

CHECKLIST OF ESTATE PLANNING ISSUES FOR NON-MARRIED COUPLES

PETER BRAUTIGAM
MANLEY & BRAUTIGAM, P.C.
907-334-5600

ETHICAL ISSUES

1. Define the Scope of Work.
 - a. Lifetime Planning - Co-habitation Partnership Agreement.
 - b. Dispositive Estate Planning.
2. Will You Represent P1, P2 or both?¹

TAX ISSUES

3. Income Tax Issues.
 - a. IRC §1041.
 - b. IRC §121.
 - c. Income Tax Return Filing Issues.
 - d. Support Payments.
4. Gift Tax Issues.
 - a. No Unlimited Marital FGT Deduction - §2523
 - b. No Split Gift allowed - §2513
5. Estate Tax Issues.
 - a. No Unlimited Marital FET Deduction - §2056.
 - b. Use of Applicable Credit Amount.
 - c. IRC §2041(b).
 - d. IRC §2701-2704.
6. Generation Skipping Tax Issues.
 - a. Generation Assignments.
 - b. Adoption.

WEALTH TRANSFER PLANNING

7. Jointly Owned Assets (JTWROS).
 - a. Real Property – AS 34.15.140
 - b. Personal Property – AS 34.15.130
 - c. Accounts
 - d. Simultaneous deaths creates problems if estate plans are not coordinated.
8. Adult Adoption.
9. Cohabitation Agreements, Domestic Partnerships and LLCs.
 - a. Full disclosure of assets and liabilities of each P
 - b. Sharing of profits and losses.
 - c. Expenses (joint) while living together: allocation/sharing.
 - d. Pooling of Income.
 - e. Joint Assets.
 - f. Title to Assets.
 - g. Support and Care Payments.
 - h. Health Insurance provided by P1 for P2.
 - i. Life Insurance on P1 fbo P2.
 - j. Agreement duration and termination.
 - k. Amendments to the document.
 - l. Children (and Pets).

¹ In this outline: P1 shall mean the person that is the lead or primary "partner," is assumed to be the partner that dies before the other partner, and generally has greater wealth/assets than P2; P2 is assumed to survive P1 and generally has less wealth/assets than P1.

- m. Termination of the relationship during life.
- n. Termination because of death.
- 10. Wills and RLT.
- 11. Defensive Planning to Minimize Challenges.
 - a. Define "Partner".
 - b. Strong *in Terrorem* Clause - AS 13.12.517 and 13.36.330
 - c. Statement of Intent to Benefit P2.
 - d. Statement of Intent to Exclude Family.
 - e. Statement of Intent re: Non-Probate Transfers.
 - f. Obtain Evidence of Capacity.
 - g. Periodic Re-execution of EP documents with some minor changes.
 - h. Observe formalities on execution of documents.
 - i. Discuss the issues in front of the witnesses.
 - j. P1 and P2 should advise other Family Members of testamentary goals.
- 12. Planning for Children.
 - a. Defining "Children", "Issue" and Descendants.
 - b. Child Health Care POA.
 - c. Guardianship.
 - d. Custodial Accounts.
 - e. Life insurance fbo children
- 13. Planning for Distributions to P2.
 - a. Joint Ownership of Assets.
 - b. Use of P1's Applicable Exemption Amount.
 - c. Outright vs. In Trust
 - d. Consider non-probate distributions to P2/others to limit challenges.
 - e. Retirement Accounts.
 - f. Life insurance.
 - g. Valuation Issues.
- 14. Review all Designation of Beneficiary Forms.
- 15. Financial Powers of Attorney.
- 16. Health Care Proxy or Power of Attorney.
- 17. Burial Instructions.
- 18. Applicable Law.

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Sources

- 1. Burda, J.M., *Estate, Tax & Benefits Planning for Unmarried Couples*, ALI-ABA, 2009.
- 2. Goffe, W.S., *Estate Planning for the Unmarried Couple/Non-Traditional Family*, 21 *ACTEC Journal* 177-205 (2005).
- 3. LISI Estate Planning Newsletter #1489 (July 13, 2009), www.leimbergservices.com
- 4. LISI Estate Planning Newsletter #1450 (April 21, 2009), www.leimbergservices.com
- 5. LISI Estate Planning Newsletter #1345 (September 18, 2008) www.leimbergservices.com
- 6. LISI Estate Planning Newsletter #1036 (October 16, 2006) www.leimbergservices.com
- 7. Rubenstein, J.S., *Planning for Unmarried Couples*, 43rd Heckerling Institute on Estate Planning, Chapter 10, January 14, 2009.

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