

For unmarried couples, estate planning is indispensable

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When married couples neglect to prepare an estate plan, state intestacy laws step in to help provide financial security for the surviving spouse. It may not be the plan they would have designed, but at least it offers some measure of financial security. Unmarried couples, however, have no such backup plan. Unless they carefully spell out how they wish to distribute their wealth, a surviving life partner may end up with nothing.

Marriage has its advantages

Because intestacy laws offer no protection to an unmarried person who wishes to provide for his or her partner, it's essential for unmarried couples at minimum to employ a will or living trust. But marriage offers several additional estate planning advantages that unmarried couples must plan around, such as:

The marital deduction. Estate planning for wealthy married couples often centers around taxes and the marital deduction, which allows one spouse to make unlimited gifts to the other spouse free of gift or estate taxes. Unmarried couples don't enjoy this advantage. Accordingly, lifetime gift planning is critical so they can make the most of the lifetime gift tax exemption and the \$15,000 per recipient annual gift tax exclusion.

Tenancy by the entirety. Married and unmarried couples alike often hold real estate or other assets as joint tenants with rights of survivorship. When one owner dies, title automatically passes to the survivor. In many states, a special form of joint ownership — tenancy by the entirety — is available only to married couples.

Will contests. Married or not, anyone's will is subject to challenge as improperly executed, or on grounds of lack of testamentary capacity, undue influence or fraud. For some unmarried couples, however, family members may be more likely to challenge a will simply because they disapprove of the relationship.

Here are steps unmarried couples should consider to reduce the risk of such challenges:

- Be sure that a will is carefully worded and properly executed.
- Use separate attorneys, which can help refute charges of undue influence or fraud.
- Include a "no contest" clause, which disinherits anyone who challenges the will and loses.

Health care decisions. A married person generally can make health care decisions on behalf of a spouse who becomes incapacitated by illness or injury. Unmarried partners cannot do so without written authorization, such as a medical directive or health care power of attorney. A durable power of attorney for property may also be desirable, allowing a partner to manage the other's assets during a period of incapacity.

Careful planning required

If you're unmarried and wish to provide for a life partner, please contact us to discuss potential strategies. You can achieve many of the same estate planning objectives as married couples, but only with careful planning and thorough documentation.

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