

Inheritance Rights of Domestic Partners: A Comparison Between New York and New Jersey Laws

November 13, 2024

By Stephanie Lehman and Jonathan Pollack



Domestic partnerships are legal arrangements between two individuals that grant some of the same rights and benefits as marriage. While domestic partnerships are recognized in many states, inheritance rights can differ greatly depending on the jurisdiction. This article explores the critical differences in inheritance rights for domestic partners under the laws of New York and New Jersey.

Qualifying for Domestic Partnerships

The qualifications for entering into a domestic partnership in New York and New Jersey are largely similar. Generally, both partners must:

- Be residents of the county or city where they are applying.
- Be at least 18 years old.
- Be unmarried and unrelated by blood.
- Be in a close, committed personal relationship for at least six months.
- Not have been in another domestic partnership within the six months prior to applying.

Inheritance Rights in New Jersey

In New Jersey, domestic partners are granted specific inheritance rights if their partner dies *intestate* (without a valid will). The surviving partner's share of the estate depends on several factors:

- If the deceased partner has no children or parents, the surviving partner inherits 100% of the estate.
- If the deceased partner is survived by children who are also the children of the surviving partner, the surviving partner inherits 100% of the estate.
- If the deceased partner has a surviving parent, the surviving partner is entitled to the first 25% of the estate (with a minimum of \$50,000 and a maximum of \$200,000) plus 75% of the remaining estate.
- If either the deceased partner or the surviving partner has a child from another relationship, the surviving partner is entitled to the first 25% of the estate (with the same minimum and maximum) plus 50% of the remaining estate.

Additionally, New Jersey law grants the surviving domestic partner priority to serve as the *legal representative* (administrator) of the deceased partner's estate.

Inheritance Rights in New York

In contrast, New York does not grant inheritance rights to surviving domestic partners if their partner dies *intestate*. Without a will, the deceased partner's assets will be distributed as follows:

- The deceased partner's assets will go to their children, not their partner.
- If there are no children, the assets go to the deceased's partner's surviving parents.
- If they are not survived by children or parents, the assets pass to the deceased partner's siblings.
- In the absence of children, parents, or siblings, the deceased partner's assets may pass to distant relatives, such as nephews or cousins, leaving the surviving partner no share of the estate.

Moreover, a surviving partner in New York does not have the right to serve as the *legal representative* (administrator) of the deceased partner's estate.

For couples in domestic partnerships in New York, comprehensive estate planning is essential. Without a will or other legal instruments, the surviving partner has no legal claim to the deceased partner's assets and no right to act on behalf of the estate.

The Federal Landscape: Domestic Partnerships and Estate Taxes

It is also important to note that the federal government does not recognize domestic partnerships. Unlike married couples, domestic partners do not benefit from the federal estate tax exemption for spouses. As a result, a surviving partner may face estate taxes on any assets they inherit from their deceased partner. Additionally, if a partner inherits a qualified retirement account (such as a 401(k) or IRA), they cannot *roll over* the account into their own retirement account. This limitation can result in significant additional income tax liabilities on inherited retirement funds.

Conclusion

The inheritance rights and legal benefits for domestic partners vary significantly from state to state. In New Jersey, domestic partners are granted certain inheritance rights and legal privileges, including the ability to serve as the estate representative. In contrast, New York provides no automatic inheritance rights or authority over a deceased partner's estate for surviving domestic partners.

Due to these significant differences, domestic partners—especially those in states like New York—should prioritize estate planning. Careful planning ensures that a domestic partner's wishes are clearly outlined, and their surviving partner is appropriately protected. Consulting with an attorney experienced in estate planning and domestic partnerships is essential for navigating these complex legal issues.