

RESOLUTION 01-08-05

DIGEST

Community Property: Domestic Partner Rights

Amends Family Code section 760 to provide that property acquired during a domestic partnership is community property.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Family Code section 760 to provide that property acquired during a domestic partnership is community property. This resolution should be approved in principle because it would provide domestic partners registered pursuant to the California Domestic Partner Rights and Responsibilities Act of 2003 (Fam. Code § 297, et.seq.) with the same community and separate property rights as spouses as the Act intended.

Family Code section 297.5(a) provides that, "Registered domestic partners shall have the same rights, protections and benefits, and shall be subject to the same responsibilities, obligations and duties under law...as are granted to and imposed on spouses." Family Code section 297.5(m)(1) provides that, "...any reference to the date of a marriage shall be deemed to refer to the date of registration of a domestic partnership with the state" in all sources of law governing the rights and the responsibilities of domestic partners in California with respect to community property and other property ownership. (Fam. Code § 297.5(m)(1).) Despite the clear intent of section 297.5 to extend the rights and duties of marriage to domestic partners, the definition of community property in Family Code section 760 does not include property acquired during a domestic partnership within its definition. The definition of community property should be amended to specify that such property is community property to comply with the terms of section 297.5.

SECTION/COMMITTEE REPORTS

FAMILY LAW SECTION RECOMMENDATION

DISAPPROVE

This resolution seeks to include within Family Code Section 760, which defines the community property rights of a married person, reference to domestic partners during a domestic partnership. The purpose of the resolution is to further the legislative intent of the California Domestic Partner Rights and Responsibilities Act of 2003, according to the proponent, the Los Angeles County Bar Association.

The Committee recommends Disapproval of this resolution by a vote of fourteen Noes and one Aye. The Committee is concerned that, with the addition of this language in this code section, it could be construed that the absence of similar language in an untold number of other statutes would indicate that the legislature didn't intend that any specific statute would not apply to or come within the protections offered to Domestic Partnerships. It was specifically intended by the Legislature that all such statutes not be amended.

This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the Family Law Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TRUSTS & ESTATES COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

This proposed statute merely clarifies rights intended to be given to domestic partners under AB 205. Although that bill contains general language applying to gender references in the Family Code, Section 760 refers specifically to "married persons" and "marriage" rather than to spouses or other gender specific terms. Thus, this resolution should be approved.

This position is only that of the Trusts and Estates Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the Trusts and Estates Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Family Code section 760 as follows:

- 1 §760
- 2 Except as otherwise provided by statute, all property real or personal, wherever situated,
- 3 acquired by a married person during the marriage, or by a domestic partner during the domestic
- 4 partnership while domiciled in this state is community property.

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

PROPONENT: Los Angeles County Bar Association

Existing Law: The California Domestic Partner Rights and Responsibilities Act of 2003 was enacted to provide registered domestic partners with the same community and separate property rights as spouses. Family Code Section 760 as presently written fails to include domestic partners within the definition of those persons who may hold title to real and personal property acquired during the domestic partnership as community property.

This Resolution: Asks the Conference of Delegates of the California Bar Associations to remedy the omission in Section 760 by means of passing this resolution to the further the administration of justice in carrying out the clear intent of the legislature in creating a new body of law for domestic partners intended expressly to help California move closer to fulfilling the promise of inalienable rights, liberty and equality contained in Sections 1 and 7 of the California Constitution by providing all caring and committed couples the opportunity to obtain essential rights as well as concomitant responsibilities.

The Problem: Family Code Section 760 refers only to "married persons" in defining "community property". Without referring to domestic partners, the statute fails to implement the explicit intent of The California Domestic Partner Rights and Responsibilities Act of 2003(Act). Section 4 of the Act at subsection (l) reads: "Where necessary to implement the rights of domestic partners under this act, gender specific terms referring to spouses shall be construed to include domestic partner." Section 15 of the Act reads: "This act shall be construed liberally in order to secure to eligible couples who register as domestic partners the full range of legal rights, protections, and benefits, as well as all of responsibilities, obligations, and duties to each other, to their children, to third parties and to the state, as the laws of California extend to and impose upon spouses." The purpose of this resolution is to further the legislative goals expressed in the Act.

IMPACT STATEMENT

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

AUTHOR AND/OR PERMANENT CONTACT: John C. Hoag, 505 North Brand Boulevard, Suite 800A, Glendale, CA 91203, voice 818-547-2030 x207, fax 818-552-3645, e-mail jhoag@stewart.com

RESPONSIBLE FLOOR DELEGATE: John C. Hoag