

Six Estate Planning Focuses for Unmarried Couples

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According to the Pew Research Center,¹ the percentage of adults presently married in the United States declined from a high of 72% in 1960 to a low of 50.5% in 2012. At the same time, 2010 Census data reveals that over 7.5 million unmarried couples live together, a 138% increase since 1990. Forty percent of these households have children.²

If you and your partner are part of this growing trend, proactive estate planning can help create a more financially secure future for your family.

Wills — Having wills is essential for unmarried couples; without a will, assets may pass to an unintended heir, possibly leaving the surviving partner without the means to support themselves. A will also makes provisions for the guardianship of minor children and any assets that will pass to them.

Titling — It is important to title property and assets properly so that jointly owned property passes to the surviving partner. Proper real estate titling is vital for a shared asset like a home. Property that is titled as “joint tenancy with right of survivorship” gives the co-owners a right of survivorship, meaning that if one owner dies, that owner’s interest in the property will pass to the surviving owner by operation of law, avoiding probate and ensuring the survivor will inherit the deceased’s share of the house. Bank and brokerage accounts can also be held in this fashion.

Individually owned assets like bank and brokerage accounts can also pass directly to the surviving partner by using the “transfer on death” or “TOD” designation. With this designation, the named beneficiaries have no control over the owner’s assets as long as the person is alive, but the asset will pass directly to them and will avoid probate upon the owner’s death.

Beneficiary Designations — Beneficiary designations on retirement accounts like IRAs and 401(k)s and on life insurance policies are important because these designations take precedence over wills or other instructions. In addition, by designating your partner as your beneficiary on these accounts you avoid probate, and the assets pass directly to him or her.

Taxes — Unmarried partners do not receive the unlimited marital deduction, which allows a married person to transfer an unlimited amount of assets to his or her spouse at any time, including at the time of their death, free from tax. This gap creates a need for careful estate tax planning.

Durable Power of Attorney — Two important durable powers of attorney apply here: the durable power of attorney for health care and the durable power of attorney for finances. Both give the partner of an incapacitated person the ability to make decisions on his or her behalf. In many states, doctors can only communicate with a spouse or relative concerning treatment plans and options, but with a durable power of attorney for health care, you can choose your partner as a health care agent. Similarly, you can allow him or her to make financial decisions and pay bills in case you are not able to do this yourself with a durable power of attorney for finances.



Life Insurance — Unmarried couples will not receive survivors’ benefits from Social Security if one of them passes before the other. This can be a real concern if one partner earned significantly more than the other and is entitled to a much higher benefit. For example, in a married couple, if one spouse stayed home to raise children and the other worked for a salary, the stay-at-home parent would be entitled to a Social Security retirement benefit equal to one-half the benefit the wage-earner receives, and would be entitled to a survivor’s benefit equal to 100% of the wage earner’s benefit if the wage-earner died. Unmarried couples do not receive any spousal or survivor’s Social Security benefits. Life insurance is one way to fill that gap.

While these different needs for unmarried couples can create challenges, they can also create an opportunity for couples to talk about issues that many people avoid, which means that unmarried couples can be more proactive in their planning.

¹<http://www.pewresearch.org/fact-tank/2014/02/06/new-census-data-show-more-americans-are-tying-the-knot-but-mostly-its-the-college-educated/>

²<http://www.nolo.com/legal-encyclopedia/free-books/living-together-book/chapter1-1.html>

