

# Planning Guide for Unmarried Couples

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No one likes to think about death, disability, or a breakup, but planning for the unexpected can help alleviate many potential problems, particularly for unmarried couples. Although some states have begun to offer committed unmarried couples the legal benefits that married couples receive, without proper planning, millions of unmarried couples face serious barriers.

In the absence of documents that say otherwise, your partner may not have the legal right to manage your personal finances, inherit your assets, or visit you at the hospital. Without a plan in place, the state's default beneficiary will step in as your legal heir, and your biological family will make decisions about your health care. Prior planning can also help alleviate disputes about property division that may arise after a breakup.

## **Marriage-like legal relationships**

There are several ways to legalize a relationship without marriage, including civil unions, domestic partnerships, and common-law marriage. These substitutes for marriage are intended to give couples the same benefits, protections, and responsibilities of married couples.

## **Civil unions and domestic partnerships**

Civil unions and domestic partnerships are formal agreements that outline what will happen in the event of death, incapacity, or a breakup. If children are involved, these agreements may also address visitation and custody rights, as well as who is responsible for support. Keep in mind, however, that civil unions and domestic partnerships may only be recognized in the state in which they were created. Furthermore, federal tax, ERISA, COBRA, and other federal protections are not available to unmarried couples, with one exception—true common-law marriages. Note, some states have automatically converted civil unions between same-sex couples into marriages.

## **Common-law marriage**

According to conventional wisdom, if you live with someone of the opposite sex long enough, you are considered married under common law. In fact, only about a dozen states recognize common-law marriages, and the requirements for a common-law marriage differ from state to state. Rather than leave your partner's rights at question, you may wish to consider formalizing your intentions with the help of an attorney. One type of legal document used by unmarried couples is a "living together" agreement.

## **Living together agreements**

Also known as relationship or cohabitation agreements, living together agreements are legal contracts, much like prenuptial agreements, that are designed to anticipate potential problems before they occur. A couple puts in writing how joint property, debts, inheritances, income, and support will be handled at a breakup or at death. It's important to understand that creditors are not required to honor a living together agreement, and being liable to a mortgage lender does not give a nonowner property rights.

When creating a living together agreement, consider:

- How will you combine finances? Will income be pooled or accounted for separately?
- How will personal finances be managed while you are a couple?
- Will property be owned equally or proportionately? How will property acquired before the relationship be treated?
- Who will have control over your financial affairs and medical care if you are sick or injured?
- Who will care for your children, either naturally born or adopted, if you can't?
- Who will receive your property at your death?

- What measures need to be taken to help provide financial security for your partner?

Remember that parental rights are governed by the laws of your state. While a relationship agreement indicates your wishes, the courts have final jurisdiction. Without key legal documents or formal adoption, you may not be able to make the most basic medical and legal decisions concerning your child.

### **Planning for the security of your partner**

Be sure to understand what your 401(k) and pension distribution options will be at your death, as they may be more limited than you expect. Your nonspouse beneficiary may be able to move your 401(k) to an inherited IRA, but he or she may be cut off from your pension benefits. If your employer's pension plan does not provide annuity benefits for nonspouse survivors, ask about a pension rollover option.

Social security only provides retirement benefits to family members and spouses; unmarried partners cannot get retirement benefits based on their partner's earning record. If social security retirement benefits are an important part of your financial plan, consider using life insurance to replace this income for your partner.

In addition to life insurance, it's important to consider other insurance coverage:

- *Long-term care insurance* for both partners is highly recommended. While states provide some financial protection for spouses of patients impoverished by long-term care expenses, an unmarried partner does not qualify for those protections.
- *Property insurance* covers only a small amount of loss to the property of "roommates." Talk to your insurance agent about ways to protect your partner's property if he or she does not own the home.
- *Employer health insurance* may be offered to a partner, but it may not be portable when you leave your job. COBRA, the federal health coverage program for departing employees, does not extend to unmarried partners, even if the state recognizes the relationship.

### **Jointly owned property**

There are two basic ways to own property as an unmarried couple. *Joint tenancy* with right of survivorship has the advantage of property passing directly to the surviving owner without the delay of probate. *Tenancy in common*, on the other hand, allows partners to own disproportionate shares of the property. But as a tenant in common, your share of the property will pass according to your will. In the absence of a will, your property will pass according to your state's intestacy laws, which never include an unmarried partner as an heir.

In general, it's a good idea to keep detailed financial records about who contributed what to jointly owned property and expenses. You can facilitate your recordkeeping by maintaining separate checking accounts.

### **Steps to building a solid estate plan**

Normally, the term *estate planning* is associated with tax reduction planning. While it's true that married couples have a considerable tax advantage when it comes to gifts and bequests to each other, the most pressing problem for unmarried couples isn't taxes. Even more important is the concern that, without legal documents in place, unmarried couples do not automatically inherit from each other, nor can they make medical decisions for each other.

The basic estate planning documents for any couple, married or unmarried, include the following:

- A *power of attorney* allows someone else to handle your financial affairs, thus avoiding a court-ordered conservatorship.
- A *durable power of attorney* is immediate and continues even if you are disabled or incompetent.
- A *springing power of attorney* takes effect only if you become incapacitated.
- A *health care power of attorney* designates who can make medical decisions on your behalf.

- A *living will* states your wishes about artificial life support, among other things.
- *Transfer on death (TOD)* and *paid on death (POD)* registrations for brokerage and bank accounts allow named beneficiaries to receive your assets outside of a will.
- A *living trust* allows you to transfer assets privately.

Other important documents—often overlooked—are a hospital visitation form that instructs the hospital about who may or may not visit you, a statement outlining your funeral and burial wishes, and a nomination of your guardian if you become incapacitated. While federal law now requires medical facilities to inform its patients of their right to designate visitors they wish to see or to bar, this assumes the patient is cognitive and can make a choice. Preplanning can avoid problems in an emergency.

In states recognizing civil unions and domestic partnerships, couples normally have the same rights of spouses under state law, making some of these documents unnecessary. Be aware, however, that even if your relationship is recognized by your state, it may not be recognized in others. Since most people sometimes leave their home state for vacations, business, and other reasons, it's important to take additional steps to ensure that you're not left in legal limbo.

As part of your estate plan, you might also consider trust-owned life insurance. This simple solution can create liquidity to pay estate and income taxes, provide the surviving partner with a source of support, and perhaps even lessen family conflict. As your financial advisor, we can work with your estate planning attorney to develop strategies for your particular situation.

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