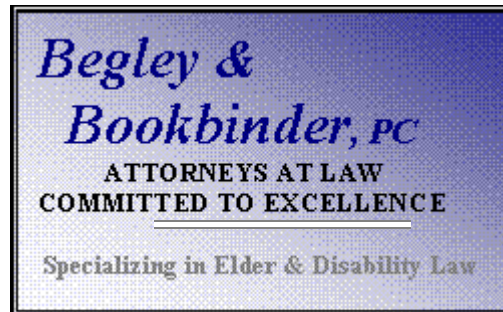


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Sent: Friday, November 10, 2006 5:10 AM
To: The Law Offices of Begley & Bookbinder, P.C.
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***PROTECTING THE RIGHTS OF
NON-TRADITIONAL COUPLES IN A
TRADITIONAL WORLD
By Thomas D. Begley, Jr., Esquire***

What is a Non-Traditional Couple?

Non-traditional couples are either same sex couples or heterosexual unmarried couples. They may even include transgender couples. Typically, these relationships are characterized as domestic partnerships. The partnerships often have the following characteristics:

- \$ Common residence
- \$ Some form of joint responsibility for each other=s common welfare
- \$ Joint responsibility for living expenses
- \$ Neither partner is in a valid marriage, except in those states permitting same sex marriages
- \$ There is a committed relationship of mutual caring
- \$ Both parties are at least 18 years of age
- \$ An Affidavit of Domestic Partnership has been filed in those states where such partnerships are authorized

Important Issues for Non-Traditional Couples

- \$ *Financial Control.* If one partner is incapacitated, that person usually wants the healthy partner to handle financial affairs.

- \$ *Health Care.* If one partner is incapacitated, that person usually wants the healthy partner to handle medical affairs.
- \$ *Autopsy.* In certain cases, a domestic partner may want the surviving partner to consent to an autopsy.
- \$ *Organ Donations.* A domestic partner may wish the surviving partner to consent to organ donations.
- \$ *Inheritance.* Domestic partners usually want their partner to inherit upon death.
- \$ *Ownership and Management of Real Estate.* Domestic partners often purchase real estate together and are often concerned about how the property is titled and how the property will be maintained.

Tools

To accomplish these objectives certain tools are available. While these tools are important in all relationships, they are particularly important in non-traditional couple relationships.

- \$ *Power of Attorney.* A Power of Attorney allows the clients to grant their partners (and/or other people) the right to make financial decisions and to have access to bank accounts.

Failure to execute a Power of Attorney may lead to unpleasant future consequences. Absent a Power of Attorney it may be necessary for someone to be appointed guardian of the incapacitated partner. Most state statutes do not give a domestic partner any priority in being named guardian. Family members, generally, would come ahead of a domestic partner. The financial power of attorney should obviate the need for having a guardian appointed.
- \$ *Advanced Medical Directive.* An Advanced Medical Directive, sometimes called a Health Care Proxy or a Medical Durable Power of Attorney, allows the clients to grant their partners (and/or other people) the right to make health care decisions and to have access to medical records.

Failure to have an Advanced Medical Directive in place might necessarily lead to the appointment of a medical guardian. Again, the domestic partner has no statutory right, in most states, to be named health care representative. Most state statutes give priority to family members.
- \$ *Living Will.* A Living Will allows the clients to be Aon record@ as to whether they want heroic measures used to keep them alive if there is otherwise no hope. Although a Living Will is not legally enforceable in some states, it is always valuable in a legal dispute or inquiry about what the patient would want.
- \$ *Burial Directive.* A Burial Directive, like a Living Will, at the very least allows the clients to be Aon record@ as to how to dispose of their remains, and in some states it even gives the designated agent authority equal to or greater than family members who would otherwise be assumed to have authority over such decisions.

Absent a Burial Directive the domestic partner has no right to make any decisions pertaining to the burial of the deceased partner. Family members and/or the executor are given priority.
- \$ *Will.* It is very important that non-traditional partners have Wills. Absent a Will each state has an Intestacy statute. The Intestacy statute is, in effect, a Will for the deceased partner, which has been written by the state. The domestic partner will not benefit through Intestacy. In order for the domestic partner to inherit from the deceased partner, a Will must be drafted.
- \$ *Living Trust.* A Living Trust allows the clients to grant their partners (and/or other people) the right to manage their assets and investments.
- \$ *Beneficiary Designations.* If a domestic partner wants the surviving partner to benefit from the deceased partner=s life insurance, retirement account and/or annuity, the domestic partner must be named as beneficiary. There may be an issue in some states as to whether the domestic partner has an Ainsurable interest@ with respect to life insurance. State law must be consulted carefully.
- \$ *Equity Sharing Agreement.* An Equity Sharing Agreement is an agreement between the unmarried couple

pertaining to ownership and management of real estate. Important provisions include the following:

- N The method in which equity is to be calculated
- N Initial deposit
- N Payment of expenses
- N Consequences of default
- N Term life insurance
- N Termination
- N Valuation
- N Distribution of proceeds of sale
- N Death
- N Rental
- N Allocation of tax benefits
- N Non-assignability

§ *Domestic Partnership Agreement.* Some states authorize Domestic Partnership Agreements, and some state laws grant various rights to domestic partners. It is important that an agreement be drafted to comply with the state statute in these cases.



Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and Lawrenceville, New Jersey and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania.

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