

# Estate Planning and Long-Term Legal Issues for Married Couples, Domestic Partners, and Just Plain Friends

And we thought that if only we won the right to marry our problems would be “over”, and now we realize in many ways, our struggle for equal rights has just begun. Don’t get me wrong, your marriage *has* achieved some basic rights. Yes, if you marry you will have the right to inherit something from your spouse in the event of his (or her) death without leaving a will (how much, and exactly what, can be complicated by how property is titled upon his passing, and if there are surviving children unrelated to you). You will have the right to make health care decisions for your incapacitated spouse, but, without the proper paperwork you will not have access to his healthcare information under the HIPAA laws. Without paperwork, your ability to make end of life decisions regarding withdrawal of life support is limited. Without a durable power of attorney, you will not be able to manage your spouse’s finances if he becomes incapacitated. Even if we are legally married, "estate planning" documents give us rights to inherit and act on behalf of our partners and ensure that our assets and our care in event of disability and death are managed according to our wishes, and not by default under the law, which most often is NOT as we would have chosen.

Those of us who do not find themselves in the traditional married with children scenario must recognize that careful estate and long term care planning is even more crucial for us. If you are a party to a marriage, have kids, and intend that your spouse make decisions for you should you be incapacitated, and that your spouse and kids inherit in the event of your death, then, in the worst case scenario that you become disabled, or die without the proper legal documents in

place, the law of the land will approximate your wishes (with the *caveats* referred to above).

On the other hand, if you are unmarried, with or without kids, and wish your friends or significant other, domestic partner, lover, boyfriend, girlfriend, charitable institutions, your old alma mater, your nieces, but not their parents, your parents, but then at their death to your boyfriend, your cats, dogs, fish, etc.: That is, if you are living a "non-traditional" life, or a "traditional married" life, you will need to make sure that the appropriate legal documents are in place to effectuate your wishes in the event of your death or incapacity.

Those of you who live in metropolitan areas or states that have domestic partnership legislation may find yourselves confused about your legal status vis a vis estate planning and long term care planning - you may assume that you have more protection than you actually have. Domestic partnership laws are extremely limited as to what rights and privileges are granted to those who register their relationships. Understandably, some folks remain little confused about just what our legal status is with regard to property ownership, inheritance and planning for long term disability.

Unless you are married - in which case you have all the legal rights marriage confers that the state can confer, e.g., inheritance, spousal rights to state pensions, second parent adoption, standing to sue for wrongful death, rights to make some health care decisions. Outside of marriage, and regardless of anti-discrimination ordinances and domestic partnership registries, those of us in non-traditional relationships are unprotected by state or federal law in the event that we want our significant others and friends to inherit from us in the event of our death.

No matter how long you and your partner have cohabited, if you are without legal documents the law considers your domestic partner a virtual stranger to you. In the event of your

death certain of your blood relatives or those related to you by marriage will inherit your property and will be appointed as your legal guardian if you suffer from a long term incapacity. Inheritance and property ownership are governed by state law and we are totally unprotected without special documents creating legal rights for us. Couples and individuals concerned that their property go to their friends and lovers rather than, or in addition to, blood relatives must take the extra step to provide these safeguards by executing legal documents that ensure that in the event of disaster, their loved ones are protected and their property is disposed of according to their wishes.

Married or not, if you are concerned that your property, in whole or in part, go your friends and ex-lovers, or relatives that would not be statutorily entitled to inherit, you will need to take the extra step to provide these safeguards by executing legal documents that ensure that in the event of disaster, your loved ones are protected and your property is disposed of according to your wishes.

You will want at a minimum, a **Last Will and Testament**, which ensures that you choose the person you wish to be in control at your death that your friends and relatives will inherit your property according to your wishes. You may also opt to create a **Revocable Living Trust** in which you create a legal entity owned by you, controlled by you, taxed under your social security number, and under which you reap all the benefits and rewards of ownership of the assets you place therein during your lifetime. You are the Trustee (the one who is in charge of the assets) and sole beneficiary during your lifetime. In this document you will set forth your wishes as to how your assets are to be distributed upon your death, and you choose who will carry out your wishes. This document also allows you to change or do away with this document

at any time during your lifetime, just like a will. While the living trust is revocable by you at any time during your lifetime, it becomes irrevocable upon your death. The main advantages of holding your assets in your living trust are that usually probate is avoided, and your assets are immediately available to your beneficiaries. You can also hold assets for future distribution to children or others, or provide assets to be held and managed for the care and support of children or the elderly or disabled in a living trust.

The other documents that are essential are: a **Durable Power of Attorney** - A formally witnessed statement authorizing an individual to handle your affairs during your temporary or permanent incapacitation; a **Living Will** - A formally witnessed statement that life prolonging procedures be withheld or withdrawn after your attending physician and another consulting physician have determined that there is no reasonable medical probability of recovery from your medical, terminal, end-state or vegetative state condition; and, a **Designation of Health Care Surrogate with HIPAA provisions** - A formally witnessed statement designating and authorizing an individual to make healthcare decisions for you if you are incapable of doing so yourself. You may not be in danger of death wherein the Living Will would come into effect, but temporarily unable to make informed decisions relative to medical, surgical or diagnostic procedures.

You may also choose to create: a **Pre-need Guardian Designation** - A document which names the individual you choose to be named as your legal guardian, or the legal guardian of your minor child(ren), in the event that you were to be determined by judicial proceeding to lack the capacity to act for yourself in the event of an accident or otherwise suffering from a mental infirmity; a **Co-habitation Agreement or Property Contract** - A document setting forth

unmarried co-habitants' mutual agreements and intentions in regard to living together and/or ownership of personal and real property, and division thereof in the event that either or both of you should end the relationship; or a **Prenuptial Agreement** - A contract entered into prior to marriage of a couple intending to marry, and commonly includes provisions regarding division of property, inheritance rights, rights to retirement funds, and spousal support in the event of a divorce or breakup of marriage. A **Postnuptial Agreement** is similar, but, entered into after the marriage has taken place.

Remember, whether you choose to marry or not, you must take the initiative to provide the legal protections and essential rights for yourself and your loved ones!

More next time on your legal rights, your equal rights and lack thereof!

Attorney Robin L. Bodiford ([www.LAWROBIN.com](http://www.LAWROBIN.com)) has served the LGBT community in the tri-county area since 1993.