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Estate Planning for Lifetime Partners

There have been some distinct changes in the American cultural and sociological landscape in recent decades. Among them is the increasing number of unmarried couples living together as lifetime partners. This trend has created estate planning challenges for the individuals involved.

Here are a few of the more common estate planning issues that may affect unmarried couples:

Family Ties

In general, the rules governing the ultimate disposition of assets are not as favorable for individuals who are not legally married as they are for those who are married. If an individual dies without a **will (intestate)**, state intestacy law will determine the disposition of the decedent's assets. Although these rules vary from state to state, they typically dispose of assets through bloodlines or marriage. So, in the case of unmarried lifetime partners, assets may not be distributed according to the decedent's wishes.

A last will and testament is designed to protect against the undesirable effects of intestacy by allowing an individual to specify who is to receive probate assets upon death. However, a will may not be immune to challenges made by the decedent's family members who may have benefited from intestacy law if a will was not accepted by the local probate court. Therefore, it is essential that a will be drafted and executed when an individual is fully competent; it may also be important that the individual's partner does not serve as a witness to the execution of the will. In addition, if certain family members or relatives are to be disinherited, it may be advisable to include a list and an explanation of why such decisions were made in the will.

Although a will can express a lifetime partner's wishes for the disposition of assets upon death, it does not provide any contingency arrangement for the management of assets or medical decisions if the individual becomes *incapacitated* due to an accident or illness. But, a general **durable power of attorney** and a **health care proxy** can allow an individual to *determine* who will make such decisions. Due to varying state laws, it may be necessary to specify powers in detail. Even then, some third parties may not accept a durable power of attorney and may require the use of their own forms.

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Are Good Grades the Only Key to College Admissions?

If you were asked how best to prepare your child for college, you might say that a well-rounded high school curriculum would be a good start. It may be true that your child needs to be a good student to compete for admission to a college or university. Today, however, *getting into college* and *graduating* are two distinct challenges.

Admissions: Increasing the Odds

Each college and university has admission guidelines that are followed when applications are reviewed. Naturally, the first items most likely to be examined are your child's high school academic record and SAT or ACT scores. However, academics are not the only items that catch the eye of an admissions officer.

Sometimes acceptance to a school depends on the applicant's participation in extracurricular activities and his or her civic involvement. Many admissions committees are as interested in grades as they are in the quality and character of individuals who may attend their college or university. Therefore, it is important for your child to include a résumé of achievements, interests, and volunteer efforts with his or her application.

Any of the following may enhance your child's college application:

- **Awards** demonstrate formal recognition of an applicant's ability to **excel in a particular area**.
- **Sports participation** demonstrates an applicant's competitive spirit and winning attitude, along with the ability to be a team player.



- **Extracurricular activities** highlight an applicant's enthusiasm, leadership qualities, and specific interests.
- **Volunteering or religious involvement** can often indicate that an applicant is active in the community and possesses moral character and integrity.
- **Political activity** can demonstrate an applicant's strong leadership skills and awareness of current events.
- **Work experience** may indicate motivation, responsibility, and a strong work ethic.
- **Hobbies and special interests** can provide a better understanding of who the applicant is, in addition to highlighting areas of knowledge.

Building the Foundation for Long-Term Success

Many children today are exposed to an array of social pressures that may be unfamiliar to most adults. So parents and other role models may need to work harder to set positive examples and instill good values, in addition to teaching

respect for others and emphasizing overall common sense.

Besides making the grade academically, a candidate for college needs to demonstrate a good attitude. Parents can help children recognize the value of learning and how education is often linked to future success. Learning to make sound choices is equally important. Being an individual rather than a follower isn't always easy, however, and your college-age children need ongoing encouragement to continually examine themselves and strive to reach their goals.

Although you hope your child will use sound judgment while navigating the maze of activities associated with college life, remember that maturing is a process, and there may be mistakes made along the way. The key is to encourage your child to learn from those mistakes, rather than keep repeating them. If you, as parents, and other role models can provide emotional support, encouragement, and guidance during these difficult years, the chances of your child transitioning smoothly to adulthood will be greatly enhanced. ■

Who'll Be in Control When You Can't Be?

One thing is for certain: Life is unpredictable. But, it is still important to prepare for the future and whatever it may hold. Have you ever considered what would happen if you were to experience an accident or illness that left you incapacitated and no longer able to make important financial decisions? While this unpleasant prospect may be difficult to think about, you can prepare to establish a measure of control in your life should you become incapacitated. One strategy is to establish a **durable power of attorney**—a legal document that appoints someone you trust to handle your financial decisions.

An attorney is a licensed professional who has been granted legal authority to conduct business on your behalf. However, you have the right to provide anyone with this power. If the **power of attorney (POA)** is *limited*, the individual you choose can conduct only that business specified in your agreement. If the POA is *general*, the person's authority is more extensive but still assumes you are competent to review and approve decisions. If the agreement contains

what is known as “durable” language (according to the passage of certain state laws), it allows the designated individual, also known as the **attorney in fact**, to make decisions on your behalf in the event of physical or mental incapacity.

The Time to Prepare Is Now

Generally speaking, a durable power of attorney allows you to specify, in advance, the person you want to make decisions regarding your personal finances and business matters, if you ever become incapable of making those decisions for yourself. By contrast, a **health care proxy** allows you to designate an individual to make decisions regarding your medical care and well-being, and a **living will** allows you to specify your preferences regarding the giving or withholding of life-sustaining medical treatments. These documents are known as **advance directives**, and they are essential estate planning tools for all individuals, regardless of age. Without such documents, court intervention—involving a great deal

of time, expense, and stress—may be necessary.

In addition to your own advance directives, consider the important role these documents can play in your *parents'* estate planning. For many of us, discussing such matters with a parent may be uncomfortable. Nevertheless, an open conversation about expectations may strengthen familial bonds and help ensure that your loved ones' preferences for the future will be met.

It is important to note that a will, which only becomes operative *at death*, is not the appropriate vehicle for specifying a durable power of attorney, health care proxy, or living will. Rather, these documents should be created separately by a qualified legal professional who is familiar with the language appropriate for your particular state. Taking the steps to designate your durable power of attorney can help ensure that your financial decisions will be handled by someone you trust, in the event that you are unable to do so. ■

Are You Considering “Unretirement”?

The common term for retirement—the “golden years”—may no longer apply for those individuals who shun taking a conventional retirement due to an unpredictable economic climate. In the past, the idealized concept of retirement as a leisurely phase of life following decades of work and raising children was based on an assumption that work was something you did until roughly age 65 and then, you never had to (or wanted to) work again. A company pension, Social Security, and some savings were generally

believed to provide enough income for funding a comfortable lifestyle in retirement.

But perhaps, another lens to look through is the multi-model approach for retirement whereby you consider what standard of living could be maintained based on different levels of projected resources. This may help determine what is realistic in your situation, and bring a focus to your retirement priorities. For some people, downsizing their standard of living in retirement may be just as valid as maintaining a preretirement standard.

“Unretirement” means working in some capacity after your long-term career has ended. Aside from money earned from working, unretirement may help you maintain a sense of emotional well-being connected to the world and fulfilling a purpose. By staying in the workforce, you may have an opportunity to do something completely different from your former job, and on a more *flexible* basis (part-time, job-share, or telework). ■

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In the case of a health care proxy, a physician may be hesitant to follow the decisions of an agent who is not legally related, especially if family members object. Therefore, it may be prudent for an individual to provide additional proof of his or her intentions (i.e., in the form of a written letter accompanying the health care proxy).

The addition of a **revocable trust** can further solidify an estate plan and help protect individuals from some of the planning problems related to wills and powers of attorney. Privacy and the ability to transfer assets associated with revocable trusts can be attractive estate planning components for lifetime partners. A revocable trust allows the **grantor** to make him or herself the **trustee** and elect his or her partner as the **successor trustee**. In the event of death, the successor trustee has control over assets held in trust. However, even with a revocable trust, it may be advisable to provide a written confirmation of the grantor's wishes to be made part of the trust document, so any potential challenges by family members may be avoided.

Federal Transfer and Estate Taxes

Another challenge facing unmarried couples is the possibility of Federal **transfer taxes**. Lifetime

partners do not qualify for the **unlimited marital deduction**, which allows spouses to pass an unlimited amount of assets between them without incurring a tax. The value of the transferred assets that exceeds the **gift tax exclusion** and the lifetime gift exemption is therefore subject to gift taxes. Also, the retitling of assets in **joint tenancy** with rights of **survivorship** could create taxable situations.

For some individuals, estate taxation may be a concern due to having substantial assets. Usually, if one partner has more assets than the other, or is much older than his or her partner, the use of the annual gift tax exclusion (\$15,000 for single filers in 2020) may assist in the gradual transfer of assets to a lifetime partner. However, the annual gift tax exclusion may not be a sufficient mechanism for the timely transfer of large assets. In this respect, planning for the use of the \$11.58 million **lifetime gift exemption** (sometimes called the applicable exclusion amount) may serve as an opportunity to gift substantial assets, such as real estate or investments, to a lifetime partner.

For planning purposes, the use of **life insurance** may be a valuable tool for helping to protect



the financial future of the surviving lifetime partner. Life insurance may help the insured partner circumvent any potential future family contestation by possibly providing the surviving partner with a **death benefit** equal to the size of the insured's estate. In addition, life insurance can play an instrumental role in helping to pay for any estate tax liability. Normally, the life insurance policy is purchased by the lifetime partner or by an **irrevocable life insurance trust (ILIT)** that is for the benefit of the lifetime partner.

Final Thoughts

While estate planning for lifetime partners can be complicated, unmarried couples need to carefully consider the potential familial and tax issues. It is important to consult with qualified tax, legal, and financial professionals before taking action to help ensure that overall estate planning objectives will be met. ■

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