

Couples, Companions, Partners – Financial Strategies for Unmarried Couples©

The 2000 U.S. Census indicates that 5.4 million unmarried couples were living in the United States. Unmarried couples include heterosexual couples that live together choosing not to marry and gay and lesbian couples who cannot legally marry in most states. Marriage in this country offers more than one thousand tax benefits and protections that are not available to unmarried couples. If you're one of the 5.4 million unmarried couples, you need to do some additional planning to avoid future financial problems for your partner.

Most people don't like to talk or think about what will happen when they're not here anymore, but it is important for everyone – especially unmarried couples – to talk about it and make some preparations in advance. Having an opening dialogue about the future of both partners and how you will protect each other's financial interests is important and should take place any time you're committed to each other, involved in a long-term relationship or own assets together.

One of the most important things in any relationship – married or not – is ensuring the long-term welfare and financial well being of the surviving partner. Without proper documentation and clear instruction, at the death of the first partner the surviving partner can find themselves having to defend their rights to receive their share of their partner's assets, even those that have been acquired together. Some tactics can be used to ensure the appropriate transfer of assets at death to protect the surviving partner. These include:

1. Unmarried couples need to fully document joint purchases of and contributions to property (i.e., houses, land, investments) because, unlike married couples, the Federal Government assumes that whoever dies first wholly owned the property so the entire value is included in their estate – unless a clear paper trail can show otherwise. Careful record keeping of joint purchases and contributions to acquire assets will avoid this potential tax problem.
2. Draft a Partnership Agreement or Domestic Partnership Agreement. These documents can offer many of the protection and responsibility benefits that are automatically provided to married couples. You should consult experienced legal counsel to properly draft these agreements.
3. See an attorney and draw up your last will and testament to back up property titles that are held jointly with rights of survivorship (JTWROS - having equal shares of ownership) or tenants-in-common (having unequal shares). If the property title and your will say the same thing, it will minimize the chances of being challenged by disgruntled family members. While property held jointly with rights of survivorship will pass to the surviving owner regardless of marital status, it's a good idea for your will to say this as well, as I'm sure you've heard about cases where wills get challenged. If you own property together as tenants in common and you want your partner to inherit your share, you need to specifically state this in your will. This is of extreme importance when the title to your joint residence is held this way. Otherwise, your partner is at risk of having to sell the house if your family members expect their share and force a sale.
4. To completely protect your partner, it has been recommended that you draft specific letters addressed to relatives stating that you are disinheriting them from a particular asset

(or specific assets) and clearly state the reasons why. There will be far fewer problems down the road if documentation is available showing that the disinheritance is intentional.

5. Use the Transfer on Death (TOD) and Payable on Death (POD) designations on bank and investment accounts. Most banks and brokerage firms offer these although it depends upon the state in which the entity is domiciled as to whether these are allowable, but they're a simple, no cost and legal means of ensuring that money will pass directly to the named beneficiary at the time of death. Putting these designations on bank or investment accounts does not confer joint account rights while you're alive – in other words, POD and TOD only apply after your death – it does not turn your account into a joint account.
6. If you and your partner are like minded when it comes to medical care and you want your partner to be able to make necessary medical decisions for you should become unable to do so for yourself, see an attorney to draft a Health Care Proxy or Durable Power of Attorney for Healthcare to protect medical decision making ability. It is especially important to carry these documents with you when traveling because if you find yourself away from home and something happens, without the documentation in hand as an unmarried partner, you will not be able to make decisions on behalf of your partner.
7. A simple asset transfer strategy is to name your partner as beneficiary on IRA accounts, Roth IRA accounts, annuity contracts and life insurance policies. These assets transfer directly to the named beneficiary and avoid probate. You should check with your employer if you can name a non-spouse beneficiary for your pension or other employer-funded retirement plan. If not, other tactics utilizing life insurance can be employed.

Although it's a small list, these things can help avoid a slew of problems down the road. The trick is – plan ahead so you and your partner are prepared and protected.

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