

ESTATE PLANNING FOR THE UNMARRIED PERSON
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Most people have a basic understanding of the importance of wills or some other form of estate planning to ensure the orderly passage of one's estate upon death. That said, if one dies without a will, contrary to a very commonly held myth, one's estate does not pass by default to the state. If one dies without a will in Maine, the Maine Probate Code sets out who is entitled to the decedent's estate, and as common sense would dictate, this is determined by degree of relationship to the decedent. For example, if one is married with children, the surviving spouse is entitled to the first \$50,000 and the remainder is divided equally between the children and the spouse. Although this is usually not what most married couples choose (more often than not, the chosen course is to leave everything to the surviving spouse) most married couples' estates will pass to the survivor regardless whether there is a will or not. This is because the property of most couples is typically held in a form such that it will pass to the surviving spouse without the necessity of probate, either with joint tenancy designations, as in the marital home and joint bank accounts, or with beneficiary designations, as in retirement accounts.

The most disastrous cases of estates not passing to the logical or desired beneficiaries are those involving single people who have no children. If a person has no spouse or children, her estate will pass to her parents, if no parents survive her, then to her siblings in equal shares, and if there are no siblings, then to the decedent's closest descendants of maternal and paternal grandparents. Suffice it to say that if one has numerous aunts and uncles and dies with no spouse and children and no will, the estate can end up being disbursed like the fluff of a dandelion. Not only can such an estate create a logistical nightmare in terms of tracking down heirs, but more likely than not, the decedent would never have chosen to have her estate divvied up in such diffuse manner.

The results can be particularly tragic in cases in which a person has had a long-time partner whom she has never married. A very common scenario is when such a person resides in the home of the decedent, often for many years, only to find that upon the death of the partner/home owner, the surviving partner has no rights, and must vacate at the whim of the decedent's heirs. Maine recently enacted a law which allows people to register as domestic partners, and by doing so, they are treated as a married couple under the probate laws. Thus, if a couple had so registered, and one of them died without a will, the survivor would at least have the same rights to the decedent's estate as would a spouse.

Divorce is another scenario which can cause confusion and skewed results in estate planning. The Probate Code does make provision preventing one's estate from inadvertently passing to a divorced spouse by essentially voiding any bequests in a will to an ex-spouse, unless it is clear that such bequest was still intended after the divorce. What the probate code does not prevent, however, is the passage of one's estate to the spouse in a pending divorce proceeding, even if a settlement agreement had been reached. Furthermore, even if one changed the will while the divorce was pending, the surviving spouse would still have the right to take a percentage of the deceased estranged spouse's estate under the spouse's right to an elective share of the estate.

Finally, another important area of planning for single people with significant others is in the event of incapacity. Powers of attorney for financial matters and health care take on particular significance, not only for the obvious reason of allowing for the smooth transition of decision making authority, but also to prevent a contest with family members over such powers. Here again, the Probate Code sets out priorities of who will be considered for appointment as guardian. Topping the list is anyone nominated in writing by the incapacitated person, next is the spouse, and next, as recently added, is the registered domestic partner.

Estate planning is an important exercise for every adult. But, for single adults, whether recently divorced, with or without children, or sharing life with a domestic partner, it can be essential to ensure that one's loved ones are provided for according to one's wishes.

Kathleen Kienitz practices law in Lewiston and her firm concentrates in elder law and disability planning, as well as probate and estate planning.