Being married offers a number of potential benefits when it comes to preparing an estate plan. From tax benefits to health care decision-making and the ease of transferring certain types of assets outside of probate, married couples will find that many aspects of the estate planning process *can be* fairly straightforward.

However, estate planning is still a highly-personalized process, and unmarried and married couples alike must ensure that their estate plans reflect their unique family and financial circumstances. If you are married and ready to put an estate plan in place, here are some preliminary considerations to keep in mind:

Joint Estate Plan vs. Separate Estate Plans

Should you and your spouse create a joint estate plan? Or, should you each sign your own will and trust? While many people assume that it is less-expensive to create a joint estate plan, (i) this is not necessarily the case, and (ii) there are a variety of reasons why a joint estate plan might not be the best option to meet a couple's estate planning needs. In many cases, creating "mirror" estate plans will be a more-desirable option. This involves each spouse signing separate reciprocal documents that serve their mutual estate planning goals.

Non-Probate Transfers

For many individuals, one of the primary goals of estate planning is to avoid the probate process. For married couples, this can be done without placing certain assets into a revocable living trust. For example, if you and your spouse own your home as "joint tenants with rights of survivorship," then your share of your home will automatically transfer to your spouse at the time of your death.

Health Care Decision-Making

If you become incapacitated due to illness or injury, would you want your spouse to have the authority to make health care-related decisions on your behalf? For most spouses, the answer is, "Yes," and Texas law grants this authority to your spouse automatically. But, to avoid issues with care providers and potential disputes

among family members, spouses will often find it preferable to confirm and clarify their wishes in their estate plan.

Child-Related Considerations

If you are married with children, many of the decisions you make with regard to your estate plan will likely be made with your children's best interests in mind. This is true whether your children are minors or adults, and whether your focus is on special needs planning or preserving your wealth for decades to come.

Income, Estate and Gift Tax Planning

While most couples do not have to worry about estate and gift tax liability (the current exemption for married couples is $11.4 million), if you have a sizable estate or you have assets that could trigger income tax liability at the time of disposition or transfer, then you will absolutely want to incorporate tax planning into the estate planning process. However, here too, being married offers certain benefits, and our estate planning attorneys can help you identify and address the relevant considerations.

The Potential for Divorce

Finally, regardless of the current state of your marriage, when preparing your estate plan it is important to at least acknowledge the possibility of divorce. Your planning in this area does not have to be substantial, and there are some fairly standard provisions our attorneys can use to make sure you and your spouse are both adequately protected.

Schedule an Initial Estate Planning Consultation at The Nordhaus Firm

If you would like more information about estate planning, we encourage you to contact us for a complimentary initial consultation. To speak with one of our

McKinney estate planning lawyers in confidence, please call 214-726-1450 or request an appointment online today.