

DOMESTIC PARTNER INHERITANCE TAX EXEMPTION FOR REAL PROPERTY

Informational Guide



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Note Regarding Obtaining Legal Advice

The Office of the Register of Wills is prohibited from giving legal advice. This guide is intended to help you understand the domestic partner inheritance tax exemption, its limited application, and the types of documentation required to qualify. The following information is for informational purposes only and does not constitute or is intended to constitute legal advice. If you have any questions, please call our office or consult with an attorney:

*Howard County Bar Association - 443.574.5018 - www.howardcountybar.org
Maryland Volunteer Lawyers Service - 410.547.6537 - www.mvlslaw.org
Maryland State Bar Association - 410.685.7878 - www.msba.org*

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 as joint tenants 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).

Inheritance Tax Exemption - Domestic Partners

5. How do we prove we are domestic partners?

The Register of Wills may require documented proof of the domestic partnership. Valid proof of a domestic partnership is considered to be either (1) a properly executed Affidavit of Domestic Partnership supported OR (2) any 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 an Affidavit of Domestic Partnership and where do we get it?

An 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 a sample form included in this guide. As in all matters pertaining to estate planning, consultation with an attorney is recommended.

7. What do I do if my property qualifies for the exemption, my partner and I were domestic partners, I have provided two or more of the documents listed above, but the Register of Wills denies my exemption because I do not have an Affidavit of Domestic Partnership?

Call the Office of the Attorney General at 410.576.7293.

8. What do I need to do now?

After you have an executed Affidavit of Domestic Partnership and/or have compiled at least two documents demonstrating proof of partnership from the list above, you should keep those documents in a safe place where relatives could easily find them in the event of a partner's passing.

AFFIDAVIT OF DOMESTIC PARTNERSHIP

The undersigned affiants, _____ and _____, swear or affirm under the penalties of perjury and upon personal knowledge that the following statements are true and correct:

1. That the undersigned affiants have established a domestic partnership with each other.
2. That each one of us is at least 18 years old.
3. That we are not related to each other by blood or marriage within four degrees of consanguinity under the civil law rule.
4. That we are not married to or in a civil union or domestic partnership with any other person.
5. That we share a mutually interdependent personal relationship and we each contribute to the maintenance and support of the other.
6. Attached to this affidavit is evidence of two of the following documents to support our claim that we have established a domestic partnership:

- _____ a. A joint housing lease or joint liability for a mortgage or other loan.
- _____ b. Designation of one domestic partner as the primary beneficiary under a life insurance policy or retirement plan of the other domestic partner.
- _____ c. Designation of one domestic partner as the primary beneficiary under a Will of the other domestic partner.
- _____ d. A durable power of attorney for health care or finances granted by one domestic partner to the other domestic partner.
- _____ e. Joint ownership or lease of a motor vehicle.
- _____ f. A joint checking account, joint investments, or a joint credit account.
- _____ g. A joint renter's or homeowner's insurance policy.
- _____ h. Coverage of one domestic partner under a health insurance policy of the other domestic partner.
- _____ i. Joint responsibility for the care of a child, such as guardianship or school documents.
- _____ j. A relationship or cohabitation contract.

THIS AFFIDAVIT is being executed in order to establish that the undersigned affiants are domestic partners for the purposes of (1) exercising health care facility visitation and medical decision-making rights as provided in Senate Bill 566 (Chapter 590, Acts of Maryland 2008), (2) claiming the exemption from inheritance tax for domestic partners as provided in *Annotated Code of Maryland*, Tax-General Article, Section 7-203(1), and (3) asserting any and all other rights and benefits afforded to domestic partners under Maryland law.

(Name)

(Address)

(Phone number)

(Name)

(Address)

(Phone number)

State of Maryland, County of _____: to wit

I hereby certify that on this ____ day of _____, 202__, before me, a Notary Public for the State and County stated above, personally appeared _____, known to me (or satisfactorily proven) to be the person who signed the foregoing Affidavit of Domestic Partnership and made oath in due form of law under penalties of perjury that the matters and facts set forth above are upon his/her personal knowledge and are true and correct.

Witness my hand and notarial seal.

Notary Public

My commission expires:_____

State of Maryland, County of _____: to wit

I hereby certify that on this ____ day of _____, 202__, before me, a Notary Public for the State and County stated above, personally appeared _____, known to me (or satisfactorily proven) to be the person who signed the foregoing Affidavit of Domestic Partnership and made oath in due form of law under penalties of perjury that the matters and facts set forth above are upon his/her personal knowledge and are true and correct.

Witness my hand and notarial seal.

Notary Public

My commission expires:_____