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Marriage NO, Civil Union YES (2001)

Despite vehement protest from the CDU/CSU, and against the vote of the FDP, the Red-Green coalition pushed through a law that aimed to end discrimination against same-sex couples. The protection of marriage and the family was pitted against the desire for greater equality. A compromise led to the introduction of a new legal institution, the “registered partnership,” which allows for rights and obligations similar to those in marriage.

Law on Registered Life Partnerships

Chapter 1: Formation of Life Partnerships

Paragraph 1

Form and Requirements

(1) Two persons of the same sex form a Life Partnership when they make a mutual declaration in person, and in the presence of the other partner, that they wish to live in partnership with each other for life (Life Partners). The declarations cannot not be subject to any condition or time limitation. The declarations become effective when made before the competent authorities.

(2) A valid Life Partnership cannot be formed

1. with a minor or a married person or a person who is already in another Life Partnership;
2. between persons who are directly related to each other;
3. between full or half-siblings;
4. if the Life Partners agree, at the time of the formation of the Life Partnership, that they do not want to enter into any obligation pursuant to Paragraph 2.

(3) The formation of a Life Partnership cannot be sued for on the basis of a promise to form a Life Partnership. Paragraph 1297, Section 2, and Paragraphs 1298 to 1302 of the German Civil Code (BGB) shall apply accordingly.

Chapter 2: Effects of the Life Partnership

Paragraph 2

Life Partnership Community

The Life Partners are obligated to care for and support each other and to forge a common life. They bear mutual responsibility for each other.

Paragraph 3

Life Partnership Surname

(1) The Life Partners may choose a common surname (Life Partnership Surname). The Life Partners, by declaration, may choose as their Life Partnership Surname the surname of one of the Life Partners at birth or at the time of the declaration concerning the determination of the Life Partnership Surname. The declaration concerning the determination of the Life Partnership Surname shall be made at the time of the formation of the Life Partnership. The declarations become effective when made before the competent authorities. Any declaration made at a later date must be publicly certified in order to be valid.

(2) A Life Partner whose surname does not become the Life Partnership Surname may add, by declaration, his or her surname at birth or at the time of the declaration concerning the determination of the Life Partnership Surname as a prefix or suffix. This shall not apply if the Life Partnership Surname consists of several names. If the surname of the Life Partner consists of several surnames, only one of these surnames may be added. The declaration becomes effective when made before the competent authorities. The declaration may be revoked; in this case, another declaration as described in Sentence 1 shall not be permitted. The declaration and the revocation must be publicly certified.

(3) A Life Partner shall retain the Life Partnership Surname even after the end of the Life Partnership. He or she may, by declaration, re-assume his or her surname at birth or up to the time of the determination of the Life Partnership Surname, or add to the Life Partnership Surname as a prefix or suffix his or her surname at birth or up to the time of the determination of the Life Partnership Surname. Section 2 shall apply accordingly.

(4) The surname at birth is the surname that appears on the birth certificate of a Life Partner at the time of the declaration as described in Sections 1 to 3.

(5) For Life Partners who formed a Life Partnership before February 12, 2005, Article 229 of Paragraph 13 of the Introductory Law to the German Civil Code applies, with the proviso that the declaration is made before the authorities that are possessed of the relevant competence under the law of the respective German federal state.

Paragraph 4
Scope of the Duty of Care

In fulfilling the obligations arising from the Life Partnership relationship, the Life Partners are responsible for providing each other only with the level of care that each would exercise in his or her own affairs.

Paragraph 5
Obligation to Support the Life Partnership

The Life Partners are mutually obligated to provide equitable support to the Life Partnership by contributing their work and their assets. Paragraph 1360, Sentence 2, and Paragraphs 1360a and 1360b of the German Civil Code, as well as Paragraph 16, Section 2, shall apply accordingly.

Paragraph 6
Property Regime

The property regime formed by the Life Partners is a community of accrued gain, unless they agree otherwise in a Life Partnership Contract (Paragraph 7). Paragraph 1363, Section 2, and Paragraphs 1364 to 1390 of the German Civil Code shall apply accordingly.

Paragraph 7
Life Partnership Contract

The Life Partners may regulate their property regime by means of a contract (Life Partnership Contract). Paragraphs 1409 to 1563 of the German Civil Code shall apply accordingly.

Paragraph 8
Other Property Law Effects

(1) For the benefit of the creditor of one of the Life Partners, it shall be presumed that movable property in the possession of one Life Partner or both Life Partners belongs to the debtor. Otherwise, Paragraph 1362, Section 1, Sentences 2 and 3, and Section 2 of the German Civil Code shall apply accordingly.

(2) Paragraph 1357 of the German Civil Code shall apply accordingly.

Paragraph 9
Regulations Pertaining to the Children of a Life Partner

(1) If a parent with sole custody of a child forms a Life Partnership, his or her Life Partner is authorized, with the agreement of the custodial parent, to make decisions regarding the child's

daily life. Paragraph 1629, Section 2, Sentence 1, of the German Civil Code shall apply accordingly.

(2) In cases of clear and present danger, the Life Partner is authorized to make the legal decisions necessary to ensure the well-being of the child; the custodial parent is to be informed of this without delay.

(3) The Family Court can restrict or prohibit the authorization described in Section 1 if this is necessary for the well-being of the child.

(4) The authorization described in Section 1 does not apply if the Life Partners live apart on a permanent basis.

(5) The Life Partner who has sole custody of an unmarried child or joint custody with the other parent may, together with his or her Life Partner, give their Life Partnership Surname to the child living in their common household by declaration before the competent authority. Paragraph 1618, Sentences 2 to 6, of the German Civil Law shall apply accordingly.

(6) If one Life Partner adopts a child alone, the consent of the other Life Partner is necessary. Paragraph 1749, Section 1, Sentences 2 and 3, as well as Section 3 of the German Civil Code shall apply accordingly.

(7) A Life Partner may adopt a child of his or her Life Partner alone. [. . .]

Paragraph 10 Inheritance Law

(1) The surviving Life Partner of the testator is legal heir to a quarter of the estate alongside relatives of the first degree, and to half of the estate alongside relatives of the second degree or grandparents. If grandparents and descendants of grandparents coincide, the Life Partner also receives the part of the other half that would have gone to the descendants in accordance with Paragraph 1926 of the German Civil Law. Additionally, he or she has the right to keep as an advance the contents of the Life Partnership household, unless they are appurtenances to land, and gifts received when the civil partnership was formed. If the surviving Life Partner is legal heir alongside relatives of the first degree, then he or she is entitled to keep the advance only insofar as it is required to maintain an adequate household. [. . .]

(2) If the deceased Life Partner had neither relatives of the first or second degree nor grandparents, the surviving Life Partner inherits the totality of the estate. If at the time of the testator's death the Life Partner maintained a property regime of separate estate, and if, in addition to the surviving Life Partner, one or two children of the deceased are legal heirs, the surviving Life Partner and each child inherit equal shares; Paragraph 1924, Section 3, of the German Civil Code shall apply also in this case.

(3) The surviving Life Partner has no right to inheritance if at the time of the testator's death,
1. the conditions for the termination of the Life Partnership as described in Paragraph 15, Section 2, Nos. 1 or 2, were met and the testator had demanded or agreed to the termination, or
2. the testator had filed a petition as described in Paragraph 15, Section 2, No. 3, and this petition was justified.

In these cases, Paragraph 16 shall apply accordingly.

(4) Life partners have the right to establish a common will. Paragraphs 2266 to 2272 of the German Civil Code shall apply accordingly. [. . .]

Paragraph 11

Other Effects of the Life Partnership

(1) One Life Partner shall be deemed a member of the family of the other Life Partner except as otherwise provided for.

(2) The relatives of one Life Partner shall be deemed in-laws of the other Life Partner. The line and degree of the relationship shall be determined according to the line and degree of the relationship through which it is mediated. The relationship shall continue even if the Life Partnership on which it was based has been dissolved.

Chapter 3: Separation of the Life Partners

[. . .]

Chapter 4: Termination of the Life Partnership

Paragraph 15

Termination of the Life Partnership

(1) The Life Partnership can be terminated by court order upon petition by one or both Life Partners.

(2) The court shall terminate the Life Partnership if

1. the Life Partners have been living apart for one year and
 - a) both Life Partners petition for termination or the respondent consents to the termination or
 - b) it cannot be expected that the Life Partnership can be re-established,
2. one Life Partner petitions for termination and the Life Partners have been living apart for three years,
3. the continuation of the Life Partnership would pose an unreasonable hardship to the petitioner for reasons that lie in the person of the other Life Partner.

The court shall furthermore terminate the Life Partnership if one of the Life Partners exhibited a lack of will in the sense of Paragraph 1314, Section 2, Nos. 1 to 4, of the German Civil Code; Paragraph 1316, Section 1, No. 2, of the German Civil Code shall apply accordingly.

(3) The Life Partnership shall not be terminated under Section 2, Sentence 1, even though the Life Partners have lived apart for more than three years, if and as long as the termination of the Life Partnership would, owing to extraordinary circumstances, pose such serious hardship to the respondent who opposes it that the upholding of the Life Partnership, by way of exception, appears to be advisable, despite the interests of the petitioner.

(4) Termination in accordance with Section 2, Sentence 2, shall not be possible if the Life Partnership has been confirmed; Paragraph 1315, Section 1, Nos. 3 and 4, and Paragraph 1317 of the German Civil Code shall apply accordingly.

(5) The Life Partners shall be deemed to live apart if no domestic community exists between them and it is clear that one Life Partner does not wish to establish such a domestic community because he rejects the Life Partnership. Paragraph 1567, Section 1, Sentence 2, and Section 2 of the German Civil Code shall apply accordingly.

[. . .]

Source: Gesetz über die Eingetragene Lebenspartnerschaft [Law on Registered Life Partnerships], *BGBI.* I 2001, pp. 266 ff.

Translation by Catherine Hales; paragraphs 9 and 10 redacted by GHDI staff from the English translation available on the website of the Lesbian and Gay Federation in Germany [*Lesben- und Schwulenverband in Deutschland* or LSVD], www.lsvd.de