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*The materials available in these pages are for informational purposes only, and should not be relied on as legal advice about specific situations. Readers should consult an attorney if they need help with legal matters. We invite readers seeking legal assistance to contact one of our attorneys to discuss their needs.*

**“ALWAYS READ THE FINE PRINT”**

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## ***GETTING HITCHED - CALIFORNIA DOMESTIC PARTNERSHIPS & AB 205***

By Michele M. Stratton

The State of California's domestic partnership law is about to undergo a revolutionary change. The Domestic Partner Rights and Responsibilities Act of 2003 (also known as "AB 205"), which will become effective on January 1, 2005, confers upon registered domestic partners nearly all the legal rights, obligations and duties which are granted to and imposed upon married persons in California, including decision making authority for funeral arrangements and disposition of remains, community property rights, protection from threats and crimes against the families of public officials, custody provisions and child support obligations, access to divorce court, and death benefits for surviving partners of firefighters and police officers. AB 205 will also require mutual responsibility for debts, disclosures of conflicts-of-interest, and joint assessment of income for determining eligibility for state government assistance programs. AB 205 does not provide same-sex couples with any of the over 1000 federal rights or benefits granted automatically to spouses; neither does AB 205 extend to Domestic Partners certain California spousal rights and benefits relating to income and estate taxes. California Domestic Partnership is available to same-sex partners of at least 18 years of age, and opposite gender partners where at least one partner is over age 62; both parties must share (but need not own) a common residence.

AB 205 only applies to couples who have already registered with the California Secretary of State as Domestic Partners as of January 1, 2005, and who register after that date. AB 205 will *not* apply to those who were registered but who terminated their Domestic Partnership *prior to January 1, 2005*. Therefore, for couples who do not want all the rights and obligations of married persons, it is imperative that they terminate their Domestic Partnership prior to January 1, 2005. Prior to the end of this year, termination of a Domestic Partner can be obtained by either partner's filing of a simple form. After 1/1/05, a Court action (divorce) will be necessary to terminate a Domestic Partnership, including orders for spousal and child support, division of property, and ongoing jurisdiction over child custody and visitation..

While the new rules represent an enormous step towards ending discrimination on the basis of sexual orientation, registered domestic partners now face significant challenges in understanding the dimensions of their new legal relationship to one another. AB 205 confers hundreds of rights and duties upon Domestic Partners. Among the most significant are: joint ownership of any real or personal property acquired during the partnership *and* joint liability for debts acquired during the partnership, a presumption of parenthood regarding any child born during the partnership, the ability to avoid probate of jointly owned property, and protection against inadvertent disinheritance by a partner.

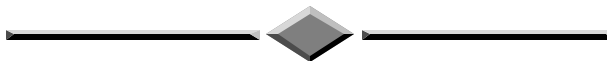
We do not yet know what impact AB 205 will have on registered Domestic Partners who receive income-based state benefits. A working partner's income may disqualify a disabled partner from receiving benefits. In a situation where a partner receives other income-based state benefits, such as financial aid or scholarships, registering as Domestic Partners may jeopardize those benefits. While an attorney can provide guidance on these and other issues, many of these questions may not be resolved for some time.

Guidance is available now on the topic of how unmarried partners, including registered Domestic Partners, should hold title to real property. The subject is complex enough to merit a special article, which is available on the firm's website, at [www.g3mh.com](http://www.g3mh.com). A courtesy copy is also enclosed with this issue.

AB 205 raises many questions regarding every aspect of a couple's lives, from parental rights to property co-ownership to estate and tax planning. In the coming months, as couples decide whether to register, or stay registered, it is important to consider these issues carefully and to consult an attorney familiar with the provisions of AB 205. Experienced counsel can help you achieve the benefits you are seeking, and dodge the pitfalls you would like to avoid.

About the Author

Associate attorney Michele M. (Laura) Stratton's practice consists of probate and domestic partner disputes, probate administration, business law and general litigation. A native of Massachusetts, Laura served in the United States Navy from 1990 to 1994, and is a member of Alexander Hamilton American Legion Post 448. Laura earned a B.A. in Creative Writing from San Francisco State University in 1997. While attending Golden Gate University School of Law, Laura was a member of the Law Review Editorial Board and editor of Golden Gate's Environment Law Journal. She was named Public Interest Law Student of the Year and earned her law degree with a certificate of specialization in public interest law in 2000. Laura can be reached at (415)673-5600, ext. 222 or via email at [LStratton@g3mh.com](mailto:LStratton@g3mh.com).



### ***LANDLORD VICTORY IN ELLIS ACT APPEAL***

In 2003, the California Supreme Court strengthened the rights of landlords to take their residential rental properties off the market and go out of the rental business, by confirming that evictions under the State's Ellis Act (Cal. Gov't Code §7060 *et seq.*) may **not** be defeated, or even opposed, by a tenant claim of "retaliatory eviction" (a defense that is otherwise available to tenants under California Civil Code §1942.5). The Court ruled, in *Drouet v. Superior Court*, 31 Cal. 4<sup>th</sup> 583 (2003), that where a landlord has complied with the Ellis Act and has instituted an eviction action, the landlord must only prove, by preponderance of the evidence, a bona fide intent to withdraw the property from the market. Any tenant claim that the landlord is acting in retaliation is barred.

If you were not already aware of it, the strict provisions originally set forth in the State's Ellis Act were significantly loosened by changes in the law which took effect in 2003. The Ellis Act now restricts any re-renting of affected units for only five years, down from the original ten.

Additional information about Ellis Act and Owner Move-In evictions is available on our web site at [www.g3mh.com](http://www.g3mh.com), or from our office by fax or mail. Please feel free to call to discuss landlord/tenant issues with David R. Gellman or R. Boyd McSparran.



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