

From the desk of Jeanne M. Kerkstra, Esq., CPA

**Viewpoint
High Stakes in Property Rights**

Earlier this month a judge in California ordered the ex-husband to continue paying alimony to his ex-wife even though she was in a registered domestic partnership with another woman and even using the other woman's last name. California matrimonial laws dictate that alimony ceases when a former spouse remarries. However, California currently bans same-sex marriages. Consequently, a person does not possess the same property rights under California's domestic partnership law as he or she would under California's matrimonial laws.

For those in same sex relationships, estate planning documents are even more important. These allow you to pass your property as you see fit and keeps the State out of it—as much as possible.

It is interesting to note that for the first time in quite some time, the divorce rate is in decline. However, this number can be misleading. People are not necessarily staying married longer. Studies have shown that it's simply that not as many people are getting married. Therefore, if your property rights are not determined under the State's property rights such as the matrimonial laws, it is even more imperative that you spell out your understanding at the beginning of the relationship or as soon as possible afterwards.

In other words, if you are in a same-sex relationship or simply living together with someone from the opposite sex, you really need to have in place the proper estate planning documents:

1. **Revocable Trust:** Who gets what, when and how. It also helps to avoid probate if properly funded.
2. **Pour-Over Will:** A client of mine joked, "I'm poor, it's over, leave me alone." But really, the point of a pour-over Will is to keep as much information confidential as possible. A Will is a public document that must be filed by someone on your behalf (because you're now deceased) within 30 days of your death. It simply states that you lived, you had family, you died, and the rest poured over to your Trust, which is a confidential document.
3. **Durable Powers of Attorney for Health Care and Property:** They are very important with how we are living longer.

The overriding concern for estate planning documents is two-fold: Remain in control and spell out in clear detail how things will pass so as to avoid confusion at a messy time (death or break-up).

As both an attorney and CPA, I view not only the legal and financial side but also the emotional side. Please call me if I may be of assistance in helping to draft your estate planning documents or in updating them.

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