Unmarried Couples Win New Inheritance Rights

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By Lee Carpenter

For more than a decade, the freedom to marry has been available to Maryland's same-sex couples. Those who have approached the altar, the chuppah, or the courthouse and tied the knot enjoy legal benefits that were denied them as domestic partners. These include the right to receive an inheritance if one partner dies without a will, and to avoid Maryland's hefty inheritance tax.

Under the new legislation, these rights are now available to Maryland's *unmarried* couples as well.

By registering as domestic partners, unmarried couples can ensure that if one partner dies without a will, the survivor will be entitled to an inheritance equivalent to what a surviving spouse would receive. This could be as much as the entire estate or a lesser amount for couples who have children from a prior relationship. The surviving partner also has the right to serve as personal representative, or executor, of the deceased partner's estate.

Whether a partner dies with or without a will, this new law exempts the surviving partner from Maryland's 10% inheritance tax on any property received from the deceased partner. The tax normally applies to any bequest left to someone who is not a spouse or close family member. By way of example, a registered couple would save some $30,000.00 in inheritance taxes if one partner died with $300,000.00 in assets, compared with an unmarried couple who had not registered.

The law will also recognize children born to registered domestic partners as the legal descendants of both parents.

Registration Requirements

Beginning October 1, 2023, a couple can register as domestic partners by completing an affidavit with their names and address. Each partner must be at least 18 years old, unmarried, and in no other domestic partnership. The signed and notarized form must then be submitted to the Register of Wills in their county of residence with a $25.00 payment either in person or by mail. A registry is available to same-sex and opposite-sex couples alike.

Once their application is approved, the couple will receive a certificate of domestic partnership. The Registers will all be able to access the records of the other registers, so a couple will be able to move to a different Maryland county without having to re-register.

An unmarried couple who have registered with the state can terminate their partnership in four ways—by the mutual agreement of the partners, by one partner who has been abandoned by the other partner for at least six months, or upon the death or marriage of either partner.

Not a Substitute for Estate Planning

Couples who register should consider taking additional steps to ensure that they are prepared for the unexpected, including the death or disability of a partner. Have an attorney draw up your estate-planning documents, including a will, financial power of attorney, and advance medical directive. Your partner may be your primary beneficiary under your will, but you might want to include gifts to your children, nieces and nephews, or charitable organizations as well. A well-thought-out will also says who inherits and who settles the estate if you and your partner are both deceased.

If your beneficiaries include children, your will could include a trust for their benefit. Placing a child's inheritance into a trust will help ensure that the assets go toward worthwhile purposes, such as college, medical care, or maybe the down payment on a house. A will can also name guardians to look after any children who may be under the age of 18 when both parents are gone.

If you or your partner becomes unable to manage your own finances or medical care, having a power of attorney and advance directive will help ensure that someone you trust is authorized to make these decisions on your behalf.

At a time when fewer people than ever are getting married, and even fewer prepare a will before they die, having the right to register as domestic partners is a huge win for Maryland's unmarried couples. If you and your partner decide to register, be sure to finish the job by having an estate plan prepared to help you navigate some of life's biggest uncertainties.

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