

Atlanta Estate Planning Attorney Discusses Estate Planning for the “Non-Traditional” Family

The face of the American family is changing. As an estate planning lawyer in Atlanta, Georgia, I have certainly seen that change.

Since 1970, the number of what are considered “non-traditional” families (i.e., unmarried opposite sex couples, same sex couples, single parents with minor children and single adults with neither children or a partner) has more than doubled.

And now, with the divorce rate at almost 50%, more and more people are either on their second marriage, getting married later, or have children from previous marriages.

These changes in the structure of the American family have given rise to the need for estate planning options and considerations that had never really been talked about before the 1990’s.

If your life situation falls under the umbrella of the “non-traditional” family, here are a few things you need to take into account when you’re considering estate planning:

1. Marital Status and Your Estate

If something happens to you, your surviving spouse often has a statutory right under state law to receive property from your estate in spite of a valid enforceable will that says otherwise. The key word in this scenario is “spouse”. The person taking from the estate must be considered a spouse under state law. Domestic partners are not entitled to this right (unless your state allows you to register as domestic partners by statute and you have legally registered; Georgia does not have this option at the time of this article).

2. Understanding the Definition of Family Members

Whether or not your partner can be considered a spouse for a specific purpose is determined by state law. For example, in some cases a person can be deemed a spouse for purposes of collecting health insurance benefits from your employer, without being considered your spouse for any other reason. However, state laws with regard to certain benefits are changing rapidly, many in response to the changes in what constitutes a family relationship. Check with your estate planning lawyer to see what the current situation is in your state.

Adoption issues are another area to give serious consideration in your estate plan. In many cases, an unmarried partner has no legal rights or obligations in relation to the other partner’s children if they are not the child’s natural parent or have not legally adopted the child. They are not defined legally as a parent. And the length of time the unmarried partners have lived together makes no difference. Make sure

to have provisions for the care of your children in your estate plan and that your wishes are legally enforceable.

3. Property Rights

Every state has laws that specifically deal with the rights, privileges and duties associated with marriage when it comes to real property. While some states are adding statutes to deal with the relationship of domestic partners, most unmarried couples don't have the same rights and privileges as married couples. That is true in Georgia.

One way to establish a legal relationship between the unmarried partners and provide for legal treatment and transfer of property is through a relationship agreement between domestic partners. If permitted by state law, the agreement can be enforced as a contract and address a multitude of estate planning issues including signature authority, asset disclosure and values, life insurance, health and disability insurance, and the transfer of property. If the agreement is treated as a partnership, it can provide enforceable inheritance rights.

As American society and its view of what constitutes a "family" continues to evolve and change, we will need to be more and more creative in dealing with estate planning and tax issues to make sure that everyone receives the appropriate planning assistance. Talking to a trained estate planning lawyer to make sure all your bases are covered is the best place to start.

If you are a member of a "non-traditional" family and would like to know more about how to provide for your loved ones if something happens to you, call us to schedule your Georgia Family Treasures Planning Session today. We can explain your legal rights and help you plan properly. Our Georgia Family Treasures Planning Session is normally \$750, but this month I've made space for the next two people who mention this article to have a complete planning session with me at no charge. Call today and mention this article.