Unmarried Couples: Take Care of Financial Legalities

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It's no secret that more and more unmarried couples are living together than ever before. But while it may sound romantic to move in with your partner, be aware that it can create some complicated financial situations.

People in long-term relationships often pick up and share pricey assets like houses, cars and retirement plans along the way. Yet while the law says plenty about the financial affairs of married couples, it's mum on those who haven't had the clergy's blessing. So if you're not married and the relationship comes to an end, or worse, your partner unexpectedly dies, you could very well end up with nothing -- unless you take care of matters now.

That means paying careful attention to legalities such as property titles, wills and beneficiary designations. "If you're married, you get everything unless you opt out. If you're unmarried, you get nothing unless you opt in," says Frederick Hertz, an Oakland, Calif.-based attorney and author of a legal guide on living together.

And certainly, more people than ever are finding themselves in such a tough spot. Between 1980 and 2000, the percentage of unmarried adults living together in opposite-sex couples nearly doubled, from 6.5% to 12.6% of the population, estimates Philip Cohen, a demographer and sociologist at the University of California (Irvine). That percentage would be even higher if you count same-sex couples (where reliable stats are harder to come by).

Given the surge in the number of nontraditional couples, a few states have passed laws expanding their rights, including Vermont and California. This year, for example, California made it easier for registered domestic partners to have a say in each other's medical decisions. It's also made such couples eligible for certain unemployment benefits and income tax deductions that had been reserved for married couples. Meanwhile, in Vermont, same-sex couples entering into a civil union can automatically inherit property from each other in the event of death.

Nevertheless, in most cases, the burden is still on couples to look out for each other. Below, we explain a few of the best ways to protect you and your partner financially.

Who Owns Your House?

A house is the most valuable financial asset owned by many Americans, making up a vital piece of their financial security. So you and your partner should think about how you want to share ownership of your place -- assuming, of course, that you want to share it at all.

There are two common options for home ownership: tenancy in common and joint tenancy with the right of survivor. A tenancy in common affords each partner more control over his share of the property. If one
member dies, his share in the house goes to whomever he has designated in his will. That may or may not be the surviving partner.

Titling a house in joint tenancy is a more drastic step. Under this arrangement, if one person on the title dies, the entire property passes to the survivor.

Only consider this option if you're very committed to the relationship. After all, if you own the house and opt to put it in joint tenancy, you're effectively giving your partner half the property. Unless you're living with a total pushover, you can't simply change your mind later and take half the house back.

Also, if your partner racks up debts, creditors could try to collect based on his share of the equity in the house.

If you want your partner to inherit the house when you die, consider simply leaving it to him in your will. With apologies to all the romantics out there, if you and your partner break up, changing the terms of a will is a lot easier than trying to take back half the interest in your house, which you'd earlier given away. "If you have a falling-out tantamount to a divorce, you can just say, 'Goodbye, go away,' " says Laurence Foster, a tax partner at Richard A. Eisner, an accounting and consulting firm.

For that matter, even if your house is titled as a joint tenancy, it's not a bad idea to confirm in your will that you want your partner to inherit it. That's especially important for same-sex couples in case the matter ends up in court, says Harold Lustig, a San Francisco-based adviser who's written a book on financial planning for same-sex couples. "If your will is out of date or there's an unhappy family member and a homophobic judge, [your partner could lose] access to property even though the title says it goes to them. But if a will confirms it and says the same thing, it's very difficult to challenge."

**Making a Will**

Making a will is especially important for domestic partners. With married couples, of course, it's assumed that the surviving spouse is first in line to inherit property. But that's not the case for unmarrieds. If you were to die while cohabiting with your partner, the law would assume that your nearest kin would inherit your estate -- not the soul mate you may have been living with for decades.

"The house could end up going to a distant third cousin you didn't even know you had," says Peg Downey, a partner at Money Plans, a financial advisory firm in Silver Spring, Md. "Maybe he has horrible political beliefs. You wouldn't even speak to the person, much less give them your money."

A tip: If your other partner hasn't contributed much to your finances as a couple, but you want to leave expensive assets to him, it's smart to have your will formally drawn up by a lawyer. That way, it would be harder for someone to claim later that you were incompetent when you made the decision, which would weaken your partner's claim to the property.

Also, be sure to review your will every three or four years, or if you move to another state, change jobs, or there's a birth or death in your family.

**Setting Up a Living Trust**

If you have substantial property, you may want to consider a step beyond writing a will. When you leave
assets through a will, your heirs must go through the hassle of probate, a time-consuming legal process. Probate fees may amount to 5% or more of your estate, depending on the state you live in and the property you own, reducing the size of the estate your heirs will receive.

To avoid probate, you may want to consult a lawyer to set up what's known as a revocable living trust. Like a will, a revocable living trust lets you divvy up your assets, and you're allowed to change the beneficiaries in the trust throughout your life. Basically, a trust will give you the same end results as a will, but it's more expensive to set up.

**Update Your Beneficiaries**

But don't think making a will or a living trust will take care of everything. It's likely you also have substantial assets in life insurance (which you may receive automatically through work, even if you've forgotten you have a policy) and pension assets.

Be sure the beneficiary designations on those policies are up to date, to avoid trouble after your death. If you want your partner to receive the benefits, name him specifically. Otherwise, your next of kin will inherit the assets. That's true even if you've left all your property to your partner in the will.

Another tip: To lessen the likelihood of a nasty wrangle if you and your partner break up, be clear about both of your financial obligations all along. Don't blithely sign onto a loan, for example, without really thinking about your liability for it. If you break up, you'll still be on the hook for your partner's debt.

"You should minimize casual shifting back and forth of bank accounts, loans, credit card payments, equity lines from houses," says Hertz. And if one of you wants to help out the other financially, make sure the extent of the gift is explicitly acknowledged on both sides, so there won't be misunderstandings later.

Above all, if you live with someone, don't let yourself be lulled into doing nothing. After all, while marriage forces a couple to consider their new financial obligations, moving in together may happen more gradually, without a big ceremony -- so it can be easier to overlook how your finances have changed. But a little honest discussion and planning could save both you and your partner plenty of money and heartbreak later.