

DOMESTIC PARTNERS: PROBATE PROCEDURES AND INHERITANCE TAXES IN MARYLAND

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 process of becoming "registered domestic partners" to receive specific benefits under Maryland law, and to understand the domestic partner inheritance tax exemption for jointly owned real property. 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*

Overview

Many Maryland residents live in committed relationships often referred to as domestic partnerships. While these partnerships have many of the same features as a marital relationship, Maryland law has historically provided substantial protections and benefits for spouses and very few for partners. In an effort to ensure our laws better reflect the manner in which individuals choose to bond, whether as domestic partners or married spouses, two important measures have been enacted:

- Most recently, in 2023 the Maryland General Assembly established the creation of a domestic partner registry, for which the Registers of Wills in the state's 24 jurisdictions are responsible. Two domestic partners who become "registered domestic partners" are entitled to important protections and benefits if one dies without a Last Will and Testament and are entitled to a full exemption from the state's inheritance tax, whether one dies with or without a Last Will and Testament.
- In 2009 the Maryland General Assembly enacted a limited exemption to the state's inheritance tax for domestic partners. This exemption applies to the receipt of interest in a joint primary residence only.

Pages 2 and 3 will explain the domestic partnership registry, including how to become registered domestic partners, which benefits the partners will have under Maryland law, and how to terminate a partnership.

Pages 4 and 5 of this Guide will first explain the inheritance tax exemption for jointly owned real property for domestic partners.

Domestic Partnership Registration

1. Who qualifies to register as domestic partners?

To qualify to become registered domestic partners, the partners must affirm they are:

1. At least 18 years of age,
2. The sole domestic partner of the other partner,
3. Not married, and
4. In a committed relationship with the other partner.

2. How do my partner and I become "registered domestic partners?"

1. The two partners must prepare a "Declaration of Domestic Partnership" to be filed with the Register of Wills in the jurisdiction in which they reside.
2. Each partner must state their name, age, home address, and sign the Declaration under the penalties of perjury.
3. The Declaration must also be signed by a Notary Public.
4. The partners must pay a filing fee of \$25 made payable to the Register of Wills.

After providing identification and after review, the Register's office will issue each partner a "Certification of Domestic Partnership," which shall bear the seal and signature of the Register.

3. What are the benefits of becoming "registered domestic partners?"

If one of the partners dies without a Last Will and Testament, meaning they died "intestate," the surviving domestic partner will be treated the same as a surviving spouse as follows:

1. The surviving registered domestic partner will have the same priority to serve as Personal Representative of the estate,
2. The surviving registered domestic partner will be entitled to the \$10,000 spousal allowance, and
3. The surviving registered domestic partner will have the same inheritance rights.

If one of the partners dies **with or without** a Last Will and Testament, the surviving domestic partner is exempt from Maryland inheritance tax. (*For more information on the inheritance tax, see Page 4, Question 2*).

4. How do I terminate my registered domestic partnership?

To terminate a registered domestic partnership, you may choose one of the following:

- **Mutual Consent:** Both parties may file a signed "Declaration of Termination of Domestic Partnership" with the Register. The termination will take effect **6 months** from filing.
- **Termination by One Party:** One party may file a signed "Declaration of Termination of Domestic Partnership" with the Register. That party must sign under the penalties of perjury that they will provide a copy of the Declaration to the non-signing party. The termination will take effect **6 months** from filing.
- **Termination Due to Abandonment:** One party may file a signed "Declaration of Termination of Domestic Partnership" with the Register. That party must sign under the penalties of perjury that they have been abandoned by the other party, have not been in contact with them for at least six months, and will provide a copy of the Declaration to the non-signing party if their location is known. The termination will take effect **immediately**.
- **Marriage:** One party may file a signed "Declaration of Termination of Domestic Partnership" with the Register of Wills and include proof of marriage of one or both parties. The termination will take effect **immediately**.
- **Death:** One party may file a signed "Declaration of Termination of Domestic Partnership" with the Register of Wills and include proof of death of one or both parties. The termination will take effect **immediately**.

5. What happens if I move?

The Registers will maintain a statewide database of all registered domestic partnerships. If you relocate to another jurisdiction in Maryland, you do not need to register again. You may file a Declaration of Termination of Domestic Partnership in a jurisdiction other than the jurisdiction where your partnership was initially registered.

NOTES

FORMS: The "Declaration of Domestic Partnership" and "Declaration of Termination of Domestic Partnership" are available on the Register of Wills website. The "Certification of Domestic Partnership" is a document generated only by the Registers of Wills.

LIMITATION OF BENEFITS: The above-mentioned benefits of being registered domestic partners is finite, meaning there are some benefits for surviving spouses that will not be benefits for a surviving registered domestic partner. Please note that a surviving registered domestic partner does not have the statutory right to file an election for an elective share of the augmented estate of the decedent.

PERSONAL INFORMATION: Registered domestic partnerships are public record, but home addresses and any proof of identification required by the Register are not public record.

NOTE: If you are in a valid registered domestic partnership at the time of one partner's death the surviving partner is fully exempt from the inheritance tax. However, domestic partners who are not in a valid registered domestic partnership may qualify for the following limited exemption for their jointly titled primary residence.

Inheritance Tax Exemption - Domestic Partners

1. What does this law do?

In 2009, the Maryland General Assembly added "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, partners will need two forms of proof of their partnership (see Page 5, Question 5 for examples) or may complete an Affidavit of Domestic Partnership (see Page 6, Question 6 for details).

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 jurisdiction 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, or siblings 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 jointly titled residence 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 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 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.