Estate Planning for Unmarried Couples: Considerations to Make

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There are two ways in which your assets pass upon your death: (1) by *operation of law* to designated beneficiaries (IRA, life Insurance, etc.), pursuant to an agreement (a living trust agreement) or as joint owners with rights of survivorship, or (2) through the probate/administration process (whether in accordance with a last will and testament ("Will") or New York State's laws of intestacy).

When one passes without a Will, New York State law generally only provides protections for the interests of blood or adopted relatives of the decedent based upon the following priority: *married* spouses and children (or if no spouse, then just children), and then parents, siblings, cousins, and/or nieces and nephews. If the decedent dies unmarried, without a Will, and their assets do not pass by operation of law to any designated beneficiaries, even a partner or fiancé would be omitted from any portion of the decedent's estate pursuant to New York State's intestacy laws. And while it may not be your intent to exclude your partner or fiancé from your estate plan, having no plan at all in place is not a good way to ensure they are provided for upon your passing.

In order to avoid these issues, an unmarried individual who would like to provide for their partner should ensure that their partner is (1) the co-owner or designated beneficiary of IRAs, insurance policies, and bank accounts, and/or (2) specifically named as a beneficiary under their Will.

This is especially true where unmarried parties share minor children. Again, if unmarried, the surviving parent would have no inherent interest in the decedent's estate without a Will or trust outlining the same. This scenario could leave children (even minor children) as the sole beneficiaries of the decedent's estate by virtue of New York State's intestacy laws. In the event that a minor child is entitled to a portion of the decedent's estate, additional steps (and additional expenses) are required to appoint someone (sometimes a stranger or entity) to hold onto that child's interest for their benefit until they reach the age of majority. This process requires court intervention and oversight, and can often be avoided. By establishing a Will or trust-based plan, one can circumvent such a concern by either naming the surviving parent as a beneficiary or appointing someone to act as a fiduciary (i.e., to act in the best interest) for their minor child (or both!).

There are, of course, additional considerations that must be given to a will-based versus a trust-based estate plan, and each situation is unique, but these are some items to consider where unmarried parties and parents are establishing an estate plan.