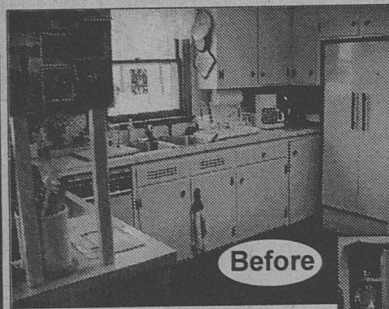


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Legal Briefs

by Susan Murray & Beth Robinson



California Law

Within days of the terrorist attacks on September 11th, the State of California, the most populous state in our country, quietly passed a law that will have a significant impact on the lives of gay and lesbian couples in that state. For a few years now, California has had a "domestic partnership registration" law, which allowed gay and lesbian couples to register as a couple and receive a very limited number of benefits. California's new law greatly expands the benefits available to gay and lesbian couples who register as domestic partners.

Unlike here in Vermont, where our Civil Union law was passed as a result of the Vermont Supreme Court's proclamation in Baker v. State that it was unconstitutional to deny gay and lesbian couples the benefits of marriage, California's newly expanded Domestic Partnership law was not prompted by a court ruling. Rather, the new California law was passed in the wake of the violent and senseless death of San Francisco resident Diane Whipple, who was attacked and killed by a vicious dog. After her death, Californians learned that Ms. Whipple's lesbian partner did not have the right to sue the dog's owners for Diane's wrongful death, because only "married couples" had the right to file wrongful death lawsuits.

California's law is much less inclusive than Vermont's Civil Union law. Vermont's law is sweeping in its scope: it simply gives gay and lesbian couples all of the rights, benefits, and responsibilities that married couples have. California did not make such a sweeping pronouncement in its new law; rather, it provided a laundry list of specific rights that domestic partners will now be eligible for.

For instance, a person such as Diane Whipple's partner will now be allowed to sue for the wrongful death of her partner. Domestic partners in California will finally be allowed to adopt their partners' children, just like stepparents. Domestic partners will be allowed to make medical decisions for their partners when their partners are unable to express their own wishes. Insurance companies selling health and disability insurance in California will now be required to offer coverage for domestic partners. Employers in California must allow employees sick leave to care for their domestic partners or the child of their domestic partner. Domestic partners will be treated like spouses in guardianship proceedings, and will be given preference in being appointed administrators of their partners' estates. Finally, domestic partners will no longer have to pay California state income tax when they sign up their domestic partners for health insurance through their work.

California's new law falls short of Vermont's Civil Union law in another important way: it does not require any of the ceremonial aspects of marriage or union. In Vermont, a couple must have their union certified by a justice of the peace or clergy member, just like a married couple. California's law stays far away from any notion that this law is similar to marriage. California does not require or call for any type of ceremony. Rather, California simply requires the couple to sign a piece of paper to "register" as a domestic partnership. The registration form is similar to ones that employers in Vermont have been using for years to sign partners up for health insurance benefits through work: the parties must be over 18, must share a common residence, and must be responsible for each other's expenses. Interestingly, California requires domestic partners to have more responsibilities than married couples or civil union couples: there is no requirement that married or civil union couples must live together, or that they must be responsible for each other's common expenses!

Because domestic partners in California aren't considered married, they are not allowed to file for divorce in the event they break up; they simply file a "Notice of Termination of the Domestic Partnership," and the relationship is officially over. Although the new California law provides that couples must divide all property they acquired jointly during the partnership, the divorce court is not available if they have a disagreement over this division, and there are no alimony or support provisions for a partner who may have been dependent on the income of the other partner.

Finally, unlike Vermont's Civil Union law, which recognized that the relationship of gay and lesbian couples is akin to that of married couples and should be treated as such, California's new law allows opposite-sex couples to enter into Domestic Partnerships if at least one of them is over the age of 62 and one of them meets the requirements for Social Security benefits. In other words, rather than treat g/l couples like married heterosexual couples, California's law is like the "reciprocal partnership" bill that the Republican-controlled Vermont House passed earlier this year. California's law is thus a significant step forward for gay and lesbian couples in that state, but it falls short of the inclusive, expansive view taken by Vermont's Civil Union law.

Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont whose practices include employment issues, family matters, estate planning, personal injury and workers' compensation cases, and general commercial and civil litigation. This column features timely information about legal issues of interest to our community. We hope to provide information about important laws and court cases that may affect our rights, as well as practical nuts and bolts advice for protecting ourselves and our families. If you'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356.