

## RESOLUTION 5-05-2002

### DIGEST

#### Domestic Partnerships: Definition of Common Residence

Amends Family Code section 297 to extend the definition of “common residence” to those who intend to live together were they not separated by incarceration or a residential treatment program.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### Reasons:

This resolution amends Family Code section 297 to extend the definition of “common residence” to those who intend to live together were they not separated by incarceration or a residential treatment program. The resolution should be approved in principle because the definition as proposed would allow the establishment of a domestic partnership under the same circumstances as permitted for persons to marry.

Persons who never have lived together and who may never in fact live together in the future may marry and become financially responsible for one another. There is no reason to deny this right to potential domestic partners.

The section already provides that the domestic partnership *continues* if one of the partners leaves the common residence but intends to return. (*Id.* at subd. (c).) Allowing the domestic partnership to be *created* on the basis of an intent to live together in the future is similar.

### SECTION/COMMITTEE REPORT

#### FAMILY LAW SECTION EXECUTIVE COMMITTEE

Recommendation: Disapprove

Reasons: The Committee believes that adding evidence of “intent” as to the common residence requirement can only serve to complicate the process of establishing the domestic partnership. We unanimously oppose this proposed resolution.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Family Code section 297 to read as follows:

- 1 §297
- 2 (a) Domestic partners are two adults who have chosen to share one another's lives in
- 3 an intimate and committed relationship of mutual caring.
- 4 (b) A domestic partnership shall be established in California when all of the
- 5 following requirements are met:

- 6 (1) Both persons have a common residence.
- 7 (2) Both persons agree to be jointly responsible for each other's basic living expenses  
8 incurred during the domestic partnership.
- 9 (3) Neither person is married or a member of another domestic partnership.
- 10 (4) The two persons are not related by blood in a way that would prevent them from  
11 being married to each other in this state.
- 12 (5) Both persons are at least 18 years of age.
- 13 (6) Either of the following:
- 14 (A) Both persons are members of the same sex.
- 15 (B) One or both of the persons meet the eligibility criteria under Title II of the Social  
16 Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title  
17 XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals.  
18 Notwithstanding any other provision of this section, persons of opposite sexes may not  
19 constitute a domestic partnership unless one or both of the persons are over the age of 62.
- 20 (7) Both persons are capable of consenting to the domestic partnership.
- 21 (8) Neither person has previously filed a Declaration of Domestic Partnership with  
22 the Secretary of State pursuant to this division that has not been terminated under Section  
23 299.
- 24 (9) Both file a Declaration of Domestic Partnership with the Secretary of State  
25 pursuant to this division.
- 26 (c) "Have a common residence" means that both domestic partners share the same  
27 residence, or both persons intend to share a common residence but are not able to do so due  
28 to either person's incarceration or residential treatment. It is not necessary that the legal  
29 right to possess the common residence be in both of their names. Two people have a  
30 common residence even if one or both have additional residences. Domestic partners do not  
31 cease to have a common residence if one leaves the common residence but intends to return.
- 32 (d) "Basic living expenses" means shelter, utilities, and all other costs directly  
33 related to the maintenance of the common household of the common residence of the  
34 domestic partners. It also means any other cost, such as medical care, if some or all of the  
35 cost is paid as a benefit because a person is another person's domestic partner.
- 36 (e) "Joint responsibility" means that each partner agrees to provide for the other  
37 partner's basic living expenses if the partner is unable to provide for herself or himself.  
38 Persons to whom these expenses are owed may enforce this responsibility if, in extending  
39 credit or providing goods or services, they relied on the existence of the domestic  
40 partnership and the agreement of both partners to be jointly responsible for those specific  
41 expenses.

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

PROPONENT: Bay Area Lawyers for Individual Freedom

#### STATEMENT OF REASONS

Existing Law: Requires that in order to establish a domestic partnership, both persons share a common residence.

**This Resolution:** Clarifies that the common residence requirement for establishing a domestic partnership is met when both persons intend to share a common residence, but are prevented from doing so due to the incarceration or residential treatment of either of them.

**The Problem:** Currently, persons who are otherwise eligible to establish a domestic partnership, but are physically prevented from sharing a common residence, either by incarceration or residential treatment, are not able to establish a domestic partnership.

#### **IMPACT STATEMENT**

This proposed resolution does not affect any other law, statute or rule.

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**RESPONSIBLE FLOOR DELEGATE:** Jennifer Walter

#### **COUNTER ARGUMENT**

##### **ORANGE COUNTY BAR ASSOCIATION**

Resolution 5-5-2002 seeks to try and amend Family Code, Section 297. This section describes what domestic partners are, and in paragraph (c) it describes what a “common residence” means. The proponent seeks to expand the definition of a common residence beyond the actual sharing of the common residence by adding, “or both persons intend to share a common residence but are not able to do so due to either person’s incarceration or residential treatment.” We think that this language is totally unnecessary since that same paragraph already states, “Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.”