

Domestic Partner Inheritance Tax Exemption For Real Property



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<http://www.registers.maryland.gov>

Note Regarding Obtaining Legal Advice

The Register of Wills Office is restricted from giving legal advice. The following information is intended to help assist in the preparation of an Affidavit of Domestic Partnership. If you have questions, please consult with an attorney or the Comptroller of Maryland:

Howard County Bar Association

Phone: (410) 313-2035
Fax: (410) 313-2032
Email: hcbaexec@verizon.net
Web: <http://howardcountybar.org/>

Maryland Volunteer Lawyers Service

Office Hours: Monday through Thursday, 9:00 A.M. – 1:00 P.M.
Phone: (410) 547-6537
Fax: (443) 451-4081
Toll Free: (800) 510-0050
Web: <http://www.mvlslaw.org/>

Comptroller of Maryland

Phone: 410-260-7850
Toll Free: 1-800-MD TAXES
Web: <http://www.marylandtaxes.com>

Inheritance Tax Exemption — Domestic Partners

1. What does this law do?

In 2009, the Maryland Legislature passed a law that adds “domestic partner” to the list of family members who are exempt from paying state inheritance tax on certain real property that passes to them from their deceased domestic partner.

This exemption applies only to the *primary residence* the partners held in *joint tenancy* at the time of one partner’s death.

In order to qualify for the exemption, couples should complete an Affidavit of Domestic Partnership to state they are domestic partners. The Affidavit must be signed in front of a notary public and should be kept in a safe place.

2. What is the inheritance tax, and who has to pay it?

The inheritance tax is imposed on the clear value of property that passes from a decedent to some beneficiaries. The tax is levied on property that passes under a will, the intestate laws of succession, and property that passes under a trust, deed, joint ownership, or otherwise. The tax is collected by the Register of Wills located in the county where the decedent either lived or owned property.

Property passing to a child or other lineal descendant, spouse of a child or other lineal descendant, spouse, parent, grandparent, stepchild or stepparent, siblings or a corporation having only certain of these persons as stockholders is exempt from taxation. The tax rate is 10 percent on property passing to other individuals.

3. Does this law exempt domestic partners’ other assets from the inheritance tax?

No. It does, however, provide protection for a couple’s primary residence — if the property is owned as joint tenants — and protects the surviving domestic partner from what can be a substantial inheritance tax bill.

4. What is a domestic partner?

As defined in Maryland statute, a domestic partnership means a relationship between two people (opposite sex or same sex) who are at least 18 years old, are not related to one another, are not married or in a civil union or domestic partnership with someone else, and agree to be in a relationship of mutual interdependence (meaning that each contributes to the maintenance and support of the other and the relationship).

5. How do we prove we are domestic partners?

The Register of Wills is required by law to have documented proof of the domestic partnership.

Valid proof of a domestic partnership is considered to be a properly executed Affidavit of Domestic Partnership supported by two of the documents listed below.

- Joint lease, mortgage or loan
- Designation of one of the individuals as the primary beneficiary on the other's life insurance or retirement plan
- Designation of one of the individuals as the primary beneficiary of the will of the other
- Health care or financial power of attorney granted by one of the individuals to the other
- Joint ownership or lease of a motor vehicle
- Joint checking account, investment or credit card
- Joint renter's or homeowner's insurance
- Coverage on a health insurance policy
- Joint responsibility for child care, such as a guardianship or school documents
- Relationship or cohabitation agreement

6. What is the required Affidavit and where do we get it?

The required Affidavit is a sworn statement signed by both domestic partners prior to the death of either. Section 6-101(b)(1) of the Health-General Article of the Annotated Code of Maryland provides for the Affidavit to be "signed under penalty of perjury by two individuals stating that they have established a domestic partnership." There is no form of domestic partnership provided by the Registers of Wills. As in all matters pertaining to estate planning, consultation with an attorney is recommended.

7. What do I need to do now?

After you have signed the Affidavit of Domestic Partnership, keep it in a safe place along with at least two of the forms of proof listed above in item number 5.