



4 Benefits of a Domestic Partner Agreement by Mark S. Germain, CFP®, MBA, ADPA®

After much study and the successful passing of a timed and proctored exam, I became an Accredited Domestic Partnership AdvisorSM and now hold the ADPA® designation. This is an achievement I am most proud of, but believe me it was no easy task. Individuals who hold the ADPA® designation complete a comprehensive course of study encompassing wealth transfers, federal taxation, and retirement planning, and planning for financial and medical end-of-life needs for domestic partners. Additional requirements tested my ability to synthesize complex concepts and apply them to real-life situations. In order to now retain this designation, the College for Financial Planning® mandates 16 hours of continuing education every two years.



My motivation for ADPA® certification was simple – to better serve the needs of my clients. In a time when domestic partnership law is evolving, more and more states and municipalities are recognizing these unions. Domestic partners usually refer to couples of the same sex. A domestic partnership identifies the personal relationship between individuals who are living together and sharing a common domestic life together but are not joined in any type of legal partnership, marriage or civil union (Source: StateLawyers.com). One of the main reasons for the creation of domestic partnership is to protect the assets and property of each partner in the case of injury, death, or a breakup. Although this does not preclude the need for basic financial and estate planning and important documents such as a will, living will, durable power of attorney and medical proxy, it serves an important purpose.

For same sex couples financially and emotionally dependent on one another who share real estate, property, and financial assets, I highly recommend the creation of a Domestic Partner Agreement ([see sample](#)). You will need the help of an attorney, ideally working alongside an ADPA® certified advisor to construct this legal agreement. In it, you will outline the legal and financial details of your relationship and how you presently share income, property, bank accounts, and all applicable assets. Furthermore, the agreement will spell out who and what assets were brought to the union in the first place. Even your grandmother's silver and Bermuda timeshare need to be mentioned here. Is this really necessary i.e. do I need to bother at all? The quick answer is yes. A domestic partnership agreement is not intended to cover 100% of all items but can help prevent disagreements before they occur and support your wishes after death. In the end, you will be better off to handle life's transitions and:

1. The costly and emotional battles resulting from a break up
2. Unexpected loss of income due to medical emergency or disability
3. A partner becomes incapacitated and cannot speak for him or herself
4. Death of a partner

And the big question – will it hold up in court? For states like New Jersey, New York, Connecticut, California, Oregon, Washington, Nevada, Delaware, and Minnesota probably yes. However, this facet of law is constantly evolving and courts generally recognize contracts between unmarried partners. Even with proper legislation, the importance of

beneficiary designations, property ownership documents, and forms remains and cannot be stressed enough. Proper documentation will be scrutinized much the same as it applies for heterosexual married couples.

Tax issues will also arise. Federal law prohibits same-sex couple's use of the unlimited marital deduction which allows heterosexual spouses to transfer as much as they want to each other, either during life or at death, without having to pay any estate or gift tax, provided that the recipient spouse is a U.S. citizen. This is because of the federal Defense of Marriage Act or DOMA has stated only marriage between opposite sex couples is recognized.

None of these decisions are easy. It is why we at Beacon recognize the need for specialized and personalized advice to help all couples protect the assets they have worked so hard to create.