

For the love of your partner include these documents in your estate

Gina M. Barry, Esq.



Recently, many committed couples are choosing not to get married,

especially if one or both have been previously divorced or widowed. Although unmarried, these couples present themselves as a married couple. They live together and own property and other assets together. They share debts. They may have children. While this arrangement allows them to live in bliss while each partner is alive and well, difficulties arise when one of the partners loses their competency or passes away. A significant other does not have the same legal rights as would a spouse. In fact, their legal rights are usually no more than a stranger would have. Fortunately, proper planning can ensure your unmarried partner some legal rights.

A durable power of attorney

Incapacity is one potential issue to be addressed. If you lose 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 designating someone to make financial decisions for you. At a minimum, naming your partner in this document will allow your partner to pay bills, manage real property and other assets, and deal with government agencies, such as MassHealth.

A health care proxy

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 designating someone to make health care decisions for you if you are unable to make your own health care decisions. End-of-life decisions can also be addressed in your proxy by including a Living Will, which typically states that you do not want extraordinary medical procedures used to keep you alive when there is no likelihood that you will recover. Instead of a Living Will, individuals with a terminal condition or who are of advanced age may choose to execute a MOLST (Massachusetts Medical Orders for Life-Sustaining Treatment) with

their physician, as a MOLST provides even more specificity as to which medical treatments are desired or should be withheld. Having a Living Will or MOLST in place lets loved ones know your wishes and should reduce conflict should such a situation arise.

An up-to-date will

Death is another concern to be addressed. You may unintentionally disinherit your partner upon your death if you have not properly planned your estate. A Will addresses the distribution of your probate assets, which are those assets held in your name alone at the time of your passing that do not have a designated beneficiary. When you die unmarried and without a Will, the heirs-at-law of your estate are your blood relatives, which would exclude your partner. While your partner may receive jointly held assets or any assets on which you have named them as beneficiary, they will not receive anything from your probate estate unless you have a Will naming your partner as your beneficiary. Further, if you

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want your partner to be in control of the administration of your estate, you must establish a Will to name them as Personal Representative (formerly known as Executor) of your estate. If they are not so named in your Will, your partner would not have priority to serve in this capacity.

A gifting or trust plan

Moreover, if you have a taxable estate, which presently in Massachusetts means an estate greater than \$1 million, you will not be able to take advantage of estate tax laws that favor married couples. The unlimited marital deduction allows a deceased spouse to leave assets of any amount 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 spouse, it is not available to your estate if you leave assets to a partner. Thus, 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 \$15,000 per person in 2020, or by establishing an irrevocable trust that owns life insurance meant to replace the wealth that will be lost on estate tax.

Because love is not enough

Even though you may have committed to your partner, 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 capacity or passed away, it is too late to protect your partner. For the love of your partner, plan now to ensure their legal rights.

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