



Effective estate planning for unmarried couples

Unmarried couples face many of the same estate planning concerns as married couples. But because they don't have the same estate planning options as those who are married, special planning is required to ensure that major decisions regarding their finances and health are protected.

Transferring assets

If you're not married but in a long-term relationship, on your death your assets will remain in your estate rather than automatically pass to your partner, as they typically would to a spouse if you were married. Thus, you must stipulate in your will that all (or the portion you desire) of your assets should transfer to your partner. Without a will, your partner has no legal right to inherit from you.

There are several ways to ensure your partner receives your assets according to your wishes, including:

Life insurance. Designate your partner as the beneficiary of your life insurance policy.

Living trust. Establish a living trust and name your partner as beneficiary. This will help to ensure that your assets are administered according to your wishes. (For more information on living trusts, see "Trust a living trust" on page 6.)

Joint tenancy. Joint tenancy is a form of co-ownership in which two or more people own property in equal undivided interests. For example, if you buy a home with your partner and intend to share ownership, establishing a joint tenancy ensures rights of survivorship. When you die, your partner inherits the home without probate administration.

But be aware that, even though joint tenancy avoids probate, property in joint tenancy with rights of survivorship doesn't automatically avoid estate tax. For unmarried couples, the value of property held jointly is included in the gross taxable estate of the first to die, unless the estate can prove the surviving partner contributed to the cost of the property. To prove the property wasn't a gift and verify your and your partner's shares of the ownership, keep accurate records of payments on jointly held property.

In addition, consider establishing a domestic partner agreement to support your will. It can outline your wishes for your estate and your partner's rights to jointly held property.

Employee benefits. You may want to designate your partner as the beneficiary of your employer-sponsored retirement plan, such as a 401(k) plan. If your employer doesn't allow this, name your estate or trust as the beneficiary and name your partner as the beneficiary of your estate or trust.

Managing financial and medical affairs in the event of incapacitation

Unmarried couples don't have automatic power to make decisions regarding each other's finances and health care in the event of incapacitation. But you have options to ensure that you and your partner are able to make decisions and act on each other's behalf should either of you become incapacitated, such as:

A general durable power of attorney for finances. This will allow you and your partner to manage each other's finances, property and other assets. Be sure to designate each other as your attorney in fact. This will help to avoid delay in the administration of assets should one partner become incapacitated.

A durable power of attorney for health care. This details your wishes regarding important issues about your health care — such as medical treatment and life support decisions. A power of attorney for health care gives your partner the authority to make such decisions on your behalf. You should also be certain to provide a copy of the document to your primary care physician so he or she knows that your medical information can be shared with your partner, and so that there will be no uncertainty should any medical decision need to be made on your behalf.

Without these documents, you have no legal standing to manage each other's assets or communicate with medical staff about health care decisions in the event of incapacitation.

Make estate planning a priority

Comprehensive estate planning is essential for unmarried couples. Careful planning ensures that you and your partner are included in important financial and medical decisions should one of you become seriously ill and that, on your death, your assets are transferred according to your wishes. Before making any estate planning changes, check with your state's estate tax laws regarding domestic partners.

Taxing matters

Unmarried couples often are at a disadvantage in terms of how they're treated for federal gift and estate tax purposes. For example, asset transfers between spouses are tax-free under the unlimited marital deduction — with a non-U.S. citizen spouse, you must take a few extra steps to get such protection — but asset transfers between unmarried couples are subject to taxes.

But there are some tax breaks you and your partner can use in your estate plan:

- The lifetime gift tax exemption allows you to give away assets totaling \$1 million — gift-tax-free.
- The estate tax exemption allows you to bequeath assets up to \$2 million (less any gift tax exemption used during your life) free from federal estate taxes. Under current law, the amount is scheduled to increase to \$3.5 million in 2009, be repealed along with the estate tax in 2010 and be reinstated in 2011 at a reduced amount of \$1 million.
- The annual gift tax exclusion currently allows you to give \$12,000 per recipient per year free of estate tax.

Consult with a tax professional to determine if there are other tax breaks that you and your partner can use.

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