

Estate Planning for the Cohabiting Couple



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Kelsey is a member of our Estate Planning and Wealth Preservation team. She represents individuals and families in estate planning and the administration of estate and trust matters.

In 1950, approximately 80% of U.S. households consisted of married couples. That number steadily declined in the following decades, and in 2020, the marriage rate hit an all-time low of 49%.

More adults are choosing to delay marriage or forego it altogether. But without proper planning, in the eyes of the law, unmarried partners might as well be complete strangers. They will not inherit from one another upon death, have control over medical or financial decisions in the event of incapacity, or receive any tax benefits — during life or at death — as a result of their relationship.

For married couples, the law provides default protections regarding the disposition of property at death. These protections do not extend to unmarried partners, which can have devastating consequences without an estate plan. However, with foresight and a few basic estate planning tools, unmarried couples can create protections and mitigate uncertainty in the event of incapacity or death.

Beneficiary Designations and Strategically Titled Assets

Assets owned in joint tenancy or on which you name a beneficiary will automatically pass to the surviving joint owner or designated beneficiary at death. Unmarried couples can likely accomplish many of their planning goals simply by naming one another as beneficiaries on specific assets or taking title to property as joint tenants. Conversely, if the intention is to keep property separate, or to transfer the property to someone other than their partner, the parties can do so just as easily.

Wills and Trusts

When an individual passes away without a will, their estate will pass according to the laws of intestacy (i.e., to their closest living relatives). By having a will, unmarried individuals can ensure that their partners inherit some or all of their property.

A trust can also be utilized to accomplish the transfer of assets between unmarried partners. Unlike a will, which only disposes of assets at death, a trust can provide for a partner during one's lifetime, upon incapacity, and at death.

Durable Power of Attorney

A power of attorney authorizes an individual, called an "attorney-in-fact," to act on your behalf with respect to certain property and financial matters. This is a useful tool for unmarried couples if one partner becomes incapacitated or otherwise unable to access accounts, pay bills, and manage their financial affairs. Without a power of attorney in place, the same result can only be achieved with a conservatorship, which can be a lengthy and expensive court process.

Health Care Directive

Similar to a power of attorney, a health care directive appoints an agent to make or communicate health care decisions on your behalf when you are unable to do so and specifies the care you wish to receive. Absent a valid health care directive, unmarried partners will have no authority to make critical decisions or obtain basic health care information about each other without commencing a time-consuming and costly guardianship proceeding.

Cohabitation Agreement

A cohabitation agreement is a legal contract between two unmarried people who live together. Cohabitation agreements outline the parties' rights and obligations during their cohabitation, upon the death or incapacity of either party, and in the event the relationship ends. These agreements are useful to protect the parties' respective rights and clearly establish their intentions with respect to property – both during and after their cohabitation.

Conclusion

Unmarried couples face unique challenges when it comes to estate planning and significant consequences if there is no plan in place. Your estate planning attorneys at Moss & Barnett can help design a plan that is right for you and your partner.