

ESTATE MATTERS

ESTATE PLANNING FOR NON-MARRIED COUPLES PART I - THE ESSENTIALS

The loss of a life partner can be devastating, regardless of marital status and sexual orientation, but the grief is compounded for most non-married couples whose relationship is not legally recognized. In illness, the partner is often shut out of the decision making process during incapacity, and even denied visitation. By default, they have no say in end-of-life decisions, or the funeral and burial of their loved one and might not be spoken of or invited to the memorial service. When the decedent's estate is distributed, the partner may have no claim to any of the decedent's belongings. In the appointment of an executor, even the decedent's creditors have a higher claim to the position. And one partner's children might be removed from the care of someone they've known all their lives as a parent.

Unmarried couples can still give each other quasi-marital rights through a durable power of attorney. With this powerful document, one can give another power over property, businesses, accounts, health care, legal rights, and other life aspects. The POA can be made to operate immediately for convenience or be restricted to become effective only upon incapacity.

A domestic partnership agreement, much like a prenuptial agreement, defines legal rights and responsibilities for partners in a long-term committed relationship and reflects mutual intent. In the event of a successful challenge to the will, the surviving partner can still enforce the agreement's provisions providing for the partner as a contract right.

Married persons have the right to make health care decisions for their spouse and the ability to make end stage decisions, options unavailable to non-married couples. Without proper planning, a non-spouse may not even be allowed hospital visitation. A designation of health care agent conveys the power to make

important health care decisions while a living will specifies end stage wishes in advance.

The central element of any estate plan is the will. When dealing with non-married couples, extra care and attention needs to be given to its drafting to avoid or defeat a challenge. Directives must be clear and unambiguous, with reasons explicitly stated for persons excluded. Including intended recipients for specific items of personal property may head-off conflicts. Naming the partner instead of a family member as executor may forestall difficulty as the executor may wield significant power and discretion. As the will may not be read until later, funeral and burial instructions should be re-stated in a separate document - or better yet pre-planned and pre-paid.

While the will, power of attorney, domestic partnership agreement, designation of health care agent, living will, and final instructions should form the essential framework of a non-married couple's estate plan, more advanced techniques should be considered as well. In the next column, we will explore revocable trusts, pay-on-death accounts, joint ownership, life insurance and benefit designation, and other advanced planning tools.

Disclaimer: This general information is neither legal opinion or advice, nor a complete estate planning discussion, and refers to Maryland law - your state's law may differ. As each situation is different, you should seek independent legal advice from an attorney for specific information.

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