Chapter Thirteen

MARRIAGE AND DOMESTIC PARTNERSHIPS

Marriage is a legal state. To enter into it, you must observe certain formal legal requirements. Once married, you have rights and duties defined by law. Domestic partnerships include both same-sex relationships and heterosexual relationships. Property rights in these relationships are determined by different legal standards than those of married couples.

What are the age and other legal requirements for marriage in Alaska?

Anyone 18 or older may generally get married. If a person is at least 16 years old, she may marry with the written consent of her parents or guardians. If she is more than 14 years old, she may marry by obtaining a court order – after notice to her legal guardians - stating that marriage is in her best interest. [AS 25.05.171.] There is no difference in the age requirement for women and men.

Marriage to more than one person is illegal. It is also illegal to marry a close relative. [AS 25.05.011 and 25.02.021.] Alaska law, through both statute and the Alaska constitution, currently defines marriage as between one man and one woman; however a recent case in the federal courts has found marriage between same sex partners to be legal in Alaska. In Hamby v. Parnell, Case No.3:14-cv-00089 TMB, the Federal District Court in Anchorage found that Alaska state law was unconstitutional and violated federal equal protection. Since this decision, Alaska courts have been issuing marriage licenses to same sex couples.

What are the marriage formalities required by Alaska law?

In order to get married in Alaska, you must apply for a marriage license and have the marriage solemnized by a religious official, marriage commissioner, or judge. [AS 25.05.261 & AS 25.05.091.]

You can apply for a marriage license at most courthouses. It usually takes three days from the time you apply until you get the license. In some remote areas you may have to apply for the license through a notary public or the post office.

You may have any kind of ceremony you want as long as you “declare in the presence of each other and the person solemnizing the marriage and in the presence of at least two competent witnesses that you take each other to be husband and wife.” [AS 25.05.301.]

Does your name automatically change upon marriage in Alaska?

When you get married, your name does not automatically change to your spouse’s, but you may change your name to your partner’s name or to a hyphenated name by taking your marriage license to the Social Security Administration. Most other agencies (credit cards, banks, voter registration, the Department of Motor Vehicles) will accept the new license to change your name on their records.

Some spouses keep their prior names for business and professional reasons, but use their partner’s name socially. This is fine, but your driver’s license, social security, voter registration, charge accounts, and bank accounts should be in your legal name and your employer should be reporting your wages in your legal name.
What is an annulment or void marriage?

In some states, the court will grant an annulment of a marriage that declares that the marriage was never valid. In Alaska, this process is called determining that the marriage is void. If the marriage is void, then it never legally happened. This is different from a divorce whereby the marriage legally occurred but the parties decide to dissolve it. A marriage may be voided if either of the persons who are married were not able to give consent because of age or lack of understanding. The marriage may also be voided or annulled if it was obtained by force or fraud; if the parties were closely related; if one of the parties acted fraudulently in entering into the marriage; if one of the parties was married to another at the time of the marriage; or if the marriage was not consummated. [AS 25.05.031.]

PRE-MARITAL CONTRACTS

Some people draw up pre-marital contracts regarding their property rights after marriage or in the event of divorce. These contracts are legal provided they are prepared properly. [Brooks v. Brooks, 733 P.2d 1044 (Alaska 1987).] In order to be valid, a contract should be fair, clear, involve property issues, include promises from both parties, and include a full disclosure of each person’s property. It is usually advisable for each party to the pre-marital contract to be represented by their own attorney.

If you wish to cancel or revise the contract during your marriage, you should do so in writing. You will also need to check your Will, if you have one, to see if any changes need to be made to it in order to be consistent with the pre-marital contract.

Courts will usually not enforce a contract solely concerning personal duties. Courts will enforce financial agreements, including agreements to waive claims to the spouse’s estate or to convey property.

Most pre-marital agreements concerning large amounts of property require legal help and knowledge of tax laws.

MARITAL PROPERTY

What are the property rights of marital partners?

The Alaska statutes regarding property rights of married people make each spouse liable only for her or his own property. [AS 25.15.010.] For example, if your spouse owns a boat in which you have no interest and the boat runs into a dock and destroys the dock, you will not have to pay for repairs to the dock just because the boat belongs to your spouse. On the other hand, if you have property of your own, you are required to maintain the property yourself. You can sell or transfer property to your spouse. [AS 25.15.030.] You are not liable for the pre-marital or separate debts of your spouse. For example, if your spouse is making payments on a college loan, you do not become obligated on these loans just because you are married. [AS 25.15.050.] Similarly, just because you are married, you do not become liable to pay your spouse’s debts or bills if you have not agreed with the creditor to do so. However, if you and your spouse are both signors on a credit card, both of you are responsible for any debts either of you may incur. If you separate, you should terminate the joint account and get credit in your own name. Of course, both you and your spouse remain responsible for any debt from the account after it is closed.

If you maintain your own property, such as a checking account, your spouse has no automatic control over it. [AS 25.15.060.] You have every right to separate your property from your spouse’s and prevent him from having access to it. For example, you could open a savings account in your name and your spouse would have no control over it unless you give him/her legal access to it.

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Can I sue my spouse?

In Alaska, you can sue your spouse for negligent or intentional wrongs or torts that s/he has committed. [Armstrong v. Armstrong, 441 P.2d 699 (Alaska 1968).] If your spouse is injured by another, you can sue the wrongdoer for loss of your spouse’s consortium or services. [Schreiner v. Fruit, 519 P.2d 462 (Alaska 1974).]

What are types of jointly held property?

Spouses who buy property together always own it as tenants by the entirety. Only married people may own property as tenants by the entirety. The unique feature about tenancy by the entirety is the right of survivorship. When one owner dies, all of the property automatically goes to the surviving spouse.

Tenancy in common is ownership with no right of survivorship. Each owner has her own individual interest in the property that can be sold freely during life or passed by will. Each tenant, or owner, is entitled to possession or use of the whole estate, but no co-tenant has the right to sole possession of any part. A tenant in common has a right to have a court separate the property.

MARRIAGE-TYPE PARTNERSHIPS AND NON-TRADITIONAL MARRIAGES

What are non-traditional marriages?

Alaska law is somewhat unsettled in the area of non-traditional marriages and marriage-type partnerships. Alaska law does not recognize common law marriage (unless the common law marriage occurred in a different state where such marriages are recognized and the parties then moved to Alaska). Common law marriage is essentially a marriage that is not formalized by law but which exists by the circumstance of living together over a period of years. However, in Alaska, cohabitation alone creates no property interests. An unmarried domestic partner of either sex may not have the same opportunity to a fair property settlement as a married person.

To protect your legal interests in property of any non-traditional union, you and your partner should put your agreements on these matters in writing. You should also carefully read any insurance policies covering health, life, and property to determine coverage.

Property Rights of Domestic Partners

Domestic partners can file a lawsuit called a “domestic partnership case” to determine their rights to property and debts from their relationship (if children are involved, the custody case would be filed in the same action). Property rights of domestic partners are determined by looking at the express or implied intent of the parties with regard to each piece of property at issue. To prove express intent, it is clearly best to have written agreements regarding each partner’s interests in the property. If there is no written agreement, then the court will look at the implied intent by analyzing, among other factors, whether the parties have:

- made joint financial arrangements such as joint savings or checking accounts, or jointly held titled property;
- filed joint tax returns;
- held themselves out as spouses;
- contributed to the payment of household expenses;
● contributed to the improvement and maintenance of the disputed property; and
● participated in a joint business venture. (*Bishop v. Clark*, 54 P.3d 804 (Alaska 2002)).

**OTHER CONSIDERATIONS FOR DOMESTIC PARTNERS**

Unmarried domestic partners should carefully consider their respective legal rights and liabilities arising from the relationship. If you want to own property together so that you and your partner will both have an interest in the property in case your partner dies or you separate, you should keep your property in *both* names, including joint checking accounts, ownership of real property as *tenants in common*, and a written agreement and last Will and testament that specifically sets forth your intentions and agreements. If you want to keep your property separate, you should also put that agreement in writing. You should be aware that you may be liable for the reasonable value of contributions (including money, labor or other services) to you or your property in the event of death or separation. If your partner dies or you separate and you and your partner have not put your agreement regarding property in writing, you should be aware that the law regarding your property interest in your partner’s property and your partner’s interest in your property is unsettled. If possible, obtain advice from an attorney to ensure a fair distribution. Do not assume that because the property was in the legal name of one person that the other person has no interest.

Be especially careful about insurance. In most cases, life and health insurance does not cover unmarried domestic partners although some insurance plans are broad enough to cover your partner. If you are purchasing an insurance policy, you can ask your insurance company to arrange for coverage of your partner. State workers that are in domestic partnerships are eligible for benefits provided to their partners through the state. In 2005, the Alaska Supreme Court ruled that it was a denial of equal protection of law for the state to deny benefits to same sex partners. [*ACLU v. State of Alaska, Municipality of Anchorage*, 122 P.3d 781 (Alaska 2005)].