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ARTICLE: “**Designated Beneficiary Agreements: A Step in the Right Direction for Unmarried Couples**” 2011 *University of Illinois Law Review* 267

Nicole C. Berg’s article argues that state laws should provide greater rights and obligations regarding property ownership and the personal affairs of individuals in long-term, committed, unmarried, heterosexual cohabiting relationships. She relies on fairness to the cohabitants, public policies underlying similar rights and obligations of married individuals, social welfare, efficiency and comparisons to laws of European countries to support her arguments. The article cites the Colorado Designated Beneficiary Agreement Act (the Act), which took effect on July 1, 2009 and generally describes it as a way in which one state made progress toward that goal, which other states might consider emulating.

The Act allows adult, competent, unmarried Colorado resident cohabitants to execute and record a standard designated beneficiary agreement. In that agreement, each individual designates the other as his or her “designated beneficiary.” Such designated beneficiaries then are accorded certain statuses similar to spouses, including owning property jointly with survivorship rights, inheriting through intestacy, making medical decisions for the other incapacitated partner, taking care of funeral arrangements and designating anatomical gifts. An individual may be a party to only one agreement. Such agreements terminate upon either party executing and filing a revocation or getting married. Further, the designations made by an agreement only apply when other documents don’t address the matter. Such superseding documents may include wills, beneficiary designations or advance medical directives.

Most estate planners can safely categorize this article as one they “don’t need to read or keep for reference.” Unlike most clients, the cohabitants this article addresses have failed to adopt traditional estate-planning documents (for example, property ownership agreements, beneficiary designations, wills, powers of attorney and advance medical directives) and, therefore, are subject to state or federal law default mechanisms, such as laws of descent and distribu-

tion. Further, the Act applies only to Colorado and isn’t typical of laws of other states. Even in the most unusual case of Colorado cohabitants who won’t be adopting standard estate-planning documents, the article isn’t a practical guide to taking advantage of the Act. (Reading the Act itself is more efficient for that purpose.)

However, I would recommend the article to those readers who wish to be reminded of the uncertainties and unexpected results that potentially face cohabitants who meld their financial and emotional lives without carefully planning and documenting their wishes. Unpleasant surprises can arise regarding property division upon termination of a relationship, death of one partner, incapacity and similar events. Further, the article may be useful for those who wish to lobby for different outcomes in such situations. They will be armed with explanations of why the law has evolved to its current status, arguments for why it should be changed and at least one alternative, based on the Colorado experience.