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So You Are Living Together Now?

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We observe some couples these days, choosing to live together without marriage, or live together over an extended engagement. A number of interesting issues arise when a couple have a relationship akin to the longevity of marriage, but have not formalized this relationship with the state. We will explore several Estate Planning and Settlement issues a couple faces when trying to protect and provide for each other, the same as a married couple would. It is important to remember that Estate Planning is a highly individualized process that merits discussion with an attorney. The following are examples and not legal advice; you should always consult an attorney before engaging in any Estate Planning practices described within.

So you are living together now: Lawsuit Recovery Issues

Sally Smith and John Brown are 24 years old and have been living together for 5 years. They own all their assets jointly (Bank accounts, personal vehicles, home). John is driving home from work in their jointly owned automobile when he is killed in an accident by a driver running a red-light.

What are some of the problems facing Sally because John dies intestate?
Can Sally bring a lawsuit for damages by reason of the automobile accident?

No. When a wrongful death occurs because of the actions of another, our legal system allows us to bring suit for damages incurred upon the 'injured' person. Since John cannot represent himself, someone else must represent his affairs. This person is called a personal representative. Since John died intestate, there was no designated personal representative. In order for a lawsuit to be filed, a personal representative must be appointed by a probate proceeding. Because Sally is not a family member or spouse of John, Sally has no preference to appointment as the personal representative of John's Estate. Only John's personal representative can bring a lawsuit for damages incurred upon John's death. The money that may be collected by reason of the automobile accident will go into John's estate managed by John's personal representative. Since John has not made a will, the assets in the estate will pass to his closest family relations, not Sally. Sally does not inherit from John.

Can Sally get ANY payment for damages by reason of the automobile accident?

Some. Because Sally was the joint owner of the car John was driving. Sally could bring a separate claim against the driver for the replacement cost or repairs to the vehicle only. Sally cannot inherit or win any damages won for the harm the other driver's negligence caused on John. Additionally, she may be limited to the amount she can get for her car if the court determines that Sally only owns half. She can only recover for what is hers. If she only owns one half of the vehicle, her damages could be limited to one half of the repairs costs.

Definitions:

Intestate / Intestacy- the state of having died without a valid will. The decedent's property will be distributed based upon statutes that govern distributions where the decedent has failed valid to appoint an administrator over his or her affairs and designate his or her assets.

Intestate Succession- the statutorily mandated transfer of ownership if a deceased party fails to make a valid will. These laws determine both who can be appointed to serve as a Personal Representative to administer the estate and who the beneficiaries are.



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So you are living together now: Incapacity and Related Disability

I often define Estate Planning by saying it is: 'When I am alive and well I want to manage and control the assets I own. If I become incapacitated, I want my assets to take care of me and the people I want to help and care for. After I die I want to distribute my assets to whom I want, when I want and how I want and in a process as quickly, cheaply and effectively as possible.' The four building blocks of Estate Planning are the Durable Power of Attorney, the Living Will, the Last Will & Testament, and the Revocable Living Trust. Generally speaking, to protect themselves and their loved ones all individuals must engage in some form of documentation that provides for their incapacity. All couples are vulnerable to the risks of uncertainty associated with lack of planning for incapacity. However, the unmarried couple is especially vulnerable to this risk.

Important to this segment is the power of attorney. Generally, a Power of Attorney delegate's authority from a grantor to a grantee named in the document and describes what action or activity the grantee is charged to do. People living together may want to make decisions for each other if through accident or illness one partner becomes incapacitated and is unable to communicate or help himself or herself. Without some form of documentation like the one mentioned above, the laws of our state do not provide any decision making power to the healthy partner in the unmarried couple. He or she cannot enact the loved one's decisions reflecting cessation of medical treatment, paying bills, renewing policies etc. If life throws an unfortunate curveball, the healthy partner will not be able to take care of the loved one, or perform any of the tasks that by incapacity or manifested disability the loved one cannot take care of for him or herself.