

Domestic Partnership Agreements

By Laurie Kadair Redman

Domestic partnership agreements describe how property is owned and how finances are managed, as well as how property will be divided if that becomes necessary. They are critical to gay and lesbian couples because the backdrop of laws that apply to traditional families does not apply to their relationship. When a couple marries, they are automatically subject to a well-established set of laws governing issues such as property ownership, financial support and divorce. Since this “default” set of rules does not apply to same-sex couples, it is important for them to express their intentions and expectations regarding these issues in a written document.

Domestic partnership agreements are governed by general contract law principles. The agreement should be made for consideration and in the absence of fraud, duress, mistake or misrepresentation, etc. The recitation of consideration should not include sex in exchange for assets because this may make the contract unenforceable as immoral. The agreement should refer to the partners as such and not as “lovers.”

The agreement will vary in complexity based on your client’s situation. For example, if your client has significant wealth and is supporting a partner, you may want to expand provisions regarding separate property, support and dissolution. At minimum, the agreement should cover:

- **Property identification.** Include separate and jointly owned real and personal property brought into the relationship. Describe the current residence.
- **Property ownership.** How will the parties treat property acquired during the relationship? Include a discussion of gifts and inheritances.
- **Income, expenses and debt.** Are household expenses shared equally? Does each partner keep a separate bank account? How will the partners treat debt incurred prior to and during the relationship? Discuss the effect of changed financial circumstances.
- **Dissolution.** Discuss procedure for dissolution, such as litigation, mediation, arbitration or a collaborative law process. Describe how property is to be valued and divided. Consider pre-dissolution counseling.
- **Death.** Provide for the death of either partner during the relationship.
- **Dispute resolution.** How will disputes under the agreement be handled? The options are the same as those discussed for dissolution.

It is difficult for a couple to negotiate details regarding money, property and break-up in the midst of a happy relationship. However, because same-sex couples can’t rely on a

default set of laws to govern their relationship, it is critical for them to express their intentions and expectations in a written agreement.

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