

RESOLUTION 09-04-2015

DIGEST

Registered Domestic Partnerships: Conversion into Marriage

Adds Family Code section 297.6 to allow registered domestic partners (RDPs) to convert their partnership to a marriage, with the effective date of marriage being the date of the RDP registration.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to add Family Code section 297.6 to read as follows:

§ 297.6

1 Registered domestic partners may apply to have their partnership converted into a
2 marriage. For purposes of determining the legal rights and responsibilities involving individuals
3 who had previously had a registered domestic partnership and are deemed married under the
4 provisions of this section, the date of the original registered domestic partnership is the legal date
5 of the marriage.

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

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: Prior to June 28, 2013, same-sex couples were prohibited from marrying in California (other than during the four-plus month period before Proposition 8 was passed in 2008). While same-sex couples have been able to become registered domestic partners in California since 1999, registered domestic partnerships (RDPs) are not considered marriages for the purposes of Federal law.

Various benefits are contingent on a date of marriage. In one example, an ERISA-governed retirement plan may incorporate a requirement that a couple be married for a period (e.g., at least a year) prior to the annuity starting date for a spouse to be entitled to the annuity.

Further, denied the ability to legally marry, many same-sex couples that entered an RDP viewed their RDP as a marriage. However, under existing law, they must apply for a marriage license and go through the ceremonial requirements of a marriage. While some same-sex couples in a RDP may want to do so, others view this as unnecessary and duplicative.

The Solution: This resolution would allow registered domestic partners to convert their partnership to a marriage, with the effective date of marriage being the date of the domestic partnership registration.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

AUTHOR AND/OR PERMANENT CONTACT: Denise Bergin, Weaver Austin Villeneuve & Sampson LLP, 555 12th St., Ste 1700, Oakland, CA 94607; 510-267-4142; dbergin@wavsip.com

RESPONSIBLE FLOOR DELEGATE: Denise Bergin

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds Family Code section 297.6 to allow registered domestic partners (RDPs) to convert a partnership to a marriage, with the effective date of marriage being the date of the RDP registration. This resolution should be approved in principle because various federal benefits are contingent on the date of marriage, and because the option will properly compensate couples whose constitutional rights were violated due to past restrictions on marriage.

Under the recent United States Supreme Court case, *Obergefell v. Hodges* (2015) 576 U.S. ___, determining that same-sex couples have a constitutional right to marry, presumably the federal government will recognize these marriages even if they date back to a point before the decision.

Under Family Code section 297.5, subdivision (a), RDPs have the same rights as spouses under California law. This protects rights in community property located in California, but not with respect to federal time-dependent benefits such as spousal social security (benefits arise only after 10 years of marriage), and spousal rights under ERISA retirement plans. Thus, even if RDPs marry, they cannot fully capture the benefits to which they would have been entitled had they been able to get married on the date they entered into their RDP.

The proposed legislation will solve this problem by, optionally at the request of the couple, making the effective date of marriage the date of the registration of the earlier RDP. (It might also be helpful to give formerly RDPs who have since married the option to also convert their previous RDP.)

SECTION COMMENTS TO RESOLUTION 09-04-2015

FAMILY LAW SECTION OF THE STATE BAR OF CALIFORNIA

Disapprove

Rationale:

The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) disapproves this Resolution for a number of reasons. These are (in no particular order):

1. The Resolution does not explain/address how the Registered Domestic Partnership will be converted to a marriage. Some mechanism/form will be needed to ensure a) both parties desire this, and b) there is a valid record of this.
2. The Resolution does not take into consideration the potential conflict with Federal law, which did not recognize same-sex marriages until the June 2013 Supreme Court decision.
3. The Resolution does not appear to take into consideration that same sex marriage was illegal prior to June 2008, yet Registered Domestic Partnerships have been legal in California since 2000.
4. The Resolution also does not appear to take into consideration the Registered Domestic Partnerships entered into in the time period between the Proposition 8 vote in November of 2008 and the June 2013 Supreme Court decision.
5. The Resolution fails to address whether or not non-California Registered Domestic Partnerships (i.e. RDPs or civil unions entered into in other states) should be eligible for such a conversion.
6. The Resolution does not address the lack of the required solemnization process for a valid marriage.

Because so many concerns exist that have not been addressed at all/adequately, FLEXCOM disapproves. The proponents of this Resolution may want to consider reworking this concept to address these and possibly other issues.

Disclaimer:

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 Trustees 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.

COUNTERARGUMENTS TO RESOLUTION 09-04-2015

SACRAMENTO COUNTY BAR ASSOCIATION

DISAPPROVE: The resolution's intent is appreciated, but the resolution, as written, does not address the following conditions:

- (1) It does not explain, procedurally, how the Registered Domestic Partnership (RDP) will be converted to a marriage. A mechanism (form) will be needed to ensure both parties are willingly consenting to the conversion. It should conform, at a minimum, to the CA RDP registration requirements.
- (2) It does not take into consideration the potential conflict with Federal law, which did not recognize same sex marriages until the June 2012 Supreme Court Decision.
- (3) It does not take into consideration that same sex marriage was illegal prior to June 2008, yet RDP's were legal since 2000. Converting an RDP entered into prior to June 2008 may not be appropriate given the illegality of pre-June 2008 same sex marriage. It also does not take into account RDP's that were entered into the time period of the Prop 8 vote in 2008, and the June 2012 Supreme Court decision.
- (4) It does not take into consideration whether or not non-CA RDP's (i.e. RDP's or civil unions entered into in other states) should be eligible for the conversion.