

# McVittie-Law PC

Domestic Partnerships and Estate Planning  
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# *What is a Domestic Partnership?*

- Civil Contract
- Entered into in person
- Between 2 individuals of the same sex
- Who are at least 18 years of age
- At least one of whom is an Oregon resident

# Top 25 Benefits of Oregon Domestic Partnership according to Basic Rights Oregon's website

- Automatic right to make health care decisions
- Automatic right to visit partner in hospital
- Right to sue for wrongful death of partner
- Preference to be appointed Personal Rep.
- Live in deceased partner's home for 1 year
- Support from deceased partner's estate
- Elective share of deceased partner's estate

- Private visits in long-term care facility
- Share room in long-term care facility
- Right to file joint state tax returns
- Automatically “authorized driver” on rental car
- Automobile insurance personal injury protection
- Right to obtain life insurance on partner
- Uninsured motorist coverage
- Protection for partner's home in bankruptcy
- Privileged communications with partner
- Protected conversations with marriage counselor

- Automatic assumed parentage for children
- Right to refuse to testify against partner
- Right to “landowner preference tag” for hunting
- Right to personal effects from deceased partner's body
- Tenancy by the entirety
- Workers' Comp if partner killed on job
- Deceased partner's unemployment benefits
- Protection through emergency court orders in divorce

Other states with Domestic Partnership or  
Same-Sex Marriage







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## Marriage Equality & Other Relationship Recognition Laws



-  State issues marriage licenses to same-sex couples (6 states).  
Connecticut (2008), Iowa (2009), Maine \* (effective Sept. 2009), Massachusetts (2004), New Hampshire (effective 1/1/2010) and Vermont (effective 9/1/2009).
-  State recognizes marriages by same-sex couples legally entered into in another jurisdiction  
New York (2008)
-  Statewide law providing the equivalent of state-level spousal rights to same-sex couples within the state (5 states and Washington, DC)  
California (domestic partnerships, 1999, expanded in 2005), District of Columbia (domestic partnerships, 2002), Nevada (domestic partnerships, effective 10/1/2009), New Jersey (civil unions, 2007), Oregon (domestic partnerships, 2008) and Washington \* (domestic partnerships, 2007/2009).
-  Statewide law providing some statewide spousal rights to same-sex couples within the state (1 state)  
Hawaii (reciprocal beneficiaries, 1997).

\* **Maine:** Gov. John Baldacci signed marriage equality legislation May 6, 2009. The new law is scheduled to become effective in mid-September 2009; however, it may face a repeal effort that would place a ballot measure before voters, possibly in November 2009.

\* **Washington:** Gov. Chris Gregoire signed the Domestic Partnership Expansion bill May 18, 2009. Most provisions are scheduled to become effective July 26, 2009 unless opponents of the measure gather enough signatures to place a ballot measure before voters.

\*\* Maryland does not have a domestic partner registry but does provide certain benefits to statutorily defined domestic partners.

# Some considerations before entering into Domestic Partnership

- Military Service
- Public Assistance Benefits
- Prior Domestic Partnership or Marriage
- Income tax returns
- Later relocation to another state
- Divorce - residency requirement
- DOMA limitations

# *What is DOMA how does it effect Domestic Partnerships?*

- DOMA = Defense of Marriage Act – 1996 in response to Hawaii court decision suggesting right to same-sex marriage
  - As applied to federal law: the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife.
  - No state must recognize the relationship between persons of the same-sex that is treated as marriage in another state.

# *What is DOMA how does it effect Domestic Partnerships?*

- Only 5 states have neither a statute nor a constitutional provision prohibiting same-sex "marriage":
  - Massachusetts
  - New Jersey
  - New Mexico
  - New York
  - Rhode Island

# *How does Domestic Partnership effect Estate Planning?*

- No unlimited marital deduction
- No “evening out estates”
- Gift Tax planning
- No gift splitting
- No disclaimer trust planning
- Lack of portability and recognition in other jurisdictions
- Joint ownership at death

# *Estate Planning Opportunities*

- No liability for partner's debts
- Family attribution rules not applicable
- Allows use of GRIT
- Be aware of 2703
- Ability to sell assets between partners below basis and claim loss
- No need for spousal impoverishment in medicaid

# *The Estate Planning Documents*

## *Trusts vs. Wills*

- Living Trusts
- Probate avoidance
- Privacy
- Disability Planning
- Better control over disposition of assets
- Minimize potential challenges & contests
- Wills
- Court Involvement at death
- Greater potential for family challenges
- No disability protection = guardian/conservator
- No creditor protection

# *Ancillary Documents*

Durable Power of Attorney

Nomination of Guardian

Pour-over Will

Health Care Documents

HIPPA

Organ Donor

Disposition of Remains

Online registration of Healthcare documents

# *Advanced Planning Opportunities*

- Annual Gifts; Gifts using lifetime exemption
- Annual exclusion gifts to fund ILIT
- LLCs and Partnerships
- Discounts in valuation
- Insurable interest

# *GRITs*

- Grantor Retained Income Trusts
  - Largely eliminated in traditional family's estate plan because of related party rules
  - Life Partners not included in definitions of family
- Gifted property creates income stream to grantor/partner during the term
- Principal remains with the grantee/partner at the end of the term

# *Charitable Remainder Trusts*

- Excellent way for one partner to provide for the surviving partner, with the ultimate disposition going to charity
- With children or other heirs, combine with ILIT to replace amount given to charity

# *Charitable Lead Trust*

- Charitably minded grantor who doesn't need the income now
- Grants income to charity for certain period
- At end of term remainder to surviving partner

*Questions?*

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