

COUNSELING CLIENTS CONCERNING:

**DOMESTIC PARTNERSHIP REGISTRATION
UNDER THE SAN FRANCISCO ORDINANCE,
AND UNDER THE STATE REGISTRY**

WHAT ARE THE IMPLICATIONS???

The Volunteer Legal Services Program of the Bar Association of San Francisco, the AIDS Legal Referral Panel, and the Bay Area Lawyers for Individual Freedom sponsor an educational forum on domestic/family registration.

TUESDAY, JANUARY 22, 1991

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POTENTIAL EFFECTS OF REGISTRATION UNDER PROPOSITION K

I. INTRODUCTION

In the November 1990 election the voters of San Francisco approved Proposition K, an ordinance which primarily provides recognition of the relationships of lesbians and gay men through a registration system. This paper will focus on issues arising from the creation and registration of domestic partnerships under the provisions of Proposition K.

Prospective domestic partners should carefully consider all the potential consequences of signing a Declaration of Domestic Partnership and of filing such a declaration with the County Clerk in City Hall. Moreover, all unmarried couples, even those who do sign a Declaration of Domestic Partnership, should draft documents and legally structure their property so that they may protect, to the extent possible by law, the families they have created.

II. PROVISIONS OF PROPOSITION K

Proposition K states that its purpose "is to create a way to recognize intimate committed relationships, including those of lesbians and gay men who otherwise are denied the right to identify the partners with whom they share their lives." (Section 1).

The proposed ordinance defines "domestic partners" as:

[T]wo adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, who live together, and who have agreed to be jointly responsible for basic living expenses incurred during the Domestic Partnership." (Section 2(a)).

Two persons who meet the above criteria and who desire to form a domestic partnership create the partnership by signing a "Declaration of Domestic Partnership." (Section 3). This declaration is either filed with the County Clerk in San Francisco's City Hall or is notarized. (Section 3(a)).

When two persons sign a Declaration of Domestic Partnership, they are doing more than declaring their strong commitment to each other and obtaining societal recognition of that commitment. The two partners are also signing a contract for mutual support in which they agree "to be jointly responsible for basic living expenses which they incur during the domestic partnership" and that the agreement can be "enforced by anyone to whom those expenses are owed." (Section 2(d)(emphasis added).

While the economic integration attested to in the Declaration of Domestic Partnership is a good indicator of "couplehood," i.e., the seriousness of the commitment between the partners, prospective domestic partners should be aware of the obligations they are assuming, who can enforce these obligations against the partners and what effect the signing of the declaration may have on benefits to which either or both of the domestic partners may be entitled.

Proposition K does not provide any specific rights, provide any nonsymbolic benefits, nor provide any protection to couples who sign a Declaration of Domestic Partnership. However, a Declaration of Domestic Partnership could be acknowledged by public or private employers or service providers and thus be used to secure benefits previously only given to married couples. These benefits include, inter alia, survivor retirement benefits, bereavement leave, family care leave and health insurance benefits.

There is no requirement in Proposition K for employers or service providers to recognize a domestic partnership. Any recognition of domestic partnerships by employers and service providers would be purely voluntary and displaying a declaration of domestic partnership to an employer or service provider would not ensure or mandate treatment equal to that provided married persons.

III. FINANCIAL ISSUES

The Declaration of Domestic Partnership provided for by Proposition K creates potentially broad financial obligations for each domestic partner. When two partners sign a Declaration of Domestic Partnership they are agreeing to be jointly responsible for each other's "basic living expenses" and explicitly give to third parties the right to enforce the agreement by collecting from one partner, the debts incurred by the other partner for such expenses. Thus, prospective domestic partners must fully understand the scope of the domestic partnership agreement. Additionally, persons with AIDS or other life threatening illnesses need practical and sound advice on how to avoid potential financial problems and catastrophes.

A. What is a "basic living expense?"

Proposition K defines "basic living expenses" as "the cost of basic food and shelter" (Section 2(c)). However, no definition is given for the terms "basic," "food," or "shelter." Nor have the phrases "basic living expenses" and "basic food and shelter" been addressed in case law. It is not at all clear how the determination of "basic living expenses" is to be made.

At a minimum, "basic" may mean the amount of money necessary to maintain a person at federal poverty guidelines. A more realistic standard may be that "basic living expenses" means the amount of support necessary to maintain a person with the food and shelter to which he or she is accustomed, i.e., the "station in life" test. Such a test is already used in the area of spendthrift trusts¹ to determine the amount necessary for support.²

If the "basic living expenses" language of Proposition K is analogized to the "support" language of spendthrift trusts, a domestic partner's liability for the expenses of basic food and shelter could be extensive, depending on the "station-in-life" of his/her partner. Even applying a reasonableness test to the definition of basic food and shelter could lead to extensive liabilities, especially if one of the partners goes on a "spending spree" and purchases items on credit without the knowledge of the other partner. Unfortunately such spending sprees frequently occur when one partner is under the stress of an AIDS or HIV-related diagnosis or has an AIDS-related condition such as dementia.

B. Third Party Rights - Generally

Proposition K provides that "anyone" to whom basic living expenses are owed has the right to enforce the agreement made by the partners. Proposition K does not define "anyone," but two statutes which similarly provide remedies to creditors have been

¹ California Probate Code, Section 15300 et seq. A spendthrift trust is a form of protective trust in which the property given in trust for another cannot be subject to the claims of creditors. Such trusts are often created for the purpose of providing a fund for the maintenance and support of a person and at the same time securing the money against the person's own improvidence or incapacity. See, 60 Cal Jur 3d, Trusts, Section 89 et seq.

² See, comment to California Probate Code, Section 15307.

given broad reach.³ These statutes define "person" to mean "a natural person, a corporation, a partnership, or other unincorporated association and a public entity." Thus, it is likely that natural persons, corporations, unincorporated associations and public entities would be included in the term "anyone" and would be able to enforce the partners' agreement to be jointly responsible for basic living expenses.

C. Third Party Rights - Expenses for Shelter

Under Proposition K, third party creditors can collect from one partner the debts incurred by the other partner for "shelter." The term "shelter" is not defined by Proposition K. We can, however, look to other sources for its meaning. For example, in the Social Security regulations "shelter" is defined as including room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage and garbage collection services.⁴ Thus, responsibility for a partner's shelter expenses can have a broad reach.

This broad responsibility could even extend into costs incurred in healthcare settings. For example, if Alan, the domestic partner of Bob, enters a nursing home, hospital, or hospice, part of the charge by the care provider is for shelter, i.e., room and board, as opposed to charges for medical care. Bob could be held liable by the care provider for that portion of the expenses attributable to room and board for Alan. Bob would not be liable for medical expenses per se as these are not basic living expenses as defined by Proposition K.⁵ However, Bob's liability to the care provider could be broad, particularly in view of current daily charges for room and board of \$500 or more.

While Proposition K requires that the prospective domestic partners live together, this does not prevent them from having

³ California Civil Procedure, Section 481.170 (allowing a "person" to attach property under certain circumstances) and California Civil Procedure, Section 680.280 (defining a judgment creditor as a "person" in whose favor a judgment has been entered).

⁴ 20 CFR 416.1130(b).

⁵ Domestic partners do assume liability for expenses "which are paid at least in part by a program or benefit for which the partner qualified because of the domestic partnership." (Section 2(c)). If one partner's employer provides health insurance coverage for domestic partners and one partner incurs uncovered medical expenses because of a cap on the amount the insurance will reimburse, then both domestic partners would be liable for the unreimbursed charges.

additional and separate residences, nor do both partners' names have to appear on a lease. For example, if Alice solely owns or rents a second property or residence, then her domestic partner, Bonnie, could become liable for the expenses related to that property. Bonnie's liability for a second residence would depend on how broadly the term "shelter" is interpreted.

Another area of concern which arises from the partners' agreement to be jointly responsible for shelter expenses arises when dealing with mortgages. A mortgage (deed of trust) is a security held in a property for a loan which is usually made to purchase the property. When the person to whom the loan is made cannot make the payments on the loan then the holder of the mortgage can foreclose on the mortgage and sell the property. If the sale of the property yields enough to satisfy the debt then there is no problem and there are no other liabilities.

If the sale of the property does not yield enough to satisfy the loan, then in some states the holder of the mortgage can obtain a personal judgment against the person who borrowed the money. This is called a deficiency judgment as it makes up the difference between the sales price and the loan balance. In California, such judgments are prohibited by law.⁶ However, in other states these judgments are permitted.

If a bank or other lender was permitted by state law to obtain a deficiency judgment and the borrower against whom the judgment was obtained could not pay it, then the lender may be able to enforce the judgment against the borrower's domestic partner.⁷ The lender would argue that the Declaration of Domestic Partnership created third party rights for basic food and shelter and that the loan and subsequent judgment were for basic shelter. The lender would then try to obtain payment from the domestic partner. Thus, domestic partners who register under the proposed ordinance and who own property in states where there are no anti-deficiency laws should be forewarned of the possible effect of a mortgage default.

C. Third Party Rights - Estate Planning

Another area which is impacted by the rights of third parties created by a domestic partnership agreement concerns traditional estate planning techniques. For example, Art may have a life-threatening illness and may reasonably anticipate major expenses.

⁶ California Civil Procedure, Section 580(b).

⁷ It is important to remember that if the partners held the property in joint title then the bank could proceed against both the partners under any circumstances.

In order to protect Art's limited assets, Art will be counseled to place his money in a joint bank account or to specifically name his partner, Bill, as the beneficiary of Art's life insurance proceeds. By so doing Art can insulate part of his assets from creditors' actions upon his death because such property will pass directly to Bill, outside of Art's estate.⁸

If, however, Art and Bill have signed a Declaration of Domestic Partnership, then upon Art's death, his creditors for basic living expenses can request payment from Bill. Even though the money which Bill received from Art's estate had been previously protected from direct attack by Art's creditors, because of the domestic partnership agreement, Art's creditors could obtain payment from Bill. The domestic partnership agreement would obligate Bill to make such payment.

IV. EFFECT OF A DECLARATION OF DOMESTIC PARTNERSHIP ON BENEFITS

Persons who are contemplating signing a Declaration of Domestic Partnership as provided for by Proposition K may also be eligible to receive benefits from public benefits programs. The effect of signing a Declaration of Domestic Partnership on eligibility for, or the amount of benefits received, from public benefit programs presents new questions in a complex area.

It is clear that the various public benefit programs will not recognize domestic partners as being the legal equivalent of a married couple and that any language in statutes, ordinances, or regulations which specifically mentions married persons or spouses would NOT apply to domestic partners. However, a different issue emerges if a Declaration of Domestic Partnership is considered to be a contract for mutual support. If the declaration is viewed as such a contract, then it is possible that eligibility and/or benefit levels under three significant programs - Supplemental Security Income (SSI), Aid to Families with Dependent Children (AFDC), and the Department of Agriculture's Food Stamp Program - could be affected by the signing of a Declaration of Domestic Partnership.

A. Supplemental Security Income (SSI)

Supplemental Security Income (SSI)⁹ is a federal needs-based

⁸ California Probate Code, Section 13050 et seq.

⁹ Supplemental Security Income should not be confused with Social Security Disability Insurance (SSDI). SSDI is a federal program, administered by the Social Security Administration, which pays income benefits, based on lifetime earning records, to disabled workers and their families. The program is available only to disabled persons with a history of employment. Propo-

welfare program established by Title XVI of the Social Security Act which makes payments to low-income aged, blind and disabled persons. The amount of a person's income is used to determine both eligibility for, and amount of, SSI benefits. Generally, the more income a person has, the lower the SSI benefit will be.

For SSI purposes, income is anything an individual receives in cash or in-kind during a calendar month that can be used to meet his or her needs for food, clothing or shelter. The statute breaks down "income" into two types: "earned" and "unearned." Earned income is remuneration such as wages or earnings from self employment.¹⁰ Unearned income means all other income including "support and maintenance furnished in cash or kind."¹¹

When Congress defined unearned income it contemplated that a reduced benefit would be paid to those whose essential needs were being satisfied by other means.¹² Additionally, the SSI regulations state that in-kind income:

is not cash, but is actually food, clothing, or shelter, or something you can use to get one of these.¹³
(emphasis added)

By signing a Declaration of Domestic Partnership, as provided for by Proposition K, two persons are entering into an agreement to be jointly responsible for basic living expenses. Thus, the partners are guaranteeing the support of each other. If one member of a domestic partnership applies for and/or is receiving SSI benefits, the existence of the Declaration of Domestic Partnership could be used by the Social Security Administration as presumptive evidence that an SSI recipient is receiving unearned "in-kind" income from the other partner. This presumption stems from the broad definition of in-kind income in the regulations and could result in a reduction of the recipient's benefits.¹⁴

sition K would not affect eligibility for this benefit.

¹⁰ 42 U.S.C. 1382a(a)(1).

¹¹ 42 U.S.C. 1382a(a)(2)(A).

¹² Antonioli v. Harris, 624 F.2d 78 (9th Cir. 1980).

¹³ 20 CFR 416.1102.

¹⁴ There is no dispute that if one partner actually receives support from the other then this would be considered as unearned income.

There are no cases on this issue, nor has the Social Security Administration issued any policy statements or formal decisions. However, in an analogous situation, where an SSI recipient was living in an apartment owned by children or other relatives and was paying less than fair market value in rent, the Social Security Administration determined that the difference between the fair market value of the rent and the actual rent paid was unearned income. Usher v. Schweiker¹⁵.

In Usher the SSI recipient argued that because the private rent subsidy could not be turned into cash no accountable income was actually available. In rejecting this argument the court found that the benefit was actually available in the sense that it directly affected and improved the quality of the living environment. Thus, the court found the difference between what was actually paid in rent and what could have been paid in rent to be unearned income.¹⁶ As with this private rent subsidy, it can be argued that the agreement for mutual support found in the domestic partnership agreement directly affects and improves the quality of each partner's life and thus is "income" to the partner who is applying for SSI benefits.

Another issue affecting SSI benefits concerns liability for repayment of excess SSI benefits. Overpayment of SSI benefits by the Social Security Administration to an SSI recipient is not an infrequent occurrence. If the recipient is "without fault"¹⁷ for the overpayment, then he/she first applies for a waiver of adjustment or recovery to the Social Security Administration.¹⁸ If the waiver is granted, then the recipient is freed from the obligation of repayment.¹⁹ If the waiver is not granted, or if a waiver request is inapplicable, then the law provides two methods of recovering an overpayment: (1) refund and (2) adjustment of future benefits.²⁰ The Social Security Administration has given a preference to refund as the method of recovery in every case in which the overpayment is identified as part or all of the amount of the recipient's nonexcluded resources, or where the overpaid

¹⁵ 666 F.2d 652 (1st Cir., 1981) (reversing Usher v. Califano, 506 F. Supp. 1230 (D. Mass. 1981)).

¹⁶ Usher, 506 F. Supp. at 1232.

¹⁷ 20 CFR 416.552

¹⁸ 20 CFR 416.550.

¹⁹ 20 CFR 416.551.

²⁰ 42 U.S.C. 1383(b)(1).

individual is not currently eligible for SSI benefits.²¹ Only when an overpayment has not been refunded is withholding future benefits appropriate.²²

If there is no Declaration of Domestic Partnership between the domestic partners, then one partner is not liable for any SSI overpayment that his or her partner may have received. However, a Declaration of Domestic Partnership creates an obligation for one partner to pay the basic living expense debts owed by the other partner to third parties. It can be argued that SSI benefits are payments for basic living expenses and thus the domestic partnership agreement may make one partner liable to the federal government for the refund of any overpayment of SSI benefits made to the other partner.²³

B. Aid to Families with Dependent Children (AFDC)

Aid to Families With Dependent Children (AFDC)²⁴ is a federal-state program which makes welfare payments to low-income families with children which include a single, unemployed, or incapacitated parent. States voluntarily participate in the program.²⁵ However, all participating states, including California, must conform to the requirements of the federal program.

Eligibility for AFDC benefits is based upon an assessment of all income and resources available to the applicant family. In the heterosexual context, this has meant that any contribution made by an unrelated adult to the applicant family (even in the form of rent, food or clothing) has acted to reduce the benefits awarded to the applicant.²⁶ Similar contributions made by a

²¹ 20 CFR Section 416.560; See also Program Operations Manual System [POMS] Section 2201.050.

²² 20 CFR Section 416.570

²³ See POMS Section 2201.002 and 4 U.S.C. 102.1.

²⁴ 42 U.S.C. 601 et seq.

²⁵ See, California Welfare and Institutions Code, Section 11200 et seq.

²⁶ The typical scenario in the heterosexual context is that the applicant is the mother of the family who is living with her male lover.

same-sex partner will also be taken into account²⁷ and the presence of a Declaration of Domestic Partnership could create a presumption of contribution by the partner.

Under both federal and state regulations governing AFDC eligibility, an AFDC applicant or recipient must agree to assign to the state or county "any rights to support from any other person" which have accrued at the time of assignment.²⁸ While the legislative intent behind these regulations was aimed at recouping child support or alimony payments from an absentee parent and/or spouse, there is nothing to prevent the application of these regulatory provisions to domestic partners who have signed a Declaration of Domestic Partnership.²⁹ Case law already has allowed these regulations a broad reach.²⁹

As with overpayment of SSI benefits, it is possible that overpayment of AFDC benefits may be recouped from the domestic partner of an AFDC recipient. An AFDC recipient's benefits can be reduced because of prior overpayments, so long as the reduction does not exceed 10 percent of the total grant.³⁰ Recoupment also can be attempted through other "reasonable cost-effective" methods.³¹

In situations where an overpayment has been made to an assistance unit which no longer receives aid, "recovery shall be made by appropriate action under state law against the income or resources of the individual responsible for the overpayment or against the family."³² Under this provision, the domestic partner of an AFDC recipient could be held liable for overpayments based on the potential third party liability created by the Declaration of Domestic Partnership.

²⁷ See, Curry and Clifford, A Legal Guide for Lesbians and Gay Couples, Berkeley, Ca.: Nolo Press, 1990, pp. 10:6 - 10:8.

²⁸ 45 CFR 232.11; California Welfare and Institutions Code, Section 11477

²⁹ See, In Re Waller, 75 B.R. 897 (D. Conn. 1987) (Income tax refund).

³⁰ California Welfare and Institutions Code, Section 11004(c).

³¹ California Welfare and Institutions Code, Section 11004(g).

³² California Welfare and Institutions Code, Section 11004(h) (emphasis added).

C. Food Stamps

The Food Stamp program is a federally financed, state-run welfare program for low-income persons, which permits low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power.³³ Eligibility guidelines are based on an analysis of household income and resources.

A Food Stamp applicant who lives with, and who customarily purchases and prepares food with others living in the same house, will have his or her program eligibility assessed on the basis of the household aggregate of income and resources.³⁴ Spouses are presumptively deemed to be a household for purposes of this legislation.³⁵ If two (or more) individuals live together, are not spouses, and purchase and prepare food separately, each individual's eligibility will be determined independently.³⁶ The existence of a Declaration of Domestic Partnership should not affect these eligibility guidelines.

While it may be within the discretion of the Department of Agriculture to presumptively view domestic partners as a household, this is unlikely. However, eligibility for Food Stamps may be impacted by the existence of a Declaration of Domestic Partnership if the declaration is viewed as a binding written agreement of support. Under the governing regulations, any money deducted or diverted from a binding written support agreement to a third party for a household expense will be considered income with respect to an applicant's eligibility.³⁷

Consider the case of Ann, who lives with Barb, her domestic partner. Ann is unemployed and has applied for Food Stamps. Although they live together, Ann and Barb purchase and prepare their food separately. Because of Ann's unemployment, and as required by their Declaration of Domestic Partnership, Barb is paying for Ann's housing costs. Barb sends a check directly to the landlord for the full amount of the rent. Barb also directly pays for all of the utilities.

³³ 7 CFR 271.1(a).

³⁴ 7 CFR 273.1(a)(1)(iii).

³⁵ 7 CFR 273.1(a)(2)(A).

³⁶ 7 CFR 273.1(a)(ii).

³⁷ 7 CFR 273.9(c)(1)(iv)(C).

It is possible that these payments made by Barb could be viewed under the Food Stamp regulations as monies deducted or diverted from a written support agreement; thereby reducing or eliminating Ann's Food Stamp allotment.

As seen with other benefit programs, the domestic partners of food stamp recipients may be liable for the repayment of the value of overissued food stamps. Under the governing provisions, the government is entitled to recoup the value of any over-issuance of food stamps and authorizes state agencies to pursue collection. While reduction of coupon allotment is the first method of collection used, if that fails or is impossible, state agencies may use other means of collection.³⁸ These means of collection include the filing of court actions³⁹ and the garnishment of unemployment compensation.⁴⁰ Under the auspices of state court litigation, it would be within the jurisdiction of the state to attempt to reach all resources available to the food stamp recipient. If the recipient and his/her domestic partner had signed a Declaration of Domestic Partnership which included a commitment for mutual support, the domestic partner could be held liable for the value of the over-issuance.

V. OTHER CONSIDERATIONS

A. Confidentiality and Privacy

There is no confidentiality or privacy protection provided by Proposition K. If the domestic partners choose to file their declaration with the County Clerk in San Francisco's City Hall everyone will have access to these public records: insurance companies investigating an application or claim, employers conducting a security clearance check, the military and other government agencies, or persons bent on harassment.

B. Partnership Law

A domestic partnership formed under Proposition K will NOT be controlled by California laws governing partnerships. California Corporation Code Section 15006(1) states:

A partnership is an association of two or more persons to carry on as co-owners a business for profit.

³⁸ 7 U.S.C. 2022(b)(1)(A) and (b)(2)(B).

³⁹ Alexander v. Robinson, 756 F.2d 1153 (5th Cir. 1985).

⁴⁰ 7 U.S.C. 2022(c).

Clearly the formation of a domestic partnership is not the creation of a "business for profit." This is true even where the partners are joint owners of property and that property generates a profit.⁴¹ However, the laws of other states might yield different results.

VI. CONCLUSION

The creation of domestic partnerships is one way to begin to correct the discrimination experienced by lesbian and gay male families. However, California's marriage laws largely preempt legislative action in this area. Thus, Proposition K cannot achieve the goal of providing full equality with married persons. Couples who register under Proposition K should understand this.

Moreover, under Proposition K domestic partners will be assuming financial obligations. Thus, it is critical for couples who are considering registering as domestic partners under Proposition K to be educated as to the possible ramifications such registration may entail. When fully informed, couples who desire to register will be able to make an informed choice as to how they wish to proclaim their relationships to society.

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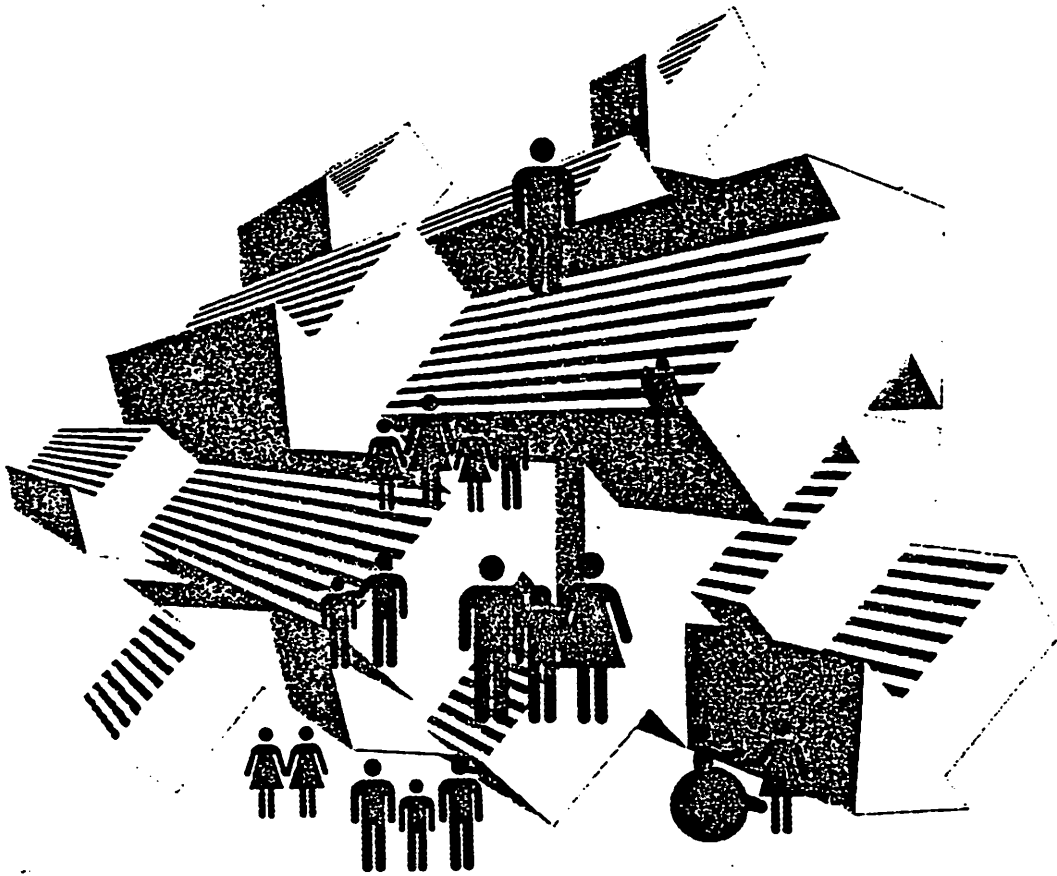
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⁴¹ California Corporation Code, Section 15007(2).

OFFICIAL REGISTRATION OF FAMILIES

WITH THE SECRETARY OF STATE

A Report on Legal, Economic, and Psychological Implications



FAMILY DIVERSITY PROJECT



First Printing: December 1990

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**APPLICANTS SHOULD CONSULT WITH A LAWYER
SINCE REGISTRATION IS A LEGAL PROCEDURE**

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**OFFICIAL REGISTRATION OF FAMILIES
WITH THE SECRETARY OF STATE**

by Thomas F. Coleman, Esq.

Family Diversity Requires Flexible Definitions

During the past decade, members of the public and their elected representatives have noticed many structural changes in family life. There has been a major shift away from a stereotypical "nuclear" family unit consisting of an employed husband and homemaker wife with minor children at home. Today, "diversity" is the hallmark of contemporary family demographics.

Family diversity is associated with a variety of sociological, economic, and legal trends. For example:

- * **Delayed marriage** is typical as a growing number of young men and women defer marriage until educations are completed and careers are established.
- * **Many unmarried couples** live together in so-called "trial marriages" before they formally tie the knot.
- * **Dual-income marriages** are now the norm, whether out of necessity or as a result of choice.
- * **Single-parent households** are on the increase, sometimes as a result of divorce and other times because women have chosen to have children outside of marriage.
- * **Divorces** have become commonplace. Currently, about half of all marriages dissolve and researchers predict that about two-thirds of recent marriages will eventually end in divorce.
- * **Stepfamilies** are one of the fastest growing family forms, due to a tremendous rise in divorce and remarriage.
- * **Cross-cultural** and interracial families are no longer uncommon as the population becomes more ethnically diverse.
- * **Foster families** are a permanent part of the social structure, providing stability to children in need.
- * **Same-sex couples** are leaving the sidelines and demanding a visible place on this broad spectrum of family relationships.

Two recent government studies have documented major demographic and structural changes in California families.¹ Addressing the need for flexibility in the definition of "family," both reports quoted from a settled decision of the California Supreme Court on this issue:²

"'Family' may mean different things under different circumstances. The family, for instance, may be a group of people related by blood or marriage, or not related at all, who are living together in the intimate and mutual interdependence of a single home or household."

Avoiding a structural view of family, the State Task Force on the Changing Family concluded that families should be identified by five basic functions.³ The Los Angeles City Task Force referenced numerous statutes, administrative regulations, and court cases documenting a pattern of flexibility in defining family, with many legal definitions encompassing couples or groups who live together and function as a family but who are not necessarily related by blood, marriage, or adoption.⁴

1. "Strengthening Families: A Model for Community Action," Final Report, Los Angeles City Task Force on Family Diversity (City of Los Angeles, May 1988), hereinafter referred to as "City Report;" "Planning a Family Policy for California," First Year Report, Joint Select Task Force on the Changing Family (California Legislature, June 1989), hereinafter referred to as "State Report."

2. Moore Shipbuilding Corporation v. Industrial Accident Commission (1921) 185 Cal.200, 196 P. 257.

3. The Task Force lists the five basic functions as: (1) maintaining the physical health and safety of members by providing for their shelter, food, clothing, health care, and economic sustenance; (2) providing conditions for emotional growth, motivation, and self-esteem within a context of love and security; (3) helping shape a belief system from which goals and values are derived, and encouraging shared responsibility for family and community; (4) teaching social skills and critical thinking, promoting life-long education, and providing guidance in responding to culture and society; and (5) creating a place for recreation and recuperation from external stresses. (State Report, pp. 7-8)

4. City Report, pp. 18-23.

The State Has Procedures to Register Relationships

In California, the Legislature has passed many statutes manifesting the state's interest in collecting and maintaining current information regarding its residents and their relationships. Many of these laws pertain to the registration of business names and relationships.⁵

Other statutes reflect a similar state interest regarding the registration of personal or family information.⁶ For example, the State Registrar of Vital Statistics and county recorders must register and issue certificates pertaining to births, deaths, and marriages.⁷ After an adoption is finalized, the State Registrar must issue a new birth certificate reflecting

5. Some examples include the formation of corporations, partnerships and associations as well as the use of names by such organizations. The state requires that persons, associations or corporations who regularly transact profit-oriented business under a fictitious name must file a fictitious name statement with the clerk of the county in which the principal office of the business is located. (Business and Professions Code, Sections 17900 et seq.) Persons who form a for-profit or a non-profit corporation must register the corporation's name and its articles of incorporation with the Secretary of State. (Corporations Code Sections 200, 9304.5; Government Code Sections 12164.5, 12200) An unincorporated partnership may register its name and a partnership statement with a county recorder. (Corporations Code Section 15010.5) Any unincorporated business organization may register its name with the Secretary of State. (Business and Professions Code, Section 14492.5) A power of attorney delegating authority from a principal to his or her agent may be recorded with a county recorder. (Government Code, Sections 27280, 27238) A farm, ranch, or villa may register its name with the Secretary of State. (Government Code, Section 12191; Business and Professions Code, Section 14461) Any person, corporation or association may register a trade mark, trade name or service mark with the Secretary of State. (Business and Professions Code, Section 14230)

6. For example, Health and Safety Code Section 429.50 authorizes the Department of Health Services to "make a continuing study of births, deaths, marriages, and divorce" and to collect any other data necessary to describe and analyze "family formation and dissolution."

7. The county recorder is the local registrar of marriages, births and deaths. (Government Code, Sections 10052, 10060; Civil Code, Section 4202) The State Registrar has a duty to keep track of adoptions as well as divorces and marital separations. (Government Code, Section 10619; Health and Safety Code, Section 10369)

the names of the adopting parent or parents and that of the adopted child.⁸ A new birth certificate also must be issued to reflect the results of a court order establishing paternity.⁹ After completion of sex reassignment surgery, a new certificate also may be prepared to reflect the new gender and any new name of the person who has undergone such surgery.¹⁰ The law also provides a method of registering an ordinary change of name. Any court decree changing the name of a person must be filed with the Secretary of State.¹¹

Some Families Need Other Options

Family members who are directly related by blood, marriage, or adoption, can satisfy a psychological or legal need to authenticate their relationship as a family by utilizing a birth certificate, marriage certificate, or adoption decree. However, for many other families the usual methods of registering family names and relationships can be woefully inadequate.

For example, the "official" relationship of a foster parent and foster child generally terminates when the child reaches the age of majority.¹² The same holds true for a guardianship.¹³ Despite this legal fiction regarding the termination of the relationship, many foster and guardianship relationships continue to function as families long after the child becomes

8. Health and Safety Code, Section 10432.

9. Health and Safety Code, Section 10450.

10. Health and Safety Code, Section 10475.

11. Code of Civil Procedure, Section 1279; Government Code, Section 12194.

12. Welfare and Institutions Code, Sections 300, 601, 602, 11400-11401.

13. Probate Code, Section 1600.

an adult. Many of these families would welcome an opportunity to register their associational status in some official manner. Many stepfamilies would have a similar interest in registering as a single entity.¹⁴

The passage of domestic partnership ordinances or resolutions by several municipalities in California and in other cities throughout the nation is evidence that many unmarried couples share this growing interest in registering their relationships as families.¹⁵ Although many unmarried couples welcome this registration trend by local governments, they would prefer a simple statewide mechanism by which they could officially declare their associational status as a family.

Registering With the Secretary of State is an Option

The creative and legitimate use of an existing statutes may provide some satisfaction to families who want to register their associational status with the State of California.

Under current law, a non-profit association may register its name with the Secretary of State.¹⁶ The statutory scheme that provides for such

14. A stepfamily generally is the product of divorce and remarriage, where one or both of the new spouses has biological children from the previous marriage. The newly created family, often referred to as a "stepfamily," is a combination of a marital relationship (the new spouses), blood relationships (biological parent and child), and psychological relationships (stepparent and stepchild / stepsiblings).

15. West Hollywood (CA), Ithica (NY) and Madison (WI) allow unmarried couples who live in long-term and committed relationships to register as a family with the city clerk. Voters in San Francisco recently approved a registration procedure for domestic partners. The cities of Seattle and New York and four others in California (Berkeley, Los Angeles, Santa Cruz, Laguna Beach) have adopted personnel policies that allow city employees to gain limited benefits for their domestic partners by privately registering their relationships with city's personnel office.

16. Corporations Code, Section 21301.

name registration is very broad and inclusive.¹⁷

In law, the term "association" does not have a fixed meaning such as is accorded to "partnership" or "corporation," but is used to indicate a collection of persons who have joined together for some common purpose and who are called, for convenience, by a common name.¹⁸ The term "association" is ordinarily and customarily used in such a broad manner.¹⁹

The concept "unincorporated association" generally denotes a voluntary group of persons, without a charter, formed by mutual consent for the purpose of promoting a common enterprise or prosecuting a common objective.²⁰ Such associations exist under the common law right of contract.²¹ The term "unincorporated association" has been defined very broadly by statute to mean "any partnership or other unincorporated

17. A group is considered "nonprofit" if it is an unincorporated association of natural persons for religious, scientific, social, literary, educational, recreational, benevolent, or other purpose not that of pecuniary profit. (Corporations Code, Section 21000) The term "association" includes several specific types of organizations, as well as "any other society, organization, or association." (Corporations Code, Section 21300) The use of the term "includes" in the definition of "association" indicates a legislative intent not to limit the definition to those organizations listed. The term "includes" is ordinarily a word of enlargement and not of limitation. People v. Horner (1970) 9 Cal.App.3d 23, 27. Thus, the specific organizations listed in the definition become illustrative rather than restrictive. Paramount General Hospital Company v. National Medical Enterprises (1974) 42 Cal.App.3d 496, 501-502. Furthermore, by its own terms, these statutes provide that "any association" that it not subversive may register its name (Section 21301) and that in addition to those groups listed, the name registration provision is available to "any other" society, organization, or association. (Section 21300)

18. 7 Corpus Juris Secundum 22; People v. Farina (1963) 220 Cal.App.2d 291, 33 Cal. Rptr. 794, 796.

19. Blacks Law Dictionary (4th ed.), p. 156.

20. Local 4076 v. United Steelworkers of America (U.S.D.C., W.D. Penn. 1971) 327 F.Supp. 1400.

21. Morris v. Willis (Mo. 1960) 338 S.W.2d 777, 779.

organization of two or more persons, whether organized for profit or not."²²

An unincorporated association may keep its structure simple. Formal officers or a constitution and by-laws are not necessary.²³ One example of such informality is found in a case where members of a family were recognized as an association.²⁴

An unincorporated association has the right to adopt a name by which it shall be known.²⁵ By publishing the name or by using it in a public way, such an association can acquire the exclusive right to such a name.²⁶ An association can also protect its name from unauthorized use by registering with the Secretary of State.²⁷

Some families in California have already registered with the Secretary of State pursuant to Section 21301 of the Corporations Code.²⁸ Other families have submitted applications and are waiting to receive their

22. Corporations Code, Section 24000. The only exception is that a government agency or subdivision is not considered as an unincorporated association. (Ibid.)

23. Law v. Crist (1940) 41 Cal.App.2d 862, 863-864.

24. John v. John (Mich. App. 1973) 209 N.W.2d 536. In this case, three sisters who lived together and shared expenses and who jointly contributed to the purchase of an automobile were held to be an "association."

25. Boogie Kings v. Guillory (La. App. 1966) 188 So.2d 445.

26. John Beard Memorial Foundation v. Krebs (1950) 96 Cal.App.2d 597, 598-599.

27. Corporations Code, Sections 21302, 21307, 21308.

28. The Secretary of State has issued a "Certificate of Registration" to an unmarried opposite-sex couple from San Jose, a male couple from San Diego, a single-parent guardianship family in Los Angeles, a married-couple stepfamily from Victorville, an unmarried-couple stepfamily from Bakersfield, an engaged-couple stepfamily in Glendale, and a female couple in Los Angeles. These families have listed the name of their associations by using the words "Family of" followed by the names of all immediate family members.

certificates of registration.²⁹

Registration is Evidence of a Family Relationship

No benefits are automatically conferred upon a family which registers itself as an association with the Secretary of State. However, a certificate of registration might be used by domestic partners, household members, or other intimate associates as evidence that they are, in fact, a family unit. Such evidence could be helpful to administrators or judges who sometimes are required to distinguish families from nonfamilies.

Although the term "family" appears more than 1,300 times in California statutes, it is only used about 162 times in a substantive way that specifically confers benefits or imposes obligations.³⁰ In 75 percent of these substantive references, the term is not defined.³¹

Especially in contexts where "family" has not been defined, it is primarily a question of fact as to whether or not a particular relationship is a "family."³² In many cases, courts have ruled that it is reality and not

29. These families include a husband, wife, and biological child (each with different last names) in Los Angeles and a Torrance family that consists of a husband, wife, two biological children and two adult foster children who are severely disabled.

30. For a summary of these statutes, see "Appendix A," *infra*.

31. No uniformity exists in the other 39 statutes that do give a specific definition. The following list includes the relationships and the number of times they are specified in these definitional statutes: 28 include "spouse," 23 include "parent," 22 include "child," 17 include "relative," 15 include "household member," 14 include "brother" or "sister," 9 include "grandparent" or "grandchild," 9 include various "in-laws," 5 include "stepparent," 4 include "aunt" or "uncle," 3 include "stepchild," 2 include "foster parent" or "foster child," and 2 include "legal guardian."

32. Ibach v. Hoffman (Or. 1948) 198 P.2d 266, 184 Or. 296, 304; Group House v. Board of Zoning Appeals (N.Y. 1978) 408 N.Y.S.2d 377, 381.

mere legal fiction that matters.³³

Although courts have used various factors for determining the existence of a family relationship, three general criteria seem to have emerged. First, the parties subjectively must consider themselves to be a family. Second, they must hold themselves out to some degree as a family to society. Finally, and probably most importantly, they must function as a family.³⁴

Registering with the Secretary of State as a family association could supply proof of the first two criteria. By naming the association "Family of John Doe and Mary Roe," for example, the parties would show that they subjectively consider themselves to be a family. Furthermore, having such an association listed as a matter of public record would supply ample evidence that the parties have publicly proclaimed they are a family.

Registration May Result in Psychological Benefits

In addition to its evidentiary value, registration as a family association may give members of many families a needed psychological

33. Morrow v. Morrow (Okl.App.) 612 P.2d 730, 733; City of Livonia v. Department of Social Services (Mich. 1985) 378 N.W.2d 402, 431.

34. For families who are not related by blood or marriage, the California Supreme Court has identified several functional criteria: (1) living together in a single home or household; (2) intimacy; and (3) mutual interdependence. Moore Shipbuilding, supra. The Michigan Supreme Court has used similar, although slightly different criteria: (1) living together; (2) continuity and permanency; and (3) operating as a fixed housekeeping and social unit. City of Livonia, supra. The New York Court of Appeals has listed several factors that will distinguish mere roommates from a family relationship: (1) longevity of the relationship; (2) level of emotional and financial commitment; (3) manner in which the parties conduct their everyday lives and hold themselves out to society; and (4) reliance placed upon each other for daily family services. Braschi v. Stahl Associates (1989) 74 N.Y.2d 201.

boost.³⁵

Unmarried opposite-sex couples may find it refreshing to be labeled as a "family" association instead of having their relationships described by outsiders in pejorative terms.³⁶ In a similar vein, gay and lesbian couples may find it empowering to liberate themselves from terms that do not appropriately describe their relationships. Linguistic justice is not done by referring to lifemates who are living in committed and long-term relationships as mere "friends" or "roommates."

Stepfamilies may reap a different kind of psychological benefit. By having all members of a stepfamily register as one family, some of the emotional conflicts experienced by many of these families may be reduced.

Many foster families or guardianship families experience anxiety as a foster child or ward reaches his or her late teens.³⁷ Although adoption is one way to bolster these relationships, adoption is not always possible. Another way for a foster family or guardianship family to obtain a sense of continuity or psychological security would be for the members to register as a family association before, or just after, the foster child or ward becomes an adult.

35. See Appendix E: Dr. Nora Baladerian, "Some Psychological Benefits of Registering as a Family."

36. Courts historically referred to unmarried couples as having "meretricious" relationships. Morone v. Morone (1980) 50 N.Y.2d 481, fn. 2. "Meretricious" was defined as "of or pertaining to a prostitute; having a harlot's traits." (Ibid.) Recently, some courts have intentionally rejected such negative language to describe the relationships of unmarried couples.

37. By definition, a foster child is a person under 19 years old. (Health & Safety Code, Section 1527) A guardianship terminates when the ward becomes 18 years old. (Probate Code, Section 1600)

Recognition as a Family May Have Legal Implications

Again, it should be emphasized that registration as a family association does not automatically confer legal benefits on those who register. However, a certificate of registration, along with other appropriate evidence, may result in the registrants being recognized as a family by courts, administrative agencies, or by private-sector organizations. As summarized below, various legal benefits may follow such recognition.

Criminal Law. Being recognized as a family could activate the protection of several criminal statutes that use the term "family" without definition. For example:

Extortion. A person is considered a victim of extortion if the perpetrator threatens to accuse the victim's family member of a crime.³⁸

Telephone Threats. It is a crime to make a phone call threatening to injure the family member of the person receiving the call.³⁹

Physical Force. A person may use physical force to resist a crime about to be perpetrated against a family member.⁴⁰

Restitution. A victim's family survivor has a right to receive restitution from a convicted defendant.⁴¹

Witness Relocation. In order to protect a witness or informant, the state may relocate the witness and his or her family.⁴²

38. Penal Code, Section 519.

39. Penal Code, Section 653m.

40. Penal Code, Section 693.

41. Penal Code, Section 1203.04.

42. Penal Code, Section 4001.1

Employee Benefits. Recognition as a family could be beneficial to some government workers who need to take time off from work. For example, employees of local school districts may take bereavement leave upon the death of a family member.⁴³ Community college employees may be eligible for leaves for personal necessity in order to care for a family member.⁴⁴ Of course, any public or private sector employee could present his or her employer with a certificate of registration as a family association in an attempt to secure various employee benefits for family needs, such as family sick leave or bereavement leave. Although registration as a family association with the Secretary of State would not automatically entitle an employee to benefits, registration could be an important tool in the ongoing struggle to make domestic partners and other family dependents eligible for participation in employee benefits plans.⁴⁵

Judicial Procedures. Several procedural statutes use the term "family" without definition. Parties to a lawsuit may challenge a prospective juror for cause or object to a referee if the juror or referee is a family member of a litigant or witness.⁴⁶ If a defendant cannot be personally served, process may be left with a family member who lives at the defendant's residence.⁴⁷ A defendant may object to an attachment to satisfy a judgment if the defendant needs the asset to provide necessities to

43. Education Code, Section 44981 does not define "family."

44. Education Code, Section 87784 also does not define "family."

45. See Appendix F: "Statement of Phil Ansell, SEIU, Local 535."

46. Code of Civil Procedure, Sections 229, 641.

47. Code of Civil Procedure, Section 700.080.

a dependent family member.⁴⁸

Business and Professions. Many statutes regulating licensed businesses or professionals use the term "family" without definition. Recognition as a family in these contexts would have legal implications. For example:

Continuation of Business. If a specified licensed professional dies, a new license is not required if the business is continued by a surviving family member.⁴⁹

Funeral Service. A funeral home employee may not use profane language in the presence of a surviving family member.⁵⁰

Bar Exam Fee. A law student may get a refund of the fee paid to take the bar exam if the student cancels the exam due to the death or injury of a family member.⁵¹

Nursing. A nursing or respiratory care license is not required prior to giving various types of medical care to a family member.⁵²

Officials and Political Candidates. Several statutes regulating the conduct of politicians use the term "family" without definition. Being recognized as a family could have ramifications to candidates or elected officials. For example, some of the statutes restricting self-dealing also prohibit various transactions between candidates and their family members.⁵³ Other statutes that impose limits on gifts to legislators also

48. Code of Civil Procedure, Sections 703.115, 704.020, and 706.051.

49. Business and Professions Code, Section 7065.5 (contractor); Section 7505.3 (reposessor); Section 7594.3 (alarm company).

50. Business and Professions Code, Section 7700.

51. Business and Professions Code, Section 6060.3.

52. Business and Professions Code, Section 2727; Section 3765.

53. Government Code, Sections 82033, 82045, 84219, 84302.5.

create restrictions on gifts to family members of legislators.⁵⁴

Health Services. Being recognized as a family also could have implications in connection with health services provided by government agencies or private sector providers. For example:

Resident Councils. Family members of a patient may serve on resident councils for long-term health care facilities or community care facilities.⁵⁵

Visitation Rights. Family members have a right to personal visits with patients in long-term health care facilities or community care facilities.⁵⁶

Prescription Drugs. A prescription drug may only be used by the designated patient, except that such a drug may be shared with a family member under certain circumstances.⁵⁷

Alcohol Rehabilitation. Rehabilitation programs for drunk drivers may permit family members to attend along with the defendant.⁵⁸

Access to Records. A patient must be given access to his or her records, except that a service provider may refuse to disclose information supplied to the provider in confidence by a patient's family member.⁵⁹

Notice. A mental health facility that takes a patient into custody must notify the patient's family of his or her whereabouts.⁶⁰

54. Government Code, Section 85310.

55. Health and Safety Code, Sections 1418.2, 1520.2.

56. Health and Safety Code, Sections 1418.3, 1512.

57. Health and Safety Code, Section 11164.

58. Health and Safety Code, Section 11837.

59. Health and Safety Code, Section 11977; Welfare and Institutions Code, Sections 4514, 4727.

60. Welfare and Institutions Code, Section 5350.2

Unemployment Compensation. Under California law, a worker is not entitled to unemployment compensation if the worker voluntarily quits a job. However, leaving a job due to a family necessity may not be considered a voluntary quit. For example, if a worker quits in order to relocate to another area to accompany a spouse or preserve a family unit, the worker may be entitled to unemployment compensation. In this circumstance, the worker need not be married to his or her family partner in order to qualify, as long as a significant family necessity requires relocation.⁶¹ Leaving a job to care for a seriously ill or dying family member is another example of a family necessity that would entitle a worker to unemployment benefits.⁶² Having a certificate of family registration may be advantageous to workers who become temporarily unemployed due to an important family need, especially when the necessity involves a relationship not based on blood or marriage.

Airlines. Some airlines have adopted restrictions that favor family members in connection with the use of frequent flyer programs or super-saver tickets. For example, a recent study found that Delta and US Air limited use of tickets issued in exchange for frequent flyer miles to account holders or their family members.⁶³ The study also found that some airlines, such as TWA, prohibited consumers from changing or cancelling a super-saver ticket, unless it was necessitated by the death or illness of a family

61. McGregor v. Unemployment Ins. Appeals Board (1984) 37 Cal.3d 205.

62. California Unemployment Appeals Board, Administrative Law Judge Decision #SF-24774, filed September 13, 1985.

63. Consumer Task Force on Marital Status Discrimination, Office of the Los Angeles City Attorney, Supplement to the Final Report, pp. 153-154 (March 1990).

member.⁶⁴ Being able to produce a certificate of family registration could be helpful to airline customers in circumstances such as these.

Credit Institutions. Being recognized as a family could also prove beneficial in various credit transactions. For example:

Credit Unions. Credit unions can only lend money to members. Membership is limited to designated employees and their family members. Unmarried couples have been denied joint loans because the designated employee and the unmarried partner were not married or related by blood.⁶⁵ Credit unions that would like to serve more consumers could easily extend membership eligibility to include registered family relationships.

Credit Cards. The registration procedure could also be brought to the attention of Gold Master Card. This credit network provides valuable services to account holders and their family members in times of need.⁶⁶ If they are stranded away from home because the credit card has been lost or stolen, a "Hotline" service will arrange for one pre-paid airline ticket for each family member. If an immediate family member dies while the card holder is abroad, "MasterAssist" will help make necessary arrangements and pay for the trip back to the United States. When a car is rented, personal effects are covered from loss, theft, or damage. Coverage is extended to any immediate family members accompanying the card holder. Consumers might convince Gold Master Card or participating lending institutions to expand "family" eligibility to include registered relationships.

These are some of the legal and economic benefits that may result when a relationship is recognized as a family. In some cases, a certificate of registration could be vital evidence to help prove that a relationship is, in fact, a family.

64. Id, at p. 132.

65. Consumer Task Force on Marital Status Discrimination, Office of the Los Angeles City Attorney, Final Report, p. 41 (March 1990).

66. Id., at p. 39.

Unintended Results Can Be Minimized

Just as registration does not, in and of itself, confer benefits, it is unlikely that registration would automatically create obligations that are not already inherent in the relationship of the registrants. However, precautions may be taken to avoid unintended legal obligations.

Financial Duties. A legal duty to provide financial support to a family member is limited to specific family relationships. Legally married spouses have a duty to support one another.⁶⁷ A parent has a duty to support a biological or adopted minor child.⁶⁸ A parent also must support an indigent adult child.⁶⁹ Conversely, an adult child must support his or her indigent parent.⁷⁰ Otherwise, a legal duty to support is not inherent in a family relationship. For example, siblings do not have an obligation to support one another. Also, a stepparent generally does not have a duty to support a nonadopted stepchild.⁷¹ Similarly, unmarried partners do not have a duty to support each other, absent an express or implied agreement to the contrary.⁷² In other words, registration as a family association should not create any support obligations that do not already exist. However, in order to avoid any possible misinterpretation of the intention of the parties, registrants could include wording such as this on the reverse

67. Civil Code, Section 242.

68. Civil Code, Section 206.

69. Ibid.

70. Ibid.

71. Woods v. Woods (1982) 133 Cal.App.3d 954; In re Estate of Teddy (1963) 214 Cal.App.2d 113.

72. Marvin v. Marvin (1976) 18 Cal.3d 660.

side of their copy of the registration application:⁷³

"By registering as a family association, the parties do not intend to create financial obligations to each other that did not already exist prior to the signing of this application. Furthermore, this application shall not be considered as evidence of preexisting financial obligations, if any, between the parties."

Tax Returns. A family that registers its name with the Secretary of State as an unincorporated nonprofit association should not have to file an annual tax return or statement with the Franchise Tax Board, provided the association, as an entity, does not carry on business, perform services, borrow money, own property in its name, or obtain tax exempt status. Annual tax returns or financial statements only must be filed by: (1) individuals;⁷⁴ (2) partnerships;⁷⁵ (3) corporations that perform services, borrow money, own property, or do business in California;⁷⁶ and (4) exempt organizations that have income.⁷⁷ Therefore, an association that does not engage in such activities should not be required to file a tax return or statement separate from its members. Obviously, individual members of a family would have to file individual returns, as usual, if they have received

73. The parties should place the date and their initials or signatures below such a disclaimer. Wording such as this would be evidence that the parties did not intend to create new obligations but were merely acknowledging their existing family status by registering as a family association. Of course, even after they have registered, the parties would remain free to enter into separate verbal or written agreements with each other pertaining to support, property distribution, or other financial matters.

74. "Individual" is defined as a natural person. (Revenue and Tax Code, Section 17005)

75. "Partnership" is defined as a syndicate, group, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on. (Revenue and Tax Code, Sections 17932, 17921)

76. Revenue and Tax Code, Sections 23301.5, 23037, 17707, 17009, 23028, 23151, 23101)

77. Revenue and Tax Code, Section 23771, 23701, 23774.

taxable income. Also, if members of a family have formed a business partnership with each other, they would need to file a partnership return. Again, precautions could be taken to be doubly sure that tax returns will not have to be filed by the family association. Persons who register as a family with the Secretary of State might want to clarify the nonbusiness nature of their association by adding a disclaimer such as this to the reverse side of their copy of the registration application:⁷⁸

"This association (as an entity) will not engage in business activities or services, borrow money, hold property in its name, or seek tax exempt status."

The Registration Process Is Not Complicated

Registration of a family association with the Secretary of State is a relatively simple process. The first step is to obtain the proper form.⁷⁹

Application. To register an association as a family, the application may be completed as follows:⁸⁰

Name of Association. The applicant may begin the name of the association with the words "Family of" followed by the names of the members of the family.⁸¹

Address. List the street address or post office box of the primary adults who head up the family.

78. If family members had any other concerns regarding possible unintended legal consequences, they could consult with a certified public accountant or tax attorney.

79. Applicants should write to the Limited Partnership Division, Secretary of State, P.O. Box 944225, Sacramento, CA 9424-2250 or call (916) 445-9872. A request should be made for an "Application to Register an Association's Name" under Corporations Code, Section 21300. Forms are provided without cost.

80. See sample application in Appendix B.

81. For example, a two-person family could be listed as "Family of John Doe and Jane Roe." Three adults who function as a family unit could be listed as "Mary Smith, Sue Jones, and Brenda Williams." Two adults with children could be listed as "Jim Peters and Rita Collins, including Barbara Peters and Stephanie Peters."

Signatures. An association officer must sign the form on behalf of the association. In the case of a family, an officer would be one or more adults who heads up the family. The officer or officers should sign the form and indicate their chosen title.⁸²

Applicants should keep a copy of the registration form for their own files. They may want to write or type an appropriate disclaimer on the reverse side of their copy of the application.⁸³ Applicants must pay a one-time fee of \$10 to register their family association.⁸⁴

Within a few weeks, the Secretary of State will mail the applicant a decorative certificate of registration.⁸⁵

Precautions. Applicants should not list anyone as a family member without receiving their permission first. Listing someone against their will or without their knowledge could subject an applicant to civil liability for fraud, invasion of privacy or defamation.

Changes. The membership of a family association may change from time to time. For example, a member might resign, a new child may be born or adopted into the family, or another person might seek to join the

82. Some families who have already registered have adopted the title of "Family Manager" for the person who heads up the family and signed the form. Other families have opted for dual leadership, having two people sign the form with each using the title "Family Co-Manager." Although the preprinted form contains a place for only one signature, these families have simply typed onto the form another signature line. See sample form at Appendix B.

83. See "Reverse Side of Application Copy" at Appendix B for a sample of wording of disclaimer language that has been used by some families who have registered.

84. Checks should be made payable to "Secretary of State" and mailed to the address listed in note 79 above.

85. See sample "Certificate of Registration of Unincorporated Nonprofit Association" at Appendix C. The certificate is multi-colored with the gold seal of the State of California attached. Some families have made color copies for each member. A color copy can be reduced in size so that it could easily be carried in a checkbook or purse.

family association.⁸⁶ Relatively simple procedures can be used to reflect these changes.⁸⁷

California's Precedent May Have National Repercussions

The registration procedure being utilized in California has national implications. At least six other states also have laws that provide for the registration of the name of an unincorporated nonprofit association.⁸⁸ Although these statutes are worded virtually identical to California's law, the application forms and fees vary among these states.⁸⁹

Whether the appropriate authorities in these jurisdictions will follow the precedent established by California Secretary of State March Fong Eu remains to be seen.⁹⁰

86. Families should anticipate such changes and provide for a procedure to accommodate them. A family might adopt a rule requiring a simple majority vote of existing members to add a new member to the family association or a two-thirds vote might be required. A rule for expulsion from the association might also be adopted. These rules do not necessarily have to be put into writing, but existing family members should agree on a procedure to expand or contract the membership before a dispute arises.

87. If the family association dissolves or the family wants to alter or cancel its name registration, a new form may be filed with the Secretary of State to notify that office of the change. (Corporations Code, Section 21303)

88. Michigan Compiled Laws Annotated, Section 430.1; New Jersey Revised Statutes, Section 56:2-1; Oregon Revised Statutes, Section 649.020; Virginia Code Annotated, Section 2.1-74; West Virginia Code, Section 35A-1-1; Wisconsin Statutes Annotated, Section Section 132.16.

89. See sample applications from Michigan, New Jersey, Oregon, and Wisconsin at Exhibit D.

90. At least one application has been submitted outside of California. A stepfamily in Troy, Michigan has applied to register in that state. The application is still pending.

APPENDIX A

**Summary of California Statutes
That Use the Term "Family"
in a Substantive Manner**

Code Section	"Family"	"Immediate Family"	Spouse	Parent	Child	Stepparent	Stepchild	Brother/Sister	Grandparent	Grandchild	Aunt/Uncle	Niece/Nephew	Other Relative	Foster Parent/Child	Legal Guardian	Household Member	No Definition	Topic
Penal 422		x	x	x	x								x			x		Terrorist Threats Against Immediate Family Members
Penal 519	x																x	Extortion by threats to Accuse Family of Crime
Penal 653m	x																x	Phone Calls Threatening to Injure Family Member
Penal 693	x																x	Use of Force to Resist Crime to Family Member
Penal 868	x		x	x	x			x							x			Victim's Right to Have Family at Court Hearing
Penal 1000.6	x		x	x									x			x		Domestic Violence Diversion Program
Penal 1000.13	x			x		x		x		x	x		*			x		Child Abuse Diversion Program / * = cousin
Penal 1102.6		x															x	Victim's Right to Have Family at Trial
Penal 1203.04		x															x	Right to Restitution from Convicted Defendant
Penal 3058.8	x																x	Right to Notice of Release of Violent Offender
Penal 4001.1		x															x	Relocation of Family of Witness/Informant
Penal 6231		x															x	Portion of Prisoner's Wages Sent to Prisoner's Family
Penal 6350	x																x	Prison Visitor Services

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Penal 12028.5	x		x	x	x								x			x		Domestic Violence / Taking Firearm from Offender
Penal 12285	x																x	Joint Registration for Guns by Family Living Together
Penal 14206	x																x	Report of Missing Persons by Family Members
Vehicle 233		x															x	Exception to Definition of "Bus"
Vehicle 322		x															x	Exception to Definition of Farm Labor Vehicle
Vehicle 12513	x																x	Driving Permit for Minor if Illness of Family Member
Vehicle 23145.6	x																x	Probation Officer Inquiry to Family Members
Elections 207	x																x	Place of Domicile
Unempl. 2601	x																x	Purpose of Unemployment Insurance Program
Unempl. 15044	x																x	Service Delivery Area Plans
Educat. 37617	x																x	Grouping of Students in Year-Round Program
Educat. 44981		x															x	Bereavement Leave for School District Workers
Educat. 44985		x	x	x	x			x					*					Bereavement / Certified Workers / * = child in-law, relatives living in household

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Educat. 45194		x	x	x	x			x	x	x			*					Bereavement for Classified Workers / * = some in-laws
Educat. 45207		x	x	x	x			x	x	x			*					Personal Necessity for Classified Workers / * = some in-laws
Educat 48604	x																x	Furnishing Residence for Superintendent & Family
Educat. 67360		x	x	x	x	x		x	x	x	x	x	*					No Financial Inducements to Student Athletes / * = Some In-Laws
Educat. 67361		x																Same as Section 67360
Educat. 69621	x																x	Renewing Grants Based On Family Hardships
Educat. 87788		x	x	x	x			x	x	x			*					Comm. College Leave of Absence for Workers / * = Some In-Laws, Relatives
Educat. 87784		x															x	Leaves for Comm. College Workers for Personal Necessity
Educat. 88194		x	x	x	x			x	x	x			*					Bereavement for Comm. College Workers / * = 87788
Educat. 88207		x	x	x	x			x					*					Personal Necessity for Comm. College Workers * = same as 88194
Probate 6540	x		x		x													Family Allowance for Surviving Dependents
Probate 9304	x																x	Exemption from Writ of Attachment for Dependents
Probate 6500	x		x		x													Remaining in Possession of Family Home