

Financial Planning for Unmarried Couples

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Why might a couple remain unmarried? Obviously, for many same-sex couples it is not a matter of choice, but a reality imposed upon them by the federal government's stance on marriage. For heterosexual couples the decision often boils down to a need to maintain financial, family, political or religious independence while still sharing a life with someone they care about.

There are two often cited reasons for not getting hitched. If one partner is on Medicaid eligibility could be lost. The other more commonly cited reason is that Social Security earnings are based on that of a prior spouse and (a new) marriage would eliminate this benefit.

Financial planning for unmarried couples can be complicated. The complication arises from federal and state government laws favoring 'family members' when there is a death, disability or end to a relationship. A partner or best friend under most state or federal law is NOT considered a family member and therefore will not inherit or be treated as an automatic beneficiary under taxation laws, and can even be denied access to a hospitalized partner or friend.

Many of these challenges need to be addressed through wills, trusts and other estate planning methods with attorneys once they have first been addressed with a financial adviser. Unmarried couples need to be very clear as to what legal standing they have; without it the law usually favors blood relatives – *even if they are estranged*. Common law marriages in some states may also fall under question since there are requirements that may need to be met before they will qualify.

When transferring money to a partner or friend, you are limited to \$13,000 each year and \$1 million over your life. This becomes even more important when you own property as "joint tenants with rights of survivorship," since the entire value of the property will likely be included in the "first to die" estate *unless* you have sufficient documentation to demonstrate that you made equal contributions from your own assets.

It is our practice to review with our clients what they might or should include in a will, power of attorney, healthcare directive or living will. Probate is the last place that unmarried couples should land since it becomes contestable by any family member. It is always a good idea to bypass probate by using beneficiary designations for retirement accounts and life insurance, or to use transfer-on-death (TOD) accounts. You may even create trusts to hold assets that will designate the appropriate person or persons to receive them. BUT, before you go and change all of your assets to include a partner or best friend PLEASE NOTE that you may create a gift-tax liability since the limit is \$13,000 per year and \$1M for

life.

For domestic partners the best approach is to create a domestic partnership agreement that defines the scope of the relationship and what happens should the relationship fail. If children are involved, *both* partners need to be signatories to a parent adoption agreement.

It is worth noting that there can be a real advantage to keeping your finances separate as an unmarried couple, since you can better control and allocate expenses and taxes. It is always prudent to have a financial advisor review your trust and other legal documents. It's their task to look over the various documents with an eye to ensuring that they truly provide for the outcome you expect.

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