

## PARENTAL RIGHTS

### **Q: How does the law affect parental rights?**

**A:** It is unclear at this time. Parental rights and obligations of domestic partners “are the same as those of spouses” according to S.B. 283. Under Nevada law, a child born into a marriage is presumed to be the child of the husband and wife, but it is unclear how this will apply to same-sex couples. Same-sex couples are encouraged to do a step-parent adoption to ensure that both parents are treated as the child’s legal parents.

### **Q: If we get a domestic partnership, will my partner automatically become the legal guardian of my children born before we registered?**

**A:** No. This never happens, not even with marriages. Neither spouses or partners automatically become the legal guardian of a child born prior to the marriage or domestic partnership. Couples have to go to court and file for a step-parent adoption.

### **Q: If we get a domestic partnership, will it be easier for my partner and me to jointly adopt a child?**

**A:** Domestic partners “have the same rights, protections and benefits... as are granted to and imposed upon spouses” and a married couple can adopt a child together. Therefore, domestic partners can now also adopt jointly, thereby eliminating the expense and inconvenience of having to go through two legal proceedings to adopt one child.

## TERMINATING THE PARTNERSHIP

### **Q: If we decide to split up, how do we get out of the domestic partnership?**

**A:** There are two ways to dissolve the domestic partnership. First, partners can file for termination in family court and follow the statutory procedures set forth for divorce. Alternatively, and more simply, partners can pursue a simplified termination proceeding by filing a one-page Notice of Termination with the Secretary of State and paying a fee. To use the simplified termination process the partners must:

- Have been registered as domestic partners in the State of Nevada for five years or less;

- Have no minor children, or have executed an agreement as to the custody of the children and the amount and manner of their support;
- Have no community or joint property, or have an executed agreement as to the disposition of such property;
- Waive any right to future support or have an executed agreement setting forth the amount and manner of any such support; and
- Waive the right to conduct a more comprehensive proceeding pursuant to Nevada Revised Statutes, chapter on the dissolution of marriage.

### **Q: Can we end a domestic partnership if we don’t live in Nevada?**

**A:** The answer is unclear. Nevada has a six-week residency requirement for ending a marriage. Couples who are married in Nevada who have moved to another state must seek a divorce in their new state; and a couple who married in another state and moves to Nevada must wait six weeks to file for divorce. Because Nevada’s domestic partnership laws treat domestic partners the same as married couples, it is likely that the six-week residency requirement will apply to domestic partners as well. It is unclear whether the six-week residency requirement applies to the simplified one-page Notice of Termination process.

A couple domestically partnered in Nevada that has moved to another state could try to file for termination in that state. However, the court in that state could refuse to recognize the relationship and refuse to grant a termination. This puts domestic partners living outside Nevada in a difficult situation because they are legally partnered in a state where they do not reside, but are unable to terminate the relationship in the state where they do reside.

### **Q: Could I be required to support my ex or pay child support if we break up?**

**A:** Possibly. If you file for termination in Nevada court, your partnership will be treated the same as a marriage when it ends. That means that you or your partner could be required to provide support to the other. If children were born or adopted during the partnership, you may also have to pay child support and work out custody arraignments with your ex.

## PROTECTING YOUR RIGHTS

If a state official refuses to recognize your domestic partnership or you are denied a specific protection, you may be able to seek legal redress. Please contact the ACLU of Nevada for more information.

## RESOURCES

### **NATIONAL ACLU LGBT-AIDS PROJECT**

Phone: 212-549-2627

Email: [getequal@aclu.org](mailto:getequal@aclu.org)

Web: [www.gbge.aclu.org](http://www.gbge.aclu.org)

[www.aclu.org/lgbt-rights](http://www.aclu.org/lgbt-rights)

*The ACLU is committed to helping LGBT couples receive relationship recognition. To discuss a specific legal problem you are having or to learn more about the services we provide, please contact the ACLU LGBT-AIDS Project.*

### **ACLU OF NEVADA**

Las Vegas: 702-366-1226

Reno: 775-786-6757

Email: [aclunv@aclunv.org](mailto:aclunv@aclunv.org)

Web: [www.aclunv.org](http://www.aclunv.org)

*The ACLU of Nevada protects the rights of all Nevadans and works to move the state toward full equality for LGBT individuals and couples. The ACLU of Nevada tries to provide helpful information but we cannot provide legal advice.*

### **NEVADA SECRETARY OF STATE**

Las Vegas: 702-486-2887

Carson City: 775-684-7195

Web: [www.nvsos.gov](http://www.nvsos.gov)

*All forms required for registration are available on the Secretary of State’s website. Detailed information about the registration process, applicable fees, and an FAQ are available online as well. The office is open from Monday through Friday, 8 AM to 5 PM.*



**Produced by the American Civil Liberties Union of Nevada Foundation**

If you are interested in learning more about the work of the ACLU of Nevada, please visit [www.aclunv.org](http://www.aclunv.org)

# DOMESTIC PARTNERSHIPS IN NEVADA

**A Practical Guide for Same-Sex and Opposite-Sex Couples**

**DOMESTIC PARTNERS** have the **SAME**

**RIGHTS, PROTECTIONS & BENEFITS**

and are subject to the **SAME**

**RESPONSIBILITIES, OBLIGATIONS & DUTIES UNDER LAW**

whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law as are

**GRANTED TO & IMPOSED UPON SPOUSES.**

*From Senate Bill 283 which passed in 2009, establishing a domestic partnership registry in Nevada that allows same-sex and opposite-sex couples the opportunity to register their domestic partnership with the Secretary of State’s Office.*

This brochure is for educational purposes only and is not intended to serve as legal advice. For specific answers to your individual situation, please see an attorney.

## REGISTRATION INFORMATION

### **Q: What is a domestic partnership?**

**A:** The domestic partnership registry allows same-sex and opposite-sex couples the opportunity to register with the Secretary of State's Office and receive the same state legal protections for their relationships as married couples.

A domestic partnership should be treated like a marriage under Nevada law, meaning that state property laws, family laws, probate laws and any other state law that applies to a married couple, would also apply to domestic partners.

### **Q: Who is eligible to register?**

**A:** Nevada's domestic partnership registry is available to same-sex and opposite-sex couples. In order to register as domestic partners, both partners must:

- Be over 18 years old;
- Share a common residence (there is no minimum time requirement);
- Not be married or registered in a domestic partnership to anyone other than the person they are seeking a Nevada Domestic Partnership with;
- Not be related by blood in a way that would prevent marriage (not nearer than second cousins); and
- Be competent to consent to the partnership.

### **Q: Do we have to be Nevada residents?**

**A:** No. You do not have to live in Nevada or even visit Nevada to register.

### **Q: How do we enter into a domestic partnership?**

**A:** Individuals wishing to register as domestic partners must file a one-page Domestic Partnership Declaration Registration Form with the Nevada Secretary of State. The form must be filled out completely and the signatures of each partner notarized separately. The completed form and registration fees must either be mailed to, or dropped off at, the Secretary of State's office in Las Vegas or Carson City.

The Secretary of State's Office also provides expedited processing, which guarantees couples their certificate on the same day. This service is available by appointment only and subject to an additional fee.

### **Q: Do we have to have a ceremony?**

**A:** No. Unlike marriage, a Nevada domestic partnership does not require a solemnization ceremony, but, you are not prohibited from having any ceremony you wish.

### **Q: We have a same-sex marriage/civil union/domestic partnership in another jurisdiction. Do we need to re-register to receive domestic Partnership benefits in Nevada?**

**A:** Yes. The bill enacting domestic partnerships includes seemingly contradictory statements about the requirement for valid domestic partnerships, civil unions, or marriages from other jurisdictions to be recognized in Nevada. Until this is clarified, couples are advised to re-register in Nevada.

### **Q: I entered a marriage/civil union/domestic partnership with my ex-partner, but we never filed for divorce/termination. Can I get a domestic partnership in Nevada with my new partner?**

**A:** No. To register as domestic partners in Nevada, neither partner can be married or partnered to anyone in any state other than the person they are seeking a Nevada Domestic Partnership with. You will have to obtain a legal divorce/termination from your ex-partner before you and your new partner can register in Nevada.

### **Q: Will our domestic partnership be valid outside of Nevada?**

**A:** Yes and no. Even if you don't live in Nevada or if you move to another state, you and your partner will still be registered domestic partners in Nevada.

The more difficult question is whether federal and other state governments and local entities will recognize your domestic partnership. A Nevada domestic partnership will not be recognized by the federal government as a marriage. A Nevada domestic partnership may or may not be recognized by other states. Individual states can choose whether to recognize such relationships, and how much or how little protections to offer. You will have to check with each state to determine whether your Nevada domestic partnership will be recognized and what rights will be granted.

## RIGHTS AND RESPONSIBILITIES

### **Q: What legal rights and obligations do we receive?**

**A:** It would be impossible to list all the legal protections and obligations afforded to domestic partners; however the following list provides a sample of some of the more important benefits and responsibilities.

Under Nevada law, domestic partners have the right to:

- Hold property as community property (there is a legal presumption that any property acquired during the partnership belongs equally to both of you, regardless of who paid for it or who holds title);
- Share the property acquired during the partnership (regardless of who paid for it or who holds title);
- Receive a portion of your partners' property if he or she dies without a will;
- Visit your partner in the hospital;
- Make medical decisions if your partner becomes incapacitated;
- Sue for the wrongful death of your partner;
- Not testify against your partner in court; and
- Use of step-parent adoption procedures to adopt a partner's child.

Domestic partners are responsible for:

- A portion (usually half) of the debt assumed during the partnership, regardless of whether the debt is in your name or your partner's name.

Upon dissolution of the partnership:

- A partner can receive a share of the property acquired during the partnership, regardless of who paid for it or who holds title; and
- You or your partner may be entitled to spousal support.

### **Q: Will my employer have to provide benefits to my domestic partner?**

**A:** No. A public or private employer in Nevada is not required to provide health care benefits for the domestic partner of an officer or employee. However, an employer is not prohibited from providing such benefits, if it so chooses.

Many private businesses and public agencies already provide benefits to domestic partners and same-sex partners of employees. We encourage you to ask your employer if they offer domestic partner benefits.

### **Q: Are there any rights we don't receive?**

**A:** The Nevada domestic partnership law does not, and cannot, give domestic partners all the rights and responsibilities of marriage. In 1996, the federal government passed the Defense of Marriage Act ("DOMA") which defines marriage as a legal union between one man and one woman for purposes of all federal laws. DOMA allows the federal government to refuse to recognize same-sex unions and deny them any and all of the federal benefits provided to married couples. DOMA also allows the states to refuse to recognize same-sex unions.

Nevada's domestic partnership law does not give same-sex couples any of the thousand or more rights and benefits that the federal government gives to married couples, including the right to:

- Sponsor a partner for immigration purposes;
- Family-related Social Security benefits;
- Federal income and estate tax breaks; and
- File federal income taxes as a married couple.

Right now, the federal government won't let states extend these federal benefits to any same-sex couple. In addition, if you enter into a Nevada domestic partnership, many of the state law protections you have in Nevada may not exist when you are outside the state. For instance, if you or your partner is injured in another state, you may not be allowed hospital visitation or the right to make emergency medical decisions on behalf of your partner. It will depend on the laws in that state.

### **Q: I am a service member in the U.S. military. Can I get a domestic partnership and keep my job in the military?**

**A:** No. The military's ban on openly gay, lesbian and bisexual service members is a federal law and is unaffected by state law allowing domestic partnership. Under the military's ban, even attempting to enter a domestic partnership with someone of the same sex is grounds for discharge.

### **Q: If I enter into a domestic partnership, can I sponsor my same-sex spouse for U.S. citizenship?**

**A:** No. Under the Defense of Marriage Act, only different-sex couples' marriages are recognized under federal law, including for the purposes of immigration.