

Estate planning issues for lesbian and gay couples

By Joan M. Burda, JD

Jack and Bill have been together for 20 years. They live in Florida. Bill makes more money than Jack and needs more tax breaks, so their home is listed in his name alone. They have no estate plan – no will. On a business trip, Bill collapses and dies before Jack reaches the hospital. On the day of the funeral Jack returns home to find the locks changed, his dog gone, and Bill’s family telling him he is trespassing. Now what does he do?

Without a will, Bill’s family will inherit all the property these men accumulated during their lives. With nothing in his name, Jack will be fighting the family for everything.

The names are fictitious, but this scenario is based on a real case. It took Jack six months of court time to get back into his house. He never got his dog back.

Estate planning means more than having a will or a trust. It is more than deciding who gets your stuff after you die. Estate planning includes insurance, real estate, guardianship, powers of attorney, taxes and financial planning. Estate planning is about what you want while you’re alive – not just after you’re dead.

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1 | A **Will** is the estate plan cornerstone. You document what you want to happen to your property after you die. You designate the person who will carry out your wishes (*executor*). You will also decide who will inherit your property (*heirs*). Without a will, state law decides who will receive your property. Unless your partner is your legal spouse or is otherwise recognized under state law, these state statutes do not include your partner.

2 | **Real estate** is usually your largest asset. If you own a house, should you hold title jointly or separately? Do you want to put your partner’s name on the title? Be careful: doing so may require you to file a gift tax return. It’s best to get sound legal advice before making these decisions. Once you put someone’s name on the deed, you cannot take it off unless that person agrees or a court orders it.

- 3 | Using a **Domestic Partnership Agreement** is one way to establish your joint intentions about the relationship. It is similar to a pre-nuptial agreement. It allows you to set up a process for dividing your property if you separate. It is a contract and is enforceable in court.
- 4 | **Taxes** – Lesbian and gay couples do not benefit from federal tax laws for married couples. In your estate plan, consider estate taxes – both federal and state; federal, state and local income taxes; deductions and gift taxes. The situation may be different if you live in a community property state – you may be required to comply with those laws depending on the nature of your relationship.
- 5 | **Insurance** takes many forms: life, disability, health, automobile, homeowner’s, renter’s, and long-term care insurance. Did you know that your homeowner’s insurance does not cover your partner if his or her name is not on the deed? (Solution: renter’s insurance.) Some insurance companies market to the LGBT community and provide joint policies. Don’t forget to name a beneficiary on life insurance policies: if you don’t, the money is paid into your estate and becomes a probate asset. Also, talk about the appropriateness of assigning the policy to your partner to take it out of your probate estate.
- 6 | **Retirement assets** – The days of retirement after 40 years with a wrist watch and a pension are over. Most companies offer 401(k) retirement plans, and some provide a match for your contributions. You are responsible for your retirement, however, and for naming a beneficiary for that 401(k) and for any Individual Retirement Accounts you may have. Consider “transfer on death” designations for your stocks and bonds.
- 7 | **Advance directives**, also called living wills and Healthcare Powers of Attorney, are essential parts of your estate plan. You name the person responsible for carrying out your healthcare wishes. Without these, your partner may have no legal authority to make any decisions – or even to visit you in the hospital
- 8 | **Other documents** – You also want to have a General Durable Power of Attorney, a HIPAA authorization, and a Designation of Agent. Authorize your partner to make decisions on your behalf, including funeral arrangements. Talk to your legal counsel about how these documents will benefit you and your partner.

This article was prepared by Attorney Joan M. Burda. The opinions expressed in this article are those of the author and may not necessarily reflect those of Massachusetts Mutual Life Insurance Company.

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