Partner Planning

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Same sex couples and couples that live together, but never get married may share the same commitment and bond as legally married couples, however, the bonds of marriage do not exist and some of the automatic rights that come with marriage cannot be assumed.

As a result, these partners will face a variety of issues and possible complications that legally married couples take for granted. Although the bonds of marriage do not exist, you are still committed to one another and there is nothing to stop you from creating your own legally binding agreement that will afford the two of you the same rights and benefits of a legally married couple. This legally binding agreement is called an estate plan.

Married or not, estate planning is a good idea for everyone. Estate Planning gives you the opportunity to name someone you trust to make medical decisions for you if you cannot; oversee your personal and financial affairs at the time of incapacity; oversee the management and division of your estate at death; avoid the public, expensive and time consuming process of probate; and reduce or eliminate estate taxes.

Medical Decisions

If you were struck by a devastating illness and you were not able to make medical decisions for yourself, who would do it for you? If you were faced with this situation, you would probably want your partner to make these medical decisions for you. With a Designation of Patient Advocate and Living Will, you can designate your partner to act as your medical decision maker and you can state whether or not you wish to be kept on life support if you are in a coma, persistent vegetative state, or terminally ill. Your partner is probably in the best position to know your wishes, concerns and needs. Without this document, your doctor may look to family members for guidance and your parents or siblings may have more legal authority over you than a partner. In fact, your parents, siblings or children have probably never discussed your wishes with you and they may have different ideas about the type of care you should receive. Without a Designation of Patient Advocate and Living Will your wishes may not be honored and you could be left on life support indefinitely while your partner sits by with no legal authority to act on your behalf.

Financial Affairs

As important as it is to make plans for your medical care, it is equally important to plan for your financial care or assistance. What would happen if you became incapacitated or ill? Who would run your business, sell your home or pay your bills if you could not? If you have not taken the time to name an "agent" under a Durable Power of Attorney, the court will intervene and name a "financial agent" for you. Although your partner may be the best person to step into this role of financial agent, your partner may face some opposition from family members. If your partner and family cannot agree on who will take over your financial affairs, the court will ultimately decide for you. Once this matter goes before the court, all control is lost. Since your partner is not legally related to you, the court may favor your family members. Once again, the one person who knows your financial affairs the most may be left out in the cold, while family members you may not have seen or talked to in years are now handling your personal financial affairs. With a Durable Power of Attorney, you can name your partner to act on your behalf and your family or the court will not be given an opportunity to get involved.

Inheritance

When it comes to inheritance, you have three choices: Do nothing...Do a simple Will..or Do a Living Trust. If you do nothing, the State of Michigan will decide how to divide up your estate for you. The automatic heirs of your estate are your parents and your siblings (if there are no children), not your partner. With a simple Will, any individually owned assets will go through Probate Court at the time of your death. Probate is a public process, which means that all of your financial affairs will become public. Probate is a court managed process that is time consuming, expensive and many times emotionally draining. The "emotional drain" can occur if a family member decides to contest your Will and fight your partner over the division of assets. Your partner may be forced to hire an attorney to defend the right to inherit from you. If you think that your death will bring your family and partner together, you need to think again. If there were hard feelings in the past death may only exacerbate the situation.

With a Living Trust, you can not only avoid probate, but in a very private and discreet way your assets can be distributed to your partner or to a beneficiary of your choice. Your financial affairs will be private because the Probate Court does not get involved. This means that there is little to no chance for outside family members to contest the Trust. If your parents or siblings are not named as beneficiaries of the Trust, they have no right to receive notice of the Trust assets or Trust distribution.

In fact, when setting up a Trust or a Will, keep in mind that there are over five ways to contest a Will and only one way to contest a Trust! To contest a Trust, your family must prove that you were mentally incapacitated when you signed the Trust. Since the Trust is a private document, attempts to prove incapacity or attempts to contest a Trust are extremely difficult.

Estate Tax Avoidance

Throughout our lifetime, we utilize every possible tax savings or tax deduction that is available to us. There is no reason why these same tax savings or deductions should be ignored at death. The IRS gives every individual the right to pass a certain amount of assets at death, tax free. This benefit is referred to as the Unified Credit. The credit changes every year and you will have to consult your CPA or Estate Planning Attorney to determine that amount.

In order for you and your partner to each take advantage of this credit, it may be necessary to do two Trusts, one for each of you. Your Trust can provide that at death, your partner can manage the assets in your Trust and continue to enjoy the use of income and principal after your death. The biggest difference is that your partner does not own the assets in your Trust, your partner merely has lifetime use of the assets. If your partner does not own the assets in your Trust, your partner cannot be taxed on the value of your Trust assets.

In other words, your partner could continue to live in the home, run the business or use investment income for lifetime support. At your partner's death, the assets can be sold or distributed to a secondary beneficiary. This secondary beneficiary could be a charity of your choice, friends or family members. With the Trust, you know that your partner will have a lifetime use of the assets, that the Trust will control the final distribution of assets and that the IRS will not become a beneficiary of your estate

As you can see, the number of documents to be completed are few, but there are many decisions to be made. If you do not take the time to make these decisions and put them into binding legal documents, the court may end up making these decisions for you.