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MEMBER



Special needs require special lawyers.

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ESTATE PLANNING FOR UNMARRIED AND SAME SEX COUPLES BY BRIAN BOYS

For unmarried and same sex couples, there are many unique legal issues to consider during the estate planning process. While some aspects of planning for unmarried couples are similar to married couples, many others are vastly different. Because of legal, religious, and societal issues, unmarried and same sex couples face real challenges to the execution of their wishes. Therefore, to prevent devastating results to their partners and families, it is critical for unmarried and same sex couples to execute detailed and legally enforceable instructions concerning the management of their financial affairs and their health care in the event of disability, and the disposition of their assets and remains in the event of death. These documents include:

1. General Durable Power of Attorney

One of the most important issues to consider is whether your partner will be able to handle your property and personal affairs during a period of your disability. By executing a general durable power of attorney (a "POA"), you can make your own decision as to who will be your primary and successor agent, whether that will be your partner or another person of your choice.

If you fail to execute a POA and later become incapacitated or otherwise unable to make your own decisions, then someone will have to petition a court to be appointed as your guardian and/or conservator to handle your affairs. The appointment process is lengthy and expensive, and it invites the prospect for disputes over who will be appointed as your guardian and conservator. The best way to prevent this is by executing a POA.

2. Advance Medical Directive

In addition to planning for the management of your financial affairs, you should provide a plan for your health care decision making during a period of disability. Virginia law provides, in the absence of your ability to make your

own choices, an order of priority for making these types of decisions. The order of priority includes one's guardian, spouse, adult child, parents, adult siblings, and other blood relatives, but makes no mention of a partner. Only through the execution of the proper documents, can you ensure that your partner has visitation rights and is able to assist you during a period of disability.

An advance medical directive usually also contains a living will, allowing you to make your wishes known regarding end of life decisions, such as the providing, withholding, or withdrawal of life support.

3. Last Will and Testament/Revocable Living Trust

For unmarried and same sex couples, the default rules established in Virginia law for both the disposition of your assets and who will serve as the administrator of your estate are likely to be contrary to your wishes. Therefore, it is important that you execute a last will and testament and possibly a revocable living trust.

A last will and testament (also known as a "will") is an instrument by which you appoint an executor to settle your estate and provide for instructions for the distribution of your assets upon your death. If you die without a will, Virginia law assumes that you prefer that your heirs inherit your estate and makes no provision for your partner. If you have minor children, a will also allows you to nominate a guardian for these children.

You may instead dispose of your assets at your death by using a revocable living trust (also known as a "living trust"). A living trust serves as a will substitute, avoiding the probate process. A notable advantage of a living trust is that it is not a document of public record, and therefore it provides more privacy than a will. This may be especially useful if you prefer that your relationship to your partner remain confidential.

Other critical estate planning issues for unmarried and same sex couples to consider include:

- How do the federal gift and estate tax laws impact unmarried and same sex couples?
- Are you sure that your partner can visit you if you become hospitalized? If you pass away, can your partner make funeral and burial/cremation arrangements for you?
- Is your partner designated as the beneficiary of your life insurance policies, retirement accounts, etc.? What are the tax implications of this decision?
- How are you and your partner going to pay for your long-term care needs? Is Medicaid an option, and should you instead purchase long-term care insurance?

While having a comprehensive estate and financial plan in place is important for all individuals, it is especially important for unmarried and same sex couples. If you do not execute the proper estate planning documents, then your partner will likely have no rights in making financial or medical

decisions on your behalf and will not inherit from your estate. Furthermore, the default rules that are in place may be contrary to your wishes. While most people do not like thinking about and discussing the issues raised by this process, by doing so, they can save time and money in the long run, avoid unnecessary litigation and disputes, and insure that their wishes are respected.

The attorneys at Oast & Hook can assist unmarried and same sex couples with estate and financial planning, tax issues, and the federal and state laws pertaining to unmarried and same sex relationships. For more information on this topic, please review Oast & Hook's newest special report "*Estate Planning for Unmarried and Same Sex Couples in Virginia*" available in the Publications section of Oast & Hook's website.

Ask Allie

O&H: Allie, last week you talked about families traveling with their pets. Please give our readers some tips about vacationing without their pets.

Allie: Sure! If families are not going to take their pets on vacation with them, then they should find a kennel or pet sitter for the time that they will be away. If the pet will be staying in a kennel, then the family should visit the kennel in advance and ask questions. The family needs to know where the pet will be staying, how often it will be taken outside (for dogs), what vaccination and health records will be required, and whether there is a veterinarian on staff. If the pet will not be going to a kennel, then a pet sitter (usually a friend or family member) could stay at the house with the pet, or keep the pet in the pet sitter's home. The family could also have a pet sitter (either a professional sitter, or a friend or family member), visit the pet a couple of times per day. If it's possible to keep the pet in its own environment, then that will help reduce stress when the family is gone; this is particularly true for cats (including me, I'd much rather stay at home!). The pet sitter should stay at least 30 minutes per visit for a walk or playtime. If a family needs to find a pet sitter, then they can ask at their veterinarian's office for recommendations or referrals. If a family hires a professional pet sitter, then it's a good idea to see if the pet sitter is licensed, insured and bonded, and that the pet sitter is permitted to bring the pet to the vet clinic in case the pet has a health emergency. I hope these tips help our pet families decide what options are best for their pets and them. Time to play . . . See you next week!

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