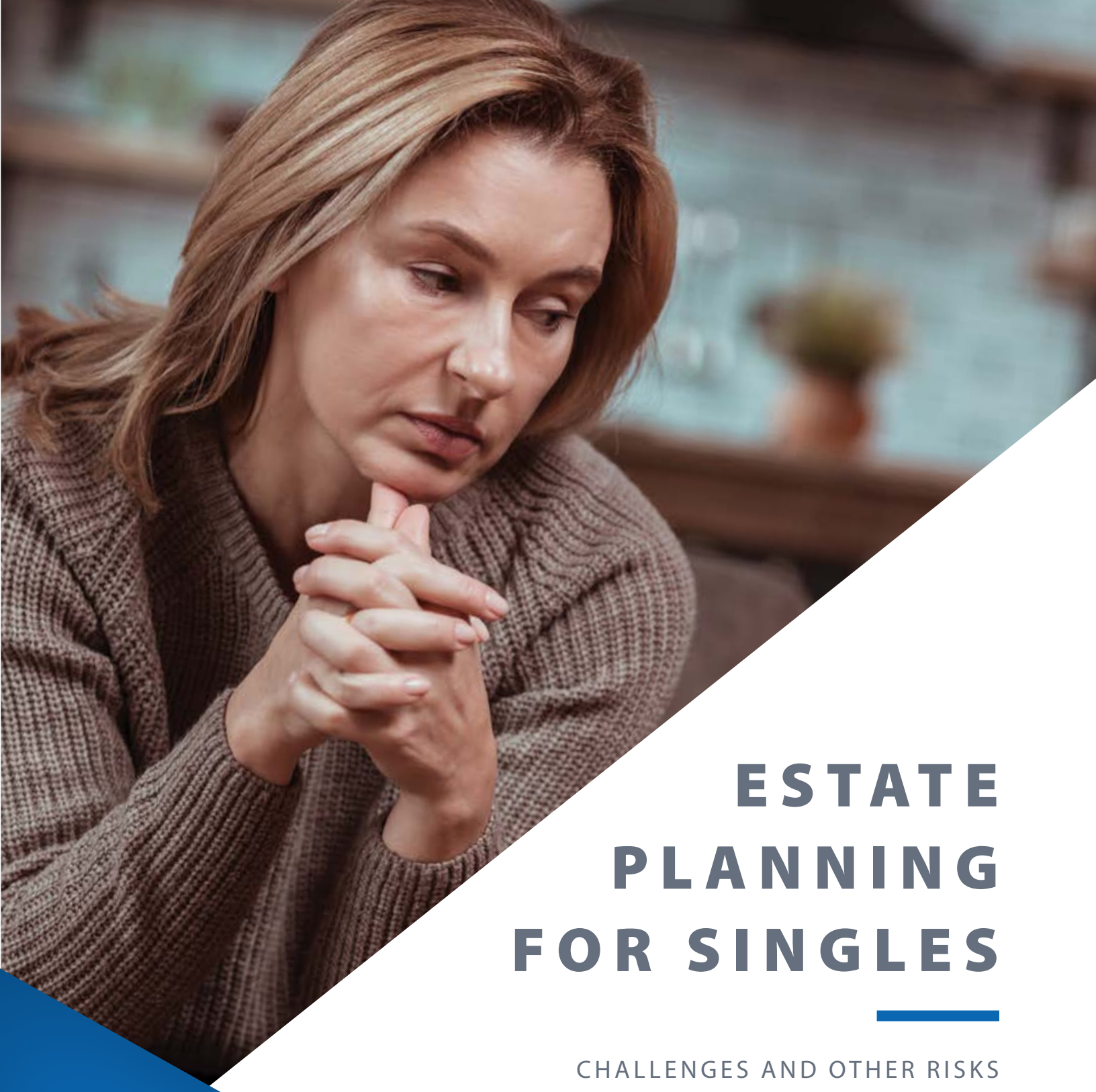

ESTATE PLANNING FOR SINGLES

CHALLENGES AND OTHER RISKS FACING UNMARRIED ADULTS

LEGACY® ASSURANCE PLAN

Love may be blind, but surveys about matrimony over the past half century have a clear message. Marriage in America is undergoing a cultural shift as its popularity continues a steady decades-long decline.

Since 2007, the number of Americans who live with an unmarried partner and choose to remain single increased 29% to an estimated 18 million, according to a Pew Research Center study. In 1960, the number was a mere 17,000.

In the past decade, the number of unmarried couples has risen fastest among Americans age 50 and older, growing by 75%.

Of all cohabitating adults in the U.S., 23% are over age 50. Nearly a quarter of older Americans prefer living together as a couple without formal strings attached.

You'll find many reasons for the trend, which is even more pronounced among millennials. Weddings are expensive. Divorce rates remain high. People may be hesitant the second time around and prefer to remain single.

Marriage, although expensive and risky, bestows each partner with rights, privileges and advantages involving access to community property and assets, Social Security, retirement benefits, taxes, inheritance and decision-making authority regarding medical treatment and access to information. By default, a spouse has next-of-kin status, hospital visitation privileges, child custody rights and other prerogatives.

For unmarried and single people, none of those built-in advantages of marriage exist. Informal commitments, although heartfelt and based on love and devotion, carry no legal weight.

Whether you are single or unmarried with a partner, the biggest estate planning risk is not having an estate plan at all. In the absence of an estate plan, your state's default rules will be applied to a wide variety of important personal decisions, including who can make medical and financial decisions for you if you are incapacitated, as well as how your property will be distributed after death.

Without an estate plan, these statutory defaults will favor family members in determining who makes decisions on behalf of an incapacitated person. An unmarried partner will have no control. Without proper planning, the incapacity of one the partners can lead to both unexpected and disastrous results. A dependent partner could be left without financial resources, a place to live and the ability to oversee medical care for their loved one.

Although it is common for people to put off thinking about creating an estate plan until they experience a major life event (such as marriage or the birth of a child), you should not put off creating an estate plan because you are unmarried. This booklet discusses the main risks and other considerations for unmarried people without an estate plan.

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INTESTACY

How will my property be distributed if I die without a will?

It is a common misconception that if you die without a last will and testament, the state will take ownership of your assets. Although this can happen, it is rare. Every state has its own intestacy laws that govern what happens to your assets if you die without a valid will. Intestacy laws are default provisions that control what happens in the absence of an estate plan.

In most states, if you are married and you die without a will, all of your assets will automatically pass to your surviving spouse (but if you have surviving children or parents, sometimes a portion will go to them as well).[1] Since most married couples would want their assets to pass to their spouse, this default rule and lack of control is less detrimental for married people, although they face the expense, delays, lack of privacy and inconvenience of probate.

Now let's look at what happens when an unmarried person dies without a will. Most state intestacy laws will distribute your assets in this order of priority, regardless of your actual intentions[2]:

1. **LINEAL DESCENDANTS (I.E., CHILDREN, GRANDCHILDREN, GREAT-GRANDCHILDREN)**
2. **PARENTS**
3. **SIBLINGS (OR NIECES/NEPHEWS IF YOUR SIBLING DIES BEFORE YOU)**
4. **GRANDPARENTS**
5. **AUNTS/UNCLES, OR COUSINS**
6. **THE STATE**

As you can see, it is possible that assets will pass to distant relatives with whom you had little or no relationship during your lifetime. The probate court will not have the power to deviate from these default rules, even if you had close friends, chosen family or an unmarried partner who you wanted to inherit your assets. In order to avoid the risk of having your state's intestacy laws govern how your property is distributed, you can create a will or trust that specifies what you want to happen to your property.

Does my will control all of my property?

Not necessarily – it is important to understand which assets you can give to others through your will, and which ones you can't. Your will does not control the following types of assets:

- ✓ **Property titled as joint tenants with rights of survivorship with another person.**
- ✓ **Property that is titled in the name of a trust.**
- ✓ **Property that is subject to a beneficiary designation or transfer-on-death form, such as retirement accounts, life insurance policies and other types of financial accounts. In a few states, you can even leave real property (like your home) to another person using a transfer-on-death deed.**

"In order to avoid the risk of having your state's intestacy laws govern how your property is distributed, you can create a will or trust that specifies what you want to happen to your property."

Property that is owned solely by you, is titled in your name only, and does not have a beneficiary designation, will be subject to the terms of your will.

What if I don't want my family to get my property if I die?

There are a variety of reasons that some people would prefer not to leave their property to their biological family members. There may be an estranged relationship, or you may simply have non-relatives, such as an unmarried partner, that you want to take care of. The default intestacy laws, however, will distribute your property only to your blood relatives. By creating an estate plan that includes a will and possibly a trust, you can choose anyone you wish to receive property and can specify dollar amounts, percentages or specific items that each person is to receive.

You may also decide that you want one or more charities to inherit some or all of your property. Many people support their favorite causes in this way and leave behind a legacy that reflects their values.

Who will raise my minor children if I die without a plan?

The guardian is the person who will raise your children and make decisions for them in the event that you die and the children's other biological parent is not able to take custody of them.

If a natural parent dies without a will that designates a guardian, a judge will appoint one – and not necessarily a person that you would have preferred. The partner of an unmarried person has no guarantee of being appointed guardian.

However, if you are unmarried and have minor children, you can name a guardian (your partner, for example) for your children in your will. You may also want to create a trust for your children to hold their inheritance money until they reach an age of your choosing. A trustee will need to be named by you to oversee the children's inheritance, spend money for the purposes designated in the trust and distribute whatever is left to the children when they come of age.

Rights of Couples

	Spouse	Unmarried Partner
Authorized to make health care decisions for each other?	Yes	No
Has access to financial accounts?	Yes	No
Has priority to serve as guardian?	Yes	No
Has right to remain in home?	Yes	No
Is intestate heir?	Yes	No

Will my estate still have to go through probate if I die without a will?

Yes – and there are reasons you may want to avoid probate. Any assets that pass through your will, or that are governed by the laws of intestacy, will probably need to go through the probate process. Probate is the legal process that makes sure your property is distributed to the correct people, and that taxes and other debts are paid. Because probate is a process that must be overseen by a court, it delays and adds expense to the estate administration process. It also creates a public record of your property, its value and who received it. Many people prefer a more private process and create an estate plan with a revocable living trust to avoid the hassles of the probate process.

Any assets that pass through your will, or that are governed by the laws of intestacy, will probably need to go through the probate process.

What will happen to my pets if I die without plan?

Just like naming a guardian for children, you can name someone to take care of your fur babies in your will. Technically, the law considers pets to be personal property (like jewelry) so you would simply give your pets to the person of your choosing in the same way that you would give other property. Providing funds to help care for your pets can be accomplished by giving a lump sum of money directly to the person who will be caring for your pets, or by establishing a "pet trust" to hold the money you leave behind for the care of your pets.

Will I save money without an estate plan?

Not having an estate plan may cost less while you are alive, but it could end up costing more after you die. The less planning you do in advance, and the more uncertainty there is after your death, the more your loved ones will have to pay in court costs and lawyer's fees to administer your estate.

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GUARDIANSHIP AND CONSERVATORSHIP

Estate planning is not only about what happens after your death. It is also important to plan for circumstances that may occur during your lifetime, such as becoming incapacitated. Who will make medical decisions for you if you are unable to make them for yourself? Who will take care of your finances, pay your bills and file your tax returns? Without proper planning, an unmarried person is at even greater risk than a married person of experiencing unwanted results during a period of incapacity.

As with intestacy laws, states also have laws that control who is able to make decisions for you and manage your affairs if you are unable to do so. Like with intestacy laws, the result may not be what you would have wanted.

MEDICAL DECISIONS

Who can make medical decisions for me if I am unmarried?

When unmarried people become temporarily or permanently unable to make medical decisions for themselves, state law steps in to determine who may make such decisions. In the event of an emergency, a medical provider will usually be able to take direction from (in order of priority):

1. **SPOUSE**
2. **ADULT CHILD (IF MORE THAN ONE, THEN A MAJORITY OF YOUR ADULT CHILDREN)**
3. **PARENTS**
4. **NEAREST LIVING RELATIVE**

Best friend, unmarried life partner, fiancé and stepchild don't make the list. If you are unmarried with no children, and your parents have predeceased you, a hospital may have to wait for a decision to be made by a relative with whom you have no relationship. Would that person know your wishes regarding medical treatment?

> ***If you are unmarried with no children, and your parents have predeceased you, a hospital may have to wait for a decision to be made by a relative with whom you have no relationship.***

Without a medical power of attorney in place, the only way for someone else to obtain authority over your medical decisions would be for that person to file a guardianship proceeding in court. Guardianship proceedings are often long, tedious, drawn-out processes – and they can be very expensive. A judge holds a hearing to determine whether you are incapacitated and then determines whether the person petitioning would be a suitable guardian. Complicating matters further, it is possible that more than one person could petition the court to be your guardian if your loved ones cannot agree among themselves. There is no guarantee that the decision of a judge – a complete stranger – will be what you would have wanted, and in the meantime, your loved ones may have incurred substantial legal fees in the process.

How guardianship can go terribly wrong

Consider the case of Ginger Franklin, an unmarried widow from Nashville, Tennessee, who suddenly fell down a flight of stairs of her townhome. The fall caused her to suffer a significant, debilitating bodily injury. Specifically, she was diagnosed with a severe brain injury. Franklin did not have any legal document that designated anyone to make decisions on her behalf if she became incapacitated. In addition, there were no immediate family members in the vicinity of her Nashville home. As a result, a judge appointed a guardian to make decisions on behalf of Franklin.

The guardian appointed by the court opted to place Franklin in a group home that specialized in helping adults suffering from mental illness. However, Franklin was not mentally ill. She suffered a brain injury and eventually recovered.

Unfortunately, her story, which made national headlines, only gets worse from here.

When Franklin returned to her home just seven weeks later, she met the guardian and was advised that they sold her townhome and all of her possessions. After learning she was effectively homeless with no earthly possessions to her name, she returned to the group home. The owners of the group home did not show any compassion or understanding. Instead, they took advantage of Franklin by essentially turning her into an indentured servant. She was required to go cook, clean, go grocery shopping and watch over the other residents of the home.

"Guardians reportedly stole more than $5 million in assets from their wards between 1990 and 2010.

She was also ordered to clean the personal residence of the group home owners, and was not paid for these services. In addition, she was required to pay monthly rent totaling $850 and attorney fees of $200 an hour.

Guardianship abuse is a growing problem

According to a report published by the U.S. Government Accountability Office (GAO), there were hundreds of reported allegations of neglect, physical abuse and financial exploitation by guardians in 45 states and the District of Columbia. The report detailed shocking revelations, including the fact that guardians reportedly stole more than $5 million in assets from their wards between 1990 and 2010.

Even more disturbing is the fact that the estimates from the GAO are likely underreporting the number of incidents and the amount of money stolen or misused by guardians. This is because many states do not maintain detailed reports or statistics on individuals who are under the care of guardians

How can I avoid guardianship proceedings?

In order to avoid your state's default laws and potential guardianship proceedings, you can create a medical power of attorney that will name a representative of your choosing to make medical decisions for you if you are incapacitated. You should always name at least one backup, in case the person you name predeceases you or is unwilling or unable to serve in this capacity.

In addition to deciding who will make decisions for you, another type of legal document, called an advance directive or living will, expresses your wishes for what types of medical treatment you do (or do not) want if you are in a terminal or end-stage condition. This might include decisions about:

- ✓ **CPR**
- ✓ **Do not resuscitate (DNR)**
- ✓ **Feeding tubes**
- ✓ **Ventilators**
- ✓ **Dialysis**
- ✓ **Specific medical procedures that do not comply with your religious beliefs**
- ✓ **Pain management (palliative care)**
- ✓ **Organ and tissue donation**

Perhaps the most famous case that illustrates the need for an advance directive is the case of Terri Schiavo, a Florida woman whose right-to-die case made international headlines in the late 1990s. When she was just 26 years old, Terri Schiavo suddenly collapsed, depriving her brain of oxygen and leaving her in a persistent vegetative state. Her doctors concluded that she was incapable of thought or emotion and that she would never recover. Terri's husband and her parents disagreed as to whether Terri would have wanted to be kept alive with a feeding tube, and their battle raged in court and the media for more than a decade. An advance directive and medical power of attorney could have helped make Terri's wishes known regarding what medical interventions she wanted in this situation.[3]

State laws regarding advance directives vary widely. For example, three states do not specifically recognize them[4], and 11 states invalidate a woman's advance directive if she is pregnant.[5] Consult with your estate planning attorney to determine what your state law requires.

FINANCIAL AND LEGAL DECISIONS

Who can handle my financial affairs for me if I am unmarried?

Unlike medical decisions, there is no default state law that will automatically give authority to your relatives to handle your financial and legal affairs for you if you are incapacitated. No one will be able to access your bank account, withdraw money to pay expenses, sell assets or make legal decisions such as initiating or settling lawsuits on your behalf.

For married couples, who tend to own assets jointly and have joint access to financial accounts, this may present less of an obstacle than for unmarried people.

In the absence of a general durable power of attorney, the only option your loved ones will have is to petition the court to be appointed as conservator over your assets. A "conservator" has authority over financial matters, while a "guardian" has authority over medical decisions. As with guardianship proceedings, anyone can petition the court to be appointed as your conservator, and these proceedings often result in substantial legal bills. In order to help avoid the need for a court to appoint a conservator, use a durable general power of attorney to give another person the power to act for you in financial and legal matters.

If all of my accounts are joint with another person, do I still need a durable general POA?

Yes – holding accounts jointly is not a replacement for a durable general power of attorney (POA). When you and another person hold an account jointly, you both have equal access to the account and are permitted to use it as you wish. If one of the joint account holders dies, the other automatically becomes the sole owner of that account. You cannot direct ownership of your portion of the account through your will.

Your joint account holder will be able to access the money in your joint account even if you are incapacitated, so that may be helpful if that individual is going to need to pay bills on your behalf. However, you may have other assets that you own individually, to which that person would not have access. Additionally, a durable general POA can give your representative power over more than just your assets. That person will also be able to act on your behalf regarding other types of decisions, such as legal matters. For example, if you are injured in a car accident that was the result of a manufacturing defect, your representative may wish to bring a lawsuit on your behalf or enter into settlement negotiations with the auto manufacturer. In order to act on your behalf, the person must be named in your general durable POA, or else they will have to petition the court to be appointed as your conservator.

03

TAXES

Another risk for unmarried people is that your assets might be taxed more heavily than those of married couples. The reason for this is simple – the tax code allows for unlimited transfers between spouses without any tax. So if a married person dies, they can leave as much money as they want to their spouse without incurring certain transfer taxes. However, some states impose inheritance taxes on any assets inherited by non-spouses. And if the value of your estate is over a certain amount, you may also be stuck paying federal estate tax.

Other issues for unmarried people to consider include eligibility and filing rules for various tax deductions and credits, such as property and mortgage interest deductions and child tax credits.

An estate planning attorney can help you evaluate how each of your assets will be taxed upon your death and create the most tax-efficient strategy to help decrease the tax burden on your estate and your heirs.

> ***If a married person dies, they can leave as much money as they want to their spouse without incurring certain transfer taxes.***

YOUNG ADULTS

Unmarried young adults can benefit from proper estate planning as soon as they turn 18. Many parents of young adults are surprised when they learn that they can no longer access their child's medical or educational records due to the privacy laws that protect these records once the child turns 18.

The Health Insurance Portability and Accountability Act (HIPAA) restricts medical providers from releasing information about their patients who are over the age of 18 – even if that young adult just turned 18 yesterday, and even if the person requesting the information is that person's parent. Challenges for families can arise when young adults are away from home for college or work and encounter a medical emergency. To maintain access to records and information regarding an adult child, three documents are necessary:

- ✓ **Health care power of attorney**
- ✓ **HIPAA waiver**
- ✓ **General durable power of attorney**

These simple and affordable documents are often overlooked by parents of unmarried young adults, but they can help reduce the risk that you will be denied access to important information in the event of an emergency.

CONCLUSION

Because people are unmarried for many different reasons – whether through divorce, widowhood or never having been married – there is no one estate planning solution that fits all circumstances. Some unmarried people have life partners and/or children, while others do not.

The default laws of intestacy are based on traditional ideas of family and favor bloodlines over relationships. Therefore, the risks of not having an estate plan are particularly high for unmarried people, who do not have a spouse to receive their property if they die. If you are unmarried, creating an estate plan that is customized for your specific situation can help protect you and your loved ones, and can give you peace of mind that your affairs will be settled the way you want them to be if anything happens to you. Working with an experienced Legacy Assurance Plan network attorney who focuses on estate planning who can help guide you through this process and ensure you understand your options can decrease risk, alleviate stress and save you money in the long run.

1. Uniform Probate Code, Article II, Part 1 (Intestate Succession), Section 2-101, et seq.
2. Ibid.
3. Haberman, Clyde, "From Private Ordeal to National Fight: The Case of Terri Schiavo," New York Times, April 20, 2014, https://www.nytimes.com/2014/04/21/us/from-private-ordeal-to-national-fight-the-case-of-terri-schiavo.html
4. New York, Massachusetts and Michigan
5. Alabama, Idaho, Indiana, Kansas, Kentucky, Michigan, Missouri, South Carolina, Texas, Utah and Wisconsin.

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At Legacy Assurance Plan, our process begins with educating you on a variety of estate and business planning issues. Our primary focus is to help guide our valued program Members through the planning process by providing them with access to the many resources necessary to help make their goals a reality. But our commitment doesn't end there, because once your plan has been established, we're not only here to help you, we'll also be here to help those you care about later.

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Legacy Plan membership provides exclusive access to a group of services, benefits, professionals and providers to assist with the creation of a complete estate plan. A complete estate plan includes legal documents, a financial plan, guidelines to successors, organization of information and periodic reviews and updates, all of which are facilitated by Legacy Plan.

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The 3 primary resources are:

1. A qualified estate planning attorney.
2. The estate planning documents needed to achieve your goals and objectives.
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Whether your goal is protecting your family the costs, delays, publicity, lack of control and hassles of probate, providing for a disabled child when you no longer can or keeping your business in the family, Legacy Assurance Plan can provide you with the information and resources you need to reach your family's goals.

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