

NEW JERSEY PASSES DOMESTIC PARTNERSHIP ACT

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Recently, the State of New Jersey passed the Domestic Partnership Act (the "Act"). The Act has dramatically affected the New Jersey Inheritance Tax rules that apply for same sex couples and unmarried heterosexual couples sixty-two years of age or older. The inheritance tax is imposed on a beneficiary's right to receive a bequest from a decedent. The inheritance tax is calculated after determining the value of property that may be received by a particular beneficiary against the relationship of the beneficiary to the decedent. The applicable tax rate and exemption amount depends on the relationship of the beneficiary to the decedent. Spouses, parents, children and grandchildren are considered Class A beneficiaries, and therefore, are exempt from inheritance tax. Same sex partners and unmarried heterosexual partners were considered Class D beneficiaries. Class D beneficiaries were subject to a tax of at least 15 percent. The inheritance tax applied to amounts inherited over \$499, and was due eight months after a person's death. The Act has established guidelines for same sex couples and unmarried heterosexual couples sixty-two years of age or older to be exempt from inheritance tax. This represents a major change.

Under the Act, different rules apply depending upon whether the situation involves a same sex couple or an unmarried heterosexual couple sixty-two years of age or older. Same sex couples will be entitled to certain rights and benefits that are currently available to married couples as long as they meet various requirements set forth in the Act. Some requirements that must be met are as follows:

- 1) Both persons have a common residence and are otherwise jointly responsible for each other's common welfare. This is demonstrated by maintaining joint bank accounts, joint ownership of real estate or motor vehicles, and the designation of each other as the beneficiary of one's Will and/or life insurance policy;
- 2) Both persons agree to be jointly responsible for each other's basic living expenses during the domestic partnership;
- 3) Neither person is married or a member of another domestic partnership;
- 4) Both persons file jointly an Affidavit of Domestic Partnership; and
- 5) Both persons have chosen to share each other's lives in a committed relationship of mutual caring.

The same rules will apply for an unmarried heterosexual couple provided that each person is sixty-two years of age or older. The Act provides protection for unmarried heterosexual couples who chose not to marry because they were

afraid of jeopardizing pension benefits, social security payments or exposing their assets to nursing home claims.

The Affidavit of Domestic Partnership should be filed in the appropriate County Surrogate's Office. In the event a couple wants to terminate their Domestic Partnership they must file in Superior Court and follow procedures similar to those used when filing for divorce. If a heterosexual couple later marries, then their Domestic Partnership status will automatically be terminated.

Domestic Partners will also receive protection through the Act in situations involving visitation rights for a hospitalized domestic partner; the right to make medical or legal decisions for an incapacitated partner; and an additional exemption from New Jersey Income Tax.