

#LOVEWINS: STIMULATING THE INSTITUTION OF PROPERTY RELATIONS FOR SAME-SEX PARTNERS*

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ABSTRACT

Engrained in the 1987 Constitution is the recognition of the need to protect the sanctity of family life and the mandate that the State should endeavor to strengthen the solidarity and development of the family. Pursuant to this, the Family Code was enacted. The law, however, limited the concept of marriage to heterosexual couples, completely excluding the institutions created by same-sex partners from state protection and consequent legal benefits. The equal protection granted by no less than the Constitution and the global clamor for equality in the eyes of the law for same-sex couples puts to question the need to establish a set of rules that would govern the property relations of same-sex couples. This paper provides an assessment of existing legislation and how it fails to address the exigencies arising from same-sex relationships. The paper proposes a legal framework on the establishment of domestic property relations that would give qualified same-sex partners similar property benefits that married partners enjoy. However, to assure the immediate, albeit temporary and variable, protection of their property rights, “legal workarounds” are put forward using contractual agreements that same-sex partners may already enter into, mimicking the intended legislative goal of this legal research.

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“[W]ithout the recognition of all family relationships, equality – the cornerstone of [a] democratic society – is missing; public acknowledgment of private affections, commitments, interdependencies and identities is denied.”

—Alastair Nicholson¹

“[M]illions of LGBT Filipinos all over the country ... are deprived [of] marrying the one they want or the one they love. They are discouraged and stigmatized from pursuing same-sex relationships to begin with. Those who pursue same-sex relationships despite the stigma are deprived of the bundle of rights that flow from a legal recognition of a couple’s relationship - visitation and custody rights, property and successional rights, and other privileges accorded to opposite-sex relationships.”

—Jesus Nicardo Falcis III²

I. INTRODUCTION

People from different parts of the world celebrate the International Day Against Homophobia, Transphobia, and Biphobia (“IDAHOT”) every 17th of May since 2004. This day represents an annual call to lawmakers, the public, and the media for awareness on express and implied discrimination faced by all those who do not conform to the majority’s sexual and gender norms.³ On the other hand, this day also serves as a reminder that despite the numerous concerted activities held by the Lesbian, Gay, Bisexual and Transgender (“LGBT”) community, many countries—including ours—still fail

¹ Alastair Nicholson, *The Changing Concept of Family: The Significance of Recognition and Protection*, 6 AUSTRALASIAN GAY & LESBIAN L.J. 13, 14 (1997).

² Jesus Nicardo Falcis III, Petition for Certiorari and Prohibition, at 9, May 18, 2015. This petition was filed with the Supreme Court, praying for the nullification of portions of Articles 1, 2, 46(4), and 55(6) of the Family Code.

³ See *What is May 17th*, ¶ 3, available at <http://dayagainsthomophobia.org/what-is-may-17th/> (last visited May 17, 2016).

to provide for legitimate ways for members of the LGBT community, especially those who see themselves as being in a same-sex relationship,⁴ to protect their interests.

Same-sex partners, although living happily together, face a very impractical yet *legal* obstacle—an absence of laws that promote and protect their rights as partners, especially as regards property relations. If done right, an effective regime of property relations between qualified same-sex partners will help pave the way to an equitable and less discriminatory Philippine society.

Western countries, such as the United States and member-States of the European Union, have long commenced the journey towards legalizing same-sex relationships. The efforts of these countries began with the recognition that members of the LGBT community may cohabit without the benefit of marriage. In fact, courts in the United States have been confronted with this reality for so long that they themselves felt the need to “disentrench themselves from previous inflexible attitudes about what constitutes a ‘family.’”⁵ The trend, in so far as pursuing recognition of same-sex relationships is concerned, is for members of the LGBT community to resort to court action to assert and defend their rights, just like what Jesus Nicardo Falcis III did when he filed a Petition for *Certiorari* with the Supreme Court assailing the constitutionality of certain provisions of the Family Code.⁶

II. A PROPERTY RELATIONS REGIME AS A GAME CHANGER FOR SAME-SEX PARTNERS

It is the humble aim of this legal research to provide a sound legal framework for any legislation that would give qualified same-sex partners similar property benefits that married heterosexual partners are presently enjoying. Like a *Registered Partnership*,⁷ this legal research will be limited to the establishment of domestic property relations among same-sex partners, leaving other types of benefits, such as the availability and the applicability of the rules

⁴ Social Weather System, *Fourth Quarter 2013 Social Weather Survey*, available at <http://www.sws.org.ph/pr20140214.htm> (last visited Oct. 9, 2015). According to this 2013 SWS survey, 2% of Filipino women and 1% of Filipino men see themselves being in a same-sex relationship.

⁵ Lauren Anderson, Note, *Property Rights of Same-Sex Couples: Toward a New Definition of Family*, 26 J. FAM. L. 357, 372 (1988).

⁶ Falcis, *supra* note 2.

⁷ Based on several laws pertaining to the registration of same-sex unions in European countries, a *Registered Partnership* is defined to have a similar set of rules that mirror heterosexual marriages.

on adoption, succession, insurable interests, next-of-kin rights, among others, as other venues for legal research.

The establishment of a set of rules that would govern the property relations of same-sex couples is the first step in ensuring the equality guaranteed by our Constitution.⁸ Benedicto Panigbatan, in his article published in the Philippine Law Journal, explains that it is not plausible to summarily state that the law is devoid of any intention to govern the properties of same-sex partners.⁹ A cursory reading of our laws, however, would show that there are ambiguities on how the law treats same-sex couples.

The limitation of the scope of this research to property relations among same-sex couples is intended to clarify ambiguities in the law. This will be helpful in case same-sex couples decide to adopt a written agreement to govern their property relations.¹⁰ This legal research offers potential solutions as regards the plethora of dilemmas confronting same-sex partners in their property relations. To further assure the immediate, albeit temporary and variable, protection of their property rights, this research will also provide “legal workarounds” using contractual agreements that same-sex partners may already enter into until a statute is enacted to fully protect their property relations.

To show the feasibility of statutory provisions that may be included in proposed legislation, it is crucial to begin with a discussion of the State’s policy on family and property rights in connection with the legal policy of the Family Code on same-sex partners. An assessment shall then be made with regard to the position of the Philippines in the global roadmap of nations which have already accorded legal recognition to same-sex relations. This will be done by juxtaposing the issues same-sex partners encounter during the existence of their partnership domestically *vis-à-vis* the current and proposed pieces of legislation on same-sex relations in Congress. Consequently, by considering the application of potential remedies available under Philippine law, if any, it would then be clear if the need for legislation for same-sex partners to gain an equal footing in society is more apparent than real.

⁸ CONST. art. III, § 1.

⁹ Benedicto Panigbatan, *Towards Legally Protecting the Property Relations and Parental Rights Same-Sex: Couples in the Philippines: Barriers, Alternatives and Prospects*, 74 PHIL. L.J. 538, 554 (2000).

¹⁰ *See id.* at 554-66.

III. THE FAMILY AND PROPERTY RIGHTS

A cursory reading of the 1987 Constitution and the Family Code will make one realize that there is no concrete definition as to what constitutes a family. A deeper look into relevant provisions, however, will show that the current definition of a family is actually anchored on the concept of *marriage*.

A. Protecting the Sanctity of Family Life

No less than the 1987 Constitution recognizes the need to protect the sanctity of family life,¹¹ as the family is considered the basic building block of our society and the foundation of our nation.¹² The Constitution further mandates that the State should endeavor to strengthen the solidarity and development of the family. This is in recognition of the fact that the family, which is founded on marriage,¹³ plays a big role in the development of its members to be productive members of society.

The Family Code, which was promulgated in 1988 by Former President Corazon Aquino using her legislative powers,¹⁴ primarily limited the concept of marriage to *heterosexual* couples. With this, the family, as an institution, has been limited to those created by “a man and a woman,” completely excluding from state protection and consequent legal benefits the institutions created by same-sex partners.¹⁵

B. Property Relations: A Right and a Tool

Former Solicitor General Florin Hilbay questioned this definition as limiting. He argued that the State should not impose a prescribed form of family structure over another, thereby depriving a different kind of “family” of basic rights and government protections. He stated that:

The term family – the locus of the familiar – is a dynamic concept. As a social unit, it is capable of performing multiple functions beneficial to both society and individuals: it can serve as an economic base, a site of cultural transmission, a platform for performing traditional family responsibilities; etc. One can conceive of many other forms of social organizations that can perform these tasks, which means that the diversity of possible functions for social units

¹¹ CONST. art. II, § 12.

¹² Art. XV, § 1.

¹³ Art. XV, § 2.

¹⁴ CONST. (1986), art. II, § 1.

¹⁵ Panigbatan, *supra* note 9, at 539.

at the lowest level of generality is clearly not exhausted by heterosexual coupling.¹⁶

To help strengthen and develop every family as an institution, the State must focus on improving the basic facets of family life. One of the rights same-sex partners are deprived of is their *property rights*—a fundamental right of every member of society.¹⁷ In the Philippines, the Family Code governs all the “nature, consequences, and incidents of marriage,” including the married couple’s property relations.¹⁸ However, it must be pointed out that the said law failed to consider that even same-sex partners may form relationships and enter into property relations arising therefrom.

Notwithstanding these deficiencies, the Family Code contains provisions regarding the system of property relations governing partners, *whether married or unmarried*, living together as husbands and wives. Aside from stabilizing such unions, and even encouraging unmarried couples to marry, this also shows the intention of the law to extend legal protection to couples, regardless of sex or gender, who are merely cohabiting. Thus, not only is it proper, it is also timely to give effect to such intention in favor of same-sex partnerships by affording them the rights and benefits enjoyed only by other protected social institutions.

IV. CURRENT LEGAL POLICY OF THE FAMILY CODE ON SAME-SEX PARTNERS

The Family Code of the Philippines¹⁹ is the law that defines legal relations between two consenting adults, especially with regard to property relations. It provides for the following legal relationships:

MARRIAGE
COHABITATION BY THOSE QUALIFIED TO MARRY
COHABITATION BY THOSE NOT QUALIFIED TO MARRY

FIGURE 1: LEGAL RELATIONSHIPS

¹⁶ Florin T. Hilbay, *Undoing Marriage*, 34 J. INTEG. BAR PHIL. 73, 79-80 (2009).

¹⁷ Republic v. Reyes-Bakunawa, G.R. No. 180418, 704 SCRA 163, 186, Aug. 28, 2013.

¹⁸ Mallilin v. Jamesolamin, G.R. No. 192718, 751 SCRA 1, 46, Feb. 18, 2015.

¹⁹ Exec. Order No. 209, s. 1987 (1988). The Family Code of the Philippines.

FOUND IN THE FAMILY CODE;²⁰

When looked at from a different angle, this seemingly simple classification actually discriminates against same-sex partners:

OPPOSITE-SEX PARTNERS	SAME-SEX PARTNERS
MARRIAGE	
COHABITATION BY THOSE QUALIFIED TO MARRY	
COHABITATION BY THOSE NOT QUALIFIED TO MARRY	

FIGURE 2: LEGAL RELATIONSHIPS FOUND IN THE FAMILY CODE
 I TS-À-I TS LEGAL RELATIONSHIPS OF SAME-SEX COUPLES

This apparent discrimination between opposite-sex partners and same-sex partners can be gleaned from several provisions in the Family Code.

A. The Provisions

Article 1 of the Family Code defines the system of marriage as a “special contract of permanent union *between a man and a woman* entered into in accordance with law for the establishment of conjugal and family life.”²¹

Article 147 applies to a situation where a *man and a woman* who are both capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage, or under a void marriage. In this setup, the law presumes that all properties acquired during the couple’s actual cohabitation have been obtained through their joint efforts, work, or industry. Thus, under this set-up, the law only provides rules as regards the couple’s property relations, whereas couples cohabiting under a valid marriage are afforded by law more rights and responsibilities.

Article 148 provides a set of rules regarding property relations for partnerships that do not qualify under Article 147. It provides for a

²⁰ Jens Scherpe, *Quo Vadis, Civil Partnership?*, 46 VICTORIA U. WELLINGTON L. REV. 755 (2015).

²¹ FAM. CODE, art. 1. (Emphasis supplied.)

presumption of equal ownership of properties that are proved to be acquired through the joint effort of the partners.

The problem with Article 148 of the Family Code is that it is vaguely worded so as to give rise to the possibility of either including or excluding same-sex partners in its application. This may lead to confusion among same-sex couples, as well as on the part of government agencies, with respect to the manner of distribution of properties owned by same-sex couples when they terminate their cohabitation, such as when one of them dies. The Supreme Court has been relatively silent in defining what kind of relationships fall under Article 148. At most, jurisprudence has applied Article 148 in the following instances: bigamous marriages, adulterous relationships, relationships in a state of concubinage, relationships where both man and woman are married to other persons, and multiple relations entered into by the same married man.²²

It is clear from a cursory reading of these provisions that until there is a clear intent to include same-sex partners in these classifications, there will be a default assumption that the rules found in the Family Code governing common law spouses is only applicable to heterosexual partners and not to same-sex partners.

B. Why Property Relations and Not Marriage (Public Policy Considerations)

Whenever same-sex relationships are tackled, public policy is always mentioned as an important consideration in enacting laws. This legal research advocates for the public policy of protecting the welfare of individuals who are in same-sex partnerships. This should be contrasted with other public policy considerations that seek to protect family relations *vis-à-vis* social constructs of what constitutes a functional family.

To reiterate, the goal of this research is to pave the way towards strengthening the legal relations between same-sex partners because the existence of these partnerships is a reality which society can no longer avoid. Needless to state, the parties thereto are in danger of being deprived of their rightful share in the properties acquired by them during the partnership. This deprivation is caused not because of sheer ignorance of the law or bad faith but because of the inadequacy of the law which fails to give them due consideration.

²² *Cariño v. Cariño*, G.R. No. 132529, 351 SCRA 127, 135, Feb. 2, 2001, *citing* ALICIA SEMPIO-DIY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES 233-4 (1995).

Furthermore, it must be made clear that the goal of this legal research will not in any way destroy the sanctity of marriage as the majority of society perceives it. The recommendations that will be put forth will only be applicable to qualified partners, which will be defined later, and not to individuals who are already enjoying the protections under the Family Code.

V. THE SEVERAL FORMS OF PROPERTY RELATIONS IN THE WORLD

There are several ways by which countries classify same-sex partnerships. Some countries classify them as *Civil Unions* or *Civil Partnerships*, while others classify them as either *Registered* or *Unregistered Partnerships or Cohabitations*.

In Europe, the legal recognition of same-sex relationships are categorized into four main groups, namely: marriage, registered partnership, registered cohabitation, and unregistered cohabitation.

Marriage between same-sex partners grants the same rights, responsibilities and legal recognition given to married opposite-sex partners. A *Registered Partnership* is a regime where same-sex partners are afforded the right to enter their relationship into a formal register, thereby providing them with virtually equivalent status, rights, responsibilities, and legal recognition as that of married partners (with some possible exceptions). This classification is often exclusively open to same-sex partners although some countries have also made the same option available to opposite-sex partners.

A *Registered Cohabitation* is where a number of enumerated rights and responsibilities, and legal recognition are given to partners who register their cohabitation. This classification is oftentimes available to both same-sex and opposite-sex partners, and requires that the partners prove that they have lived together for a determined period of time before they can register. Finally, an *Unregistered Cohabitation* is an arrangement where very limited rights and responsibilities are automatically afforded to individuals involved in a partnership after a specified period of cohabitation. These rights are almost always available to unmarried opposite-sex partners as well.

A. How Denmark Started It All

In 1989, Denmark became the first country in the world to enact a statute allowing same-sex partners to register their partnership. By enacting the

Danish Registered Partnership Act,²³ Denmark has become the benchmark in the field of same-sex partnerships.²⁴

The Danish Registered Partnership Act was initiated in 1984 when the center- and left-wing parties in the Danish Parliament proposed to set up a Commission to study issues faced by homosexuals. The Commission's goal was to propose measures to lessen discrimination with a view towards improving the regulation of homosexual partnerships. On the one hand, the majority of the members of the Commission believed that the problems may be addressed by simply enacting a statute prohibiting discrimination on the basis of sexual orientation. The minority, on the other hand, believed that equality can only be truly obtained if there was formal equality.²⁵

The Act provides that two persons of the same sex may publicly register their partnership.²⁶ Registration requires the fulfillment of conditions similarly imposed on couples seeking to enter into a marriage,²⁷ provided, however, that at least one of the parties is both a Danish citizen *and* is domiciled in Denmark.²⁸

Registered partners are treated as married couples under Danish law.²⁹ Thus, any reference in Danish legislation pertaining to married individuals also applies to registered partners.³⁰ This means that registered partners are obliged to mutually maintain and support each other; that they can use the same property regimes that married couples do; that taxation and social benefits accorded to married individuals also apply to them; and that there is a law-based mutual right of inheritance as between the partners.³¹

The Danish Registered Partnership Act was enacted to promote equality; therefore, the model strives to give equal footing to homosexual and heterosexual couples regardless if they are married or in a registered partnership. As Broberg concludes:

²³ Lov nr. 372 af 7.6.1989 om registreret partnerskab *som ændret ved lov nr. 821 af 19.12.1989*. Act no. 372 of Jun 7, 1989, on registered partnership *as amended by* Act no 821 of Dec. 19, 1989.

²⁴ Morten Broberg, *The Registered Partnership for Same-Sex Couples in Denmark*, 8 CHILD & FAM. L. Q. 149 (1996).

²⁵ *Id.* at 150.

²⁶ § 1.

²⁷ § 2(1).

²⁸ § 2(2).

²⁹ § 3.

³⁰ § 3(2).

³¹ Broberg, *supra* note 24, at 152.

Regardless of the shortcomings which the Act may have and whether or not we as individuals like or dislike the idea of a registered partnership, the fact that it diminishes a rather obvious discrimination between heterosexuals and homosexuals, and recognises that following one's sexual orientation must be considered a human right, means that putting the idea into practice through legislation has much to commend it.³²

B. The Global Topography of Same-Sex Property Relations

At least 34 countries,³³ or around 17% of the world, have formally recognized the concept of same-sex relationships through legislation. In Europe alone, 27 out of 51 countries (53%) recognize some form of legal relationship among same-sex partners.

In Southeast Asia, only the Philippines and Thailand have endeavored proposing legislation on same-sex relationships. This being the case, the Philippines is in a position to lead this region in the creation of a model for same-sex legislation, at least in the aspect of property relations.

VI. HOW FAR IS THE PHILIPPINES FROM THE IDEAL STATE?

A. Philippine Efforts in Institutionalizing Same-Sex Partnerships

1. Same-Sex Property Relations Bill

In 2013, Congressman Edcel Lagman, Jr. introduced House Bill (H.B.) 3179 or the Same Sex Property Relations Act.³⁴ It aspired to cover property relations of same-sex couples living together as partners.³⁵ It proposed a regime of co-ownership between same-sex partners, somehow similar to a Conjugal Partnership of Gains applicable to opposite-sex married individuals. The

³² *Id.* at 155.

³³ Andorra, Argentina, Australia, Austria, Belgium, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Norway, Portugal, San Marino, Slovenia, South Africa, Spain, Sweden, Switzerland, United Kingdom, and Uruguay.

³⁴ H. No. 3179, 16th Cong., 1st Sess. (2013).

³⁵ H. No. 3179, 16th Cong., 1st Sess., § 2 (2013).

proposal sought to enable individuals belonging in the partnership to identify which of their properties would remain part of their exclusive property during the existence of the partnership.³⁶

The proposed legislation addresses an important concern same-sex partners in the country face in their daily lives. It relates to property relations, including the ability to administer their co-owned properties in case of incapacity of the other. However, it fails to address other concerns. These include: tax incentives for qualified dependents; the applicability of governmental benefits, such as those provided by the Social Security System (SSS), Government Service Insurance System (GSIS), Home Development Mutual Fund (Pag-IBIG) and Philippine Health Insurance Corporation (PhilHealth); the applicability of the presumptions as to contributions to co-owned properties; the applicability of the standards to be used in identifying properties that individual partners bring into the partnership; and the applicability of the rules on the constitution of a family home.

2. *Anti-SOGI Discrimination Bill*

In 2015, H.B. 5687 or the Anti SOGI Discrimination Act³⁷ was proposed by the Committee on Women and Gender Equality. This seminal piece of legislation aims to eliminate discriminatory practices based on sex, sexual orientation, or gender identity (“SOGI”) by proscribing and penalizing several discriminatory practices.³⁸

The Anti-SOGI Bill is very similar to the Danish Act, insofar as the former also contains a provision that prohibits discrimination in employment, career opportunities, education, the right to associate with another, professional licensing, use of public services, and law enforcement on the basis of sexual orientation.³⁹

The big difference, however, is that the Danish Act is worded in such a way as to expressly allow same-sex partners to register their partnership, thereby amending the marriage laws of Denmark. In contrast, no express amendment to the Family Code was proposed in the Bill. This may further

³⁶ H. No. 3179, 16th Cong., 1st Sess., §§ 4, 6-7 (2013).

³⁷ H. No. 5687, 16th Cong., 2nd Sess. (2015). This replaced H.B. 101 filed by Cong. Kaka J. Bag-ao, H.B. 342 filed by Cong. Sol Aragonés, H.B. 1230 filed by Cong. Lani Mercado-Revilla, H.B. 1842 filed by Bayan Muna representatives Neri Colmenares and Carlos Zarate, and H.B. 2571 and H.B. 2572 filed by Rep. Sol Aragonés.

³⁸ H. No. 5687, 16th Cong., 2nd Sess., Fact Sheet, Objective (2015).

³⁹ H. No. 5687, 16th Cong., 2nd Sess., § 4 (2015).

result in confusion as the Supreme Court has explained that implied repeals are not favored,⁴⁰ and only exists if two laws are absolutely incompatible and clearly repugnant such that the law subsequently enacted cannot exist without nullifying the prior law.⁴¹

The best argument one could make is as regards Section 4(f) of the bill, which reads:

SEC. 4. *Discriminatory Practices.* – It shall be unlawful for any person, natural or juridical, to:

[...]

(f) deny an application for or revoke a professional or other similar kind of license, clearance certification or any other similar document issued by the government due to the applicant's sexual orientation or gender identity[.]

The problem with arguing that this provision impliedly repeals the Family Code's limitation to marriage as between a man and a woman is that such a reading is inconsistent with the principle of *ejusdem generis*. The principle requires that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include—or to be restricted to—things akin to or resembling, or of the same kind or class as, those specifically mentioned.⁴² Here, the term license can only pertain to a professional type of license or something similar to that. This provision cannot be expected to extend to marriage licenses, which are not, in any way, connected to a professional type of license.

In sum, the Anti-SOGI Discrimination Bill, albeit a welcome addition to Philippine laws, cannot be used to fight for equality as regards protecting the property relations of same-sex partners. At most, it can be used to ensure that same-sex partners can avail of other government benefits and public services.

⁴⁰ *Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service*, G.R. No. 197676, 715 SCRA 293, 308, Feb. 4, 2014.

⁴¹ *Gov't Service Ins. Sys. v. Commission on Audit*, G.R. No. 162372, 658 SCRA 796, 815, Oct. 19, 2011.

⁴² *Liwag v. Happy Glen Loop Homeowners Association, Inc.*, G.R. No. 189755, 675 SCRA 744, 754, July 4, 2012.

B. Issues Same-Sex Partners Face under Existing Laws

At best, same-sex partnerships are presently governed by the rules on joint savings accounts under relevant banking laws and other private contracts, not affecting their dealings with third persons. In more formal situations, same-sex partners may enter into different types of agreements generally governed by the New Civil Code.

In a nutshell, this legal research aims to provide for default property rules that mirror property regimes currently available to married partners (Absolute Community of Property or Conjugal Partnership of Gains) in the absence of a written agreement between same-sex partners while also answering the following questions:

- (a) Who are qualified to avail of these benefits?
- (b) What are the current benefits available to married individuals that can be extended to qualified same-sex partners?
- (c) What presumptions should be present as regards their properties?
- (d) How can this *special* property regime be dissolved?
- (e) What happens after a voluntary or involuntary dissolution?
- (f) How should married individuals be treated if they cohabit with another person of the same sex?

By understanding the issues faced by same-sex partners, the government will be able to enact laws that would help same-sex partners to better govern their property relations, and perhaps afford them rights and benefits pertaining to adoption, succession, taxation, and other aspects of family life.

VII. ALEX AND JERIC

To illustrate the difficulties faced by same-sex partners, let us look at the hypothetical story of Alex and Jeric, both male and of legal age, which will be helpful in understanding the gamut of issues faced by same-sex partners.

Alex is 32 years old and works as a freelance interior designer. He has been in a romantic relationship for more than four years with Jeric, a 28-year-old and working as a junior landscape architect working in a construction firm. While on their annual anniversary trip abroad, the two mutually agreed to formally establish family life, despite the absence of any law allowing same-sex marriage. Together with their friends, the two held a private *wedding* ceremony on their fifth anniversary. On the said day, they also agreed to sign a “marriage contract” that would act as their partnership agreement. The contract stipulated the following terms, among others:

1. All properties, both presently owned and those to be acquired in the future, of both Alex and Jeric shall form part of a pool of properties belonging to the partnership, equally shared, except the following:
 - a. Properties acquired during the marriage, by either partner through gratuitous title, and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator or grantor that said properties form part of the partnership property; and
 - b. Properties for personal and exclusive use of either partner. However, jewelry shall form part of the partnership property;
2. An inventory of properties is attached to this contract for documentation purposes.
3. In case of temporary incapacity or civil interdiction of either partner, the capacitated partner shall have the power of administration over the partnership property.
4. In case of death or permanent incapacity of either partner, the partnership shall be deemed terminated and all the properties shall be divided equally between Alex and Jeric and/or their heirs, if applicable;
5. The other incidents of the partnership shall be governed by the laws on partnerships under the New Civil Code of the Philippines.

To commemorate their wedding, they had their partnership agreement notarized and framed to show the world that they are taking their commitment seriously and with pride.

A. Pool of Partnership Properties

After the marriage of Alex and Jeric, their trusted friend who is an accountant-lawyer gave them an inventory of their properties. Such inventory indicated that the house of Jeric worth 5 million pesos and his liquid assets amounting to 1.25 million pesos, and Alex's car worth PHP 500,000 and his liquid assets worth PHP 750,000 now form part of a single pool of properties. Upon hearing this, Jeric quietly questioned their property regime. He asks himself, "would it have been possible to just contribute equally and keep the other properties as part of the exclusive properties of each partner?"

Fortunately for Alex and Jeric, they had a written agreement as to what will form part of their pool of partnership properties and what will remain as their exclusive properties. But not all stories go as Alex and Jeric's did. Thus, the better question to ask is: "In the absence of a written agreement between same-sex partners, what will then form part of their pool of partnership properties? How will the law treat their properties obtained through joint efforts?"

B. Constitution of a Family Home

Upon arriving home from their one-month European honeymoon, Jeric was surprised to see their house renovated. Without his knowledge, as he was busy preparing for their wedding, Alex contracted some of his office friends to help him execute his wedding surprise—an interior and exterior make-over of their future family home. Alex spent around PHP 500,000 to improve the house's interior design and garden landscape. Alex also commissioned an artist to paint a portrait of them together with their new family home.

Little did Alex and Jeric know, since the house was included in the pool of partnership properties, it could no longer be considered as a family home because under the Family Code, the family home may be constituted on an *unmarried* head of a family's own property.⁴³ Since the property no longer formed part of Jeric's exclusive properties, it can no longer claim the benefits a family home has under the law, such as exemption from execution, forced sale, or attachment to a certain value.⁴⁴

⁴³ FAM. CODE, art. 156.

⁴⁴ Art. 155.

C. Tax Implications

The day after Jeric and Alex posted a photo of the painting of their family home on Facebook, their friends started commissioning them to do house renovations. Using both Jeric's expertise in landscape architecture and Alex's eye for interior design, they agreed to take on projects on a part-time basis under the name of their partnership. As the demand for their services grew, they thought of formalizing their business partnership under the trade name Beautiful and Elegant Kraftsmanship Home Improvements ("BEKHI").

Eighteen months into the business, the partners received mail from the Bureau of Internal Revenue (BIR) informing them that they are remiss in their obligation of filing their annual Income Tax Returns ("ITR") for their partnership. They are now being required to pay their income taxes on the partnership profits amounting to 30% of all their taxable income for the past year. This surprised both of them as they diligently filed their personal ITRs for the past year. Upon consultation with their lawyer-friend, the latter told them that this issue arose due to their creation of a partnership and their subsequent business ventures under the partnership name. They have now come under the radar of the BIR, and must comply with the reportorial requirements under the Tax Code.

The principal problem presented by this scenario is the confusion that a partnership would bring as to the tax responsibilities of same-sex partners. In the regular course of business, a family need not file any ITR with the BIR as regards the composition of the family fund. But since the partnership is registered with the Securities and Exchange Commission (SEC), it must then report to the latter regularly any change in the partnership properties, and correspondingly report to the BIR any income that it may gain during the existence of the partnership.

D. Administration of the Partnership Properties: Revenues, Expenses, Debts, Donations, and Support

Because of the issues that Alex and Jeric suddenly encountered with the BIR, they were able to formulate a series of questions as regards their partnership funds:

1. What are the tax implications of their contributions to the partnership fund? Are these contributions taxable as revenue, or are they tax-exempt for being capital contributions?

2. How will the partners distinguish between expenditures on partnership property and on exclusive property?
3. Will the debt of a partner which redounded to the benefit of the partnership affect the partnership properties?
4. Can the partnership enter into loan agreements payable by partnership property?
5. Can the partnership donate to anyone, including the partners' adopted children?
6. Can a partner demand support from the partnership in case of problems between the partners?

E. Government Benefits: Social Security and Pension

It is necessary to be identified as a legal dependent or beneficiary to enjoy the benefits that the government provides to its citizens. At present, each individual is capacitated to enjoy the benefits of a mutual provident savings system, a provident fund, and a national health insurance program. The services that these institutions provide extend not only to individual members but also to the member's legally acknowledged dependents or beneficiaries.

It is critical to include the discussion of these benefits in this legal research as they supplement the property relations of same-sex partners because the contributions made by a partner affect the properties that form part of the pool of partnership funds.

1. Social Security System (SSS) and the Government Service Insurance System (GSIS)

The SSS aims to further the policy of the State to establish, develop, promote and perfect a sound and viable tax-exempt social security system, suitable to the needs of the people throughout the Philippines. It aims to promote social justice and provide meaningful protection to its members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in the loss of income, or a financial burden. Towards this end, the State endeavors to extend social security

protection to workers and their beneficiaries.⁴⁵ This is made possible by the creation of the SSS, which is a provident fund that consists of voluntary contributions by its members for the payment of benefits to such members or their beneficiaries, subject to rules and regulations.⁴⁶

There are two types of beneficiaries an SSS member can have. First, the *primary beneficiary*, which is limited to the legal spouse, parents, and children. The other is a *secondary beneficiary*, who may be any person, other than the legal spouse, parents and children. Under this framework, primary beneficiaries are able to get continuous monthly pensions after the death of the pensioner while secondary beneficiaries may only enjoy a lump-sum pension for a maximum of 36 months. Noteworthy is the fact that secondary beneficiaries may only claim benefits in the absence of any qualified primary beneficiary.

Despite the distinction, it is notable that same-sex partners may be treated as a secondary beneficiary. The only impediment is if the deceased partner still has a parent or a child still living at the time of death.

The GSIS, on the other hand, aims to improve the social security and insurance benefits of government employees. In essence, it is the counterpart law of the SSS for government officers and employees.

The major difference between the SSS and the GSIS is that the latter does not allow non-relatives to be a beneficiary or dependent of a member. This greatly hampers the establishment of property relations between same-sex partners where either one of the partner works in government, as they cannot name their partner as their beneficiary.

2. *National Health Insurance Act of 2013 (PhilHealth)*

PhilHealth aims to further the policy of the State of adopting an integrated and comprehensive approach to health development that shall endeavor to make essential goods, health, and other social services available to all the people at affordable cost, and to provide free medical care to paupers. Towards this end, the State shall provide comprehensive health care services to all Filipinos through a socialized health insurance program that will prioritize the health care needs of the underprivileged, sick, elderly, persons with

⁴⁵ Rep. Act. No. 1161 (1954), § 2, *amended by* Rep. Act No. 8282 (1997). The Social Security Law.

⁴⁶ § 4(2).

disabilities (“PWDs”), women and children and provide free health care services to indigents.⁴⁷

Like the GSIS, PhilHealth does not allow a non-relative to be a beneficiary or a dependent of a member. Qualified dependents are limited to the legitimate spouse who is not a member; the unmarried and unemployed children, legally adopted or stepchildren below 21 years of age; children who are 21 years old or above but suffering from congenital disability, either physical or mental, or any disability acquired that renders them totally dependent on the member for support; the parents who are 60 years old or above whose monthly income is below an amount to be determined by PhilHealth; and parents with permanent disability that render them totally dependent on the member for subsistence.⁴⁸

3. Home Mutual Development Fund (Pag-IBIG)

In terms of housing, the government created Pag-IBIG, a financial institution involved in mobilizing provident funds primarily for shelter finance.⁴⁹ It aims to further the policy of the State of establishing, developing, promoting, and integrating a nationwide sound and viable tax-exempt mutual provident savings system suitable to the needs of the employed and other earning groups, and to motivate them to better plan and provide for their housing needs, by membership in the Home Development Mutual Fund, with mandatory contribution support of the employers in the spirit of social justice and the pursuit of national development.⁵⁰

Under the law and its Implementing Rules and Regulations, only members and those entitled to support under the Family Code, including heirs as defined in the Civil Code, may avail of the benefits under Pag-IBIG. In case only one of the spouses is earning, a full-time spouse is still eligible to join the program. With these rules, in the case of same-sex partners, a full-time homemaker partner is not eligible to join the program, thus depriving such partner of the housing benefits enjoyed by qualified individuals.

⁴⁷ Rep. Act. No. 7875 (1995), § 2, *amended by* Rep. Act No. 10606 (2013). The National Health Insurance Act of 2013.

⁴⁸ § 4(e).

⁴⁹ Rep. Act. No. 9679 (2009), § 4(h). The Home Development Mutual Fund Law of 2009.

⁵⁰ § 2.

F. Dissolution and Liquidation of the Partnership Fund

Being the idealistic persons Alex and Jeric are, they only foresaw the possibility of dissolving the partnership through the death of either partner. However, during a major fight, Jeric thought of leaving Alex but was stunned when he was hit with this question, “how will the law deal with the distribution of the partnership property if I unilaterally end the partnership?”

Jeric’s concern is but one of the many problems that same-sex partners face as regards the issue of dissolving the partnership. Some of the other issues same-sex partners may also face include:

1. Aside from death of one of the partners, what other circumstances can lead to the dissolution of the partnership?
2. Will the dissolution of the partnership affect creditors?
3. In case of death of a partner, who will then be considered as heirs of the deceased?
4. If one of the partners contract a subsequent same-sex relationship or marriage, will this affect the current partnership?

VII. ADDRESSING THE ISSUES: *FOR NOW* AND *WHAT COULD BE*

There are two ways of resolving the issues faced by Alex and Jeric. *First*, by applying current laws that may be made applicable to same-sex couples. *Second*, by proposing new legislation or amendments to existing laws to enable same-sex partners to manage their property relations.

This portion shall delve into the specific problems as stated in the earlier pages of this paper, together with short-term solutions (“For Now”) and the proposed legislation (“What Could Be”).

A. Treating Property Relations as a Co-Ownership or a Partnership

Aside from arrangements under the Family Code, the Civil Code provides for two types of property relations that can exist between two unmarried individuals: a *Partnership* and a *Co-Ownership*. These relationships, although providing for very similar rights and obligations, differ in their

manner of creation, implementation, and dissolution. These differences matter in understanding the rules which will apply in certain circumstances, and the consequences that may affect same-sex partnerships. To achieve this goal, a distinction must first be made between the two property regimes.

A *co-ownership* exists whenever the ownership of an undivided thing or right belongs to different persons.⁵¹ It is the right of common dominion which two or more persons have in a spiritual part of a thing which is not physically divided.⁵² A *partnership* is an agreement whereby two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.⁵³

1. *Distinction as to the Creation of the Property Regime*

With regard to *creation*, a co-ownership is generally created by law.⁵⁴ It may exist with or without a contract or agreement between the parties. A partnership, on the other hand, requires the consent of the partners, whether express or implied, in its creation.⁵⁵ As to its *purpose*, a co-ownership is created for the common enjoyment of a thing or right,⁵⁶ while the purpose of a partnership is the realization of profits.⁵⁷ In the absence of an agreement, written or not, between the parties to share in the profits, the relationship between them shall be governed by the rules on co-ownership.⁵⁸

Therefore, if Alex and Jeric merely decided to purchase properties, such as a condominium unit or a car, and registered them under their names without any proof of their intention to use these properties to generate profits that they will divide among themselves, the law will consider them as co-owners of such properties. Meanwhile, if Alex and Jeric wanted to establish a

⁵¹ CIVIL CODE, art. 484.

⁵² HECTOR DE LEON & HECTOR DE LEON, JR., COMMENTS AND CASES ON PARTNERSHIP, AGENCY, AND TRUSTS, 46-7 (2010 ed.), *citing* 4 Sanchez Roman 162.

⁵³ CIVIL CODE, art. 1767.

⁵⁴ *See* Arts. 582, 658, 666, 691, 1083, 1775, 2170.

⁵⁵ Art. 1767.

⁵⁶ Art. 486.

⁵⁷ Art. 1767.

⁵⁸ “Intent to divide profits” as a factor in establishing partnership can be inferred from the ruling of the Supreme Court in the case of *Oña v. Comm’r of Internal Revenue*, G.R. No. 19342, May 25, 1972, where it was held that:

[F]or tax purposes, the co-ownership of inherited properties is automatically converted into an unregistered partnership the moment the said common properties and/or the incomes derived therefrom are used as a common fund *with intent to produce profits* for the heirs in proportion to their respective shares in the inheritance[.] (Emphasis supplied.)

partnership, they could formalize their intent to derive profits and share such among themselves in a written “Partnership Agreement.”

In the event that a same-sex couple wanted to put their intention to create a partnership in writing, they must follow certain rules. Generally, partners can put such agreement in a private or public document.⁵⁹ However, in case their agreement consists of real properties, the law requires that such agreement be placed in a public instrument, together with an inventory of their exclusive properties; otherwise, their agreement will be void.⁶⁰ Furthermore, the law requires that such public instrument be registered with the SEC; otherwise, such agreement will not affect the liability of the partnership and its partners as to third persons.⁶¹

2. Distinction as to the Existence of a Separate Juridical Personality

As regards the existence of a *separate juridical personality*, a co-ownership has none while a partnership has its own juridical personality separate and distinct from that of each partner.⁶² By having its own juridical personality, the partnership can enter into contracts and incur obligations in its own name.⁶³ While property relations between married opposite-sex partners do not create a separate juridical entity, this characteristic of a partnership makes it similar to that of a regime of conjugal partnership of gains, insofar as the law treats the conjugal properties liable for obligations incurred by the spouses in favor of the family.⁶⁴

In case same-sex partners agree to form a co-ownership over their properties instead and they subsequently entered into loan agreements under their name, the law will either consider them as jointly or solidarily liable for such obligations, depending on the nature of the contract.⁶⁵ In case of a joint obligation, the partners must settle the obligations using their own properties in proportion to their indebtedness.⁶⁶ In case of a solidary obligation, any of the partners may settle the obligation, with a right to demand from the other partner his or her rightful share in the obligation.⁶⁷

⁵⁹ Art. 1771.

⁶⁰ Art. 1773.

⁶¹ Art. 1772.

⁶² Art. 1768.

⁶³ Art. 46.

⁶⁴ FAM. CODE, art. 121.

⁶⁵ CIVIL CODE, art. 1207.

⁶⁶ Art. 1208.

⁶⁷ Art. 1217.

3. *Distinction as to the Rights and Obligations of the Parties*

In creating a covenant to govern their property relations, same-sex partners definitely want flexibility as regards their rights and obligations over their properties while maintaining a sense of mutual trust and confidence among themselves. Considering that both property regimes allow the fixing of the rights and duties between the partners,⁶⁸ either property regime may be beneficial to same-sex partners. But in case they fail to specify their preferred rules, a careful examination of the default rules on the rights and obligations of parties in the two property regimes will show that the rules on co-ownership are *more beneficial* to same-sex partners.

In a co-ownership, the right of administration and enjoyment of the property is held in common by the co-owners. This means that in case of a same-sex partnership, same-sex couples have the right to use and enjoy their co-owned properties equally. With respect to the administration of the properties, the law requires that the majority of the co-owners who represent the controlling interest decide on the matter.⁶⁹ Thus, in case of disagreement, there being no stipulation as to whose decision shall prevail, the partner who has invested more in a specific property has the power to administer it.

With respect to necessary expenses such as house repairs and groceries, the Civil Code allows a co-owner to demand that co-owners contribute to such expenses.⁷⁰ The consent of the same-sex partners is required to effect any alteration on the co-owned properties.⁷¹ However, if one of the co-owners withholds such consent to the prejudice of the common interest of the co-ownership, the other partner may secure relief from the courts.⁷²

Similar to a co-ownership, parties to a partnership have the right to enjoy specific properties forming part of the partnership as long as such enjoyment is consistent with the purpose for which the partnership had been

⁶⁸ II ARTURO TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 168 (1992); DE LEON & DE LEON, JR., *supra* note 52, at 85.

⁶⁹ CIVIL CODE, art. 492.

⁷⁰ Art. 488.

⁷¹ TOLENTINO, *supra* note 68, at 192. He defined alteration as an “act by virtue of which a co-owner, in opposition to the common agreement, if there is any, or, in the absence thereof, to the tacit agreement of all the co-owners, and violating their will, changes the thing from the state in which the others believe it should remain, or withdraws it from the use to which they desire it to be intended.” It “includes changes in the use from that expressly or tacitly agreed upon by the co-owners” or “that which modifies and limits, and above all, prejudices the condition of the thing or its enjoyment by the others.” (Citations omitted.)

⁷² CIVIL CODE, art. 491.

constituted. Consequently, a partner has no right to possess such property for any other purpose without the consent of his or her partner.⁷³

With respect to administration, the partners are considered agents of the partnership, and an act by any one of them may bind the partnership.⁷⁴ This means that a partner wanting to manage the partnership properties need not ask for the consent of the other. But in case one partner dislikes the acts of administration by the other, the former may make his or her opposition known and, in case of disagreement, the decision of the partner having a controlling interest over the entire partnership, not just over the specific property, will prevail.⁷⁵ This particular difference is a possible source of conflict between same-sex partners, especially if one of the partners is contributing more to the partnership.

Partnership properties answer for necessary expenses. If common assets are not enough, the partners shall be proportionally liable based on their contributions.⁷⁶ In case of alteration of partnership properties, the same set of rules on co-ownership which requires the totality of consent governs.⁷⁷

4. Distinction as to the Duration and Dissolution

The duration and dissolution of the property regime are also important considerations for same-sex partners when they choose the property regime to govern their property relations.

A co-ownership may be dissolved either by an agreement between the parties, such as by partition, or by operation of law, such as by prescription or by destruction of the co-owned property.⁷⁸ Meanwhile, a partnership may be dissolved either by an agreement between the parties,⁷⁹ by operation of law, such as due to the insolvency of a partner,⁸⁰ or by judicial decree, such as when a partner is declared to be insane.⁸¹ The primary difference between the regimes is that the modes of dissolution are more detailed for a partnership than those for a co-ownership. Of note to same-sex couples is the fact that the

⁷³ Art. 1811.

⁷⁴ Art. 1803.

⁷⁵ Art. 1801.

⁷⁶ Art. 1797.

⁷⁷ Art. 1803.

⁷⁸ TOLENTINO, *supra* note 68, at 204.

⁷⁹ CIVIL CODE, art. 1830(1)-(2).

⁸⁰ Art. 1830(3)-(7).

⁸¹ Art. 1830(8).

death of a co-owner does not necessarily dissolve the co-ownership⁸² while the death of a partner results in the dissolution of the partnership, which leads to the liquidation of the partnership properties for distribution.⁸³

Although co-owners may easily agree to dissolve the co-ownership, the co-owner-partners may also agree to prohibit the partition or the dissolution of the co-ownership but only for a maximum period of 10 years. This may be renewed by both parties, thereby limiting their agreement into multiple periods of 10 years. In case one of the co-owner-partners refuses to renew such commitment, the other cannot compel the former to stay in the co-ownership.⁸⁴ On the other hand, a partnership may exist as long as there is no ground for its dissolution.

As regards the *disposal of interests*, co-owners may freely dispose of his or her individual interest in the co-ownership.⁸⁵ On the other hand, a partner may not dispose of his or her individual interest in the partnership so as to make the assignee a partner, unless agreed upon by all of the partners.⁸⁶

As may be gleaned from the above discussion, it is more advantageous for same-sex partners to apply the rules on co-ownership to govern their property relations. Unlike a partnership, where a partner that contributes more to the partnership is favored, rights and benefits in a co-ownership are not dictated by the amount of contributions each party makes.

Fortunately, in the absence of an agreement between the parties to contribute to a common fund with the intent to divide profits among themselves, which is often the case, same-sex partnerships will be governed by the rules on co-ownership.

B. Qualified Same-Sex Partners

A law that will form a bond between two persons, albeit pertaining to property relations alone, must specify who should be allowed to enjoy such benefits. This will help strengthen the property regimes of same-sex partners as it prevents unscrupulous individuals from abusing rights afforded to same-sex couples.

⁸² DE LEON, *supra* note 52, at 47, *citing* *Rodriguez v. Ravilan*, 17 Phil. 63 (1910).

⁸³ CIVIL CODE, art. 1830(5).

⁸⁴ Art. 494.

⁸⁵ Art. 495.

⁸⁶ Arts. 1812, 1814.

In some jurisdictions, like the United States of America and most European countries, laws relating to civil unions or same-sex marriages require, as a minimum, that the individuals entering into such unions must be qualified to marry but are of the same gender.⁸⁷ This includes attaining a certain age that capacitates one to enter into contracts and having the status of *single* or *unmarried*.

1. For now

The applicable law for same-sex partners who want to have a formal agreement on their property regime would be the Law on Co-ownership and the Law on Partnership found primarily in the New Civil Code of the Philippines. Under the Civil Code, the only requirement to enter into contracts is for one to have *legal capacity* or capacity to act. A natural person has legal capacity upon reaching the age of majority,⁸⁸ which is fixed at present at 18 years old,⁸⁹ and without any of the restrictions or limitations.⁹⁰

⁸⁷ See, e.g. CAL. FAM. CODE (2004), § 297. It provides for the following qualifications to capacitate an individual to enter a domestic partnership:

“297. [...]”

(b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division, and, at the time of filing, all of the following requirements are met:

- (1) Both persons have a common residence.
- (2) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.
- (3) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.
- (4) Both persons are at least 18 years of age.
- (5) Either of the following:
 - (A) Both persons are members of the same sex.
 - (B) One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.
- (6) Both persons are capable of consenting to the domestic partnership.” CAL. FAM. CODE, § 297 (2004).

⁸⁸ CIVIL CODE, art. 37.

⁸⁹ FAM. CODE, art. 234.

⁹⁰ CIVIL CODE, arts. 38-39. See also arts. 1327-29.

2. *What could be*

The problem with having legal capacity as the only requirement to enter into a same-sex partnership is that it may be used as a veil to conceal properties that are supposed to form part of a conjugal partnership or community property, but is instead being used to pool a fund separate from an existing marriage. This makes it difficult for the parties to determine which properties should form part of which pool of assets.

It is therefore more appropriate to further require the parties to neither be married nor be a party to another Same-Sex Partnership that has not been terminated, dissolved, or adjudged a nullity. With this, the changing of civil status of those who will enter into a same-sex partnership from '*Single*' to '*Partnered*' is necessary to inform the community that such individual is currently in a same-sex relationship governed by a special property regime. This will also deter persons already in a same-sex relationship from marrying an opposite-sex partner, and confusing the property relations in both unions.

Furthermore, in order to uphold the policy under the Family Code in disallowing incestuous marriages and marriages against public policy, Articles 37 and 39 could serve as a template in determining who should be considered as disqualified from entering into same-sex partnerships:

[Partnerships] between the following are incestuous and void from the beginning, whether relationship between the parties be legitimate or illegitimate:

1. Between ascendants and descendants of any degree; and
2. Between brothers and sisters, whether of the full or half blood.⁹¹

The following [partnerships] shall be void from the beginning for reasons of public policy:

1. Between collateral blood relatives whether legitimate or illegitimate, up to the fourth civil degree;
2. Between step-parents and step-children;
3. Between parents-in-law and children-in-law;
4. Between the adopting parent and the adopted child;

⁹¹ FAM. CODE, art. 37. This article's text was modified to reflect the proposed changes.

5. Between the surviving spouse of the adopting parent and the adopted child;
6. Between the surviving spouse of the adopted child and the adopter;
7. Between an adopted child and a legitimate child of the adopter;
8. Between adopted children of the same adopter; and
9. Between parties where one, with the intention to marry [or enter into a same-sex Partnership] with the other, killed that other person's spouse [or same-sex partner], or his or her own spouse [or same-sex partner].⁹²

In sum, in the absence of any legislation on same-sex property relations, parties must at least have legal capacity to enter into contracts for them to agree on what property regime under the Civil Code should govern their relations. In future legislation, the following may be used as a guide in determining who should be qualified to enter into same-sex property relations:

ARTICLE __. *Qualified Individuals* – A person who meets all of the following requirements is qualified to enter into a Same-Sex Partnership with another qualified individual:

- (a) Must be at least eighteen (18) years of age and is not legally incapacitated to enter into contracts;
- (b) Must neither be married nor is a party to another Same-Sex Partnership that has not been terminated, dissolved, or adjudged a nullity; and
- (c) Must not be otherwise disqualified by law to enter into a Same-Sex Partnership.

C. Pool of Partnership Properties

In a regime of co-ownership, Article 485 of the New Civil Code presumes that co-owners own the co-owned properties in equal shares, in the absence of proof to the contrary. But unlike in a partnership, co-owners must

⁹² Art. 38. This article's text was modified to reflect the proposed changes.

first prove that they co-own the properties before such presumption of equality in share arises.⁹³

Under the Law on Partnership, partners are presumed to own in equal shares the partnership funds, in the absence of any agreement as to contribution and sharing.⁹⁴ As to contribution, the law presumes that there is a Universal Partnership of Profits,⁹⁵ meaning that the only property belonging to the pool are those contributed to it and future acquisitions of the partners.⁹⁶

These rules under Partnerships are actually similar to the property regime of Conjugal Partnership of Gains (“CPG”) under the Family Code. Under the CPG, all properties, except those brought to the conjugal partnership as their own, and those subsequently acquired by both parties, will form part of the conjugal partnership.⁹⁷ This is in stark contrast with the default property regime of Absolute Community of Property (“ACP”), which consists of all properties owned by the spouses at the time of the celebration of the marriage or acquired thereafter.⁹⁸ Although the default contribution rules are different, the rules on sharing and stipulations remain the same.

1. For non

As stated earlier, both property regimes allow the parties to stipulate as to the manner of contribution to and administration of the property pool. To closely mirror the property regime of a CPG, the same-sex couple may incorporate the following stipulation in their contract:

We agree to adopt the rules on (Conjugal Partnership of Gains/ Absolute Community of Property) under the Family Code as the property regime that would govern our property relations insofar as such rules do not violate the law on co-ownership/ partnership.

2. What could be

Couples can now choose between using the regime of an ACP or the regime of a CPG. The system of ACP became the default property regime

⁹³ CIVIL CODE, art. 485.

⁹⁴ See arts. 1790, 1797.

⁹⁵ DE LEON, *supra* note 52, at 77 citing CIVIL CODE, art. 1378. He explains that the reason for this presumption is that “a universal partnership of profits imposes less obligations on the partners, since they preserve the ownership of their separate property.”

⁹⁶ CIVIL CODE, art. 1780.

⁹⁷ FAM. CODE, arts. 106, 109.

⁹⁸ Art. 91.

under the Family Code “[i]n order to make the law realistic and expressive of the real and actual conditions and practice in Filipino families.”⁹⁹ Prior to the Family Code, however, the CPG was the default property regime of married couples.

The author believes that a regime similar to that of a CPG should be used as the default property relations between same-sex partners. Compared to marriage, the proposed legislation on same-sex property relations has no policy in ensuring that persons who enter such property relations would stay in the same for the rest of their lives. This is in consideration of the fact that individuals consider the concept of *cobabitation* as temporary until the couple decides to get married. Furthermore, the rules on Partnership under the Civil Code, which is one of the bases of the temporary solutions offered in this legal research, are almost the same as those under a Conjugal Partnership of Gains regime. It is therefore recommended that the rules on CPG be the basis for the proposed same-sex property relations.¹⁰⁰

D. Constitution of a Family Home

1. *For now*

In case one or both of the partners already owns a house, it would be more beneficial for them to not include the house they will consider as their family abode as part of the partnership properties in order that they may be able to avail of the benefits of a family home under the Family Code. Unfortunately, the partners cannot constitute their family home in a house which they plan to purchase together.

2. *What could be*

It is beneficial to adopt the provisions on a family home¹⁰¹ in the same-sex property regime. This may be done by amending certain articles, such as the constitution of a family home over a house that is part of the partnership property or by including a same-sex partner as a beneficiary of the family home.¹⁰²

⁹⁹ Alicia Sempio-Diy, *Major Changes Introduced by the New Family Code*, 15 J. INTEG. BAR PHIL., 1, 18, (1987).

¹⁰⁰ See Article 7, Chapters I-III of the proposed legislation, Part IX of this work *infra*.

¹⁰¹ FAM. CODE, arts. 152-62.

¹⁰² See Article 13 of the proposed legislation, Part IX of this work *infra*.

E. Tax Implications

1. *For now*

Complications as regards tax laws arise in case the partners agree to enter into a contract of partnership, as the National Internal Revenue Code (NIRC) does not consider a co-ownership as a taxable juridical entity.

In case the couple adopts the laws on partnership, they should not be afraid that their contributions to the common fund shall be taxed as capital contributions, for such do not form part of gross income, and are therefore exempt from taxation. In case the partners use these contributions for the benefit of the partnership, such expenses can be used by the partnership as deductions from gross income for being business expenses.¹⁰³

2. *What could be*

By creating a special property regime for same-sex partners, they will not face the issues described above because their union would not give rise to a taxable juridical entity.

F. Administration of the Partnership Properties: Revenues, Expenses, Debts, Donations, and Support

1. *For now*

In addressing the issue of loan agreements entered into by the same-sex partners, whether individually or jointly, a distinction must be made in case the partners agree to adopt either property regime. In case they adopt the rules on co-ownership, individual debts would not affect the interests of the other partner in the co-owned properties should creditors go after the properties. If the partners want to enter into obligations together, they may either enter into such loan agreements as joint debtors or as solidary debtors, whichever they believe would suit their needs and capability to fulfill the obligation.

On the other hand, if the partners agree to form a partnership, the law allows the partnership to enter loan agreements, as it has its own juridical personality. In case of partnership debts, partnership properties must first be exhausted before individual properties of the partners are charged against.¹⁰⁴ In

¹⁰³ TAX CODE, § 34(A)(1).

¹⁰⁴ CIVIL CODE, art. 1816.

case of individual debts of the partners, the partnership properties are not liable for such debts, but the creditors of the indebted partner have the right to charge the interest of such partner with payment of the unsatisfied amount of such judgment debt.¹⁰⁵ In no case shall the properties of the partnership be subject to attachment or execution for individual debts.¹⁰⁶

As to donations, the laws on partnership do not prohibit a partnership from making a donation, subject to some restrictions under other laws.¹⁰⁷ Therefore, the partners may then donate to their own children, natural or adopted, using partnership funds, without circumventing any law.

Importantly, regardless of whether or not partners are enjoying good relations, they have the right to get support from the partnership, as each has the right to use the partnership property relevant to the purpose of the partnership. The only issue partners may face is that a partner may contest the use of partnership property for the personal use of another partner, as such will not fall under its purposes.

2. What could be

To address some of these issues, the author suggests that the proposed same-sex property regime further adopt the rules under the regime of CPG, and fine tune them to better address the needs of same-sex partners.

For one, there must be a delineation as to what should be charged to the partnership assets, and what should be borne exclusively by the partners. This is to avoid the commingling of assets and liabilities never intended by the parties. But since the agreement is akin to a general partnership, the partners must be held solidarily liable in case the partnership assets are insufficient to answer for partnership debts.¹⁰⁸

G. Government Benefits: Social Security and Pension

1. What could be

Because of the exclusive enumeration of allowed dependents and beneficiaries, same-sex partners are at a disadvantage when it comes to government benefits. This is why amendatory legislation is necessary to include

¹⁰⁵ Art. 1814.

¹⁰⁶ Art. 1811(3).

¹⁰⁷ See, e.g. EJECT. CODE, § 95.

¹⁰⁸ See Article 7, Chapters IV and V of proposed legislation, Part IX of this work *infra*.

same-sex partners as primary beneficiaries or dependents of their members. This does not mean that the state is now recognizing their union as the same as that of a married couple; however, this will elevate same-sex property status to the level of ordinarily married partners.

H. Dissolution and Liquidation of the Partnership Fund

1. *For now*

Tax-wise, it is more advantageous for same-sex partners to enter into a regime of co-ownership. When a partnership is dissolved, the partner's distributive share is subjected first to a final withholding tax of 10%,¹⁰⁹ It is subsequently subjected to estate tax ranging from 5 to up to 20% before being distributed to the heirs. This is because a partner's distributive share is considered as "dividends" of the partnership. On the other hand, the dissolution or partition of co-owned properties and its subsequent distribution to the co-owners are not considered as "dividends" or gains by the co-owners. Therefore, these are exempt from tax.

In case one of the partners in a partnership decides to unilaterally end the partnership in violation of their agreement, the law allows the other partner to claim for damages that arose from the violation.¹¹⁰ In this case, the partner is not bound to stay in the partnership, but is deterred from violating the partnership agreement. In comparison, a co-owner cannot be prohibited from leaving the co-ownership, unless an agreement exists to keep the subject of the co-ownership undivided.

Aside from death and voluntary agreement, a partnership may be dissolved through any of the following modes: by the termination of the definite term or particular undertaking;¹¹¹ by any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in a partnership;¹¹² when a specific thing which a partner had promised to contribute to the partnership perishes before the delivery;¹¹³ by the loss of the thing that was only for its use or enjoyment by the partnership;¹¹⁴ by the

¹⁰⁹ Bureau of Internal Revenue (BIR) Revenue Memo. Circ. No. 73 (2014).

¹¹⁰ CIVIL CODE, art. 1837.

¹¹¹ Art. 1830(1)(a).

¹¹² Art. 1830(3).

¹¹³ Art. 1830(4).

¹¹⁴ Art. 1830(4).

insolvency of any partner or of the partnership;¹¹⁵ by the civil interdiction of any partner;¹¹⁶ or by court decree.¹¹⁷

This means that if same-sex partners agree to enter into a partnership, the insolvency of any one of them ends the partnership. In any case, it must be remembered that both a co-ownership and a partnership are contractual agreements that may be dissolved by the parties by mere consent.

Creditors are more secure in instances where the debtor is a partnership and not individual persons. This is because upon dissolution and during the liquidation of the partnership, creditors are ranked first in the payment of obligations.¹¹⁸ In contrast, creditors are not preferred in a co-ownership, since they are not privy to the contract of co-ownership, unless the obligation of the co-owners to the creditor is secured by the co-owned properties.

2. *What could be*

With so many ways of dissolving a co-ownership or a partnership, it is now easy to simply walk away from an agreement. The integrity of the same-sex relationship is, thus, destroyed. To uphold the state policy of maintaining stable and economically sound partnerships, the dissolution of the partnership must be limited to specific grounds that will protect the State, third persons, and, especially, the individual rights of the partners. The following are recommended to achieve that end.

First, death should be the only mode of dissolving the partnership by operation of law. Civil interdiction or loss of a thing contributed to the partnership should not prohibit same-sex partners from enjoying a continuous relationship together, as the partnership does not rely on the solvency of the partners or the existence of certain things in the partnership.

Second, similar to a marriage, partners should be allowed to legally separate their property relations. Under the Family Code, spouses are prohibited from changing their property relations by mere agreement during the marriage,¹¹⁹ but they may resort to the courts to separate their properties.¹²⁰

¹¹⁵ Art. 1830(6).

¹¹⁶ Art. 1830(7).

¹¹⁷ Art. 1830(8).

¹¹⁸ Art. 1839.

¹¹⁹ FAM. CODE, art. 76.

¹²⁰ See arts. 55-67 and arts. 134-38.

The law should allow same-sex partners to mutually agree to go their separate ways, but the state should safeguard the rights of creditors. The California Family Code, as amended by the California Domestic Partner Rights and Responsibilities Act of 2003, provides for the following requirements in case partners want to terminate the domestic partnership without judicial decree:

Section 299. (a) A domestic partnership may be terminated without filing a proceeding for dissolution of domestic partnership by the filing of a Notice of Termination of Domestic Partnership with the Secretary of State pursuant to this section, provided that all of the following conditions exist at the time of the filing:

- (1) The Notice of Termination of Domestic Partnership is signed by both domestic partners.
- (2) There are no children of the relationship of the parties born before or after registration of the domestic partnership or adopted by the parties after registration of the domestic partnership, and neither of the domestic partners, to their knowledge, is pregnant.
- (3) The domestic partnership is not more than five years in duration.
- (4) Neither party has any interest in real property wherever situated, with the exception of the lease of a residence occupied by either party which satisfies the following requirements:
 - (A) The lease does not include an option to purchase.
 - (B) The lease terminates within one year from the date of filing of the Notice of Termination of Domestic Partnership.
- (5) There are no unpaid obligations in excess of the amount described in paragraph (6) of subdivision (a) of Section 2400, as adjusted by subdivision (b) of Section 2400, incurred by either or both of the parties after registration of the domestic partnership, excluding the amount of any unpaid obligation with respect to an automobile.
- (6) The total fair market value of community property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan, is less than the amount described in paragraph (7) of subdivision (a) of Section 2400, as adjusted by subdivision (b) of Section 2400, and neither party has separate property assets, excluding all encumbrances and automobiles, in excess of that amount.

- (7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities of the community property, and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.
- (8) The parties waive any rights to support by the other domestic partner.
- (9) The parties have read and understand a brochure prepared by the Secretary of State describing the requirements, nature, and effect of terminating a domestic partnership.
- (10) Both parties desire that the domestic partnership be terminated.¹²¹

Simply put, California law requires that both parties agree to dissolve the partnership, and that creditors are secured first by the partners either by the execution of documents setting aside assets for the creditors or by the assumption of liabilities by the partners. Furthermore, the law provides for a six-month gap between the filing of the Notice and the date of effectivity of the termination to allow either or both parties to still withdraw such Notice.¹²²

The six-month grace period will also prove useful in ensuring that the parties have finally decided to push through with the separation. This is similar to the provision under the Family Code where courts allow a grace period of six months before they try cases on legal separation.¹²³

We can also adopt this mode of dissolution but limiting the requirements to ensure that creditors are protected and at the same time, waiving any right of the partners to support from the other. Creditors may be protected by ensuring that partnership assets are enough to pay for the unpaid obligations and that documents have been executed to ensure payment of such obligations, with all of these stated in an affidavit submitted to the Civil Registrar.

Finally, a judicial decree of separation should also be allowed in case either partner commits acts prejudicial to the welfare of the other, like those enumerated as grounds for legal separation in the Family Code. In reality, a

¹²¹ CAL. FAM. CODE (2004), § 299(a).

¹²² § 299(b).

¹²³ FAM. CODE, art. 58.

judicial decree of legal separation ends in the dissolution of the property relations of the spouses, which is also the intention of a judicial decree of separation for same-sex partners. In this light, it is recommended that the rules on legal separation be adopted for same-sex partnerships.¹²⁴

I. Other Considerations

The danger with choosing to enter a co-ownership agreement is that the law does not prohibit same-sex partners from entering into a similar agreement with another person. In contrast, partnership laws are strict as to the creation of multiple partnership contracts. A capitalist partner is prohibited from personally engaging in any operation which is of the kind of business the partnership is engaged in, unless there is a stipulation to the contrary.¹²⁵ Industrial partners, on the other hand, are strictly prohibited from engaging in any business unless the partnership expressly permits him to do so.¹²⁶ In case a capitalist partner violates the rule, profits earned from the latter engagement shall be brought to the partnership, while an industrial partner may be excluded from the firm or may be required to remit the profits from such engagement, subject to a claim for damages in either case.

In the case of same-sex partners, their roles in the partnership are crucial in determining whether they can enter another partnership agreement. If the partner contributes to the partnership by pooling all of his or her earnings to the common fund, he or she cannot enter into another same-sex partnership agreement having the same purpose. If the partner contributes to the partnership using his or her skills, for instance, as a homemaker or as a manager of the businesses, that partner is prohibited from engaging in another partnership agreement, regardless of the nature of the purpose of such partnership.

VIII. CONCLUSION AND RECOMMENDATIONS

The Philippines is indeed a long way far from recognizing same-sex property relations. In the meantime, same-sex partners may enter into contractual agreements that reflect their true intentions in forming their partnership. In crafting these contractual agreements, they must remember that although they are free to agree on the terms they wish, they are limited to

¹²⁴ See Article 10 of proposed legislation, Part IX of this work *infra*.

¹²⁵ CIVIL CODE, art. 1808.

¹²⁶ Art. 1789.

stipulations that are not contrary to law, morals, public policy, and public order.

Fortunately, laws applicable to partnership and co-ownership are viable sources of contractual stipulations sufficient to establish rules and regulations as regards the property relations of same-sex partners in the Philippines. In case same-sex partners fail to put their agreements in writing, the default rules on both co-ownership and partnership are sufficient to protect their basic interests. In the absence, however, of any enabling legislation that would formally recognize same-sex partnerships, same-sex partners are still left at a disadvantage. Should there be confusion, there is no recourse to the courts in enforcing their supposed rights and obligations.

The fight for enabling legislation is not limited to merely finding a way to legitimize and give legal effects, rights, and obligations to same-sex partners. Enabling legislation can give public recognition and acceptance to same-sex partnerships. By declaring that these partnerships are indeed *institutions* on par with marriages, same-sex partners will then be given the equal footing they deserve in our community.

A draft proposal, amending the bill by Congressman Lagman (House Bill 3179), is included in this paper to aid in the legislation of same-sex property relations. It is a compilation of the legal framework of solutions based on the issues in the case of Alex and Jeric.

The establishment of a regime of property relations for same-sex partners is a stepping stone in formalizing same-sex unions in the country. While same-sex marriage is miles away from being a reality—it might not even happen at all in this country—state recognition of same-sex partnerships will greatly curb discrimination, not only verbally but also legally, in the form of government benefits and protection greatly needed by every taxpaying citizen.

Hopefully, Filipinos will see the day when same-sex partners are not just considered important players in society but are also regarded as equals—at least in the realm of property relations, which should look something like this:

OPPOSITE-SEX PARTNERS	SAME-SEX PARTNERS
MARRIAGE	SAME-SEX PARTNERSHIP
COHABITATION UNDER ART. 147 OF THE FAMILY CODE	
COHABITATION UNDER ART. 148 OF THE FAMILY CODE	

FIGURE 3: FINAL PROPOSED FRAMEWORK

IX. RECOMMENDED PROPOSAL LEGISLATION FOR SAME-SEX PROPERTY RELATIONS

AN ACT GOVERNING THE PROPERTY RELATIONS OF SAME-SEX PARTNERS

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

ARTICLE 1. *Title* – This Act shall be known as the “Same-Sex Property Relations Act.”

ARTICLE 2. *Definitions.*

“Partnership” or “Same-Sex Partnership” is a special contract between two individuals of the same sex where they agree to bind themselves in a property regime governed by this Act and other pertinent laws.

“Partnership Agreement” is a written agreement, signed and entered into by the Same-Sex Partners prior to registering their partnership with the Civil Registrar, containing their intended property regime to govern their partnership. Everything stipulated in the agreement in consideration of a future same-sex partnership, including donations between the prospective partners made therein, shall be rendered void if the partnership is not registered. However, stipulations that do not depend upon the registration of the partnership shall be valid.

“Same-Sex Partner” or “Partner” is any person who is a party to a subsisting Same-Sex Partnership.

“Same-Sex Partnership of Gains” is the default property regime between same-sex partners in the absence of any partnership agreement and registered together with the Same-Sex Partnership.

ARTICLE 3. *Qualified Individuals* – A person who meets all of the following requirements is qualified to enter into a Same-Sex Partnership with another qualified individual:

- (a) Must be at least eighteen (18) years of age and is not legally incapacitated to enter into contracts;
- (b) Must be neither married nor a party to another Same-Sex Partnership that has not been terminated, dissolved, or adjudged a nullity; and
- (c) Must not be otherwise disqualified by law to enter into a Same-Sex Partnership.

ARTICLE 4. *Individuals Disqualified to enter into a Same-Sex Partnership.*

SECTION 1. *Incestuous Partnerships.* Same-sex partnerships between the following are incestuous and void from the beginning, whether the relationship between the parties be legitimate or illegitimate:

- (a) Between ascendants and descendants of any degree; and
- (b) Between brothers and sisters, whether of the full or half blood.

SECTION 2. *Void Partnerships for reasons of Public Policy.* The following same-sex partnerships shall likewise be void from the beginning for reasons of public policy:

- (a) Between collateral blood relatives whether legitimate or illegitimate, up to the fourth civil degree;
- (b) Between step-parents and step-children;
- (c) Between parents-in-law and children-in-law;
- (d) Between the adopting parent and the adopted child;
- (e) Between the surviving spouse of the adopting parent and the adopted child;

- (f) Between the surviving spouse of the adopted child and the adopter;
- (g) Between an adopted child and a legitimate child of the adopter;
- (h) Between adopted children of the same adopter; and
- (i) Between parties where one, with the intention to marry or enter into a same-sex partnership with the other, killed that other person's spouse or same-sex partner, or his or her own spouse or same-sex partner.

ARTICLE 5. *Registration of the Same-Sex Partnership* – The Same-Sex Partnership shall be duly registered with the Civil Registrar of the city or municipality where either same-sex partner habitually resides. The date of registration of their partnership shall be deemed to be the date of their actual cohabitation.

ARTICLE 6. *Partnership Agreement* – Future partners may, in a partnership agreement, agree upon the regime of property relations that will govern the partnership. In the absence of a partnership agreement, or when the regime agreed upon is void, the system of Same-Sex Partnership of Gains as established in this Act shall govern.

ARTICLE 7. *Property Regime in the Absence of a Written Agreement*.¹²⁷

¹²⁷ For a shorter version, this Article can be rephrased as:

“**ARTICLE 7.** *Property Regime in the Absence of a Written Agreement.* The regime of Same-Sex Partnership of Gains shall mirror the regime of Conjugal Partnership of Gains found in Title IV, Chapter 4, §§ 1-5 of the Family Code, subject to the exceptions in the succeeding paragraph. Provisions pertaining to marriage shall pertain to same-sex partnerships, and any mention of husband and wife shall pertain to the partners without distinction.

For purposes of same-sex partnerships, Articles 120 and 124 of the Family Code shall be replaced with the following provisions:

Article 120. The ownership of improvements, whether for utility or adornment, made on the separate property of the partners at the expense of the partnership or through the acts or efforts of either or both partners shall pertain to the original owner-partner, subject to reimbursement of the value of the property of the owner-partner at the time of the improvement.

Article 124. The administration and enjoyment of the partnership properties shall belong to both partners jointly.

In the event that one partner is incapacitated or otherwise unable to participate in the administration of the partnership properties, the other partner may assume sole powers of administration. These powers include disposition or encumbrance, subject to the right of the incapacitated or absent partner to reimbursement in case of fraudulent dispositions or encumbrances.”

CHAPTER I. General Provisions

SECTION 1. Under the regime of Same-Sex Partnership of Gains, the partners place in a common fund the proceeds, products, fruits and income from their separate properties, and those acquired by either or both partners through their efforts or by chance, and, upon dissolution of the partnership, the net gains or benefits obtained by either or both partners shall be divided equally between them, unless otherwise agreed in the partnership agreement.

SECTION 2. The provisions on Partnership under the Civil Code shall apply to the Same-Sex Partnership of Gains between the partners in all matters not provided for in this Act that is not in conflict with what is expressly determined by the partners in their partnership agreement.

CHAPTER II. Exclusive Property of each Partner

SECTION 3. The following shall be the exclusive property of each partner:

1. That which is brought to the partnership as his or her own;
2. That which each acquires during the partnership by gratuitous title;
3. That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the partners; and
4. That which is purchased with exclusive money of the partner.

SECTION 4. The partners retain the ownership, possession, administration and enjoyment of their exclusive properties. Either partner may, during the partnership, transfer the administration of his or her exclusive property to the other by means of a public instrument, which shall be recorded in the registry of property of the place where the property is located.

SECTION 5. A partner may mortgage, encumber, alienate or otherwise dispose of his or her exclusive property, without the consent of the other partner, and appear alone in court to litigate with regard to the same.

SECTION 6. The alienation of any exclusive property of a partner administered by the other automatically terminates the administration over such property and the proceeds of the alienation shall be turned over to the owner-partner.

SECTION 7. Property donated or left by will to the partners, jointly and with designation of determinate shares, shall pertain to the donee-partner as his or her own exclusive property, and in the absence of designation, share and share alike, without prejudice to the right of accretion when proper.

If the donations are onerous, the amount of the charges shall be borne by the exclusive property of the donee-partner, whenever they have been advanced by the partnership.

CHAPTER III. Same-Sex Partnership Property

SECTION 8. All property acquired during the partnership, whether the acquisition appears to have been made, contracted or registered in the name of one or both partners, is presumed to be part of the pool of partnership properties unless the contrary is proved.

The following are partnership properties:

- a) Those acquired by onerous title during the partnership at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the partners;
- b) Those obtained from the labor, industry, work or profession of either or both of the partners;
- c) The fruits, natural, industrial, or civil, due or received during the partnership from the common property, as well as the net fruits from the exclusive property of each partner;
- d) The share of either partner in the hidden treasure, which the law awards to the finder or owner of the property where the treasure is found;
- e) Those acquired through occupation;
- f) Livestock existing upon the dissolution of the partnership in excess of the number of each kind brought to the partnership by either partner; and
- g) Those that are acquired by chance, such as winnings from gambling or betting. However, losses therefrom shall be borne exclusively by the loser-partner.

SECTION 9. Property bought on installments paid partly from exclusive funds of either or both partners and partly from partnership funds belongs to the buyer or buyers if full ownership was vested before the partnership and to the partnership if such ownership was vested during the partnership. In either case, the owner or owners shall reimburse any amount advanced by the partnership or by either or both partners upon liquidation of the partnership.

SECTION 10. Whenever an amount or credit payable within a period of time belongs to one of the partners, the sums that may be collected during the partnership in partial payments or by installments on the principal shall be the exclusive property of the partner. However, interests falling due during the partnership on the principal shall belong to the partnership.

SECTION 11. The ownership of improvements, whether for utility or adornment, made on the separate property of the partners at the expense of the partnership or through the acts or efforts of either or both partners shall pertain to the original owner-partner, subject to reimbursement of the value of the property of the owner-partner at the time of the improvement.

CHAPTER IV. Charges Upon and Obligations of the Partnership

SECTION 12. The partnership shall be liable for:

- a) The support of the partners; however, the support of children shall be governed by the provisions of the Family Code on Support;
- b) All debts and obligations contracted during the partnership by the designated administrator-partner for the benefit of the partnership, or by both partners or by one of them with the consent of the other;
- c) Debts and obligations contracted by either partner without the consent of the other to the extent that the partnership may have benefited;
- d) All taxes, liens, charges, and expenses, including major or minor repairs upon the partnership property;
- e) All taxes and expenses for mere preservation made during the partnership for the separate property of either partner;

- f) Expenses to enable either partner to commence or complete a professional, vocational, or other activity for self-improvement;
- g) Ante-partnership debts of either partner insofar as they have redounded to the benefit of the partnership;
- h) Expenses of litigation between the partners unless the suit is found to be groundless.

SECTION 13. If the partnership property is insufficient to cover the foregoing liabilities, the partners shall be solidarily liable for the unpaid balance with their separate properties.

SECTION 14. The payment of personal debts contracted by the partners before or during the partnership shall not be charged to the partnership except insofar as they redounded to the benefit of the partnership.

Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.

However, the payment of personal debts contracted by either partner before the partnership, that of fines and indemnities imposed upon them, as well as the support of children of either partner, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the partner who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such partner shall be charged for what has been paid for the purpose above-mentioned.

SECTION 15. Whatever may be lost during the partnership in any game of chance or in betting, sweepstakes, or any other kind of gambling whether permitted or prohibited by law, shall be borne by the loser and shall not be charged to the partnership but any winnings therefrom shall form part of the partnership property.

CHAPTER V. Administration of the Partnership Property

SECTION 16. The administration and enjoyment of the partnership properties shall belong to both partners jointly.

In the event that one partner is incapacitated or otherwise unable to participate in the administration of the partnership properties, the other partner may assume sole powers of administration. These powers include disposition or

encumbrance, subject to the right of the incapacitated or absent partner to reimbursement in case of fraudulent dispositions or encumbrances.

SECTION 17. Neither partner may donate any partnership property without the consent of the other. However, either partner may, without the consent of the other, make moderate donations from the partnership property for charity or on occasions of partnership rejoicing or distress.

ARTICLE 8. The property regime between partners shall commence at the precise moment that the partnership is registered. Any stipulation, express or implied, for the commencement of the property regime at any other time shall be void.

ARTICLE 9. No waiver of rights, shares and effects of the property regime during the marriage can be made except in case of dissolution of the partnership.

ARTICLE 10. *Dissolution of the Same-Sex Partnership.*

CHAPTER I. General Provisions

SECTION 1. The Same-Sex Partnership terminates:

- (a) Upon the death of either partner;
- (b) After six (6) months from the filing of a Joint Affidavit of Dissolution of the Same-Sex Partnership with the Civil Registrar where the partnership was registered, provided that no notarized notice of revocation of the termination of the partnership is filed with the Civil Registrar; or
- (c) When there is a decree of legal termination of the partnership.

SECTION 2. Upon dissolution of the partnership regime, the following procedure shall apply:

- (1) An inventory shall be prepared, listing separately all the properties of the partnership and the exclusive properties of each partner.
- (2) Amounts advanced by the partnership in payment of personal debts and obligations of either partner shall be credited to the partnership as an asset thereof.

- (3) Each partner shall be reimbursed for the use of his or her exclusive funds in the acquisition of property or for the value of his or her exclusive property, the ownership of which has been vested by law in the partnership.
- (4) The debts and obligations of the partnership shall be paid out of the partnership assets. In case of insufficiency of said assets, the partners shall be solidarily liable for the unpaid balance with their separate properties, in accordance with the provisions of Article 7, Section 12.
- (5) Whatever remains of the exclusive properties of the partners shall thereafter be delivered to each of them.
- (6) Unless the owner had been indemnified from whatever source, the loss or deterioration of movables used for the benefit of the partnership, belonging to either partner, even due to fortuitous event, shall be paid to said partner from the partnership funds, if any.
- (7) The net remainder of the partnership properties shall constitute the profits, which shall be divided equally between the partners, unless a different proportion or division was agreed upon in the partnership agreement or unless there has been a voluntary waiver or forfeiture of such share as provided in this Act.

CHAPTER II. Termination by Death of a Partner.

SECTION 3. Upon the termination of the partnership by death, the partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial settlement proceeding is instituted, the surviving partner shall liquidate the partnership property either judicially or extra-judicially within six months from the death of the deceased partner. If upon the lapse of the six-month period no liquidation is made, any disposition or encumbrance involving the partnership property of the terminated partnership shall be void.

Should the surviving partner contract a subsequent partnership or marriage without complying with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent partnership or marriage.

SECTION 4. Support shall be given to the surviving partner and to the deceased's children, which shall come from the partnership property during the latter's liquidation and until what belongs to them is delivered; but from this shall be deducted that amount received for support which exceeds the fruits or rents pertaining to them.

CHAPTER III. Termination by Joint Affidavit.

SECTION 5. The partnership may be terminated by filing a Joint Affidavit of Dissolution of the Same-Sex Partnership with the Civil Registrar where the partnership was registered, which should comply with the following requirements:

- (a) The Affidavit must be signed by both parties, duly notarized;
- (b) There are no unpaid obligations by the partnership in excess of the partnership properties;
- (c) The parties have executed an agreement on how to divide the partnership assets and the assumption of liabilities of the partnership, and have executed any document necessary to effectuate the agreement;
- (d) The parties waive any right to support by the other partner; and
- (e) Both parties desire to terminate the partnership.

SECTION 6. After the lapse of six (6) months from the filing of the Joint Affidavit of Dissolution of the Same-Sex Partnership with the Civil Registrar, and there being no notarized notice of revocation of the said joint affidavit, the Civil Registrar shall issue an order cancelling the same-sex partnership, with notice to both partners through registered mail.

CHAPTER IV. Termination by Judicial Decree.

SECTION 7. The rules on legal separation under Title II of the Family Code shall be applicable to same-sex partners except for Articles 61 to 63 and Articles 65 to 67.

SECTION 8. If the partners should reconcile during the pendency of the proceedings, a corresponding joint manifestation under oath duly signed by them shall be filed with the court in the

same proceeding for legal termination of the partnership, and the proceedings shall thereby be terminated at whatever stage.

SECTION 9. The reconciliation referred to in the preceding section shall thereby be terminated at whatever stage;

ARTICLE 11. *Amendments to Article 147 of the Family Code* – Article 147 of Executive Order No. 209, as amended, otherwise known as the Family Code of the Philippines, is hereby further amended to read as follows:

“ARTICLE 147. When two persons who are capacitated to marry each other or are likewise qualified to enter into a same-sex partnership, live exclusively with each other as husband and wife or as partners without the benefit of marriage or a registered same-sex partnership or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.”

ARTICLE 12. *Amendments to Article 148 of the Family Code* – Article 148 of Executive Order No. 209, as amended, otherwise known as the

Family Code of the Philippines, is hereby further amended to read as follows:

“ARTICLE 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, or is in a same-sex partnership with another, his or her share in the co-ownership shall accrue to the absolute community, conjugal partnership, or partnership property existing in such valid marriage or registered same-sex partnership. If the party who acted in bad faith is neither validly married to another nor is in a same-sex partnership, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.”

ARTICLE 13. *Amendments to Title V, Chapter 2 (Family Home) of the Family Code* – Articles 152, 154, 156, 158, and 159 of Executive Order No. 209, as amended, otherwise known as the Family Code of the Philippines, is hereby further amended to read as follows:

“ARTICLE 152. The family home, constituted jointly by the husband and the wife, by the same-sex partners, or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated.”

“ARTICLE 154. The beneficiaries of a family home are:

- (1) The husband and wife, same-sex partners, or an unmarried person who is the head of a family; and [...]

“ARTICLE 156. The family home must be part of the properties of the absolute community, conjugal partnership, same-sex partnership, or of the exclusive properties of either spouse or partner with the latter's consent. It may also be constituted by an unmarried head of a family on his or her own property. [...]

“ARTICLE 158. The family home may be sold, alienated, donated, assigned or encumbered by the owner or owners thereof with the written consent of the person constituting the same, the latter's spouse or partner, and a majority of the beneficiaries of legal age. In case of conflict, the court shall decide.”

“ARTICLE 159. The family home shall continue despite the death of one or both spouses or partners, or of the unmarried head of the family for a period of ten years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This rule shall apply regardless of whoever owns the property or constituted the family home.”

ARTICLE 14. *Penal Clause* – The provision on bigamy under Article 349 of the Revised Penal Code shall likewise apply to persons who shall contract a subsequent marriage or same-sex partnership before the former same-sex relationship or marriage has been legally dissolved, or before the absent spouse or partner has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

ARTICLE 15. *Government Benefits* – Partners shall be treated as valid beneficiaries or dependents of their partners under laws that provide for government benefits insofar as having beneficiaries or dependents are concerned.

ARTICLE 16. *Applicability Clause* – The Civil Code of the Philippines, the Family Code, the Rules of Court and other existing laws, insofar as they are not inconsistent with the provisions of this Code, shall be applied suppletorily.

ARTICLE 17. *Separability clause* – If, for any reason, any article or provision of this Code is held to be invalid, the same shall not affect the other articles or provisions hereof.

ARTICLE 18. *Repealing clause* – All laws, proclamations, executive orders, rules and regulations, or any part thereof, inconsistent with provisions of this Code are hereby correspondingly modified or repealed.

ARTICLE 19. *Effectivity* – This Act shall take effect fifteen (15) days after its complete publication in at least two (2) newspapers of national circulation.

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