



DMK
Advisor
Group, Inc.

PLANNING FOR NON-TRADITIONAL FAMILIES

MAIN OFFICE

Ballantrae Professional
Office Park

17961 Hunting Bow Circle

Suite 102

Lutz, FL 33558-5374

813.996.6100

800.983.4448

info@dmkadvisorgroup.com

VISIT US ONLINE AT

dmkadvisorgroup.com

Today's families often bear little resemblance to Ozzie and Harriet. Gay or straight, those who don't have the protection of traditional marriage need help to achieve estate planning equality.

Unless you've been living on a desert island for the past year, then you probably know that a growing number of states are redefining domestic partnerships to include not only traditional marriage, but also same-sex marriage or civil unions.

While the news headlines would suggest that only the gay and lesbian communities are affected by this trend, the fact is that a large number of heterosexual couples in the U.S. are increasingly choosing to form families without the benefit of marriage.

Today 7.5 million heterosexual couples in the U.S. are cohabitating, a record high. While as many as two-thirds of these couples plan to marry eventually, a significant number will never marry for the duration of their relationship.

The reasons heterosexual couples avoid marriage vary widely. Some avoid the marital state because of concerns about the high rate of divorce. Others face difficult impediments, such as religious obstacles or other social issues. For older men and women who form relationships late in life after the loss of a spouse, the issues keeping them from marriage can be even more complex. They may lose benefits if they remarry, or they may be concerned about upsetting their family's emotional or financial security by entering into a second marriage.

Gay, straight, young, old, childless or child-rearing: All committed non-traditional couples who care about their partners and want to protect them should take heed: with a little planning, you can provide your partner a measure of protection outside of marriage.

WHAT'S MARRIAGE GOT TO DO WITH IT?

There's no denying traditional marriage confers to husband and wife a long list of societal, legal and emotional benefits. For many, it is also an important religious sacrament. Traditional marriage offers spouses more than 1,100 benefits, rights and protections, such as:

- Hospital visitation rights.
- The right to act on behalf of one's spouse in the event of a medical emergency.
- The right to be kept with one's spouse in a long-term care or nursing care facility.
- Spousal privilege, whereby one spouse cannot be compelled to testify against the other.
- Automatic inheritance rights, unless otherwise stipulated.
- Over 179 federal tax and benefit provisions that take marital status into account: such as the right to receive spousal benefits for social security, Medicare, federal retirement benefits, etc.
- Estate-tax free transfers of wealth from one spouse to another.
- Parental rights and responsibilities over children born into the marriage.

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WHAT CIVIL UNIONS CAN AND CANNOT DO

Today just nine states and the District of Columbia allow marriage between same sex partners. Another eight allow couples to enter into civil unions or similar legally-recognized domestic relationships.

While these 17 states extend some benefits of traditional marriage to non-traditional couples, keep in mind that these state-based statutes only impact the ways in which these couples are treated in their respective jurisdictions. The benefits do not extend to federally-granted benefits, such as access to a partner's federal retirement benefits, social security or Medicare.

While the states differ in what they offer non-traditional couples, in general, they offer couples access to such benefits as:

- Favored treatment in inheritance of a partner's property at death, including non-probate transfer.
- Recognition of both partners' status in adoptions.
- Group insurance for state employees.
- Workers' compensation benefits.
- Ability to act on behalf of the partner in medical decisions, hospital visitation rights, and rights of notification.
- Terminal care documents and durable power of attorney for health care execution and revocation.
- Family leave benefits.
- State public assistance benefits.
- Marital privilege and testimonial immunity laws.
- Making, revoking, and objecting to anatomical gifts by others.
- State pay for military service.
- Equal tax treatment for couples and families at the state and local level.
- Health insurance coverage for same-sex partners and the other partner's children.
- Right to take Family Emergency and Medical Leave.
- Right to share a nursing home.
- Right to control disposition of a partner's remains.

ACHIEVING SOME OF THE BENEFITS OF MARRIAGE WITHOUT THE LICENSE

No arrangement other than traditional marriage currently provides a couple with the fullest range of benefits on both the state and national level. If that's not an option you can or want to pursue, there are some estate planning strategies available that can help you protect yourself and your loved ones.



BENEFICIARY DESIGNATIONS

One of the simplest ways to make sure that your property passes to the person of your choice – spouse or otherwise – is to use the beneficiary designation. For assets as varied as your bank accounts, annuities, retirement accounts, and investments, the beneficiary designation will ensure that the asset passes immediately to your beneficiary without delay upon your death. Similar to the beneficiary designation is “payable on death,” which allows the financial institution to pay the balance of your account to your designated heir upon your death.

JOINT TENANCY WITH RIGHTS OF SURVIVORSHIP

For such property as bank accounts, your home, cars, and other assets, you and your partner can share in ownership by using joint tenancy with rights of survivorship. This ownership strategy gives 100 percent ownership to each of the joint tenants, with the survivor inheriting the asset in its entirety when the partner dies. Once again, this transfer happens immediately upon death, and allows you and your partner to avoid probate.

LIFE INSURANCE

Without entering into a federally-recognized marriage, there's no remedy for extending your government benefits such as social security and Medicare to a partner other than your legal spouse (children, of course, may receive benefits under social security). However, you can help provide your partner with a source of income in the event of your death by acquiring life insurance protection. Most life insurance carriers allow the death benefit to be annuitized, paying out the proceeds to your beneficiary in regular installments over a period of time.

Here's something else that life insurance can do: provide a source of funds to pay your final expenses, especially your estate taxes. This year, the estate tax exemption amount is \$5 million. That means you can pass on to anyone up to \$5 million in wealth without incurring estate taxes. Over that amount, however, and the excess is taxed at 55 percent. If you have a large estate, your life insurance can help pay this costly expense.



GUARDIANSHIPS FOR CHILDREN

For heterosexual couples, parental rights outside of marriage may still exist, as long as both parents are on the child's birth certificate or paternity is otherwise established. But same-sex couples have a bigger obstacle, especially in states that do not recognize same-sex adoptions. In those cases, only one of the partners may be legally recognized as a child's parent. In that situation, the legally recognized parent can ensure that his or her partner is named as the child's legal guardian in the event of the parent's death or incapacity.

POWER OF ATTORNEY, HEALTH CARE POWERS

Speaking of incapacity, another critical step domestic partners need to take is to empower each other to act on the other's behalf in the event of a serious injury or illness.

GENERAL AND DURABLE POWERS OF ATTORNEY A general power of attorney allows the person you designate to act on your behalf in legal and financial affairs as long as you are of sound mind and in good health. Should you become incapacitated, however, you'll need a durable – or springing – power of attorney, which lets your partner act on your behalf when you can no longer do so for yourself.

HEALTH CARE POWER OF ATTORNEY This legal device, which goes by different names in different jurisdictions, allows you to name the individual you want to make decisions on your behalf when you can no longer do so for yourself. It will also give that person the right to visit you in the hospital, be informed about your medical records, and much more. Without these legal tools, unmarried partners will often be completely shut out of the process and may not even be allowed to visit their partners in the hospital during a medical emergency.

LIVING TRUSTS, WILLS

Without creating a plan of their own, domestic partners may not be able to direct how their assets will be distributed upon death. Most jurisdictions have a formula for distribution of property when an individual dies intestate, and it usually gives precedence to blood relatives.



While creating an estate plan is an important task we should all undertake, it's especially critical for those individuals who have no legally recognized relationship with their partners.

Fortunately, lots of planning strategies will help you control who, when, how and why your estate passes on to your chosen heirs. Living trusts allow you to transfer assets to a trust now, with ownership passing on to your heir upon your death. Or you can use a will to direct how your assets will be distributed when you're gone. Your estate-planning advisor is the best source for help in determining the right strategies for you.

EXPERT GUIDANCE NEEDED

For those among us who can't take advantage of traditional marriage, the good news is that many of the benefits spouses enjoy can be obtained through other planning strategies. But, as is true in many financial and legal matters, the complexity of these planning strategies requires expert guidance of competent legal and financial counselors. If we can be of any help to you in these matters, please call us today!

ABOUT DMK ADVISOR GROUP, INC.

First established in 1993, the firm that would eventually become DMK Advisor Group, Inc. was created to help clients achieve their most cherished goals through personalized financial planning services and a wide range of quality financial products. Today, the firm has evolved to include a team of affiliated financial professionals from coast to coast. Working together, the advisors of DMK Advisor Group offer the expertise, planning techniques, and products to serve businesses, individuals, and families.