



FITZWATER
L A W

6400 SE Lake Road, Suite 440 | Portland, OR 97222
503.786.8191

Estate Planning Group

[Melanie Marmion](#)

[Theresa Hollis](#)

[Wesley D. Fitzwater](#)

[Andrea Bachhuber](#)

[Emily Hogan](#)

[Shauna M. Haney](#)

I have a partner. How does this impact my estate planning?

DECISION-MAKING DURING LIFE

How Can I Be Sure My Partner Has The Right To Manage My Financial Affairs If I Should Lose The Ability To Do So?

There are many traditional estate planning documents that can be utilized by unmarried couples to ensure each can make decisions for the other if incapacity occurs. If the documents are not drawn up, court procedures exist that can grant authority over one's partner. If you do not designate your partner as your decision-maker, that duty may fall to a family member whose beliefs you do not share. Some examples and their links to lengthier explanations elsewhere in the website are listed below:

Power of Attorney for Finances. You can designate a financial decision maker to manage your affairs while you are alive, but incapacitated. This may be the ounce of prevention needed to avoid a conservatorship. (For more information about Powers of Attorney, [click here.](#))

Conservatorship. Without a Power of Attorney for Finances, the only entity that can grant authority over your assets if you become incapacitated is the court. A conservatorship is the pound of cure when you do not have a Power of Attorney for Finances. The judge will appoint a conservator to manage your money. This person may be your partner if your partner applies to the court. However, if a family member challenges your partner's application, the court may appoint your family member as your conservator. (For more information about Conservatorships, [click here.](#)) If you and your partner are registered as domestic partners under the Oregon Family Fairness Act, the judge must consider your legal status in determining who to appoint as your conservator. This probably increases the likelihood that your partner (instead of a different family member) will be appointed as your conservator. However, a Power of Attorney provides an additional layer of protection, as it can allow your partner to manage your affairs while avoiding a conservatorship altogether.

If I Get Sick Or Have An Accident, Who Can Make Health Care Decisions For Me If I Am Unable To Make My Own Decisions?

Advance Directive. Similar to financial matters, decisions have to be made regarding your health care if you become incapacitated. The Advance Directive is a document you can use to nominate a health care representative. This ounce of prevention also avoids guardianship in many cases. (For more information about the Advance Directive, [click here.](#)) To download a free copy of the Advance Directive Form, [click here.](#)



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DECISION-MAKING DURING LIFE *(continued)*

If I Get Sick Or Have An Accident, Who Can Make Health Care Decisions For Me If I Am Unable To Make My Own Decisions?

Guardianship. If you become incapacitated and cannot make decisions about personal care for yourself, the court can also appoint a person to make them for you. The issues about family versus partner exist here as well as with conservatorship. An Advance Directive may prevent the need for a guardianship. However, there may be a situation unrelated to health care that warrants a guardianship. (For more information about Guardianship, [click here.](#))

Nomination of Guardian and Conservator. As mentioned above, in the absence of a legally recognized spouse or Registered Domestic Partner, the court's default choice for guardian and conservator is a blood relation. You may execute a document that names a person of your choosing to serve as guardian and conservator. This nomination will serve as evidence of your wishes even if you become incapacitated. The nomination can contain language that specifically acknowledges a relationship with a partner or close friend. The nomination can explain why you chose this person to make your decisions. For many people it is a pleasure to complete this document as it expresses the depth and seriousness of their chosen relationships in plain language.

PROPERTY OWNERSHIP

Should My Partner And I Own Assets Jointly?

Joint Property Declaration of Tangible Personal Property. To avoid any confusion about who owns the stereo, television and toaster oven, you can execute a document that states your tangible personal property is the property of both you and your partner, and that the ownership passes to the survivor when the first one of you dies.

Joint Ownership with Right of Survivorship. Banks and other financial institutions allow people to own accounts together. This way, any money placed in the account may be used by either owner, regardless of who deposited the money. Most often these accounts also provide that one joint owner becomes the sole owner at the death of the other joint owner. There may be tax consequences to transferring certain assets such as brokerage accounts and stocks into joint ownership, and you may wish to consult a tax professional for advice before doing so.



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PROPERTY OWNERSHIP (continued)

Right of Survivorship in Real Property. If you own your home with survivorship provisions in your deed, then the survivor will automatically become the owner at the death of his or her partner. If one person owns the home in her or his own name, then when the owner dies the property doesn't pass automatically to the survivor. Also, the partner who is not named on the deed may not have any rights in the property during life. Sometimes owning real property with survivorship rights is a good idea, but sometimes it is not. You should obtain advice from your tax or legal adviser before making this decision.

DECISIONS AFTER DEATH

When I Die, Who Will Inherit My Estate?

You may leave instructions regarding how you want your assets handled after your death. Some are discussed more thoroughly on other areas of the website.

Wills and Trusts. These planning documents leave instructions that direct the distribution and management of your assets after you die. Wills involve a court process called probate. This is a public process and it takes some time before the assets can be distributed. Trusts however, can be administered privately and assets may be transferred immediately. You may wish to consider how easily your assets can be accessed by your partner at your death. Be sure to get professional advice from an attorney before executing a will or trust. The attorney will help you decide which mechanism works best for your situation.

Beneficiary Designations. Be sure to consider your life insurance, retirement plans and other assets that allow beneficiary designations. You should name your partner as beneficiary if you want the assets to be immediately available to that person upon your death. Without a designation the assets may pass through your estate. While this may direct the assets to your partner, it may not do so quickly if you have a will and may have negative income tax consequences.

What If I Haven't Done Any Estate Planning? What Happens Then?

Intestacy. If you do not express your desires while alive, then the law of the State of Oregon decides who inherits from you. If you and your partner are registered as domestic partners, then your partner will inherit your estate to the same extent as if you were legally married. If you and your partner are not registered as domestic partners, the laws of intestacy apply. The laws of intestacy direct that the assets of a person who dies without a will or trust be distributed to certain of your relatives. The law sets out an order of priority among



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DECISIONS AFTER DEATH (continued)

the branches of your family tree. The law does not favor unmarried partners, unless they are registered domestic partners. For this reason, it is very important to execute valid estate planning documents. Even if you and your partner are registered as domestic partners under the Oregon Family Fairness Act, preparation of estate planning documents can provide a level of protection far greater than what the law provides by default. Properly drafted estate planning documents allow you and your partner to determine exactly how your property should be distributed upon your death. These documents provide customized planning not available under the default law.

Who Decides What Happens To My Body When I Die?

Disposition of Remains. Without a designation to the contrary, your next of kin has the right to direct the disposition of your remains at death. If you and your partner are registered as domestic partners, your partner will be treated as your next of kin. If you are not registered, the disposition of your remains may be decided by a family member who does not share your beliefs, or who may not follow your wishes. You may execute a document that names another person to make that decision. You may also provide some guidance and instructions in the document about your wishes for disposition of your remains.

It is important that you deliver the documents discussed above to your chosen decision makers. Otherwise, they won't know they have the powers granted and won't be able to use them.

DISCLAIMER: The information contained in this document is based on Oregon law and is subject to change. It should be used for general purposes only and should not be construed as specific legal advice by Fitzwater Meyer Hollis & Marmion, LLP or its attorneys. Neither this website nor use of its information creates an attorney-client relationship. If you have specific legal questions, consult with your own attorney or call us for an appointment.