ARAG

Legal Insurance

Legal Concerns for Non-Traditional Families

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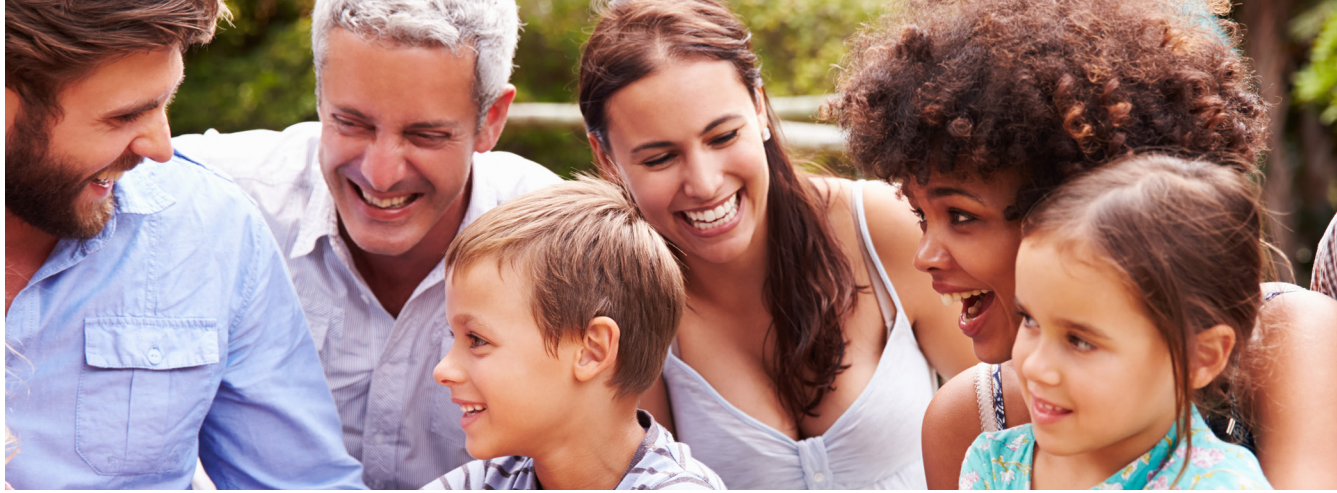


Families are our core social units and the basis on which we build our social policy. Our culture and media tend to portray the "traditional" family as a household composed of a married male and female and their children, natural or adopted. Yet compelling data from the 2020 census shows that this type of family is far from being the norm in the United States today.

The Changing Dynamics of Families

The 2020 U.S. Census reported that:

- The "traditional" family (married couples with their own children) make up only 18.7% of U.S. households, a 5.5% decrease since 2010.
- Cohabitation has become more common, especially among young adults, with the number of cohabiting couples reaching almost 9 million.
- The 2021 American Community Survey reported 1.2 million same-sex households in the U.S. (a statistic never reported in prior census data).

Based on the most recent census data, more than half of U.S. households consist of unmarried couples, single-parent households or individuals living alone or in a group.[1] Yet our country's laws and benefits have been historically based on the traditional family model, leaving tens of millions of American households who don't fit this model with limited legal options – and without many legal privileges, presumptions and advantages.

If you – like the majority of American families – live in a non-traditional household, then you will want to familiarize yourself with these common legal issues and how your family will be affected by laws.

Did you know?

In June 2015, the United States Supreme Court ruled that same-sex marriage is a constitutional right. Now same-sex couples can enter into a civil marriage and receive the same rights as opposite-sex couples.

Property and Other Assets

While cohabitation among unmarried partners has increasded in the United States over the last decade,[2] unmarried couples still face challenges with transferring property after a separation or upon death. Here's a brief breakdown of what generally takes place regarding the distribution of property and assets in these two scenarios.

Upon separation: If you have property that is titled in your name only, even if you both put money toward the mortgage and other expenses, that property will remain yours unless the other person can show written proof to a court that you both deliberately contributed to it.

If you have property or assets that are jointly owned (e.g., both names are on the deed to your house, you have a joint banking account), then those assets are split equally between the two of you unless you have a previous written agreement stating otherwise.

Some non-traditional couples choose to enter into a domestic partnership agreement (similar to a pre-nuptial agreement) that specifies how all assets would be divided if the relationship ends or if one of the partners dies.

Upon death: If you want your partner to receive property or assets when you pass away, you must have a will that names them as the beneficiary. Otherwise, the state will decide who receives your assets. And most state laws dictate that, in the absence of a will, a spouse (by civil marriage) and children receive assets first, followed by any immediate family members such as parents or siblings.

Children

Non-traditional couples can face challenges when they decide to have and raise children.

Adoption: Although it is now easier for single individuals, unmarried couples or same-sex couples to adopt children, some states still have regulations that define who can adopt.

Same-sex parents: Many couples are choosing to use artificial insemination to have children. In these situations, most states only recognize the biological parent's rights. One option in some states is to do a "co-parent adoption," where the non-biological parent adopts the child to gain legal parenting rights. If this is not possible, you and your partner can sign a co-parenting agreement, which states in writing that both people are equally sharing parental responsibilities and can consent to medical care. A co-parenting agreement can also stipulate custody details if the couple should separate.

Unmarried parents: If you are both the biological parents of a child, make sure both names are on the child's birth certificate. This will make issues – like access to medical records – more straightforward. You might also want to consider creating a co-parenting agreement, which would detail parental responsibilities and possible custody and child support details if you separate.

Learn more about your state laws at:
adoptivefamilies.com/adoption-laws-by-state/

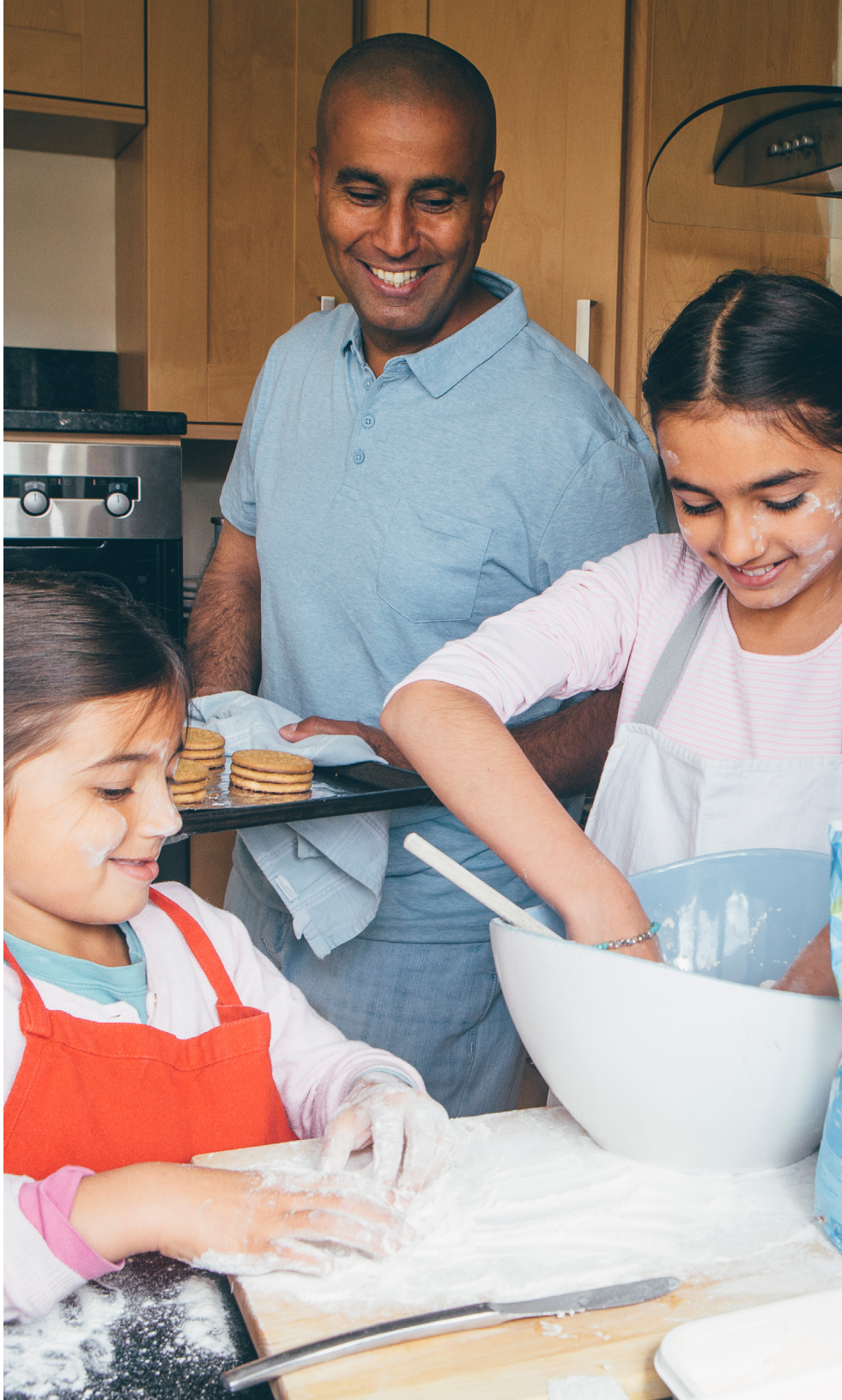
Did you know?

If you are unmarried and are helping your partner raise their biological child(ren), you would have virtually no legal rights in most states if you and your partner separate or if your partner dies – unless you have created a co-parenting agreement.

Taxes

Although unmarried couples can end up paying less income tax than married couples who file jointly, non-traditional family members may have issues claiming dependents or receiving deductions. For example, if you are raising your grandchild, unless you have legal custody, you will not be able to take advantage of tax deductions or credits. Or, if you are an unmarried couple, only one of you can take tax deductions or credits for your biological children.

For more information regarding tax deductions and credits for unmarried couples, please visit: https://www.irs.gov/faqs/earned-income-tax-credit/other-eitc-issues/other-eitc-issues



Estate Plans

When it comes to end-of-life issues, the state only recognizes partners who are legally married. This means that if you are not married and your partner becomes incapacitated, you will not be the first person authorities look to for health care decisions – they will consult your partner's immediate family instead. The same is true if you are a grandparent raising a child who is not your legal dependent. To avoid this, be sure you and your partner put together health care advance directives or medical powers of attorney (see Page 8) to specify that you should be your partner's representative.

Unmarried partners will want to take great care in putting together a will; otherwise, upon your death, your assets will pass to your immediate family members and not your partner.

Self-Help Solutions for All Families

Any family – traditional or non-traditional – would be well advised to create and document their legal preferences and intentions.

Non-traditional families in particular should learn about and consider these advance planning documents and arrangements because they may not be able to fall back on that legal safety net of legal presumptions, privileges and benefits of a traditional family. By creating a comprehensive set of estate planning documents, advance directives and non-probate property arrangements, non-traditional families can better control and protect their persons and property.

Advance directives

These documents name who will make decisions for you if you're unable.

Health care advance directive

This document names who will make health care decisions, including end-of-life care decisions, if you're unable to make decisions for yourself. It can also name an agent to act as a personal representative who can access your medical information to make informed decisions.

Also known as:

- Health care power of attorney
- Living will
- Designation of surrogates or proxies
- HIPAA designation of personal representative

Personal care advance directive

This document names a guardian and/or conservator if you become incapacitated and cannot handle personal or property matters such as paying bills or making deposits into a bank account.

Also known as:

- Designation of preneed guardian (or conservator)
- Are sometimes an optional provision in a health care power of attorney or a durable power of attorney

Finance advance directive

This document names who can manage your property, either on an ad hoc basis or for longer periods, if you become temporarily or permanently incapacitated. If you don't have this document in place, a court will need to name a guardian or conservator to handle your property.

Also known as:

- Power of attorney
- Durable power of attorney, if the power granted is not affected by the maker's incapacity

Funeral arrangements advance directive

This document names who can specify funeral arrangements, including disposition of remains, and ensure your wishes are carried out.

Depending upon the usage in the state, also known as:

- Declaration of final disposition
- Declaration for disposition
- Disposition of remains
- Appointment of agent
- Appointment of agent to control disposition of remains

Hospital visitation authorization

This document can be used to make sure someone can visit you in the hospital, as sometimes non-family members can be prevented from visiting.

Insurance, annuity and retirement asset beneficiary designations

These documents name who will receive the proceeds of insurance, annuities or retirement assets. Since all of these assets are contracts, you'll need to contact the company that holds the asset. Generally, you'll receive a beneficiary designation form that you need to complete and return.

In annuity contracts, proceeds can be paid out or the annuity can continue by transferring ownership to a successor annuitant, a partner or other named person.

With property insurance, the principal insured can name loss payees and protect their non-traditional family and follow the ownership of the property.

You can name either individuals or a trust as beneficiary of an IRA account.

Bank accounts and securities accounts ownership designations

While bank accounts and securities accounts can be passed to another in your will or trust, they can also be set up so your intended recipients can receive access to funds if you die or become incapacitated. All these accounts must be set up at the financial institutions holding them, with special attention to the paperwork establishing the form of the account and the beneficiary designations.

These accounts can be set up as joint accounts with rights of survivorship so that the named persons are owners with access during life and receive entire ownership upon death of an owner.

If shared ownership during life is not desired, but access for the benefit of the owner is needed, these accounts can be set up in the owner's name with another having power of attorney access (i.e., access to the funds for the use of the owner); these are often called convenience accounts.

Transfer-on-death, pay-on-death or Totten trust accounts can be set up by a sole owner with passage of ownership to a survivor.

Real estate

- Joint tenancy with right of survivorship ensures that ownership of the land will pass on death of a joint owner to the other joint owner(s) automatically. This type of ownership can be held in all but three states (Alaska, Louisiana and Tennessee).
- A growing group of states are permitting land within their borders to be held by an owner with title passing only at the owner's death to a beneficiary named in the most recent deed. Also note:
  - The named beneficiary can be changed by the owner and the beneficiary has no interest in the land until the owner's death. These arrangements are called "beneficiary deeds" or "transfer-on-death deeds."
  - With the exception of Ohio (which uses a transfer on death transfer affidavit), the transfer-on-death or beneficiary deed must be created in accordance with the state's authorizing statutes and by a special form of deed, with the suggested statutory form set out in most adopting state's statute.
  - Due to the complexity of some real estate-related situations and arrangements, you may want to check your state's laws or consult with an attorney to see if you can use a transfer-on-death deed to transfer your real estate.

Living trusts

A living trust names someone (or several people) to control and manage property placed in the trust. It also provides specific directions on how that property should be controlled, managed and ultimately disposed. A living trust offers more control to a grantor than a durable power of attorney since it can provide specific directions on how the trustee is to handle the property in trust. It also can take the place of a guardianship or conservatorship of the property of the grantor, avoiding costly court proceedings and orders.

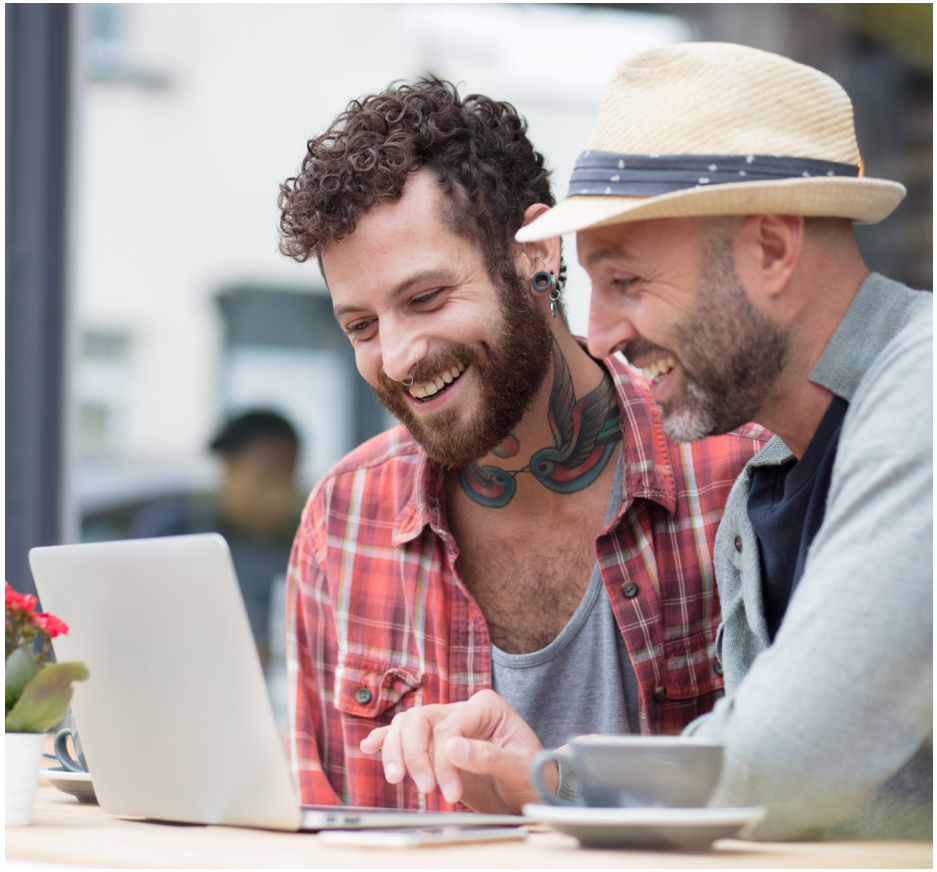
Since a living trust gives the grantor total control over its terms and the appointments of trustees and beneficiaries, it can bypass many rules, privileges, presumptions and advantages designed for traditional families.

Wills

A will directs how property is to be distributed upon an individual's death. It also appoints persons to carry out the will, to act as guardians for any of the individual's minor or disabled children, and to act as trustees for property the person wants to be held under trust for beneficiaries.

Take Control with ARAG

If you're not sure how to get started with your plans or don't have an attorney to help you through the process, ARAG can help. Visit ARAGlegal.com to learn more about how ARAG legal coverage gives you an affordable way to manage legal matters and the freedom to live the life you dream of.



[1] https://www.census.gov/library/stories/2023/05/family-households-still-the-majority.html

[2] https://www.bgsu.edu/ncfmr/resources/data/family-profiles/julian-decade-change-shares-single-cohabiting-married-2012-2022-fp-23-07.html