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**CALIFORNIA'S NEW DOMESTIC PARTNERSHIP LAW:**

**IS REGISTRATION UNDER AB 205 RIGHT FOR YOU?**

**DISCLAIMER**

*This information is provided for educational purposes only, and is not intended to be a substitute for legal advice with regard to any particular client or situation. Deciding whether or not to register as domestic partners under the newly-expanded state registration rules may have significant economic and legal impacts, and should only be done after consultation regarding your particular situation with a qualified attorney.*

**I. AB205 Transforms California's Domestic Partnership Registration**

*1. Effective January 2005, Family Law rules apply to registered couples:*

a. All income and all assets and savings acquired after registration or accumulated from earned income are presumed to be *equally* owned (community property), regardless of titling of deed, asset or account; generally, there's a requirement of a *written* agreement to transmute property from community to separate (except for down payment on a residence), or from separate property to community property.

b. The rules of community property apply to savings accounts, stock options and accounts, real property acquired, businesses developed, and IRA/pension benefits accrued

*Note:* complex rules regarding commingling of funds/mixed assets, allowing for reimbursement to a partner in certain instances of contributions to or from a separate or community property asset

c. Pre-registration assets, or gifts or inheritances received at any time, are presumed to be separately owned -- with complex statutory rules for allocating mixed assets/debts

d. Post-registration debts are likely to be considered joint debts, regardless of named debtor, and pre-registration debts can also be paid out of either partner's income, subject to various rules for separation of incomes and assets

e. Lesser-earning partner is eligible for post-separation spousal support as determined by Family Law Court judge, based upon statutory factors; spousal support is generally for a period no longer than half the "marriage"

f. Fiduciary duty imposed on partners: potential liability for mis-management or wrongful transfer of community property assets

2. *Dissolutions require judicial process, except for couples with no disputes, few assets, and no real property and no children*

a. couples must follow the statutory procedures for filing of dissolution petition

b. Family Court handles adjudication of all disputes, not the civil division

c. Family Court handles adjudication of post-separation support claims (both temporary and permanent support)

d. For couples with pre-registration assets/debts: some situations are resolved by Family Court; in other situations, a separate lawsuit over pre-registration claims is possible, and in some situations the two lawsuits can be combined in one action

## **II. Critical Uncertainties regarding AB205 and Domestic Partnership Registration**

*For couples that registered before January 2005, is the "date of marriage" the date of registration or January 1, 2005? (current legislation is silent on this issue; possible legislative clarification, most likely to make duties/benefits retroactive to registration date rather than January 2005)*

*Will any state or federal tax benefits and burdens apply? Probably NOT!*

*Will couples who registered with their partner out-of-state (i.e. Vermont Civil Unions) be covered automatically if they reside in California? Probably YES!*

*Will partners who were registered with someone else out-of-state (i.e. Vermont Civil Unions) need to terminate that registration before registering as DP in California? Probably YES -- and they should be able to do so in California courts!*

*Will California courts recognize a Massachusetts marriage? Uncertain at this time!*

### **III. Four Options for California Couples**

1. Remain unregistered (or terminate existing registration prior to January 1, 2005) and organize all property and debt allocations by title, account name, etc., without executing any formal asset or property agreement
2. Remain unregistered (or terminate existing registration prior to January 1, 2005) but execute property co-ownership and/or cohabitation agreement to address allocation of property, assets, debts, and post-separation support
3. Register (or remain registered after January 1, 2005) and agree to be bound by all community property rules (*note*: some couples may still need written agreement to address their pre-registration assets and debts)
4. Register (or remain registered after January 1, 2005) and execute property co-ownership and cohabitation agreement to modify the community property rules regarding assets, debts, and post-separation support (support waivers subject to Court review)

### **IV. Making the Registration Decision**

*FIRST, decide whether registration is vital for your relationship (i.e. to obtain insurance or other private benefits, to be eligible for adoption procedures, to minimize property tax or transfer tax implications, etc.)*

*Then, if registration is clearly vital for you, evaluate what private written agreements are desired to modify the community property rules regarding property or debt or inheritance issues, or spousal support obligations, and if such modifications are desired, draft and execute the required agreements*

*For those facing adoption issues and for emotional reasons: make sure you have your limiting agreements in place BEFORE you register, not afterwards (if you have not already registered)!*

*SECOND, decide whether registration is clearly harmful to your situation (i.e. disqualification from benefits, exposure to partner's debt, privacy issues)*

*If registration is clearly harmful for the two of you, evaluate what private written agreements are needed to provide for property or debt or inheritance rights and benefits; if such agreements are necessary, draft and execute the agreements*

*Reasons to not register: Immigration concerns, tax issues, eligibility for public benefits, exposure to debt liability, high-risk business/professions, and remember to keep assets separate until your written agreements are signed*

*THIRD, if registration is neither vital nor harmful, do you prefer registration (with or without private agreements limiting the community rules) or non-registration (with private agreements providing for property and debt protections)?*

Factors to consider: consistency with your basic arrangements (are you a shared-asset couple or a separate property couple? If basically shared, registration probably is best; if basically separate assets, not registering is probably best). Consider the tax implications, symbolic value, simplicity of rules, and the making of a political statement, and the other benefits of registering (i.e. wrongful death claims)

**BIG RISKS:** tax uncertainties, post-separation spousal support claims

Once the decision has been made, either register (or keep your registration active if you have already registered) *or* if you decide not to be registered, terminate an existing registration prior to January 1, 2005 (only one signature required), and then draft and execute the appropriate agreements

Property co-ownership agreements: ownership and management of property

Cohabitation agreements/pre-registration agreements: sharing of financial assets and provision for or waiver of post-separation support

Mindset: intend to stay together, but clarify your decisions and agreements to help you each make appropriate decisions regarding savings, career goals/plans, sharing of assets and debts, property purchases/residential decisions

Act consistently: make sure the "paper" reality is consistent with the heartfelt reality!

and **FOURTH, remember:** registering as a California Domestic Partner does not relieve you of the duty to take care of estate planning and tax planning issues!!!