

For the love of your partner, plan now

Gina M. Barry, Esq.



Presently, many committed couples are choosing not to get married, especially if they have been divorced or widowed in the

past. Although these couples are not married, they present themselves as a married couple. They live together, and they share their assets and debts. While this arrangement may allow the happy couple to live in bliss while each partner is alive and well, trouble begins when one of the partners loses their competency or passes away. Your partner 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, with proper planning, you can provide your partner with some legal rights even if you are not married.

Grant them legal powers

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 will allow your partner to pay bills, manage real property and other assets, and deal with government agencies,

such as MassHealth.

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.

Language addressing your end-of-life decisions, which is known as a Living Will, is normally included within the Health Care Proxy. This language usually states that you do not want extraordinary medical procedures used to keep you alive when there is no likelihood that you will recover. Having a Living Will in place lets loved ones know your wishes and should reduce conflict should such a situation arise.

Prepare for their future

Further, if you have not properly planned your estate and you pass away, you may unintentionally disinherit your partner. 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 at law of your probate estate are your spouse and your blood relatives. As your partner is neither your spouse, nor a blood relative, your partner would not receive any of your probate estate. While your partner may receive those assets held jointly with you 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. Another reason to establish a Will is so that you may name your partner as the personal representative of your estate, which will give your partner the authority to handle your estate for you.

Consider potential tax issues

If you have a taxable estate, which at the present time 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 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 \$15,000 per person in 2018, 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, if you have not taken the legal steps necessary to protect your

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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.

Gina M. Barry is a partner in the regional law firm of Bacon Wilson, P.C., Attorneys at Law. She is a member of the National Association of Elder Law Attorneys, the Estate Planning Council, and the Western Massachusetts Elder Care Professionals Association. She concentrates her practice in the areas of estate and asset protection planning, probate administration and litigation, guardianships, conservatorships and residential real estate.