



ESTABLISHED 1924

FARR LAW FIRM

FARR, FARR, EMERICH, HACKETT AND CARR, P.A.

e-law

Newsletter

WWW.FARR.COM

PERSONAL INJURY &
WRONGFUL DEATH

LITIGATION

ESTATE PLANNING

REAL ESTATE & TITLE
INSURANCE

MARITAL & FAMILY

ENVIRONMENTAL
& LAND USE

BUSINESS

TAXATION

ELDER LAW

ASSET PROTECTION

ATTORNEYS

EARL DRAYTON FARR, JR.
(Senior Counsel)

GUY S. EMERICH

JACK O. HACKETT II

MICHAEL P. HAYMANS

CHARLES T. BOYLE

DAROL H.M. CARR

DAVID A. HOLMES

GARY A. KAHLE

JENNIFER R. HOWELL

ROGER H. MILLER III

DOROTHY L. KORSZEN

WILL W. SUNTER

ESTATE PLANNING FOR UNMARRIED PARTNERS

By: Dorothy L. Korszen

Oftentimes partners elect to live together committed in a long-term relationship, but for various reasons do not marry. For these couples, estate planning is crucial if they wish to provide for their loved one after they pass away and allow each other to handle their affairs while living. By executing basic estate planning documents, including a power of attorney, advanced medical directives, and a will, these partners will be in a better position to allow their partner to be involved in their decisions so they can help carry out their wishes.

Power of Attorney. Some type of legal authority is needed before someone will be allowed to handle another person's dealings, such as banking, filling out tax returns or applying for government programs, to name a few. A power of attorney is a document in which a "principal" gives this authority to an "agent" so that the agent may act on the principal's behalf. A properly executed power of attorney will allow a person to give authority to whomever he or she chooses to handle his or her affairs and to take all actions that person could take for the principal's benefit. A power of attorney can either take effect immediately after it is signed, or it may be prepared so that it becomes effective after the principal becomes incapacitated and is no longer able to manage his or her affairs.

Without a power of attorney, if a person becomes incapacitated or requires help managing his or her affairs, it may be necessary for their partner to file a guardianship proceeding in court and ask the court to appoint a guardian to handle the person's affairs. This is a more time consuming and costly process than executing a power of attorney. A power of attorney will generally remain effective even after the principal becomes incapacitated up until the principal has passed away.

Advanced Medical Directives. Whereas a power of attorney typically addresses business matters, advanced medical directives typically address health care and medical issues. Advanced medical directives may include three provisions: (1) a living will, which states whether a person wishes to be maintained on life support, meaning a feeding tube and intravenous hydration; (2) a designation of health care surrogates, who are persons authorized to make medical decisions on your behalf; and (3) a HIPAA release which allows your health care surrogate to obtain your private medical records. The person named as a health care surrogate need not be the same person named as an agent under a power of attorney. Someone may have a partner or a close family member involved in the medical community





ESTABLISHED 1924

FARR LAW FIRM *Newsletter*

FARR, FARR, EMERICH, HACKETT AND CARR, P.A.

WWW.FARR.COM

PERSONAL INJURY &
WRONGFUL DEATH

LITIGATION

ESTATE PLANNING

REAL ESTATE & TITLE
INSURANCE

MARITAL & FAMILY

ENVIRONMENTAL
& LAND USE

BUSINESS

TAXATION

ELDER LAW

ASSET PROTECTION

who would be best suited to make medical decisions and select a different person more qualified to make business type decisions.

With unmarried partners, you could be faced with a situation where medical professionals will not be able to either accept guidance from your partner about your medical treatment or provide information to your partner about your medical condition. This is frustrating to both the medical community and the partner. Countless stories are told of unmarried partners who are unable to learn about their loved one's medical condition because there is no authority for the medical professional to deal with them.

Last Will and Testament. While the power of attorney and advanced medical directives are effective while you are living, a last will and testament takes effect after one passes away. If a person should pass away without executing a last will and testament, his or her property will be distributed in accordance with Florida's Intestacy Code. Florida's Intestacy Code, as that of most states, makes no provisions for unmarried partners. In Florida, common law marriages entered into after January 1, 1968, are not valid. Fla. Stat. § 741.211. Therefore, if a person intends to provide for an unmarried partner, then provisions should be included in a last will and testament which spell out that person's wishes as to whom should inherit property and who should serve as personal representative. Although the person named as personal representative is often the same person named as an agent under a power of attorney, this is not required. In addition, beneficiary designations on investments, bank accounts, life insurance policies and retirement accounts should be reviewed to make sure that these beneficiary designations reflect the person's wishes.

Because unmarried partners will need legal authority to take care of each other's affairs, it is vitally important to prepare estate planning documents. A power of attorney and advanced medical directive can allow your partner to help you manage your affairs while living, and a last will and testament can allow you to make provisions for your partner afterwards.

To subscribe to our monthly newsletters, please visit our website at www.FARR.com

This newsletter is for general information and education purposes only.

It is not offered as legal advice or legal opinion.

To the extent this message contains tax advice, the U.S. Treasury Department requires us to inform you that any advice in this letter is not intended or written by our firm to be used, and cannot be used by any taxpayer, for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code. Advice from our firm relating to Federal tax matters may not be used in promoting, marketing or recommending any entity, investment plan or arrangement to any taxpayer.

Punta Gorda Office:
99 Nesbit Street
Punta Gorda, FL 33950
Phone: 941.639.1158
Fax: 941.639.0028

Englewood Office:
33 S. Indiana Avenue
Englewood, FL 34223
Phone: 941.460.9334
Fax: 941.460.9443