

CHAPTER 599

(Senate Bill 597)

AN ACT concerning

Recordation and Transfer Taxes – Exemptions – Domestic Partners

FOR the purpose of exempting from recordation tax and State and county transfer taxes certain instruments of writing transferring property between domestic partners and former domestic partners under certain circumstances; requiring the submission of certain documents under certain circumstances to qualify for certain exemptions; defining certain terms; providing for the construction of this Act; and generally relating to certain exemptions from recordation and transfer taxes.

BY adding to

Article – Tax – Property
Section 12–101(e–1) through (e–5)
Annotated Code of Maryland
(2007 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Tax – Property
Section 12–108(c) and (d), 13–207(a)(2) and (3), and 13–403
Annotated Code of Maryland
(2007 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – Property

12–101.

(E–1) “DOMESTIC PARTNER” MEANS AN INDIVIDUAL WITH WHOM ANOTHER INDIVIDUAL HAS ESTABLISHED A DOMESTIC PARTNERSHIP.

(E–2) “DOMESTIC PARTNERSHIP” MEANS A RELATIONSHIP BETWEEN TWO INDIVIDUALS WHO:

(1) ARE AT LEAST 18 YEARS OLD;

(2) ARE NOT RELATED TO THE OTHER BY BLOOD OR MARRIAGE WITHIN FOUR DEGREES OF CONSANGUINITY UNDER THE CIVIL LAW RULE;

(3) ARE NOT MARRIED OR A MEMBER OF A CIVIL UNION OR DOMESTIC PARTNERSHIP WITH ANOTHER INDIVIDUAL;

(4) AGREE TO BE IN A RELATIONSHIP OF MUTUAL INTERDEPENDENCE IN WHICH EACH DOMESTIC PARTNER CONTRIBUTES TO THE MAINTENANCE AND SUPPORT OF THE OTHER DOMESTIC PARTNER AND THE RELATIONSHIP, EVEN IF BOTH DOMESTIC PARTNERS ARE NOT REQUIRED TO CONTRIBUTE EQUALLY TO THE RELATIONSHIP; AND

(5) SHARE A COMMON RESIDENCE WHERE BOTH DOMESTIC PARTNERS LIVE, EVEN IF:

~~**(I) ONE DOMESTIC PARTNER LEAVES THE COMMON RESIDENCE ON A SHORT TERM OR LONG TERM BASIS, WITH THE INTENT TO RETURN TO THE COMMON RESIDENCE;**~~

~~**(I)**~~ **(I) ONLY ONE OF THE DOMESTIC PARTNERS HAS THE RIGHT TO LEGAL POSSESSION OF THE COMMON RESIDENCE; OR**

~~**(II)**~~ **(II) ONE OF THE DOMESTIC PARTNERS HAS AN ADDITIONAL RESIDENCE.**

(E-3) "EVIDENCE OF A DOMESTIC PARTNERSHIP" MEANS:

(1) AN AFFIDAVIT SIGNED UNDER PENALTY OF PERJURY BY TWO INDIVIDUALS STATING THAT THEY HAVE ESTABLISHED A DOMESTIC PARTNERSHIP; AND

(2) EVIDENCE OF ANY TWO OF THE FOLLOWING:

(I) JOINT LIABILITY OF THE INDIVIDUALS FOR A MORTGAGE OR OTHER LOAN OR FOR A LEASE;

(II) 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;

(III) THE DESIGNATION OF ONE OF THE INDIVIDUALS AS THE PRIMARY BENEFICIARY OF THE WILL OF THE OTHER INDIVIDUAL;

(IV) A DURABLE POWER OF ATTORNEY FOR HEALTH CARE OR FINANCIAL MANAGEMENT GRANTED BY ONE OF THE INDIVIDUALS TO THE OTHER INDIVIDUAL;

(V) JOINT OWNERSHIP OR LEASE BY THE INDIVIDUALS OF A MOTOR VEHICLE;

(VI) A JOINT CHECKING ACCOUNT, JOINT INVESTMENTS, OR A JOINT CREDIT ACCOUNT;

(VII) A JOINT RENTER'S OR HOMEOWNER'S INSURANCE POLICY;

(VIII) COVERAGE OF ONE OF THE INDIVIDUALS UNDER A HEALTH INSURANCE POLICY OF THE OTHER INDIVIDUAL;

(IX) JOINT RESPONSIBILITY FOR CHILDCARE, SUCH AS SCHOOL DOCUMENTS OR GUARDIANSHIP DOCUMENTS; OR

(X) A RELATIONSHIP OR COHABITATION CONTRACT; ~~OR~~

~~(XI) DOCUMENTATION OF MARRIAGE, CIVIL UNION, OR DOMESTIC PARTNERSHIP ENTERED INTO UNDER THE LAWS OF THE UNITED STATES OR OF ANY STATE, LOCAL, OR FOREIGN JURISDICTION.~~

(E-4) "EVIDENCE OF DISSOLUTION OF A DOMESTIC PARTNERSHIP" MEANS ~~AN AFFIDAVIT SIGNED UNDER PENALTY OF PERJURY BY TWO INDIVIDUALS STATING THAT THEY ARE NO LONGER IN A DOMESTIC PARTNERSHIP;~~

~~(1) EVIDENCE THAT A DOMESTIC PARTNERSHIP HAD PREVIOUSLY EXISTED; AND~~

~~(2) (1) A DEATH CERTIFICATE; OR~~

~~(1) A DEATH CERTIFICATE; OR~~

~~(2) AN AFFIDAVIT SIGNED UNDER PENALTY OF PERJURY BY TWO INDIVIDUALS WHO FORMERLY ESTABLISHED A DOMESTIC PARTNERSHIP STATING THAT THE DOMESTIC PARTNERSHIP HAS BEEN DISSOLVED.~~

(E-5) “FORMER DOMESTIC PARTNER” MEANS AN INDIVIDUAL WITH WHOM ANOTHER INDIVIDUAL HAD ESTABLISHED A DOMESTIC PARTNERSHIP THAT HAS SUBSEQUENTLY BEEN DISSOLVED.

12-108.

(c) (1) When property is transferred subject to a mortgage or deed of trust, the recordation tax does not apply to the principal amount of debt assumed by the transferee, if the instrument of writing transfers the property from the transferor to a:

[(1)] (I) spouse or former spouse;

[(2)] (II) son, daughter, stepson, or stepdaughter;

[(3)] (III) parent or stepparent;

[(4)] (IV) son-in-law, daughter-in-law, stepson-in-law, or stepdaughter-in-law;

[(5)] (V) parent-in-law or stepparent-in-law;

[(6)] (VI) brother, sister, stepbrother, or stepsister; [or]

[(7)] (VII) grandchild or stepgrandchild; **OR**

(VIII) DOMESTIC PARTNER OR FORMER DOMESTIC PARTNER.

(2) (I) **TO QUALIFY AS A DOMESTIC PARTNER UNDER THIS SUBSECTION, AN INDIVIDUAL SHALL SUBMIT EVIDENCE OF A DOMESTIC PARTNERSHIP.**

(II) **TO QUALIFY AS A FORMER DOMESTIC PARTNER UNDER THIS SUBSECTION, AN INDIVIDUAL SHALL SUBMIT EVIDENCE OF DISSOLUTION OF A DOMESTIC PARTNERSHIP.**

(3) THE EXEMPTION UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR TRANSFERS TO A DOMESTIC PARTNER OR FORMER DOMESTIC PARTNER OF THE TRANSFEROR APPLIES ONLY TO AN INSTRUMENT OF WRITING FOR A COMMON RESIDENCE WHERE BOTH DOMESTIC PARTNERS OR FORMER DOMESTIC PARTNERS LIVE OR HAVE LIVED RESIDENTIAL PROPERTY.

(d) (1) An instrument of writing that transfers property between [spouses or former spouses] **THE FOLLOWING INDIVIDUALS** is not subject to recordation tax:

(I) SPOUSES OR FORMER SPOUSES; OR

(II) DOMESTIC PARTNERS OR FORMER DOMESTIC PARTNERS.

(2) (I) TO QUALIFY AS A DOMESTIC PARTNER UNDER THIS SUBSECTION, AN INDIVIDUAL SHALL SUBMIT EVIDENCE OF A DOMESTIC PARTNERSHIP.

(II) TO QUALIFY AS A FORMER DOMESTIC PARTNER UNDER THIS SUBSECTION, AN INDIVIDUAL SHALL SUBMIT EVIDENCE OF DISSOLUTION OF A DOMESTIC PARTNERSHIP.

(3) THE EXEMPTION UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR TRANSFERS BETWEEN DOMESTIC PARTNERS OR FORMER DOMESTIC PARTNERS APPLIES ONLY TO AN INSTRUMENT OF WRITING FOR A COMMON RESIDENCE WHERE BOTH DOMESTIC PARTNERS OR FORMER DOMESTIC PARTNERS LIVE OR HAVE LIVED RESIDENTIAL PROPERTY.

13-207.

(a) An instrument of writing is not subject to transfer tax to the same extent that it is not subject to recordation tax under:

(2) § 12-108(c) of this article (Transfer between relatives AND DOMESTIC PARTNERS);

(3) § 12-108(d) of this article (Transfer between spouses AND DOMESTIC PARTNERS);

13-403.

(A) IN THIS SECTION, “DOMESTIC PARTNER”, “EVIDENCE OF A DOMESTIC PARTNERSHIP”, “EVIDENCE OF DISSOLUTION OF A DOMESTIC PARTNERSHIP”, AND “FORMER DOMESTIC PARTNER” HAVE THE MEANINGS STATED IN § 12-101 OF THIS ARTICLE.

(B) An instrument of writing that transfers property between spouses or former spouses OR BETWEEN DOMESTIC PARTNERS OR FORMER DOMESTIC PARTNERS in accordance with a property settlement [or], divorce decree, OR DISSOLUTION OF A DOMESTIC PARTNERSHIP is not subject to a county transfer tax.

(C) (1) TO QUALIFY AS A DOMESTIC PARTNER UNDER THIS SECTION, AN INDIVIDUAL SHALL SUBMIT EVIDENCE OF A DOMESTIC PARTNERSHIP.

(2) TO QUALIFY AS A FORMER DOMESTIC PARTNER UNDER THIS SECTION, AN INDIVIDUAL SHALL SUBMIT EVIDENCE OF DISSOLUTION OF A DOMESTIC PARTNERSHIP.

(D) THE EXEMPTION UNDER SUBSECTION (B) OF THIS SECTION FOR TRANSFERS BETWEEN DOMESTIC PARTNERS OR FORMER DOMESTIC PARTNERS APPLIES ONLY TO AN INSTRUMENT OF WRITING FOR A COMMON RESIDENCE WHERE BOTH DOMESTIC PARTNERS OR FORMER DOMESTIC PARTNERS LIVE OR HAVE LIVED RESIDENTIAL PROPERTY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to have any effect on § 2-201 of the Family Law Article.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2008.

Approved by the Governor, May 22, 2008.