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For the Love of Your Partner . . . Plan Now

By Gina M. Barry, Esq.

Times have changed, and many committed couples are now choosing to delay marriage, sometimes indefinitely. Although they are not married, they present themselves as a married couple would. They live together. They raise children together. They share their assets and their debts. While this arrangement may allow the happy couple to live in bliss while each partner is alive and well, trouble begins when one or both of the partners lose their competency or pass away. Your partner, which is essentially a boyfriend or a girlfriend, does not have the same legal rights as would your husband or wife. In fact, their legal rights are usually no more than a stranger would have. Fortunately, with proper planning, you can provide your partner with appropriate legal rights even if you are not married.

The first potential issue to be addressed is incapacity. If you lose your capacity, your partner will have no power to handle your financial affairs unless you have executed a valid Durable Power of Attorney. A Durable Power of Attorney is a document in which you designate someone to make financial decisions for you. At a minimum, naming your partner in this document should allow your partner to pay bills, manage real property and other

assets, and deal with government agencies.

Similarly, if you lose your capacity, your partner will have no power to make medical decisions for you unless you have executed a valid Health Care Proxy. A Health Care Proxy is a document in which you designate someone to make health care decisions for you in the event that you are incapacitated and unable to make your own health care decisions. Living will language is normally included within the Health Care Proxy. This language sets forth your end-of-life decisions and usually states that you do not want extraordinary medical procedures used to keep you alive when there is no likelihood that you will recover.

Further, if you have not properly planned your estate and you pass away, you may unintentionally disinherit your partner. While your partner may receive those assets that are held jointly with your partner or the assets on which you have named your partner as beneficiary, your partner will not receive your probate estate unless you have a Last Will and Testament naming your partner as your beneficiary. Your probate estate consists of any asset held in your name alone at the time of your passing that does not have a designated beneficiary. When you die without a Will, the heirs of your

probate estate are your spouse and your blood relatives. As a partner is neither a spouse nor a blood relative, your partner would not receive any of your probate estate unless you have executed a valid Will naming your partner as your beneficiary. Another reason to establish a Will is so that you may name your partner as the Executor of your estate, which will give your partner the authority to handle your estate for you.

To ensure that your partner receives your entire estate, there are a number of additional considerations. You should consider adding your partner as a joint owner to any asset that you hold in your name alone. Adding your partner as a joint owner will give your partner access to this asset during your lifetime. If you are not comfortable naming your partner as a joint owner, you could consider establishing a "pay on death" designation in favor of your partner, which would only pass the asset to your partner upon your passing. You should also consider updating the beneficiary designations on your life insurance policies, retirement accounts and any other accounts with a named beneficiary in order to name your partner as beneficiary. Finally, if your estate is fairly large, you might also consider establishing a Trust for the benefit of your partner in addition to a establishing a Will.

If you have a taxable estate, which in Massachusetts means an estate greater than \$1 million at the present time, it is important to note that you will not be able to take advantage of tax laws that favor married couples. The unlimited marital deduction allows a deceased spouse to leave any amount of money to a surviving spouse without having to pay any estate tax. Since this deduction may only be taken with respect to assets left to a surviving spouse, it is not available to your estate if you leave assets to a partner. As such, it may be necessary for you to address your tax issues in other ways, such as by gifting using the annual gift tax exclusion of \$13,000 per person, or

by establishing an irrevocable trust that owns life insurance meant to replace the wealth that will be lost on estate tax.

Even though you may have committed to your partner with your mind, body and soul, if you have not taken the legal steps necessary to protect your partner's interests should you lose your capacity or pass away, you have overlooked a very important aspect of your relationship. Once you have lost your capacity or passed away, it is too late to protect your partner. For the love of your partner, plan now and ensure their legal rights.

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