

ELDERLAW

NEWS

New Jersey®

Legal News for the Aging and Disabled

November 2004

RIGHTS OF SENIOR CITIZENS AND SAME SEX COUPLES ARE EXPANDED UNDER NEW JERSEY'S NEW DOMESTIC PARTNERSHIP ACT

On July 10, 2004, the New Jersey Domestic Partnership Act, N.J.S.A. 26:8A-1 et seq., became effective. The Act, which was signed by Governor James E. McGreevey on January 12, 2004, affords legal status to same-sex couples and to unmarried opposite-sex couples over the age of sixty-two. With its passage, New Jersey became one of only five (5) states in the country (along with California, Massachusetts, Vermont and Hawaii) to grant to same-sex domestic partners some of the same rights afforded to married couples.

According to the legislative findings and declarations accompanying the Act, there are a significant number of individuals in the State "who choose to live together in important personal, emotional and economic committed relationships" which "assist the State by their establishment of a private network of support for the financial, physical and emotional health of their participants." N.J.S.A. 26:8A-2(a), (b). As such, the Legislature concluded that "these mutually supportive relationships should be formally recognized by statute, and ... certain rights and benefits should be made available" to the domestic partnerships. N.J.S.A. 26:8a-2(c). Those rights are outlined below.

It is important to keep in mind that the Act affects not only same-sex couples, but also un-

married opposite-sex couples over the age of sixty-two--couples who have the legal right to marry but who might have chosen not to marry so that they may continue to receive important governmental benefits that may be lost to them upon marriage, such as Medicare and Social Security benefits.

REGISTRATION AS A DOMESTIC PARTNERSHIP

The New Jersey Domestic Partnership Act creates a statewide domestic partnership registry administered by the Department of Health and Senior Services. Couples who wish to take advantage of the protections of the Act are required to register with a local registrar.

The Act specifies that the local registrar, who is either the city clerk or the registrar of vital statistics, shall do the actual registration. The local registrar is required to verify the validity of the domestic partnership, issue a domestic partnership certificate, and record a local copy. The State registrar is also responsible for revising records when a domestic partnership is legally terminated.

REQUIREMENTS FOR REGISTRANTS

A couple meeting the criteria below may establish a domestic partnership by executing and filing an Affidavit of Domestic Partnership and paying the appro-

priate filing fee. N.J.S.A. 26:8A-4. In order to register as a domestic partnership, the couple must meet the following requirements:

(1) They must have a common residence and be "otherwise jointly responsible for each other's common welfare." Id. This latter requirement can be satisfied by demonstrating that the couple has a jointly-held mortgage or joint real or rental property; a joint bank account; a will, life insurance policy or retirement plan designating the other as a primary beneficiary; or a jointly owned automobile;

(2) They must agree to be "jointly responsible for each other's basic living expenses" (defined as "the cost of basic food and shelter, and any other cost, including, but not limited to, the cost of health care, if some or all of the cost is paid as a benefit because a person is another person's domestic partner." N.J.S.A. 26:8A-3.);

(3) Neither may be in a marriage or another domestic partnership;

(4) They may not be related to each other up to and including the fourth (4th) degree of consanguinity;

(5) They must be of

(Continued on Page 2)

(Continued from page 1)

the same sex, or both must be 62 years of age or over;

(6) They must "have chosen to share each other's lives in a committed relationship of mutual caring;"

(7) They must each be at least 18 years of age;

(8) They must file jointly an Affidavit of Domestic Partnership; and

(9) Neither may have been a partner in a domestic partnership terminated less than 180 days prior to filing the Affidavit (unless one of the partners had died) and, if previously registered as a domestic partnership, the prior partnership must have been terminated in accordance with the Act.

N.J.S.A. 26:8A-4.

Execution of an Affidavit of Domestic Partnership that fails to comply with these requirements subjects the applicant to a fine of \$1,000. Id.

RIGHTS AND RESPONSIBILITIES OF DOMESTIC PARTNERS

Exemption under the New Jersey Gross Income Tax Act

Because a domestic partner is now included within the definition of "dependent" under the Gross Income Tax Act, N.J.S.A. 54A:1-2, a taxpayer is now allowed to take a personal exemption in the amount of \$1,000 for his/her domestic partner. This does not mean that domestic partners may file joint returns. Thus, presumably, because the exemption applies where a taxpayer's domestic partner does not file separately, N.J.S.A. 54A:3-1, the exemption is only available if the dependent does not file a return.

Exemption from New Jersey Transfer Inheritance Tax

A domestic partner is now allowed an exemption from New Jersey transfer inheritance tax on the same basis as a spouse: pursuant to N.J.S.A. 54:34-2(a), no New Jersey Transfer Inheritance tax shall be imposed on transfers of property to a domestic partner of a decedent. Also exempt from such tax are transfers to the survivor of a decedent's share of property held by the domestic partners as joint tenants. N.J.S.A. 54:34-1(f).

Transfers from a domestic partner's qualified pension, annuity or retirement plan to the surviving domestic partner are also exempted from New Jersey Transfer Inheritance Tax. N.J.S.A. 54:34-4(j).

New Jersey Homestead Property Tax Rebate

The New Jersey Homestead Property Tax Rebate program was not changed by the Domestic Partnership Act; thus, domestic partners must claim homestead rebates separately.

New Jersey Estate Tax; Federal Taxation

Because federal law does not recognize domestic partnerships, a taxpayer may not declare a domestic partner as a dependent on his/her federal tax return. The taxpayer must also pay federal gift taxes on gifts to a domestic partner that total more than \$11,000 in a tax year, and there is no marital deduction on the Form 706 for property transferred to a domestic partner.

Moreover, because the New Jersey Estate Tax relies upon the Federal Estate Tax credit, domestic partners are not provided relief under the New Jersey Estate Tax.

Employee Health Care and Pension Benefits

State employees are now entitled to health insurance coverage for their same-sex domestic partners just as spouses are so entitled. Other public employees may be entitled to such coverage, if the employer adopts such a resolution. For private employees, although there is no requirement that the employer offer coverage for same-sex domestic partners, the Act does require that insurers offer such coverage. Id.

State and public employees may also be entitled to pension benefits for their same-sex domestic partners. See N.J.S.A. 26:8A-1.

Law Against Discrimination

The Act includes protection against various forms of discrimination on the basis of status as a member of a domestic partnership, pursuant to the Law Against Discrimination. N.J.S.A. 26:8A-2; N.J.S.A. 10:5-1 et seq. As a result of the

(Continued on Page 3)

(Continued from page 2)

Act, domestic partners who have registered under the Act are protected from discrimination in many critical areas, such as employment, public accommodations, housing, credit and contracting.

Health Care Issues

Couples who have filed an Affidavit of Domestic Partnership are to be allowed, in emergency medical situations, to accompany the other when being transported to a hospital, or visit with the other who is in the hospital, to the same extent as would a member of the immediate family. N.J.S.A. 26:8A-6.

Debts

Although the Act requires that domestic partners agree to be “jointly responsible for each other’s basic living expenses” (defined as “the cost of basic food and shelter, and any other cost, including, but not limited to, the cost of health care, if some or all of the cost is paid as a benefit because a person is another person’s domestic partner,” N.J.S.A. 26:8A-3), N.J.S.A. 26:8A-4), the Act also states that one partner is not liable for debts that the other incurs prior to the establishment of the domestic partnership, or for the debts incurred by the other “in his own name” during the partnership. N.J.S.A. 26:8A-6(g). The partner incurring such debt(s) is separately liable and may be sued separately, and his property is liable to satisfy such debts as if he had not entered into a domestic partnership. Id. The Act does permit domestic partners to contractually agree to assume joint responsibility for each other’s prior debts, and to jointly contract for new debt.

A domestic partnership, civil union or the like that is validly created in another jurisdiction is recognized as valid in New Jersey.

TERMINATION OF A DOMESTIC PARTNERSHIP

The Act gives the Superior Court jurisdiction over the termination of a domestic partnership, including the division of jointly-held property. N.J.S.A. 26:8A-10. However, the court is not required to effect an equitable distribution of property.

Opposite-sex domestic partnerships will automatically terminate upon the legal marriage of the partners. N.J.S.A. 26:8A-1.

If a domestic partner has given a copy of a Certificate of Domestic Partnership to a third

party in order to qualify for a benefit or right, that partner must give notice to that third party upon termination of the partnership.

LIMITATIONS OF THE ACT

It is important to recognize that there are many protections afforded to married couples which are not extended to domestic partners under the Act, including intestacy rights, federal rights (such as federal income and inheritance tax, Social Security, Medicare, Medicaid and other benefits), and realty transfer tax exemptions.

EXPANDING THE SCOPE OF THE ACT BY PRIVATE CONTRACT

Notably, under the Act, domestic partners who meet the requirements for domestic partnership are expressly given the right to modify their rights and obligations by private contract. N.J.S.A. 26:8A-6(e). This provision endorses the concept of cohabitation agreements and other private agreements, and should be kept in mind by practitioners when counseling clients who are contemplating entering into a domestic partnership. Because the Act extends to unmarried opposite-sex couples over age 62, practitioners should be mindful of the implications of the Act in providing advice to clients in such areas as retirement and estate planning.

RIGHTS FOR UNREGISTERED COUPLES

In a medical emergency, unregistered domestic partners will be treated as registered, allowing one unregistered partner to accompany the other while being transported to the hospital. This emergency recognition also allows unregistered domestic partners to visit each other in the

hospital, just as any other family member is allowed.

In addition, the Act allows any individual or entity in the State, including employers, health care providers such as hospitals or doctors, property owners such as landlord, and others to treat domestic partners as members of a domestic partnership, even if they have not registered. The extent of this voluntary recognition is entirely up to the individual or entity, and the recognition can be withdrawn at any time.

CONCLUSION

As shown above, NJ’s Domestic Partnership Act gives new rights to same-sex couples and to unmarried opposite-sex couples over age 62.

Law Offices of Donald D. Vanarelli
ELDER LAW SEMINAR SERIES
Topics

- 1. Protecting Your Assets From the Catastrophic Costs of Nursing Homes and Other Long-Term Care Facilities.**
- 2. Estate Planning for Widows and Widowers.**
- 3. Special Needs Planning: Estate Planning for Persons with Developmental and Other Severe Chronic Disabilities and their Families.**

Protecting Your Assets

Are you concerned about losing your assets to the high costs of long-term care?

If your spouse needs more care than you can give, will you lose everything to pay for care, or are there options? Will Medicare pay for the cost of care? Is long-term care insurance available?

If your parents are aging, what should you know to help them when they need you?

Widows & Widowers

If you are too ill to make health care decisions, how can you be sure your wishes will be carried out?

If you become incapacitated, how can you be sure your affairs are conducted in your best interests?

How can you be sure your money and property end up in the right hands when you're gone?

Special Needs Planning

How will your child continue to receive her public benefits?

Who will take over caring for your child when you cannot do so any longer?

Seminar Dates

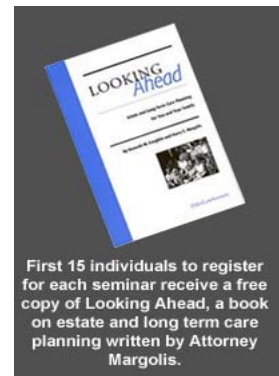
<u>Protecting Assets</u>	November 10, 2004	6:30-8:00 p.m.
<u>Widows & Widowers</u>	November 16, 2004	6:30-8:00 p.m.
<u>Special Needs Planning</u>	December 7, 2004	6:30-8:00 p.m.

Have your questions answered by one of New Jersey's leading elder law attorneys, Donald D. Vanarelli, Board-Certified as an Elder Law Attorney by the National Elder Law Foundation, Accredited by the ABA.

All Seminars held in Westfield, NJ

RSVP by calling 908-232-7400 or emailing dvanarelli@dvanarelli.com.

Free refreshments



First 15 individuals to register for each seminar receive a free copy of Looking Ahead, a book on estate and long term care planning written by Attorney Margolis.

ELDERLAW
NEWS

**LAW OFFICES OF
DONALD D. VANARELLI**

242 St. Paul Street
Westfield, NJ 07090

Tel: (908) 232-7400

Fax: (908) 232-7214

Email: dvanarelli@dvanarelli.com

Websites: dvanarelli.lawoffice.com

-and- elderlawanswers.com/attorney/vanarelli.html

**Civil Rights: New Jersey's New Domestic Partnership Act
Seminars: Upcoming Elderlaw Seminar Series Announced**