

Resolution 05-08-2009

Family Law: Single Petition Dissolving Both Marriage and Domestic Partnership

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Family Code section 299 to read as follows:

1 § 299.

2 (a) A registered domestic partnership may be terminated without filing a proceeding
3 for dissolution of domestic partnership by the filing of a Notice of Termination of Domestic
4 Partnership with the Secretary of State pursuant to this section, provided that all of the
5 following conditions exist at the time of the filing:

6 (1) The Notice of Termination of Domestic Partnership is signed by both registered
7 domestic partners.

8 (2) There are no children of the relationship of the parties born before or after
9 registration of the domestic partnership or adopted by the parties after registration of the
10 domestic partnership or adopted by the parties after registration of the domestic partnership,
11 and neither of the registered domestic partners, to their knowledge, is pregnant.

12 (3) The registered domestic partnership is not more than five years in duration.

13 (4) Neither party has any interest in real property wherever situated, with the
14 exception of the lease of a residence occupied by either party which satisfies the following
15 requirements:

16 (A) The lease does not include an option to purchase.

17 (B) The lease terminated within one year from the date of filing of the Notice of
18 Termination of Domestic Partnership.

19 (5) There are no unpaid obligations in excess of the amount described in paragraph
20 (6) of subdivision (a) of Section 2400, as adjusted by subdivision (b) of Section 2400,
21 incurred by either or both of the parties after registration of the domestic partnership,
22 excluding the amount of any unpaid obligation with respect to an automobile.

23 (6) The total fair market value of community property assets, excluding all
24 encumbrances and automobiles, including any deferred compensation or retirement plan, is
25 less than the amount described in paragraph (7) of subdivision (a) of Section 2400, as
26 adjusted by subdivision 9b) of section 2400, and neither party has separate property assets,
27 excluding all encumbrances and automobiles, in excess of that amount.

28 (7) The parties have executed an agreement setting forth the division of assets and the
29 assumption of liabilities of the community property, and have executed any documents, title
30 certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

31 (8) The parties waive any rights to support by the other domestic partner.

32 (9) The parties have read and understand a brochure prepared by the Secretary of
33 State describing the requirements, nature, and effect of terminating a domestic partnership.

34 (10) Both parties desire that the domestic partnership be terminated.

35 (b) The registered domestic partnership shall be terminated effective six months after
36 the date of filing of the Notice of Termination of Domestic Partnership with the Secretary of
37 State pursuant to this section, provided that neither party has, before that date, filed with the
38 Secretary of State a notice of revocation of the termination of domestic partnership, in the

39 form and content as shall be prescribed by the Secretary of State, and sent to the other party a
40 copy of the notice of revocation by first-class mail, postage prepaid, at the other party's last
41 known address. The effect of termination of a domestic partnership pursuant to this section
42 shall be the same as, and shall be treated for all purposes as, the entry of a judgment of
43 dissolution of domestic partnership.

44 (c) The termination of a domestic partnership pursuant to subdivision (b) does not
45 prejudice nor bar the rights of either of the parties to institute an action in the superior court
46 to set aside the termination for fraud, duress, mistake, or any other ground recognized at law
47 or in equity. A court may set aside the termination of domestic partnership and declare the
48 termination of the domestic partnership null and void upon proof that the parties did not meet
49 the requirements of subdivision (a) at the time of the filing of the Notice of Termination of
50 Domestic Partnership with the Secretary of State.

51 (d) The superior courts shall have jurisdiction over all proceedings relating to the
52 dissolution of domestic partnerships, nullity of domestic partnerships, and legal separation of
53 partners in a domestic partnership. The dissolution of a domestic partnership, nullity of a
54 domestic partnership, and legal separation of partners in a domestic partnership shall follow
55 the same procedures, and the partners shall possess the same rights, protections, and benefits
56 and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution
57 of marriage, nullity of marriage, and legal separation of spouses in a marriage respectively,
58 except as provided in subdivision (a) and except that, in accordance with the consent
59 acknowledged by domestic partners in the Declaration of Domestic Partnership form,
60 proceedings for dissolution, nullity, or legal separation of a domestic partnership registered in
61 this state may be filed in the superior courts of this state even if neither domestic partner is a
62 resident of, or maintains a domicile in, the state at the time the proceedings are filed.

63 (e) Parties to a registered domestic partnership who are also married to one another
64 pursuant to Division 3, commencing with Section 300, may petition the court to dissolve both
65 their domestic partnership status and their marriage status in a single proceeding, in a form
66 prescribed by the Judicial Council.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS:

Existing Law: Existing law allows gay and lesbian couples, and heterosexual couples over 62 years of age, to be both married and registered domestic partners. The existing law provides only for procedures to dissolve marriages *or* to dissolve domestic partnerships. There is no statutory authorization for the filing of a single petition to dissolve both statuses. If two people are registered domestic partners *and* are married, present law would suggest that the couple must file two separate petitions with the superior court in order to dissolve both statuses.

Family Code section 297 sets out the requirements under which a valid domestic partnership may be established. Under this section, two people may be validly registered in California as domestic partners if they meet the specified criteria, including the requirement that

they not be “married to someone else” or a “member of another domestic partnership with someone else.” Based thereon, Family Code section 297 contemplated that two individuals wishing to register as domestic partners may be also married to one another. Following the California Supreme Court’s decision in *In Re Marriage Cases*, 43 Cal.4th 757 (2008), thousands of same-sex couples were allowed to validly marry in California from until the passage of Proposition 8 on November 4, 2008. According to some reports, County Clerks continued to issue marriage licenses to same-sex couples until mid-November 2008. The constitutionality of Proposition 8 is presently being argued before the Supreme Court. Many of these couples were already registered as domestic partners and many of them registered concurrently with or subsequent to marriage, resulting in the dual status. Similarly, some elderly opposite-sex couples who previously registered as domestic partners for various reasons, including government benefits predicated on federal law, may have subsequently decided to marry for personal, moral or religious reasons. Thus, they too may have dual status.

The law which governs the dissolutions of domestic partnerships and marriages is essentially the same. The only difference is procedural.

This Resolution: Seeks to modify Family Code section 299 to authorize the filing of a single petition to dissolve both the status of marriage and the status of registered domestic partnership.

The Problem: Requiring a couple that is both married and registered as domestic partners to file two separate petitions to dissolve their legal relationship increases the burden on the courts and increases the costs to the parties, including costs for court costs and attorneys fees. The courts have a compelling interest in streamlining such proceedings in order for the already overburdened courts to function most efficiently. And requiring that couples incur unnecessary legal fees and costs associated with litigation is antithetical to the stated position of the State Bar policy of making the legal system as open, available, and cost-effective as possible. By allowing couples to dissolve each status in one petition, the court’s resources are used most efficiently and the costs associated with the dissolution are reduced.

IMPACT STATEMENT:

This resolution would call for the creation of new judicial council forms.

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