

## Important Checklists under California Law:

### Same-Sex Relationship Status; Definition of Legal Parents (December 2011)

From the Panel – “Representing Same-Sex Couples in Dissolution and Domestic Violence Proceedings”

[Paul W. Thorndal](#), [Cathy Sakimura](#), & [Tulin D. Acikalin](#), December 16<sup>th</sup> 2011 10:45-12:15pm

BEYOND THE BENCH 21 FAMILY LAW CONFERENCE DECEMBER, 2011

[Legal Aid Association of California / Administrative Office of the Courts](#)

#### **CHECKLIST: SAME-SEX RELATIONSHIP STATUS**

Same-sex couples often have more than one recognized relationship status, and when they separate, it is very important to dissolve all these statuses. Marriages, California registered domestic partnerships, and civil unions or domestic partnerships from other states can be dissolved in one proceeding. However, dissolving one status does not automatically dissolve the others unless it is included in the order.

- ✓ *California Registered Domestic Partners.* California provides registered domestic partners with all the rights and responsibilities of marriage under California law.<sup>1</sup> You may contact the California Secretary of State to determine whether your client is registered with the state. There is no residency requirement for dissolutions of California Registered Domestic Partnerships.
- ✓ *Marriages entered before November 5, 2008.* California fully recognizes all marriages between same-sex couples who legally married in any jurisdiction before November 5, 2008.<sup>2</sup> Non-resident same-sex couples who married in California may dissolve their marriage in California if they both live in a state that will not allow them to divorce.<sup>3</sup> All other same-sex married couples must meet CA residency requirements for dissolutions.
- ✓ *Marriages entered on or after November 5, 2008.* Same-sex couples who married outside of California on or after November 5, 2008 are entitled to all the rights, benefits, and obligations of marriage, except for the use of the term “marriage” to describe their relationship.<sup>4</sup> They must meet CA residency requirements for dissolutions.
- ✓ *Civil unions & domestic partnerships from other states* that are “substantially equivalent” to California domestic partnerships are treated as California registered domestic partnerships.<sup>5</sup> They must meet CA residency requirements for dissolutions.
- ✓ *County or city domestic partnership registries* do not provide any of the state rights of marriage, and can usually be dissolved by filing a form with the county or city clerk who registered the domestic partnership.

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<sup>1</sup> Cal. Fam. Code § 297.5.

<sup>2</sup> *Strauss v. Horton* (2009) 46 Cal.4th 364, 474; Cal. Fam. Code § 308(b).

<sup>3</sup> Cal. Fam. Code § 2320 (effective Jan. 1, 2012).

<sup>4</sup> Cal. Fam. Code 308(c). For more information, see *SB 54 and Same-Sex Couples Who Marry Outside of California*, available at [www.nclrights.org](http://www.nclrights.org).

<sup>5</sup> Cal. Fam. Code § 299.2. At a minimum, this includes civil unions from Connecticut, New Jersey, and Vermont; and comprehensive domestic partnerships in the District of Columbia, Nevada, Oregon, and Washington. This may also include domestic partnerships and other types of relationship recognition from states that provide only some of the rights and obligations of marriage. For more information about relationship recognition for same-sex couples in other states, see NCLR’s publication “*Marriage, Domestic Partnerships, and Civil Unions: An Overview of Relationship Recognition for Same-Sex Couples in the United States*,” available at [www.nclrights.org](http://www.nclrights.org).

## **CHECKLIST: DEFINITION OF LEGAL PARENTS UNDER CALIFORNIA LAW**

There are numerous ways that a person can be a parent under California law. A “natural” parent is a term of art under California law. It is not merely a synonym for “biological” parent – rather, it includes anyone who is a non-adoptive legal parent under California’s Uniform Parentage Act. A “natural” parent includes a biological parent, a person whom a court has determined is a parent, or a presumed parent under the Uniform Parentage Act where the presumption is not rebutted.<sup>6</sup> A legal parent includes:

- ✓ Biological/birth parent
- ✓ Adoptive parent
- ✓ Any person with a court order recognizing his or her parentage<sup>7</sup> or any man who signed a properly executed voluntary declaration of paternity that has not been set aside.
- ✓ A presumed parent if the presumption is not rebutted. A presumed parent includes:
  - A legal parent’s registered domestic partner or spouse if the child was born during the registered domestic partnership/marriage or within 300 days after termination or legal separation;<sup>8</sup>
  - A legal parent’s registered domestic partner or spouse where a) the child was born before the registered domestic partnership and b) the RDP/spouse is on the birth certificate, the RDP/spouse made a written promise to support the child, or a court has ordered the RDP/spouse to support the child;<sup>9</sup>
  - A person who has lived with the child and has held themselves out as a parent, regardless of the parents’ gender, or marital/domestic partner status.<sup>10</sup>

**For more information, visit [www.nclrights.org](http://www.nclrights.org) or [www.waldlaw.net](http://www.waldlaw.net)**

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<sup>6</sup> Fam. Code § 7610 (“natural” parentage may be established through birth, adoption, or the provisions of the Uniform Parentage Act); see also *In re Nicholas H.* (2002) 28 Cal.4th 56 (a biological relationship is not required to establish parentage under the Uniform Parentage Act).

<sup>7</sup> Fam. Code § 7636 (“judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes”).

<sup>8</sup> Fam. Code §§ 7611(a), 7613(a). All provisions that relate to “marriage,” “husband,” “wife,” or “spouse” apply equally to domestic partners. (Fam. Code 297.5 [providing registered domestic partners are subject to the same rights, protections, and benefits as spouses under all sources of law].)

<sup>9</sup> Fam. Code 7611(c).

<sup>10</sup> Fam. Code §§ 7611(d). Although some provisions in the Uniform Parentage Act use the term “father,” it is clear that these provisions also apply to women. (Fam. Code § 7650 [paternity provisions apply to women]; *Elisa B. v. Superior Court* (2005) 37 Cal.4th 108 [paternity provisions may be applied to recognize that a child has two mothers].)