



# California Domestic Partnership Law

## FAMILY CODE SECTION 297, ET SEQ: *Effective January 1, 2005*

### Requirements

Requirements for establishing a domestic partnership in California:

- Both persons file a Declaration of Domestic Partnership with the Secretary of State.
- Both persons share a common residence.
- Neither person is married to someone else or is a member of another domestic partnership.
- The two persons are not related by blood in a way that would prevent them from being married to each other in this state.
- Both persons are at least 18 years of age.
- Either of the following:
  - A)** Both persons are members of the same sex.
  - B)** One or both of the persons meet certain eligibility criteria under the Social Security Act and one or both of the persons are over the age of 62.
- Both persons have the capacity to consent to the domestic partnership.

### Rights of Domestic Partners

Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same

responsibilities, obligations, and duties under 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.

### Income Tax Returns

When filing their state income tax returns, domestic partners should use the same filing status as is used on their federal income tax returns, or that would have been used had they filed federal income tax returns. Earned income may not be treated as community property for state income tax purposes.

### Vesting

The statutes do not specify a manner of holding title. We will accept vestings that mirror vestings for husbands and wives.

Examples are:

- John Jones and Sam Smith, domestic partners, as joint tenants.
- Mary Jones and Barbara Smith, domestic partners, as community property.

# COMPARISON CHART

## DOMESTIC PARTNERSHIP/COMMUNITY PROPERTY

	Community Property	Community Property w/ Right of Survivorship (July 1, 2001)	Domestic Partnership (January 1, 2005)	Joint Tenancy
Parties	Only husband and wife or registered domestic partners (after 1.01.05)	Only husband and wife or registered domestic partners (after 1.01.05)	Parties to a Declaration of Domestic Partnership filed with Secretary of State of CA in compliance with §297 of the family code.	Any number of persons (can be husband and wife domestic partners, etc.).
Division of Interests	Equal	Equal	Equal, absent a deed as tenants in common with differing interests.	Equal
Title	In the names of the individual owners.	In the names of the individual owners.	In the names of the individual owners.	In the names of the individual owners.
Possession	Equal right of possession.	Equal right of possession.	Equal right of possession.	Equal right of possession.
Conveyance	Both spouses must join in a conveyance.	Both spouses must join in a conveyance.	Both partners must join in a conveyance.	Conveyance by one co-owner breaks the joint tenancy.
Death	Decedent spouse's 1/2 interest passes to decedent's estate.	Decedent spouse's 1/2 interest passes to surviving spouse.	Decedent partner's 1/2 interest passes to decedent's estate.	Decedent's interest passes to the survivor(s).
Successor's Status	Tenancy in common between devisee and survivor results.	Surviving spouse owns entire interest.	Tenancy in common between devisee and survivor results.	Last survivor owns entire interest.
Creditor's Rights	Community property is liable for the debts of either spouse incurred before or during marriage.	Community property is liable for the debts of either spouse incurred before or during marriage.	Partnership property is treated as Community property and is probably liable for the debts of either partner incurred before or during the domestic partnership.	Co-owner's interest may be sold at an execution sale to satisfy the co-owner's judgement creditor.