

How Do We Dissolve A “Domestic Partnership”?

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Dear Ask the Attorney:

Back in 2005, my same-sex partner and I were “married”. Per the law at the time, we have a Certificate of Domestic Partnership which was filed in our local registrar’s office. Now, 8 years later, we are splitting up. There are no kids in this partnership but we have acquired a lot of stuff. Do we need to have a divorce or some other “legal” breakup?

F.M.

Our guest blogger today is Matthew S. Coleman, Esq., an associate with Einhorn Barbarito and a member of the Matrimonial and Family law department.

Dear F.M.,

I am sorry to hear that your relationship is ending. No matter what label is placed on the relationship, it is never easy when the relationship must end. Unfortunately, that label does make a difference when considering the legal rights and responsibilities that the parties have to one another.

New Jersey first began to recognize same-sex couples when the legislature enacted the Domestic Partnership Act, which came into effect on July 10, 2004. For the first time in this State, this Act created a formal legally recognized relationship status for same-sex couples. In addition, the Act allowed for recognition of couples where the parties are 62 years old or older.

A domestic partnership does not afford same-sex couples the same rights and responsibilities as marriage or civil unions. The law specifically identified the limited benefits that were granted to those entering into a domestic partnership. These rights include protections against various forms of discrimination based on domestic partnership status, such as employment, housing and credit discrimination; visitation rights for a hospitalized domestic partner; the right to make medical or legal decisions for an incapacitated partner; and an additional exemption from state personal income tax and transfer inheritance tax, similar to that of a married spouse.

As important as it is to understand what rights are afforded to domestic partners, it is equally important to understand what rights do not exist under the Domestic Partnership Act. There is no domestic partnership equivalent to alimony, support or maintenance of one partner to another. The Act specifically states that the Courts shall not be required to equitably distribute property, meaning that the Court will not have to determine which partner receives which asset that was acquired during the domestic partnership.

The New Jersey Supreme Court recognized that domestic partnerships did not offer the full rights to same-sex couples as opposite sex couples who choose to marry. In *Lewis v. Harris*, 188 N.J. 415 (2006), the Court stated “[a]lthough under the Domestic Partnership Act same-sex couples are provided with a number of important rights, they still are denied many benefits and privileges accorded to their similarly situated heterosexual counterparts.” The Court decided that the then-current framework of domestic partnerships violated the State Constitution’s equal protection clause, and that same-sex couples are entitled to the same rights as opposite sex married couples. It left the question of how to remedy this to the Legislature.

The New Jersey Legislature ultimately decided to make these rights available to same-sex couples by creating civil unions, rather than amend the marriage statutes. On February 19, 2007, New Jersey instituted civil unions for same-sex couples, and since that time domestic partnerships are only available for opposite-sex couples who were 62 years old or older. Civil union partners have many more rights and responsibilities to one another than those of domestic partnerships. Rights of civil union partners are intended to be equal to those rights given by the State of New Jersey to married couples.

The domestic partnership statute remains in place even though New Jersey has since enacted the civil union statute. Those who entered into same-sex domestic partnerships between the years of 2004 and 2007 continue to hold that status unchanged. Couples in an existing domestic partnership were not required to enter into civil union. However, new domestic partnerships are available only to couples in which both partners are 62 and over, whether same-sex or different-sex. If you wished to enter into a legally recognized relationship with your same-sex partner today, you could only enter into a civil union.

Since you chose to remain in your domestic partnership and did not enter into a civil union when it later became available to you, you may not have as many rights as civil union partners or married couples. This does not mean you are without legal recourse. The Superior Court of New Jersey has jurisdiction over the termination of a domestic partnership. The Family Part is a court of equity, which means that judges in these matters must make decisions based on fairness. The process is similar to a divorce or dissolution of a civil union. A complaint must be filed with the Chancery Division – Family Part, and the fee is the same as a divorce proceeding.

No matter the kind of legal status you have entered into with a partner, you should understand your rights and obligations to each other when it comes time to end your partnership. Each relationship is different. If you are looking to dissolve your same-sex relationship, it is important that you consult with a qualified family law attorney well versed in non-traditional families.