

Estate Planning Considerations *for Same-Sex Couples*

Estate planning can be a complicated process, particularly if there are extenuating circumstances, such as being a partner in a same-sex relationship. Following are a few of the many planning considerations.

Considerations while alive ...

- Executing a Health Care Directive/Power of Attorney for Personal Care naming the partner will ensure that the partner has a say in how the individual is cared for. If the individual has a family that is not supportive of the same-sex relationship, and there is no HCD/POAPC, the partner may be excluded from the decision-making process and the individual's wishes may not be carried out.
- Having a Power of Attorney for Property naming a trusted attorney is always a prudent measure.
- Cohabitation agreements can reduce conflict in the event of a relationship breakdown and legally establishes the existence of the relationship, which may be beneficial if there is ever a challenge to a Will or other legal documents.

When planning for death ...

- When executing a Will, the individual should be specific and detailed about the distribution of the estate and the relationship, particularly if the family is not supportive of the relationship. Wills of individuals in a same-sex relationship may be more likely to be challenged than Wills of individuals in an opposite-sex relationship.

- If the individual is planning to leave registered plans and insurance policies to the partner, the partner should be named as the designated beneficiary on the actual contract. The added benefit with respect to registered plans is that a qualified partner will be eligible for a spousal roll-over.

Once the individual has passed on ...

- If an individual has not executed a Last Will and Testament, the estate will fall under the rules of intestacy. In some provinces unmarried same-sex partners have fewer rights than opposite-sex married or common-law partners. The partner may not be eligible as a beneficiary under the estate and may not be included in planning the funeral arrangements, even if he/she is fully aware of the deceased's wishes.
- Administration of the estate may be more difficult if the individual has named as executor someone that is not supportive of the same-sex relationship, particularly if the partner is the main beneficiary under the Will.

Individuals with special circumstances, whether it is being a partner in a same-sex relationship or some other unusual situation, should meet with an estate planning specialist or a lawyer specializing in estate planning.

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