave to care for a child. Contact an employment law attorney if you have any problems taking leave to care for a child.

### **Are my partner and I entitled to Social Security and other benefits provided to spouses by the federal government?**

No. As discussed above, the federal government will not provide registered domestic partners with any of the 1,138 benefits provided to different-sex spouses under federal law. One of these federal benefits is the right to obtain survivor Social Security benefits after a different-sex spouse has died. The federal government also continues to tax the value of domestic partner benefits, while it does not tax the value of benefits to different-sex spouses.

## Miscellaneous Questions about AB 205

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### Do I owe my partner any duties?

Yes. A registered domestic partner who willfully abandons and leaves her or his partner in a destitute condition or who refuses or neglects to provide her or his partner with necessary food, clothing, shelter, or medical attendance is guilty of a misdemeanor.

### Can I sue if someone kills or injures my partner?

Yes. If a registered domestic partner is killed due to the negligence or wrongdoing of another person, her or his partner can bring a wrongful death suit to recover for lost financial support and companionship. A registered domestic partner can also bring a suit for the infliction of emotional distress if the partner witnesses her or his domestic partner being physically harmed by another person.

### Will I have to testify against my partner in a court of law?

Not in state court. A registered domestic partner has a right not to testify against her or his partner in any state court or administrative proceeding. Because the federal government does not recognize domestic partnerships, however, this protection likely will not apply in a federal court or federal administrative proceeding.

### Am I allowed to visit my partner in prison?

With regard to state prisons, you should be allowed to visit with your partner to the same extent that a spouse can. Because the federal government does not recognize domestic partnerships, however, you may continue to face discrimination with respect to visitation rights in federal prisons.

#### For more information about

#### Legal issues contact:

National Center for Lesbian Rights  
870 Market St., Ste. 370  
San Francisco, CA 94102  
415.392.6257  
[www.nclrights.org](http://www.nclrights.org)

#### Legislative issues contact:

Equality California  
415.581.0005 (Northern California Office)  
310.248.3692 (Southern California Office)  
916.554.7681 (Sacramento Office)  
[www.eqca.org](http://www.eqca.org)  
[www.eqca.org](http://www.eqca.org)