

“Planning puts the law on your side”

Cohabitation, Real Estate and the Associated Estate Planning Issues

It could be argued that the only two guarantees in life are death and taxes. It could also be argued that the two biggest decisions a person will make during their lifetime involves marriage and/or buying a home. As a result, it would follow that having an understanding about the relationship between death, taxes, marriage, and real estate is vital to a person’s ability to make informed decisions.

The face of American society is much different than it was a generation ago. This change can be seen in many different areas, especially the increasing number of couples choosing to live together (cohabit) outside of marriage. When this occurs, cohabitating couples need to understand not only how to protect their property rights but also the rights of their partners in the event of a medical emergency or untimely death.

Arizona is a state that does not recognize common law marriages or same sex marriages. As a result, only those couples who have a recognized marriage license are afforded legal rights for their spouse under the law. However, a couple’s inability or decision not to pursue marriage does not prevent them from taking affirmative steps to protect their rights, as well as the rights of their partner under the law. For example, cohabitating couples can prepare deeds, wills, trust, powers of attorney, or enter into

contracts to affirmatively protect their financial and personal interests where the law does not mandate such protection.

Protecting One’s Right in Real Estate

As it is often the case, the primary residence of a cohabitating couple is owned solely by only one of the partners. As a result, in the event the owner of the property dies, the surviving partner has no right to inherit the property or even stay in the property following their partner’s death. This is often the case even if the non-owner partner contributed time, energy, and money to the upkeep and maintenance of the property. Typically, this concern is avoided when a couple is married because the spouses are protected under Arizona laws. Unfortunately, many of these laws only apply to legally married couples in Arizona and not cohabitating couples.

Although cohabitating couples are not afforded the same default protections under Arizona law, as previously stated, cohabitating couples are not prevented from taking affirmative steps to protect their interests under the law. For example, cohabitating couples can insure their partners are protected under the law by executing a will, beneficiary deed or creating a trust for the benefit of one another. By creating a will or trust, cohabitating couples are helping to ensure

their assets will be distributed to the people they select and not to the people the court or their family members desire. In addition, cohabitating couples can also record beneficiary deeds appointing the non-property owner's partner as the owner of the property following the property owner's death. Lastly, the property owner can also add their cohabitating partner as an owner to the property by re-recording a deed.

Conclusion

Cohabitating couples have numerous rights under the law; they just have to be proactive about implementing the laws in their favor. As this article only briefly touches on some of the many topics affecting cohabitating couples, anyone confronted with these types of situations should speak with an experienced real estate and estate planning attorney to help ensure their rights, as well as the rights of their loved ones, are protected under the law.

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Scott F. Burns, Esq. is an Arizona attorney and licensed real estate broker whose clientele includes professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning, real estate law and business consulting.

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