

CHAPTER 770

DOMESTIC PARTNERSHIP

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770.01 Definitions. In this chapter:

(1) “Domestic partner” means an individual who has signed and filed a declaration of domestic partnership in the office of the register of deeds of the county in which he or she resides.

(2) “Domestic partnership” means the legal relationship that is formed between 2 individuals under this chapter.

History: 2009 a. 28.

Chapter 770 is constitutional based on the presumption of constitutionality, the plaintiffs’ failure to meet the burden of proof, and the evidence reviewed from the drafting and ratification process. The plain language of the amendment prohibits only a status “identical or substantially similar to” marriage, and by implication it does not prohibit what is not identical or substantially similar thereto. There are important statutory distinctions in the way the state treats marriage and domestic partnerships and important differences in the lists of benefits and obligations that inhere in the two types of relationships. *Appling v. Walker*, 2014 WI 96, 358 Wis. 2d 132, 853 N.W.2d 888, 11-1572.

Understanding Domestic Partnerships in Wisconsin. Sweet. Wis. Law. Nov. 2009.

770.05 Criteria for forming a domestic partnership. Subject to s. 770.07 (1) (a), 2 individuals may form a domestic partnership if they satisfy all of the following criteria:

(1) Each individual is at least 18 years old and capable of consenting to the domestic partnership.

(2) Neither individual is married to, or in a domestic partnership with, another individual.

(3) The 2 individuals share a common residence. Two individuals may share a common residence even if any of the following applies:

(a) Only one of the individuals has legal ownership of the residence.

(b) One or both of the individuals have one or more additional residences not shared with the other individual.

(c) One of the individuals leaves the common residence with the intent to return.

(4) The 2 individuals are not nearer of kin to each other than 2nd cousins, whether of the whole or half blood or by adoption.

(5) The individuals are members of the same sex.

History: 2009 a. 28; 2017 a. 59.

770.07 Application and declaration. (1) (a) To form a domestic partnership, individuals must apply on or after the 31st day beginning after July 1, 2009, but no later than April 1, 2018, for a declaration of domestic partnership to the county clerk of the county in which at least one of the individuals has resided for at least 30 days immediately before applying.

(b) 1. Except as provided in subd. 2., the county clerk may not issue a declaration of domestic partnership until at least 5 days after receiving the application for the declaration of domestic partnership.

2. The county clerk may, at his or her discretion, issue a declaration of domestic partnership less than 5 days after application if the applicant pays an additional fee of not more than \$25 to cover any increased processing cost incurred by the county. The county clerk shall pay this fee into the county treasury.

(c) No declaration of domestic partnership may be issued unless the application for it is subscribed to by the parties intending

to form the domestic partnership; it contains the social security number of each party who has a social security number; and it is filed with the clerk who issues the declaration of domestic partnership.

(d) 1. Each party shall present satisfactory, documentary proof of identification and residence and shall swear, or affirm, to the application before the clerk who is to issue the declaration of domestic partnership. In addition to the social security number of each party who has a social security number, the application shall contain such informational items as the state registrar of vital statistics directs. The portion of the application form that is collected for statistical purposes only shall indicate that the address of an applicant may be provided by a county clerk to a law enforcement officer under the conditions specified under s. 770.18 (2).

2. Each applicant shall exhibit to the clerk a certified copy of a birth record, and each applicant shall submit a copy of any judgment, certificate of termination of domestic partnership, or death certificate affecting the domestic partnership status. If any applicable birth certificate, death certificate, notice of termination of domestic partnership, or judgment is unobtainable, other satisfactory documentary proof may be presented instead. Whenever the clerk is not satisfied with the documentary proof presented, he or she shall submit the proof, for an opinion as to its sufficiency, to a judge of a court of record in the county of application.

(2) If sub. (1) and s. 770.05 are complied with, the county clerk shall issue a declaration of domestic partnership. With each declaration of domestic partnership the county clerk shall provide information describing the causes and effects of fetal alcohol syndrome and the dangers to a fetus from the mother’s use of cocaine or other drugs during pregnancy. After the application for the declaration of domestic partnership is filed, the clerk shall, upon the sworn statement of either of the applicants, correct any erroneous, false, or insufficient statement in the application that comes to the clerk’s attention and shall notify the other applicant of the correction, as soon as reasonably possible.

(3) No county clerk may issue a declaration of domestic partnership to individuals who apply after April 1, 2018.

History: 2009 a. 28; 2015 a. 162; 2017 a. 59, 334.

770.10 Completion and filing of declaration. In order to form the legal status of domestic partners, the individuals shall, within 30 days after the clerk issues a declaration of domestic partnership under s. 770.07 (2), complete the declaration of domestic partnership, sign the declaration, having their signatures acknowledged before a notary, and submit the declaration to the register of deeds of the county in which they reside. The register of deeds shall record the declaration and forward the original to the state registrar of vital records.

History: 2009 a. 28; 2015 a. 162; 2017 a. 334.

770.12 Terminating a domestic partnership. (1) (a) A domestic partner may terminate the domestic partnership by filing a completed notice of termination of domestic partnership form with the county clerk who issued the declaration of domes-

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tic partnership and paying the fee under s. 770.17. The notice must be signed by one or both domestic partners and notarized.

(b) If the notice under par. (a) is signed by only one of the domestic partners, that individual must also file with the county clerk an affidavit stating either of the following:

1. That the other domestic partner has been served in writing, in the manner provided under s. 801.11, that a notice of termination of domestic partnership is being filed with the county clerk.

2. That the domestic partner seeking termination has been unable to locate the other domestic partner after making reasonable efforts and that notice to the other domestic partner has been made by publication as provided in sub. (2).

(2) If a domestic partner who is seeking to terminate the domestic partnership is unable to find the other domestic partner after making reasonable efforts, the domestic partner seeking termination may provide notice by publication in a newspaper of general circulation in the county in which the residence most recently shared by the domestic partners is located. The notice need not be published more than one time.

(3) Upon receiving a completed, signed, and notarized notice of termination of domestic partnership, the affidavit under sub. (1) (b) if required, and the fee under s. 770.17, the county clerk shall issue to the domestic partner filing the notice of termination a certificate of termination of domestic partnership. The domestic partner shall submit the record of termination of domestic partnership to the register of deeds of the county in which the declaration of domestic partnership is recorded. The register of deeds shall record the record and forward the original to the state registrar of vital records.

(4) (a) Except as provided in par. (b), the termination of a domestic partnership is effective 90 days after the certificate of termination of domestic partnership is recorded under sub. (3).

(b) If a party to a domestic partnership enters into a marriage that is recognized as valid in this state, the domestic partnership is automatically terminated on the date of the marriage.

History: 2009 a. 28; 2017 a. 334.

770.15 Forms. (1) The application and declaration of domestic partnership under s. 770.07 and the notice of termination of domestic partnership and certificate of termination of domestic partnership under s. 770.12 shall contain such information as the state registrar of vital statistics determines is necessary. The form for the declaration of domestic partnership shall require both individuals forming a domestic partnership to sign the form and attest to satisfying all of the criteria under s. 770.05 (1) to (5).

(2) The state registrar of vital statistics shall prepare the forms under sub. (1) and distribute the forms in sufficient quantities to each county clerk.

History: 2009 a. 28.

770.17 Fees to county clerk. Each county clerk shall receive as a fee for each declaration of domestic partnership issued and for each certificate of termination of domestic partnership issued the same amount that the clerk receives for issuing a marriage license under s. 765.15. Of the amount that the clerk receives under this section, the clerk shall pay into the state treasury the same amount that the clerk pays into the state treasury from the fee collected for issuing a marriage license. The remainder shall become a part of the funds of the county.

History: 2009 a. 28; 2013 a. 20.

770.18 Records. (1) The county clerk shall keep among the records in the office a suitable book called the declaration of domestic partnership docket and shall enter therein a complete record of the applications for and the issuing of all declarations of domestic partnership, and of all other matters which the clerk is required by this chapter to ascertain related to the rights of any person to obtain a declaration of domestic partnership. An application may be recorded by entering into the docket the completed application form, with any portion collected only for statistical purposes removed. The declaration of domestic partnership docket shall be open for public inspection or examination at all times during office hours.

(2) A county clerk may provide the name of a declaration of domestic partnership applicant and, from the portion of the application form that is collected for statistical purposes, as specified under sub. (1), may provide the address of the declaration of domestic partnership applicant to a law enforcement officer, as defined in s. 51.01 (11). A county clerk shall provide the name and, if it is available, the address, to a law enforcement officer who requests, in writing, the name and address for the performance of an investigation or the service of a warrant. If a county clerk has not destroyed the portion of the declaration of domestic partnership application form that is collected for statistical purposes, he or she shall keep the information on the portion confidential, except as authorized under this subsection. If a written request is made by a law enforcement officer under this subsection, the county clerk shall keep the request with the declaration of domestic partnership application form. If the county clerk destroys the declaration of domestic partnership application form, he or she shall also destroy the written request.

History: 2009 a. 28.