

ESTATE PLANNING FOR UNMARRIED COUPLES

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Unmarried couples do not have the same legal rights as married couples. However, with appropriate planning, you and your partner can be protected.

I. Providing for Disability

Power of Attorney for Financial Affairs. Unmarried couples have no automatic power to act for each other in the event one of you is disabled during lifetime. You can have a power of attorney for financial affairs (also called management of assets) prepared to allow your partner to pay bills, manage real property and other assets, and deal with government agencies.

Power of Attorney for Health Care. You can also prepare a power of attorney for health care to allow your partner to make medical decisions when you are unable to. This can be especially important for you, because a partner, even a long-standing partner, has no standing under the law to communicate with medical staff or make decisions without a power of attorney. This power of attorney defines your wishes regarding health care issues that are important in regard to life support or withdrawal from medical treatment and can address your hospital visitation desires.

II. Providing for Disposition of Estate Upon Death

Life Insurance. A beneficiary designation in favor of your partner is a simple and effective manner of transferring assets to your partner at your death. This can be helpful when a wealthy unmarried partner dies with a large estate. A life insurance policy can be purchased on the life of the wealthy partner, naming the other partner as beneficiary, to pay the estate taxes and provide for the surviving partner.

Pay on Death. Bank or investment accounts can be payable to one or more persons on your death.

Joint Tenancy. Joint tenancy is a form of co-ownership in which two or more persons own property in equal undivided interests. A deceased joint tenant's interest passes automatically to the surviving joint tenant or tenants at the moment of death, without requiring probate administration.

Unlike married couples, upon your death, the entire property is included in your estate unless it can be proven that all or a portion of the property originally belonged to your partner and was never received or acquired by your partner from you for less than its full value.

Employee benefits and IRAs. You may want to designate your partner as a beneficiary of your employee benefits. However, in some situations employers will not allow the employee to designate a partner. An alternative is to name your estate or trust as the beneficiary and then name your partner as the beneficiary. Unlike

married beneficiaries, unmarried beneficiaries of plan participants do not qualify for “rollover” treatment.

Annuities An annuity is an agreement to pay a person a fixed sum at periodic intervals as long as the person lives.

Life Estate You may give a life estate in your personal residence to your partner, with a remainder to a charitable organization. You will receive a charitable deduction for the remainder interest.

Will. Your will is effective upon your death. You can name the person you want to act as executor and the beneficiaries of your assets.

Trust A trust is effective during your life and at your death. You can name someone to be trustee if you become incapacitated during your lifetime and upon your death, and you can choose beneficiaries to receive your assets.

Grantor Retained Income Trust or Personal Residence Trust. You can retain the right to income generated by your trust for a number of years; upon expiration of the trust’s term, the property passes to a person you choose. This is an effective way of passing on money or a residence from an older partner to a younger cohabitant. Once established, this trust is irrevocable.

Tax Issues

Unlike married couples, unmarried couples do not have the benefit of the marital deduction. The only “major” deduction is an unlimited charitable deduction. ***Estate tax and gift tax issues include treatment of joint property: Whoever paid for the asset is taxed on its value when transferred.***

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