

# Estate Planning for Unmarried Couples in Massachusetts

## Services

### Estate Planning

**By Thomas J. Cleary on May 6, 2026**

If you build a life with your partner without getting married in Massachusetts, you may leave them without the resources they need when you pass away. Massachusetts does not recognize common-law marriage, so your partner has no inheritance rights or protections. If you don't have the right estate planning documents in place, the Commonwealth decides where your legacy goes.

Fortunately, you can take action to avoid these problems by consulting with an experienced legal team about estate planning for unmarried couples in Massachusetts. At Cohen Cleary, P.C., our [estate planning attorneys](#) will prepare the right set of tools to safeguard your assets for yourself and your partner.

## Why Estate Planning Is Critical for Unmarried Couples in Massachusetts

Both married couples and unmarried partners often focus on their plans for their family, home, and future together. Yet under the [Massachusetts Uniform Probate Code](#), if you die without a will while unmarried, the law governs who receives your assets.

If you have children together when you pass away, your partner may not have the legal right to retain custody of them. Estate planning can establish your partner's right to [guardianship](#) and keep your family together when you're gone.

Even before death, estate planning for an unmarried couple is highly beneficial. For example, without the right documents, your partner is unable to make medical decisions for you if you are incapacitated, even if this is what you would want. You can avoid these and other legal issues by taking time to meet with an attorney to tailor an estate plan to your needs.

## Does Massachusetts Recognize Common Law Marriage or Domestic Partnerships?

What are the rights of unmarried couples living together in Massachusetts? Unfortunately, Massachusetts does not recognize common-law marriage, so any assets you leave behind are subject to [intestate succession rules](#) under the Massachusetts Uniform Probate Code. Under those rules, your property passes to your children, parents, or siblings if you have no legal spouse.

The good news is that Massachusetts [laws regarding unmarried couples and domestic partnerships](#) permit cities to enact ordinances that allow these arrangements. If you have a domestic partnership or civil union from a city in MA or another state, you have the same rights and protections as a legal marriage. This is due to two Massachusetts Supreme Court decisions in 2012: [Hunter v. Rose, 463 Mass. 488](#), and [Elia-Warnken v. Elia, 463 Mass. 29](#).

## Essential Estate Planning Documents for Unmarried Couples in Massachusetts

Estate planning documents allow you to legally protect your surviving partner and their rights to property, bank accounts, life insurance, and retirement accounts. Here are some tools that may benefit you and your partner if you pass:

- **Wills:** You should each have a [will](#) leaving your assets to one another, naming your surviving partner as your personal representative.
- **Trusts (revocable and irrevocable):** Under the [Massachusetts Uniform Trust Code \(MUTC\)](#), you can establish [trusts](#) as separate legal entities to own and manage your assets, bypassing probate in most instances.
- **Healthcare proxies:** A [healthcare proxy](#) gives your partner the right to act as your personal agent to speak with doctors and make choices about your care.
- **Durable power of attorney (POA):** For financial, legal, and real estate matters, a [POA](#) gives your partner the right to handle your affairs if you are incapacitated.
- **Beneficiary designations:** Designate your partner as your beneficiary for all life insurance, retirement, and other applicable accounts if you want them to inherit those assets.

Your estate planning attorney can assist you in establishing the same protections that married couples in Massachusetts enjoy.

## What Are Common Estate Planning Mistakes Unmarried Couples Make?

Aside from assuming you have some of the same protections as a legally married couple, there are other mistakes that unmarried couples commonly make. These errors can often be avoided by working with an estate planning attorney, and include:

- Leaving beneficiary designations blank
- Titling assets in your name only
- Assuming your unmarried partner can make medical, financial, or legal decisions for you if you're incapacitated
- Ignoring the [Massachusetts Estate Tax](#) for estates worth over \$2 million, which could leave your partner with a substantial tax burden if you aren't married

Along with preparing your physical property and financial accounts through estate planning, you should also plan to transfer any digital assets and social media accounts after your death. Without careful preparation, your partner won't have access.

## Considerations For Unmarried Couples When Estate Planning

These are recommended ways to maximize the benefit of estate planning as an unmarried couple in Massachusetts:

## Property Ownership and Inheritance Strategies

Married couples in MA can use a legal instrument of “Tenancy by the Entirety” under [M.G.L. Part II, Title I, Chapter 184, Section 7](#), but this isn’t available for unmarried partners. Instead, they can rely on:

- **Joint Tenancy with Right of Survivorship (JTWROS):** Property passes automatically to the survivor without probate if one party dies.
- **Tenants in Common:** You own a share of the property that passes to your designated heir through your will.
- **Cohabitation agreement:** You have a legal contract with your partner outlining what happens to the property if you die or end your relationship.

## Avoiding Probate in Massachusetts

[Probate](#) is the legal process of transferring assets from a deceased party to their heirs. It also allows the state to value and tax eligible assets. Ideally, you can avoid probate for most assets if you use the following strategies:

- Transfer your assets into a revocable trust
- Hold property using JTWROS or as Tenants in Common
- Set up Payable-on-Death (POD) designations for bank accounts
- Name your partner as beneficiary for life insurance and retirement accounts
- Gift your assets while you’re alive to reduce your estate’s final value
- File a [Voluntary Administration Statement \(MPC 170\)](#) if your deceased partner’s estate is under \$25,000 and has no real estate under the Small Estate Administration process

## Do You Need a Cohabitation Agreement?

One of the most powerful ways to protect yourself and your partner in life and after death is a cohabitation agreement. You can tailor it to your specific goals, and it can provide rights similar to those in a marriage contract. The difference is that it’s between you and your partner to detail financial, property, and other rights both during the relationship and if you separate.

## Planning for Minor Children and Blended Families

Blended families of unmarried couples don’t enjoy automatic rights to guardianship or custody in Massachusetts. While biological parents maintain custody rights, their partners won’t unless you create estate planning documents to cover those matters. Likewise, children can’t inherit from non-biological parents without a formal adoption in place.

## Taxes and Financial Considerations in Massachusetts

You must also consider tax and financial differences in MA as an unmarried couple. For taxes, you file as single or head of household, missing out on a joint filing deduction available to married couples. If you transfer money over the annual exclusion amount, you may have to file a [federal gift tax return](#). Finally, you could be held responsible for your partner’s debt by creditors if you own property jointly titled in both your names.

## Schedule a Consultation With a Massachusetts Estate Planning Attorney

At Cohen Cleary, P.C., we focus on helping you overcome legal limitations to passing your legacy to those you love. In the case of unmarried couples, we proudly offer estate planning services so you can rest easy knowing your loved ones won't go unsupported in the event of your passing. To discuss your long-term goals and begin preparing, [contact us](#) to speak with a Massachusetts estate planning attorney today.