CEPC

Chicago Estate Planning Council

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My same-sex partner and I are planning to get married. Do we still need estate planning?

Congratulations! You still should utilize all the standard estate planning strategies that married different-sex couples use including pre-nuptial agreements, wills, revocable trusts, and powers of attorney. As discussed above, powers of attorney are particularly important because they may be required to make decisions for each other if you visit a state that doesn't recognize your same-sex marriage.

There are a few additional issues you may want to consider. If your partner and you have a domestic partnership agreement it may no longer be enforceable. If your partner and you created certain types of irrevocable trusts motivated by the fact that you could not take advantage of the unlimited marital deduction for spouses, you may want to consult an attorney about terminating those trusts. Finally, you might want to consider whether amending past years' income or gift tax returns is an option.