Estate planning can be complicated for any couple, but LGBTQIA+ couples often face added challenges. Fortunately, an experienced estate planning attorney can put plans in place to cover the gaps and protect couples and their families. Knowing the potential problems can help you prepare.

Marriage Makes a Big Difference

Any couple that is not married will need to take special steps to protect loved ones during their life together and after death. It does not matter how committed your relationship is or how long it has lasted or even how much property you own jointly. If you're not in a legally-recognized relationship such as a marriage, the law gives you no rights when it comes to your partner.

Unless you have prepared documents in advance, you cannot talk to the doctor about your partner's condition if they are taken to the hospital. You cannot make decisions on their behalf if they are in a coma. You cannot access their account to pay bills. If they pass away, their property will pass to relatives, even if they are not on speaking terms with those relatives. Jointly-owned property may need to be sold so that others can have their legal share.

Couples who are not married but who want to support each other should consider executing documents such as:

- A will or living trust to leave property to their partner and name the partner as their executor or trustee
- Financial power of attorney to give their partner the ability to manage financial affairs if they become incapacitated
- Medical power of attorney to give their partner the ability to make health care decisions if they become incapacitated
- HIPAA authorization to allow health care providers to discuss their partner's medical condition and insurance issues

In addition, if the couple is raising a child together, it is important to take steps to ensure that both partners have parental rights, such as an adoption by a non-biological parent.

Married Couples Still Need to Be Aware of Potential Concerns

One area of concern for any couple but particularly for LGBTQIA+ couples is the tendency to leave outdated beneficiary designations in retirement accounts, life insurance policies, and other financial accounts. When a couple divorces, beneficiary clauses naming a former spouse may be automatically invalidated. At the very least, the divorce process prompts partners to go through and make changes to beneficiary designations.

But because legal marriage has only been an option for LGBTQIA+ couples relatively recently, couples that broke up years ago may not have gone through a divorce. Without a formal process, they might not have remembered to take all the steps necessary to remove a former partner from their financial affairs.

Another area of concern for some LGBTQIA+ couples is family conflict. If you expect any family members to disagree about property designations or decisions after your death, you might consider adding a no-contest clause to your will or trust. This type of clause specifies that if someone challenges the validity of the terms and loses the challenge, they will inherit nothing.

Your Estate Planning Attorney Can Review and Update Your Plans

Life changes quickly, and your estate plans should adjust to keep up with your needs and expectations. If you don't have all the plans you need or you'd like to ensure your documents are up-to-date, this is a good time to schedule a review with your attorney. To talk to the experienced team at The Nordhaus Firm about any of your estate planning needs, just give us a call at 214-726-1450 or contact us online.