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Til Death Do Us Part? Why Unmarried Couples Must Have An Estate Plan That Works For the People They Love

Love in the 21st century takes many forms, and for a growing number of couples, "forever" doesn't always include a marriage license. While a deeply personal choice, being unmarried adds layers of legal and financial complexity that can't be ignored, especially when it comes to protecting your assets and loved ones.

Imagine this: you've built a life with your partner, maybe even bought a home and had children together. You share bills, dreams, and a future. But without the legal protections of marriage, what happens when one of you passes away? And what happens if one of you becomes incapacitated first?

Some of the questions you should be asking:

Who makes medical decisions for you or your partner? Without marriage or legal protections, it likely won't be the person you want.

Who inherits what? Again, without marriage or legal documents, it's not likely going to go the way you want.

How would your children be provided for? It all depends on who the biological parents are, and the line of "blood" relationship, unless you've got an estate plan in place to ensure your children are cared for by the people you want, not who the law would choose.

And most importantly, how can you avoid a court process, and potentially conflict, during an already emotional time?

The Legal Reality for Unmarried Couples

Unlike married couples who automatically receive certain legal protections, unmarried couples must take deliberate steps to ensure their wishes are honored. In the eyes of the law, unmarried partners are essentially legal strangers, regardless of how long they've been together or how intertwined their lives may be.

This legal disconnect becomes starkly apparent in moments of crisis. If you're hospitalized, your partner may be denied visitation rights or the ability to make medical decisions on your behalf. If you pass away without proper planning, your partner could be left with nothing – not even the home you've shared for decades.

According to a recent survey by Caring.com, only 24% of Americans have a will. This omission leaves millions of Americans vulnerable to painful legal and financial complications that can compound grief with unnecessary hardship. And it's completely avoidable.

The Unmarried Couple's Estate Planning Checklist

Here's a closer look at some key areas where unmarried couples need to be especially proactive in their estate planning:

✔ Home Sweet Home, But Whose Name is on the Deed?

Many unmarried couples purchase a home together. But without a will or living trust that clearly outlines ownership and inheritance wishes, the surviving partner might face significant challenges. Here's why:

Intestacy Laws: If you die without a will, your state's intestacy laws dictate who inherits your property. These laws typically favor spouses and blood relatives, meaning your unmarried partner will be left with limited or no rights to the home you shared.

Tax Implications: Inheritance laws for married couples often come with tax benefits that unmarried couples don't receive. The surviving partner could face a hefty estate tax bill, potentially forcing them to sell the home to cover the costs.

Title Matters: How you title your property significantly impacts what happens after death. Joint tenancy with rights of survivorship offers some protection, but this approach doesn't address other estate planning concerns and may have unintended tax consequences.

✔ Providing for Your Children

Having children together adds another layer of complexity for unmarried couples. Here's how a lack of proper estate planning can create significant hardship:

Guardianship Concerns: If one parent passes away, the surviving parent might not automatically have legal guardianship rights (especially if that person isn't the biological parent, as is often the case with same sex couples). This could lead to legal battles with other family members or even state intervention in extreme cases.

Inheritance Complications: Without a will or trust, your children might not automatically inherit your assets as intended. Again, intestacy laws could mean your assets are divided in ways you wouldn't have chosen, potentially leaving your children with inadequate financial support.

Blended Family Challenges: If either partner has children from previous relationships, the potential for conflict multiplies. Without clear documentation, children from previous relationships may find themselves at odds with the surviving partner, creating painful family rifts during an already difficult time.

✔ Beyond the Home: Protecting All Your Assets & Minimizing Taxes

Unmarried couples often accumulate significant assets together—bank accounts, investments, retirement funds, and more. Without a plan:

Ownership Disputes Can Arise: If it's unclear who owns what, it can lead to legal battles between surviving partners and family members of the deceased.

Unnecessary Tax Burdens: Unmarried couples often miss out on tax advantages available to married couples, potentially leading to a larger tax bill for the surviving partner.

Retirement Account Complications: Retirement accounts like 401(k)s and IRAs require specific beneficiary designations. Without these, your partner may have no claim to these assets, regardless of your intentions.

✔ Healthcare Decisions and End-of-Life Care

Perhaps the most immediate concern for unmarried couples is handling medical emergencies and end-of-life decisions:

Medical Decision-Making: Without healthcare directives, your partner may have no legal right to make medical decisions on your behalf if you become incapacitated.

Hospital Visitation Rights: In some healthcare facilities, only family members are allowed to visit patients in intensive care. Without proper documentation, your partner could be denied access during critical moments.

Funeral and Burial Decisions: Legal next of kin typically make funeral arrangements. Without documentation stating your wishes, your partner may have no say in how your remains are handled, even if you've discussed your preferences extensively.

✔ Digital Assets and Modern Considerations

In our increasingly digital world, estate planning must also address digital assets:

Access to Online Accounts: From social media to cryptocurrency, digital assets must be specifically addressed in your estate plan to ensure your partner can access them.

Business Interests: If you own a business, clear succession planning is essential to prevent disruption and protect your partner's financial interests.

Pets: While many consider pets family members, the law views them as property. Specific provisions must be made to ensure your beloved pets continue to receive proper care.

Don't Leave Your Future to Chance - The Personal Family Lawyer Difference

Estate planning isn't just for the wealthy or the elderly - it's for anyone who wants to protect the people and assets they cherish most. For unmarried couples, creating a legally sound estate plan is not just a good idea - it's essential. But a traditional estate plan, DIY plan, or cheap legal plan isn’t sufficient. Instead, you need a Life & Legacy Plan.

At my Personal Family Lawyer® firm I can help you create a tailored estate plan for your life and legacy. I'll guide you to understand all the complexities and design a personalized plan that makes it all as simple as possible so that when one of you becomes incapacitated or dies, the survivor will have all the support they need without any of the mess. This includes:

Clearly Addressing Ownership of All Assets and Avoiding Probate: I'll work with you to determine the best way to handle the transfer of all jointly and separately owned assets—including your home, bank accounts, investments, retirement accounts, and personal property—in a way that minimizes tax burdens, avoids probate court, and ensures a smooth and seamless transition for your surviving partner. This means your loved ones can focus on healing and honoring your memory, not battling legal complexities.

Establishing Guardianship and Financial Provisions for Children: If you have children together or separately, I will work with you to legally designate guardians, establish trusts if needed, and ensure your children's financial well-being is protected. If you have children from previous relationships, I will take extra care to minimize or eliminate potential conflicts between your children and your surviving partner, ensuring a smoother transition and honoring your wishes.

Planning for Incapacity of Either Partner: I'll put in place powers of attorney and healthcare directives so your partner can seamlessly manage affairs and make medical decisions on your behalf if you become unable to do so yourself.

Your Next Steps for Peace of Mind

Don't wait until it's too late – take proactive steps today to protect the ones you love. Schedule a consultation with me to get started. Together, we can build a plan that provides clarity, security, and peace of mind for you and your family, no matter what the future holds.

Book a call here:

https://calendly.com/lauren-tlppc

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