



Wealth Planning Update

Legal protection for unmarried couples

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Key takeaways:

- The number of unmarried partners living together has grown over the years. If you are in a relationship and not married, it is important to be aware of the financial and legal protections marriage provides and actions you may consider taking.
- Financial and legal implications to take under consideration include estate planning, health care authorization, retirement planning, and wealth transfer impacts.

What this may mean for you:

- It is important to consult with a legal professional if you are not married to consider steps you may take to protect you and your partner.

Modern long-term romantic relationships can be characterized by a move away from the traditional legal notion of marriage in favor of more relaxed arrangements. This freedom of choice provides many benefits, including empowering women and allowing same-sex couples to enjoy fulfilling relationships. Yet marriage provides many legal protections to each spouse, and if you choose to not be married, you should plan accordingly.

Trends and statistics

Marriage may have lost some of its luster, but the story is more complex than it seems. The number of Americans living with an unmarried partner reached 18 million in 2016, which is up 29% since 2007.¹ This trend is found even when dependent children are present: 1 in 4 parents living with a child in the U.S. today are unmarried. Fifty years ago, it was fewer than 1 in 10 parents.² Appreciating the implication of these statistics requires even more digging into the numbers. In 2017, 35% of all unmarried parents lived with a partner.² Single mothers no longer make up as large a segment of unmarried parents. The numbers tell an interesting story:²

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- 1968: 88% single moms, 12% single dads
- 1997: 10% cohabitating dads, 10% cohabitating moms, 12% single dads, 68% single moms
- 2017: 17% cohabitating dads, 18% cohabitating moms, 12% single dads, 53% single moms

The declining popularity in marriage is not confined to the young or those raising children. While roughly half of cohabiters are younger than 35, cohabitation is rising quickly among Americans age 50 and older.¹ The United States Census Bureau data shows adults over the age of 50 are among the fastest-growing segment of unmarried couples in the United States.³ The number of cohabitating adults over the age of 50 has increased from 2.3 million in 2007 to 4 million in 2016.⁴

Legal implications

Marriage provides a constellation of legal rights and protections between spouses. If you are not married, you generally do not get the benefit of such laws with regard to a non-spouse partner:

- No right to your partner's health care information or ability to make health care decisions for your partner
- No right to have access to or make financial decisions when your partner is incapacitated or after your partner's death
- No automatic right to inherit a deceased partner's assets
- No ability to utilize the marital deduction in estate planning
- No retirement plan protections for your partner under ERISA or other federal laws
- No favorable treatment of retirement account payouts after death of spouse (although other favorable treatment rules unrelated to marriage may apply)
- No legal rights for couples in the event the relationship dissolves

Long ago, common law marriages existed to provide some rights between technically unmarried partners that held themselves out as married but did not formalize their union. Today, common law marriages are largely a relic of the past and exist in only a few states.⁵ Even many states that do recognize common law marriage will only acknowledge a union formed before a certain date many decades ago.

Estate planning documents

Fortunately, contracts or testamentary documents can create many of the rights and protections afforded by marriage. All adults should have basic estate planning documents, but it is especially important for unmarried partners to consider what estate planning documents to have in place. These documents may include:

- Durable powers of attorney for property, which can empower your partner to manage your financial affairs
- Health care powers of attorney, which may allow your partner to act on your behalf for medical decisions when you are incapacitated
- HIPAA authorizations to allow your medical providers to share your health information with your partner
- Wills and revocable trusts can appoint your partner as executor or trustee, respectively, to manage your estate upon death — perhaps most importantly, these documents can override the default non-inheritance for an unmarried partner by articulating exactly what you intend your partner to inherit

Providing for your partner

Planning to provide for an unmarried partner after your death requires you take affirmative action. It cannot be stated enough that in the absence of such estate planning documents, your surviving partner is not entitled to an inheritance from you by law.

A will or revocable trust is the customary way to leave resources for your partner at your death. However, estate planning documents are not the only consideration:

- Keep in mind that your partner will not receive Social Security benefits based on your earnings.
- In conjunction with your estate plan, you may consider naming your partner as beneficiary/payable on death (POD) on accounts. You should always consult with your estate planning attorney before-hand to ensure the beneficiary/POD designations align with your other estate planning documents.
- Be aware of issues related to your retirement accounts if your partner is a beneficiary of your IRA⁶:
 - If your partner is not more than 10 years younger than you, they will be able to use their life to recalculate the required minimum distribution (RMD) timeline from the Inherited IRA.
 - If your partner is more than 10 years younger than you, the Inherited IRA will be distributed within 10 years unless they otherwise qualify as an eligible beneficiary.
- You may consider exploring life insurance planning for your partner if you plan to leave the bulk of your assets to other individuals, such as your children.
- Consider whether you wish for your partner to have the ability to continue to live in your home after your death if they are not an owner.
 - Having minor children heightens the need to have an estate plan in place addressing this.
 - If you and your partner share a residence that you own separately or jointly, make sure that you are comfortable with how that residence will pass after your death.

Planning for children

Setting up custodial accounts and trusts for children can provide resources for their education and care in the future. There are significant nonfinancial considerations regarding the guardianship of non-biological parents that are beyond the scope of this piece. As these are state law considerations, discuss your situation with your attorney.

Advanced estate planning

For affluent and high-net-worth couples, efficient wealth transfers require additional consideration because your estate may be subject to an estate tax liability upon your death. Married couples can often defer this liability because they can use an unlimited marital deduction for estate tax by leaving assets outright or in qualifying trusts for the surviving spouse. Furthermore, you and your partner cannot freely transfer assets or money between each other without potential gift tax consequences. An unmarried couple is allowed only \$15,000 per year to transfer tax-free between each other. Families in this situation should seek the counsel of a tax advisor or attorney.

Conclusion

If you have decided not to marry, a few actionable steps can provide you with some of the same legal and financial rights and protections afforded by marriage. You should have estate planning documents in place, consider how you want to provide for your partner at your death, and plan ahead for the care of any children. Taking action now may provide you and your partner with the stability and security of good planning.

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¹ Gieger, A.w. and Livingston, Gretchen, "8 facts about love and marriage in America", PewResearch Center, February 13, 2019, [pewresearch.org/fact-tank/2019/02/13/8-facts-about-love-and-marriage](https://www.pewresearch.org/fact-tank/2019/02/13/8-facts-about-love-and-marriage).

² Livingston, Gretchen, "The Changing Profile of Unmarried Parents", Pew Research Center, April 25, 2018, [pewsocialtrends.org/2018/04/25/the-changing-profile-of-unmarried-parents](https://www.pewsocialtrends.org/2018/04/25/the-changing-profile-of-unmarried-parents)

³ Epperson, Sharon, "Why Older Couples Are Living Together, Skipping Marriage", CNBC online, June 6, 2014, [cnbc.com/2014/06/06/ouples-are-living-together-skipping-marriage.html](https://www.cnbc.com/2014/06/06/ouples-are-living-together-skipping-marriage.html)

⁴ Stepler, Renee, "Number of U.S. adults cohabiting with a partner continues to rise, especially among those 50 and older", Pew Research Center, April 25, 2017, [pewresearch.org/fact-tank/2017/04/06/number-of-u-s-adults-cohabiting-with-a-partner-continues-to-rise-especially-among-those-50-and-older](https://www.pewresearch.org/fact-tank/2017/04/06/number-of-u-s-adults-cohabiting-with-a-partner-continues-to-rise-especially-among-those-50-and-older)

⁵ "Common Law Marriage by State", National Conference of State Legislatures, March 11, 2020, [ncsl.org/research/human-services/common-law-marriage.aspx](https://www.ncsl.org/research/human-services/common-law-marriage.aspx)

⁶ IRS Publication 590-B (2020), [Distributions from Individual Retirement Arrangements \(IRAs\) | Internal Revenue Service \(irs.gov\)](https://www.irs.gov/retirement-accounts/distributions-from-irras)

