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A Financial Planning Update

From the Desk of:

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Estate Planning for Lifetime Partners

There have been some distinct changes in the American cultural and sociological landscape in recent decades. Among them is the increasing number of unmarried couples living together as lifetime partners. This trend has created estate planning challenges for the individuals involved.

Here are a few of the more common estate planning issues that may affect unmarried couples:

Family Ties

In general, the rules governing the ultimate disposition of assets are not as favorable for individuals who are not legally married as they are for those who are married. If an individual dies without a **will (intestate)**, state intestacy law will determine the disposition of the decedent's assets. Although these rules vary from state to state, they typically dispose of assets through bloodlines or marriage. So, in the case of unmarried lifetime partners, assets may not be distributed according to the decedent's wishes.

A last will and testament is designed to protect against the undesirable effects of intestacy by allowing an individual to specify who is to receive probate assets upon death. However, a will may not be immune to challenges made by the decedent's family members who may have benefited from intestacy law if a will was not accepted by the local probate court. Therefore, it is essential that a will be drafted and executed when an individual is fully competent; it may also be important that the individual's partner does not serve as a witness to the execution of the will. In addition, if certain family members or relatives are to be disinherited, it may be advisable to include a list and an explanation of why such decisions were made in the will.

Although a will can express a lifetime partner's wishes for the disposition of assets upon death, it does not provide any contingency arrangement for the management of assets or medical decisions if the individual becomes *incapacitated* due to an accident or illness. But, a general **durable power of attorney** and a **health care proxy** can allow an individual to *determine* who will make such decisions. Due to varying state laws, it may be necessary to specify powers in detail. Even then, some third parties may not accept a durable power of attorney and may require the use of their own forms. In the case of a health care proxy, a physician may be hesitant to follow the decisions of an agent who is not legally related, especially if family members object. Therefore, it may be prudent for an individual to provide additional proof of his or her intentions

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Life Insurance and Divorce: Protecting Your Family's Future

Sometimes in life things don't work out as planned. One of the most trying examples of this is when a couple decides they can't make their marriage work and, subsequently, file for divorce. Divorce takes a significant financial and emotional toll on both parties, their children, and other family members and friends. In the midst of the immediate financial and legal concerns, couples also need to look beyond the present to help ensure that their financial futures are secure and that the future needs of children, such as education expenses, will be provided for in the event of an untimely death. Life insurance may offer a solution.

According to the latest data from the U.S. Census Bureau, about five of every six custodial parents were mothers (82.5 percent) and one of every six were fathers (17.5 percent). In addition, the proportion of custodial mothers with income below poverty (31.2 percent) was higher than that of custodial fathers (17.4 percent). With the majority of care falling to single mothers living on relatively modest average incomes, concerns arise regarding the future needs of children. Because women traditionally spend more time out of the workforce than men because they are caring for children, planning for future financial independence is especially important.

Let's look at several different scenarios.

After divorce, if the spouse paying alimony and/or child support were to die, then the custodial parent may be hard-pressed to maintain the children's current lifestyle, let alone be able to afford college fees. On the other hand, if the custodial parent were to die prematurely, the ex-spouse may find it difficult to cover daily childcare expenses. For these reasons, divorcing couples may want to consider making life insurance policies part of the divorce decree. An example of this language would be as follows: "(Name of husband or wife) shall maintain insurance on (his/her) life in the total amount of ($ amount) as long as (he/she) is required to pay child support. The insurance shall be payable to (Name) as trustee for the minor children. If such insurance is not in force at death, the children shall have a claim against the estate for ($ amount)."

A custodial parent may consider purchasing a life insurance policy on his or her ex. If this is not possible, transferring ownership and beneficiary arrangements on an existing policy may be another option. If policy premiums exceed the budget, the custodial parent may request alimony or child support increases to cover the costs. If the non-custodial parent remains the policy owner, the divorce decree may include arrangements to ensure that the custodial parent is named as the irrevocable beneficiary and receives ongoing proof that the payments continue to be made and the policy remains in effect.

A non-custodial parent may wish to keep the policies he or she already has to protect the financial interests of other family members, such as children from a new marriage. In this case, the non-custodial parent may consider purchasing a new policy on his or her life with the ex as the owner and beneficiary. If this is done before or during the divorce proceedings, gift tax will not be owed. As part of tax reform, beginning January 1, 2019, alimony or separate maintenance payments are not deductible from the income of the payer spouse, or includable in the income of the receiving spouse, if made under a divorce or separation agreement after December 31, 2018.

For existing policies, it is important that the insurance company be notified of any beneficiary changes: Using a will for this purpose will not be valid. In addition, should the insured remarry and the policy name the "husband" or "wife" of the insured as the beneficiary, the new spouse may receive the

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proceeds. If the insured does not remarry and this same policy language is in force, then the proceeds may be paid to the secondary beneficiary. If the insured's estate is named as the new beneficiary, insurance proceeds will likely be held up in the probate process. If minor children are named as the new beneficiaries, additional problems may arise, as insurance companies generally will not pay minors directly. Consequently, it may be a good idea to create a trust for minor children and name the trust as the beneficiary of the policy proceeds.

Laws vary from state to state, so it is important to consult with financial, tax, and legal professionals. Divorce is rarely easy, but a well-planned strategy can help ensure the short- and long-term financial needs of children. $

Continuing Care Retirement Communities: Aging in Place

Do you sometimes think about what your life will be like when you retire? Most people imagine living independently in comfortable and safe surroundings, preferably residing in their own home. With longer life spans and advances in health care, many retirees—if they retire early enough—may have several decades or more to enjoy their "golden years."

Continuing care retirement communities (CCRCs), also known as life-care communities, accommodate active, healthy older adults in a range of living quarters, such as single-family homes, apartments, or condominiums. As residents age and require assistance, they remain at the CCRC, but can enter an assisted living or nursing care facility. Such a community allows residents to remain in one place for the duration of their life, so they can age in place, without worrying about their future care.

The Cost of CCRCs

CCRCs usually require a one-time entrance fee and monthly charges. According to the American Association of Retired Persons (AARP), the one-time entry fee can range from $100,000 to $1 million, and it pays for care in advance and funds the CCRC's operating costs. Monthly fees can average $3,000 to $5,000 and more depending on your state of health, whether you are renting or buying, how many residents live in the facility, and the type of service contract you choose. Additional fees may be added for such options as for housekeeping, meal service, transportation, and social activities.

Three types of service contracts are usually offered. The **life care,** or **extended contract**, the most expensive, provides unlimited assisted living, medical care, and skilled nursing care. A **modified contract** provides care for a specified length of time, after which the monthly fee increases if you require other services. A **fee-for-service contract** allows you to pay a lower enrollment fee, but you would pay for assisted living and nursing home care, if needed, at the market rate.

Do Your Research

When you are researching facilities, it is important to be sure that the one you pick is financially stable, because you will want to be certain it will provide the housing and support you need 10 or 15 years into the future. Most states offer some level of CCRC regulation, so you should ask to see any licensing and inspection reports, complaint investigations, and audit reports. You should also plan to visit all of the different facilities in the community.

Seek Legal Advice

If you are considering this retirement option, you should get legal advice because of the complexity of CCRC contracts. Once you have worked out a contract, have your attorney look at it, to make sure it accurately reflects your agreement with the community. $

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(i.e., in the form of a written letter accompanying the health care proxy).

The addition of a **revocable trust** can further solidify an estate plan and help protect individuals from some of the planning problems related to wills and powers of attorney. Privacy and the ability to transfer assets associated with revocable trusts can be attractive estate planning components for lifetime partners. A revocable trust allows the **grantor** to make him or herself the **trustee** and elect his or her partner as the **successor trustee**. In the event of death, the successor trustee has control over assets held in trust. However, even with a revocable trust, it may be advisable to provide a written confirmation of the grantor's wishes to be made part of the trust document, so any potential challenges by family members may be avoided.

Federal Transfer and Estate Taxes

Another challenge facing unmarried couples is the possibility of Federal **transfer taxes**. Lifetime partners do not qualify for the **unlimited marital deduction**, which allows spouses to pass an unlimited amount of assets between them without incurring a tax. The value of the transferred assets that exceeds the **gift tax exclusion** and the lifetime gift exemption is therefore subject to gift taxes. Also, the retitling of assets in **joint tenancy** with rights of **survivorship** could create taxable situations.

For some individuals, estate taxation may be a concern due to having substantial assets. Usually, if one partner has more assets than the other, or is much older than his or her partner, the use of the annual gift tax exclusion ($15,000 for single filers in 2019 and 2020) may assist in the gradual transfer of assets to a lifetime partner. However, the annual gift tax exclusion may not be a sufficient mechanism for the timely transfer of large assets. In this respect, planning for the use of the $11.4 million in 2019 and $11.58 million in 2020 **lifetime gift exemption** (sometimes called the applicable exclusion amount) may serve as an opportunity to gift substantial assets, such as real estate or investments, to a lifetime partner.

For planning purposes, the use of **life insurance** may be a valuable tool for helping to protect the financial future of the surviving lifetime partner. Life insurance may help the insured partner circumvent any potential future family contestation by possibly providing the surviving partner with a **death benefit** equal to the size of the insured's estate. In addition, life insurance can play an instrumental role in helping to pay for any estate tax liability. Normally, the life insurance policy is purchased by the lifetime partner or by an **irrevocable life insurance trust** (ILIT) that is for the benefit of the lifetime partner.

Final Thoughts

While estate planning for lifetime partners can be complicated, unmarried couples need to carefully consider the potential familial and tax issues. It is important to consult with qualified tax, legal, and financial professionals before taking action to help ensure that overall estate planning objectives will be met. $

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