

Basic Estate Planning for Unmarried Couples

This memo will give you some basic information about estate planning for unmarried different-sex and same-sex partners. See the Resources section at the end of this document for links to more information.



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An estate plan is a collection of documents – typically a will, durable power of attorney for finances and health care, and a health care directive – that protect you and your assets in case of disability or death.

The law gives married people and state-registered domestic partners certain protections if one member of the couple becomes incapacitated or dies. While even married or state-registered couples need an estate plan, unmarried or unregistered couples can provide important protections for a surviving partner and/or any minor children by drafting an estate plan, as well as naming the people responsible for making important decisions about their health and property.

Because estate planning can be complicated, and it is important to do it right, we strongly encourage you to get help from a lawyer if you can.

Will and Probate Basics

What Is a Will?

A Will is like a road map for your surviving heirs and beneficiaries to follow. It shows them what to do with your assets and how you want children, your property, and even your pets cared for. In the Will, you will appoint people to serve as your personal representative, trustee, and guardian – roles explained later in this memo.

What If I Don't Have a Will?

If you die without a Will, in legal terms it means you have died “intestate.” When you die intestate, your assets are divided up according to state law, which prioritizes your heirs and beneficiaries in a way you may not want. In other words, not having a will means that you lose the chance to say what you want to happen with your assets. Washington law also requires that the court appoint an administrator (usually a close relative if you are not married) to oversee the distribution of your assets if you die intestate. The administrator of the estate may have to post bond and ask permission of the court before doing anything with your estate. If you have a Will that says who you want as your personal representative, your Will should give that person all necessary powers and allow them to act with complete authority and without court intervention.

Though surviving partners can ask the court to treat a decedent's property as though it were community property under the Committed Intimate Relationship doctrine, it is far easier and cheaper to simply use estate planning tools and documents to state how you want your assets distributed after your death.

What Is Probate?

Probate is the legal process of taking care of a person's assets (cash, stocks, real estate, vehicles, other valuables, etc.) and liabilities (taxes, debts, etc.) after death. The lawyers and court fees related to probate are paid by the estate before it is divided among the heirs. Having a Will does not mean that you can avoid a probate. Compared to other states, probate in Washington State is relatively easy if you have an estate plan.

What Is a Revocable Living Trust?

Some couples choose to form a Revocable Living Trust (RLT) so they can avoid probate. Because the trust owns your assets at the time of your death, the assets pass privately under the trust rather than through probate in the court. Trusts must be set up properly, require on-going management by a trustee, and are generally more complicated than Wills. Trusts may be helpful, however, if you own real property in other states or if you want to keep the transfer of your property very private. You should discuss whether or not to establish a RLT with an estate planning lawyer, if possible.

Preparing a Will

- Bequests:** First and foremost, you'll need to think about who you want to receive your assets if you die. This could be one person, several people, or even a charity. If it is several people or charities, you can give a percentage of your estate to each person or entity instead of a specific amount of money. Since the value of an asset can change constantly, and it is not possible to know how much your estate will be worth at the time of your death, using percentages can be easier.

You may have certain belongings that you would like to give to specific people. These items are typically referred to as "tangible personal property," which may include furnishings, vehicles, boats, jewelry, collections, tools, artwork, and anything else you can see, touch and move. It does not include real estate or mobile homes (if they are attached to the property,) checks, debts owed to you, bank accounts or other monetary deposits, documents of title, or securities.

Tangible property does not have to be included in your Will. Rather, you can write up a separate document that clearly identifies what you are giving and to whom and keep it with your will. You can even change this document after your will is executed, but you'll want to sign and date separate written wishes.

- **Appointing a personal representative:** In your Will, you'll be able to name who you want to be your personal representative. The personal representative carries out the instructions in your will and deals with all assets and liabilities in your estate, ultimately distributing your assets as you have instructed. Typically, partners name each other as personal representative and designate a back-up in case the partner is unable to act as the personal representative at the time of your death.

- **Appointing a guardian:** Whether or not you and your unmarried partner are the legal parents to your children, you should seriously consider designating a legal guardian for them in your Will. If your children have a surviving legal parent, that parent will have full custody and responsibility of the children when you die. If there is no surviving legal parent, the court will look to your Will for the appointment of a legal guardian for your children. So, if you and your partner have children but your partner is not a legal parent, you can specify in your Will that you want your partner to become the children's legal guardian at your death. It is a good idea to list an alternate person in case the first person you name is not able to care for the children. It will still be up to a judge to decide who will be your child's guardian; see the Legal Voice publication *Placement of Minor Children in case of Death* listed in Resources.

- **Providing for your children:** If you have children but are not their legal parent, your will is the only way to ensure that they will get anything from your estate. In addition, you may want to establish a trust for the benefit of your children and name a trustee in your will. A trustee is someone who manages assets in a trust, and a beneficiary is the person(s) who can use the funds from the trust. You will have the ability to decide how the payments from the trust are made and how often, and can name someone you feel comfortable managing money for your children as the trustee. This is often a trusted family member or a professional with experience handling financial affairs, such as a financial planner.

What a Will Won't Cover

In Washington, assets pass from one person to another either by court process or by contract. The Will only covers assets that do not pass by contract. Assets passing by contract may be referred to as "non-probate property," "property passing by contract," or "property passing outside probate," and may include:

1. **Life Insurance:** Life insurance policies have designated beneficiaries as part of the policy, and any payments are made according to that designation.

2. **Retirement Benefits and Annuities:** There are two types of retirement benefits and annuities:
 - Qualified retirement assets (QRAs) include 401K plans, 403(b) annuities, and IRAs. Because the rules for QRAs are complex, do not put "my estate" or "my personal representative" as the beneficiary of your retirement plan, and do not leave it blank.
 - Non-qualified retirement assets include but are not limited to Roth IRAs and other purchased annuities.

3. **“Pay on Death” (POD) Designations:** If you have an account with a financial institution, you can choose a beneficiary of that account. The financial institution will give the account to the beneficiary when you die. You can also pass on U.S. savings bonds this way.
4. **Joint Tenant with Right of Survivorship (JTWROS) Assets:** The word “tenant” in this case means “owner.” All forms of property can be owned as JTWROS in Washington, including real estate, stocks and bonds, mutual funds, and accounts with financial institutions. An asset can have more than two joint tenants. The letters “JTWROS” will appear after your names on the title. If you own assets as joint tenants with a right of survivorship, then the surviving joint tenant becomes the owner of the property after you die. It is important to understand that owning property in this manner means all joint tenants can treat the property as his or her own property, the property might be available to debt collectors, and unrestricted ownership of the property will go to the other joint tenant when you die. No other heirs or family member will have rights to that property.
5. **Trust Assets:** If you are the beneficiary of a trust during your lifetime, then the trustee will dispose of trust assets as directed by the document creating the trust.

It is very important to review how all of your assets are titled to ensure that they will be distributed according to your wishes when you die. Many couples like to be on titles together to show that they are both equal owners. You must be careful, however, when you change titles to property as there may be tax implications.

Other Estate Planning Documents

- Durable Power of Attorney for Health Care and Finances:** A durable power of attorney is a document that says who you want to be in charge of your financial affairs and health care decisions if you can't make decisions for yourself. (This person is called an attorney-in-fact.) If you become unable to make these kinds of decisions and you don't have a durable power of attorney, the court must appoint a guardian at the request of a family member or friend. This court process can be very expensive and can sometimes cause problems between family members. This can be avoided with a durable power of attorney.

A durable power of attorney for health care allows your attorney-in-fact to make medical decisions on your behalf. She or he will be able to work with doctors and other health care providers to make sure that you receive the kind of medical care you need and would want. This document also allows you to appoint someone to make health care decisions for your children in the event you are not able to.

A durable power of attorney for finances allows your attorney-in-fact to manage your property and financial affairs. You can specify the types of powers she or he would have. An attorney-in-fact is usually not allowed to make any changes to your estate plan.

If you are appointing the same attorney-in-fact for both health care and finances, you can draft just one document. You'll want to seek the advice of an estate planning lawyer to help you decide the best approach for your situation.

Married or state-registered domestic partners are granted some decision-making powers under state law. But some powers are usually granted only through a durable power of attorney. So it is important for every couple to draft durable powers of attorney for health care and finances, but especially so for unmarried or unregistered partners, who don't have protections under state law.

- Health Care Directive:** A health care directive, which is also called a “directive to physicians” or a “living will,” is a document that typically specifies which types of life support you would like given or withheld and under what circumstances. Without this, a health care provider may be required to, or may decide to, provide on-going care, potentially leaving you on life support indefinitely. Health care directives can be drafted either generically for those without a history or medical conditions, or can be very specific to address known health care concerns.

Usually, spouses and registered domestic partners can make these decisions if there is no health care directive in place. A health care directive can relieve your partner or family from having to argue over or wrestle with these very difficult decisions.

- Mental Health Advance Directive:** A mental health advance directive is a document drafted for individuals with a history or mental health issues or institutionalization. It allows you to direct in advance what types of treatment you prefer, which doctors you do or do not want to be treated by, or even which facilities you prefer. See the publications listed under Disability Rights Washington in Resources below.

If You Move to a Different State

Laws vary from state to state, so as a general rule you should have your estate plan reviewed by a local lawyer if you move from one state to another to be sure that your property will pass according to your wishes. The laws relating to the rights and responsibilities of same sex couples also vary from state to state, whether or not you are registered with the State of Washington.

Estate Tax

States have different laws concerning taxes. Additionally, our state and federal estate tax laws are complicated and may or may not apply to your estate at the time of your death. You should consult an estate planning lawyer or tax professional about your specific situation.

Resources

Wills and Trusts

- **Estate Planning Council of Seattle** publications
By phone: 206-228-9351
Online: www.epcseattle.org/council/info
 - *Guide to Estate Planning* (2014) (\$7)
- **National Consumer Law Center**: Provides information about common scams involving living trust and wills.
By phone: 617-542-8010
Online: www.nclc.org/for-consumers/brochures-for-older-consumers.html
 - *Avoiding Living Trust Scams: A Quick Guide for Advocates*:
www.nclc.org/images/pdf/older_consumers/consumer_concerns/cc_avoiding_living_trust_scams.pdf
- **NOLO.com**: Offers a wide range of legal information and self-help materials, some for free.
Online: www.nolo.com/legal-encyclopedia/marriage
 - *Living Together – A Legal Guide for Unmarried Couples* (2014) (\$24.49)
 - *Property Rights of Unmarried Couples FAQ*
 - *Parenting for Unmarried Couples FAQ*
 - *Claiming an Unmarried Partner as a Dependent on Your Tax Return*
 - *Health Care Directives and Financial Powers of Attorney for Your Partner*

Low Cost or Free Estate Planning Advice

- **Neighborhood Legal Clinics**: Run by the King County Bar Association and Senior Rights Assistance. For King County residents. Appointment required. Go to the website for a full list of clinics and phone numbers.
By phone:
 - General Clinics: (206) 267-7070 (T-Th 9:00 a.m. – 12:00 p.m.)
 - Elder Law Clinic: (206) 448-5720 (M-Th 9:30 a.m. – 3:30 p.m.)
 - LGBTQ Clinic: (206) 267-7070 (T-Th 9:00 a.m. – 12:00 p.m.)Online: www.kcba.org/pbs/NLC.aspx
- **Eastside Legal Assistance Program (ELAP)**: Individual legal clinic consultations and referrals; estate planning information to senior citizens through lecture series (durable power of attorney, probate and estate, living trusts)
By phone: 425-747-7274
By email: info@elap.org
Online: www.elap.org
- **CLEAR Senior**, Northwest Justice Project: Legal advice and referral by phone for low-income seniors (60 or older) statewide.
By phone: 1-888-387-7111 (toll-free)

Lesbian/Gay/Bisexual/Transgender/Queer/Intersex (LGBTQI) Individuals

- **National Center for Lesbian Rights**
By phone: 415-392-6257, or 1-800-528-6257 (toll-free)
By email: info@nclrights.org
Online: www.nclrights.org; use the search box to find these publications
 - *Navigating the System: A Know-Your-Rights Guide for Lesbian, Gay, Bisexual, and Transgender Elders in California* (The general tips and federal information are useful for Washington residents.)
 - *Planning with Purpose: Legal Basics for LGBT Elders* (See Part VII.)

Native Americans

- **Institute for Indian Estate Planning and Probate** at Seattle University School of Law
Online: www.law.seattleu.edu/centers-and-institutes; click on Center for Indian Law & Policy, then on Programs
- **Northwest Justice Project's Native American Unit** provides free civil legal services, including Wills and BIA probate.
By phone: 1-888-201-1014 (toll-free)

Special Needs and Disabilities

- **ABLE Accounts and Special Needs Trusts**, and article by Somers Tambllyn Isenhour Bleck, a private law firm.
Online: <https://stiblaw.com/able-accounts-and-special-needs-trusts/>
- **Disability Rights Washington** publications:
Online: www.disabilityrightswa.org; click on "Tools to Help You"
By phone: 1-800-562-2702 (toll-free) or 206-324-1521; TTY via 711
 - *Writing Your Mental Health Advance Directive* (2014), under "Mental Health"
- **Special Needs Alliance**: A national, not for profit organization of attorneys dedicated to the practice of disability and public benefits law, including special needs trusts and wills.
By phone: 1-877-572-8472 (toll-free)
Online: www.specialneedsalliance.org/frequently-asked-questions/

Related Information

- **Legal Voice** publications:
By email: info@legalvoice.org
Online: www.legalvoice.org/tools-family
 - *Questions and Answers: Washington's Domestic Partnership Law*
 - *How to Become a Legal Parent in Washington State*

- ***Handbook for Washington Seniors: Legal Rights and Resources*** (2016), by Legal Voice: Covers a wide range of legal issues affecting unmarried couples of all ages. Available in English and Spanish. Free online. Hard copy \$20.
By phone: (206) 682-9552 x123
By email: info@legalvoice.org
Online: www.legalvoice.org/handbook
- **Northwest Justice Project** publications:
Online: www.washingtonlawhelp.org
 - *Living Together Contracts*
 - *Unmarried Couples: Washington Property Law*
 - *What Happens to My Kids if I am Sick or Die?*

Lawyers

- **Legal Voice** publications:
Online: www.legalvoice.org/tools-lawyers
 - *How to Find a Lawyer and Other Legal Resources in Washington State*
 - *Working With a Lawyer*
- **County bar associations** offer lawyer referral services, often for a fee. For a complete list of county bar associations with contact information, go to:
www.wsba.org/connect-serve/other-bars/county-bar-associations

Bar referral services in some of Washington's populous counties:

- Clark/Cowlitz County (360) 695-5975
- King County (206) 267-7100
- Kitsap County (360) 373-2426
- Lewis County (360) 748-6641
- Snohomish County (425) 388-3056
- Spokane County (509) 477-6032
- Southwest Washington (360) 695-0599
- Tacoma-Pierce County (253) 272-8871

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of March 2015. Resources updated April 2019.

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