

# The Best Housewarming Gift for the Unmarried Couple: An Estate Plan

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*“Thinking too long about doing something is often the reason it never gets done.”*  
–Everyday Life Lessons

In recent years, a growing number of Americans are deciding to cohabitate instead of getting married or remarried. Often, individuals of all ages, state they do not need an estate plan, either because they are not married or because they do not have children. These are not reasons to avoid preparing your estate plan and, in fact, are often more reason to ensure your estate is in order. Although this article will not discuss everything that unmarried cohabitating couples should have in place, it is a decent starting point for a conversation with your partner and, eventually, an estate planning attorney.

**Estate plans are important for a devoted unmarried couple, because without an estate plan, you have no input into major healthcare and financial decisions for your partner.**

## ***Medical Decisions***

You have been together for years or even decades, but if you are hospitalized, can your partner speak on your behalf and make decisions for your care and well-being? Sadly, no. Failure to have a valid Health Care Power of Attorney in place may result in a courtroom battle between your partner and family. A Health Care Power of Attorney is a document whereby you name an Agent to act on your behalf if you are unable to make reasonably informed medical decisions for yourself. Undertake an honest discussion with your partner concerning your wishes. Topics to discuss include organ transplant during life, removal of life sustaining treatment, burial arrangements, organ donation and religious limitations. Your wishes will be explicitly stated within the Health Care Power of Attorney, which your named Agent must follow to the best of their abilities.

## ***Real Property and Holding Title***

Throughout your relationship, you may have purchased a home (or several homes, depending on your lifestyle). Consider this scenario: you both paid half of the down payment for the home, and you

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each pay half of the monthly mortgage payments, but because your partner had a better credit score, the home is only titled in his or her name. If your partner dies without a Last Will and Testament that leaves the property to you, that property is not yours, and unless you purchase it for fair market value, you will have to vacate the home. If your partner did have a valid Last Will and Testament, it could provide that the home be distributed directly to you. Other options include your partner recording a Beneficiary Deed, which states that when he or she dies, the property passes to you by operation of law; another option is that your partner could deed the property to be held in both your names, as joint tenants with right of survivorship. Be aware that such a transfer may have gift tax implications and may affect your mortgage. Discuss these matters with your attorney before proceeding.

### ***Distribution of Your Assets***

By living together, you have likely acquired mutual possessions and one of you may have supported the other for a period of time, e.g. during graduate school, through loss of employment or through a disability. Because of this, there may be assets that you both believe are shared, even if they are in the sole name of one partner.

If you do not have a valid Last Will and Testament, your estate is considered intestate. An estate that passes through intestate succession means your assets will be distributed according to Arizona law. In this scenario, the following persons will receive your assets: first your legal spouse, then your children, siblings, parents, grandparents and finally, if none of the foregoing are then living, to issue of your grandparents. If you want to leave anything to your partner, you must execute a Will that provides for the distribution of your estate to him or her. There are also other options you can discuss with your attorney, such as beneficiary designations and language that provides for transfer on death of the assets.

You may also want to consider leaving your partner as your beneficiary on a life insurance policy or on any retirement accounts. At the very least, be aware of who is named as your beneficiary on your policies and accounts and be sure those are your wishes.

**Although seeking the advice of an attorney is important, start the conversation at home, informally.**

### ***How to Start***

Have a casual conversation with your partner to discuss the basics. These topics will likely require multiple conversations. If you are not sure how to start, go straight to the source. Many attorneys charge a one-time flat fee for an initial consultation. You will want to find an attorney with whom you are both comfortable and, preferably, that you will use in the preparation of your documents. When you are satisfied with your decisions, engage the attorney and get drafts started. Review the drafts with your attorney in his or her office and then take the drafts home to read and digest alone. Take your time. Be sure to ask any questions and voice any concerns; this is why you are paying the attorney. Throughout the process, it is important to remember that most estate planning documents can be revised if your circumstances or living arrangements change.

**If it is important to you, discuss your plan with your family so they do not feel left out of important decisions.**

### ***Acceptance by Family and Friends***

There is a chance some of your family or friends may not agree with your lifestyle or the decision to live together. Attempt to inform your friends and family that your desire is for your partner to be the lead in making decisions on your behalf, and that the two of you have discussed it and made each other aware of your personal wishes. Doing so may also avoid potentially costly and time-consuming legal battles should you become incapacitated or die.

**Take the first step and work your way through it. Although it may seem overwhelming initially, the process should only take a couple of months. Once finished, you will both be able to sigh with relief knowing these issues have been resolved.**

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