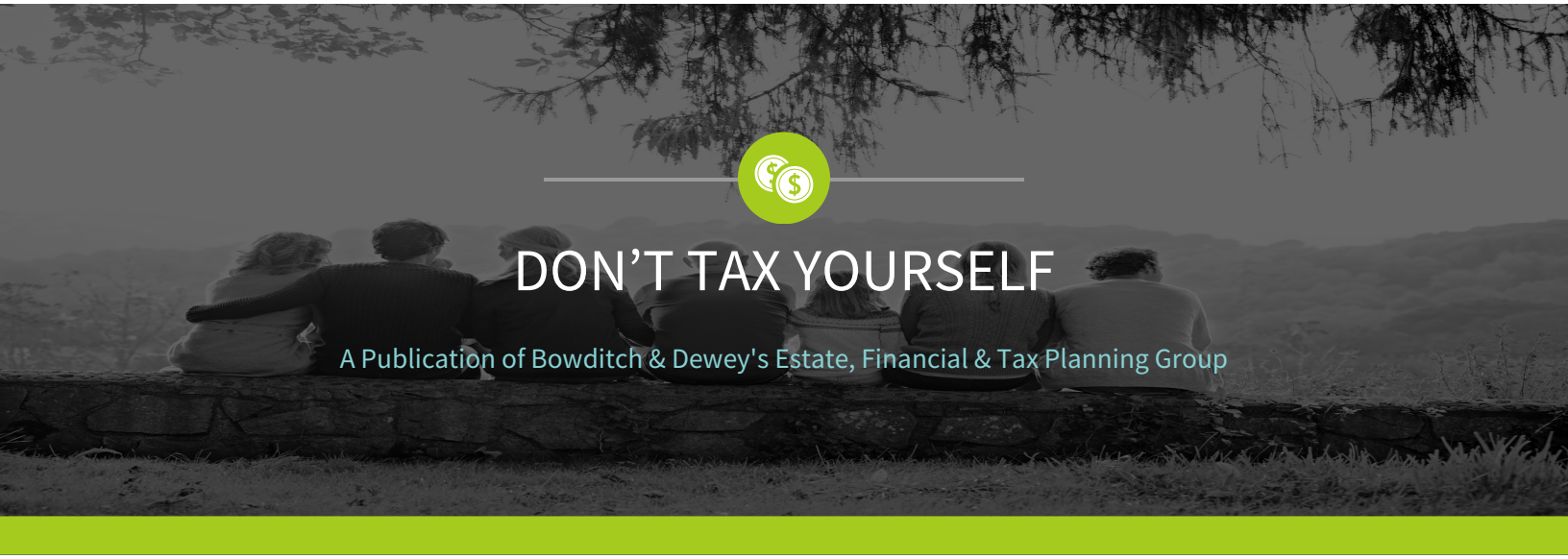


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Unmarried Couples: Think About A Cohabitation Agreement

BY EILEEN Y. LEE BREGER • NOVEMBER 22, 2016

Earlier this year, we covered the tax and legal implications of getting married. With an increasing number of unmarried millennial couples planning to buy a condo or house together, how can they safeguard their rights absent the legal protections of marriage? When an unmarried couple signs a purchase and sale agreement, they should also consider drawing up a cohabitation agreement that specifies the assets that each person brings to the relationship and what happens in the event of a breakup. Such an agreement is similar to a prenuptial or postnuptial agreement made by married couples.

What does a cohabitation agreement cover?

The agreement is treated like a business contract and addresses the division of property including real estate and its contents, property acquired by gift or inheritance, property acquired prior to the relationship, and the division of expenses and debts. It can set out how much someone has contributed to the down payment or mortgage payments.

In the event of breakup or death:

One of the most significant things that a cohabitation agreement can cover is the division of real estate. In the event of a breakup, there are a few options. The agreement can spell out terms for one person to buy out the other person's share or lay out terms for selling the property and splitting the proceeds. Oftentimes, a separating couple will disagree about the value of the real estate so a good cohabitation agreement should specify how the real estate will be valued. The most typical method for valuation is for the couple to hire a licensed appraiser to value the property.

In the unfortunate event that one member of an unmarried couple dies, the title of the property on the deed can make a difference as to what happens to the property. Two people can hold real estate as joint tenants with rights of survivorship, which means that if someone passes away, the survivor will own 100% of the property. Ideally, such an intention is also reflected in the person's will. If the real estate is held as tenants-in-common, the share held by the deceased person will pass according to his or her estate plan. If the person has not created an estate plan, that person's

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stake in the property would most likely pass to that person's parents or siblings, or perhaps a minor child, based on the state's laws of intestacy.

What else should a couple think about?

In addition to a cohabitation agreement and will, an unmarried couple should consider a durable power of attorney and health care documents. A durable power of attorney allows someone to designate a person to handle financial and legal affairs if he or she is incapacitated. A health care proxy is used if someone wants to give a partner the ability to make medical decisions on his or her behalf and a HIPAA release allows doctors to speak to a partner about one's medical treatment.

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