

Estate Planning for Alternative Lifestyles*

by,

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Whether or how one uses the term "alternative lifestyle" aside, the laws surrounding estate planning are predicated on a certain family structure. That family structure in many cases does not exist and so particular attention needs to be focused on estate planning.

For example, the current federal estate tax system allows for an unlimited marital deduction from estate taxes. In other words, you can be as rich as Bill Gates, but if you leave all that money to a surviving spouse, there is no federal estate tax. Because the federal estate tax is governed by federal law, the federal definition of marriage governs. The federal definition of marriage was "only a legal union between one man and one woman as husband and wife." (USC 1.7) but that was ruled unconstitutional. So marriage is essentially defined by state law. If your family does not fall into that definition, the unlimited marital deduction is not available to you and different planning techniques need to be made.

In addition, federal and state laws have certain default provisions. For example, if you die without a Will (called dying "intestate"), the applicable state will have default provisions as to what happens to your assets. That may or may not be in keeping with your personal desires, particularly if you have an "alternative lifestyle." In most states, the default distribution is to (1) a legally recognized spouse (if any), else (2) legal children (if any), and so on down the blood line.

Also, there are certain rights that are granted by federal and state laws to a "spouse" automatically, such as a homestead allowance. If you do not have a spouse (as it is defined), your significant other will not have those automatic rights.

Estate planning for many people can be a difficult topic. Many people choose to ignore estate planning because it is too "morbid." However, as can be seen above, if you have an alternative lifestyle, you need to take an active role in predetermining your estate plan, from determining who can help make medical decisions for you to who gets your "stuff" when you are gone.

*For purposes of this article, "alternative lifestyle" encompasses anything other than a legal union between one man and one woman as husband and wife.