

MD Inheritance Tax Exemptions – Domestic Partners

By Arnold Sherman

The Maryland Code exempts from inheritance tax all property received by the spouse of a deceased Maryland resident. It also exempts property that passes from a decedent to or for the use of, among others, the decedent's children, grandchildren, the spouse of a child of the decedent, the spouse of a lineal descendant of a child of the decedent and the brother or sister of the decedent.

In an effort to reduce the impact of the inheritance tax on the transfer of assets between domestic partners, Section 7-203(l) of the Tax-General Article of the Annotated Code of Maryland exempts the receipt by the surviving domestic partner of an interest in his or her domestic partners' joint primary residence. To qualify for the exemption, the joint primary residence must be held in joint tenancy by the deceased domestic partner and the surviving domestic partner at the time of the deceased domestic partner's death—and the residence must pass from the deceased domestic partner to or for the use of the surviving domestic partner.

The Maryland Code does not restrict this exemption to same sex couples. Opposite sex couples who satisfy the statutory requirements are also eligible to take advantage of the reduction in the inheritance tax.

To be eligible for the exemption, the surviving domestic partner must provide evidence of the domestic partnership. Evidence of the existence of such a relationship is determined in accordance with the guidelines for domestic partnerships as set forth in Health-General Article of the Annotated Code of Maryland. Section 6-101(b) of the Health-General Article sets out requirements for establishing the existence of a domestic partnership. The surviving domestic partner must provide an affidavit signed under penalty of perjury by both the surviving domestic partner and the deceased domestic partner stating that they have established a domestic partnership. He or she must also present two documents evidencing the domestic partnership; for example, the joint liability of the individuals for a mortgage, lease or loan, the designation of one of the individuals as the primary beneficiary under a life insurance policy on the life of the other individual or under a retirement plan of the other individual, or the designation of one of the individuals as the primary beneficiary of the will of the other individual.

Domestic partners should consider jointly executing, under penalty of perjury, an Affidavit drafted to meet the applicable statutory requirements. Both of them should be prepared to produce any two (2) of the statutory listed evidences of a domestic partnership, including the ones set forth above.

Although this inheritance tax exemption is limited to a primary residence held jointly by domestic partners, the tax savings can be significant. For example, (a) if domestic partners jointly and equally own their primary residence at the time of the death of one of the domestic partners; (b) the surviving domestic partner is the beneficiary of the deceased domestic partner's interest in the primary residence; (c) the primary residence is not encumbered by a mortgage and is valued at \$600,000 as of the date of death of the first domestic partner to die, the inheritance tax savings could be \$30,000 ($\$600,000/2 = \$300,000 \times 10\% = \$30,000$).

The inheritance tax is often one of the biggest liabilities inhibiting a surviving domestic partner from taking under the estate planning documents of the deceased domestic partner. The reduction in the amount of the inheritance tax imposed on the transfer of assets to the surviving joint domestic partner could assist the surviving domestic partner in deciding whether to accept/retain the surviving domestic partner's interest in the primary residence upon the death of the first to die of the two of them.

If their primary residence is not currently owned by the two domestic partners, and they wish to take advantage of this exemption from the inheritance tax, they should consult with counsel regarding the income and gift tax consequences of transferring an interest in a primary residence from one domestic partner to the other prior to any such transfer.

The exemption is limited in scope to jointly-held primary residences. It is, however, an important planning tool which domestic partners (same or opposite sex couples) should review with counsel.