Rainbow Law Presents...

An Estate Planning Workbook for the LGBTQ Community

Get All Your Ducks In A Row!

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FORWARD

After then President Bill Clinton signed the Federal Defense of Marriage Act (DOMA) in 1996 (the Act defined “marriage” as a union between one man and one woman and also permitted states to ignore and disavow marriages between same-sex partners that were granted by other states), the hope of achieving LGBTQ legal equality has rapidly diminished. Despite gains in Massachusetts, Vermont, Connecticut, New Jersey, Oregon and California, opponents of equality continue to demand that rights granted be rolled back and that no further advances be permitted. And because 2008 is a Presidential Election year and politicians tend to say and do whatever it takes to get elected, we can not be certain that our successes will not be yanked out from under us without a moments notice.

So-called ‘conservatives’ use the issue of equal marriage as a weapon to frighten Americans into believing that the ‘homosexual agenda’ will destroy society and ‘traditional families.’ This technique has been an effective distraction that conceals right-wing efforts to dismantle our social safety nets, devastate the public education system, eviscerate the environment, bankrupt the economy, outsource jobs, weaken civil rights and liberties, fight preemptive, unjust wars and on and on…

Trying to do something on the State and National level may seem too daunting a task. But there is something each of us can and must do to protect our own family now.

By taking the time to put your wishes in writing to create Advance Directives and Estate Planning documents you can protect your own rights as well as those of your partner and children.

We are living in scary times and right now for most lesbian and gay Americans there is no justice – there is JUST US.

Carrie & Elisia

INTRODUCTION

We are Carrie Ross-Stone, J.D., & Elisia Ross-Stone, R.N. (a.k.a. *the Rainbow Grannies*), lesbian partners, grandmothers and civil rights activists. Not so long ago we naively believed that America was becoming more accepting of same-sex relationships. It seemed to us that it was just a matter of time before lesbian and gay partners would have full legal protections. We thought we may even live to see that day!

Then, in 1996 and seemingly without warning, President Bill Clinton signed the Federal Defense of Marriage Act (DOMA), defining marriage as an institution between one man and one woman. Even worse, DOMA denies gay and lesbian families – including our CHILDREN – access to ALL Federal rights, responsibilities and protections that are automatically guaranteed to other legally recognized families. Needless to say we were stunned! In the months and years that followed we discovered that many gay and lesbian people were unaware of the existence of DOMA and the fact that our second-class citizenship had been written into law. We decided to do everything in our power to educate the community about our rapidly eroding rights so that LGBTQ Americans can take whatever steps necessary to protect themselves and their families. This workbook is just one of the educational tools we put forward.

On RainbowLaw.com we offer FREE Advance Directives (Living Will, Medical Power of Attorney and Durable (Financial) Power of Attorney) and Affordable Legal Document Packages (containing a Last Will and Testament, Living Revocable Trust, Deeds to Property, Living Together Agreement, Parenting Agreement, Nomination of Guardian, Donor Insemination Agreement, and more. All of our documents are specific to your individual state law.

Since we began the FREE Advance Directives Program, the value of free documents we've made has exceeded $500.000 and have helped thousands of gay men and lesbians protect their rights and relationships. The $500,000 estimated value is based upon an assumption that the cost of each document is $25.00. Our Free document package contains 3 documents per person (6 per couple). The true value may be much higher because some attorneys charge up to $500 per couple. The more expensive Advance Directives do not provide more protections than those we make for free! Unlike other free document services, Rainbow Law's Advance Directives are NOT blank forms. We create documents complete with your personal information and make sure they comply with the laws of your State.

Information about each document, the various packages and prices can be found on the RainbowLaw.com website.

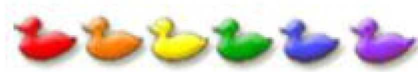
In addition to our document preparation service, we travel the country to give Estate Planning Workshops at LGBTQ community centers, places of worship, festivals and other events.

Over the summer of 2003 and 2004, we rode our *bicycles* (not motorcycles) across America to introduce ourselves to ordinary Americans who may have never met a lesbian couple. We talked about our family and why we feel we need and deserve equal legal protections. This experience led us to the belief that most Americans are ignorant about LGBTQ equality – especially marriage – because they have been lied to repeatedly by their religious leaders, educators, peers and family members. They had simply never heard the other side of the story! A documentary film was made about our 2004 ride entitled *Lesbian Grandmothers from Mars: One Couple's Journey to Marriage Equality.* The title is a play on Carrie's home town – Mars, Pennsylvania -- and the opposition's attempt to paint us as evil aliens who want to destroy the 'family.' You can see a trailer or order a copy of the DVD on www.lesbiangrandmothersfrommars.com.

We publish a blog about LGBTQ legal rights at www.rainbowblawg.com, as well as a progressive newsletter at www.RainbowZine.com. Here you will also find news that is relevant to the LGBTQ Community, classified ads and an LGBTQ business and service directory.

Congratulations on taking this first step toward getting your ducks in a row and we hope you enjoy the workbook!

ARE YOU A G.A.Y. DUCK?



In this instance, G.A.Y. Ducks is short for the phrase "get all your ducks in a row" act of getting your life and/or affairs in order.

Coincidentally, the word GAY is an anachronism for "Get" "All" and "Your," and thus the expression "Get All Your Ducks in a Row" has become a Rainbow Law catchphrase.

In a manner of speaking, therefore, those LGBTQ folks who have created legal documents that protect their rights and the rights of their partners and/or children are GAY Ducks!

And so we ask… are *YOU* a GAY Duck?

If you are ***not*** a GAY Duck, perhaps it is because:

- You're not sure you need to create legal documents;
- You don't understand the whole concept;
- The subject matter is confusing and/or intimidating;
- You do not know where to begin;
- You believe Estate Planning is only for the very wealthy;
- You feel intimidated by legalese;
- You don't want to think about death and dying;
- You do not have a partner.

This post is the first in a series of easy-to-understand articles -- written in plain English -- that will put to rest the concerns that we've outlined above.

Naturally, no one wants to think about illness, death and dying – especially when it comes to our own lives and those of our loved ones.

But because we are unwilling to think about the hard stuff, an alarming number of gays and lesbians have put off getting their legal ducks in a row.

Statistics show that 7 out of 10 Americans – in general -- do not have a Last Will. We believe the number is much higher in the LGBTQ community.

This is especially alarming given that – unlike heterosexual married spouses -- committed gay and lesbian partners have NO built-in legal protections. Sadly, as a result of this disparity, many will lose property, children, hospital visitation and the right to make medical and financial decisions as well as rights to arrange for burial, cremation and organ donation for our partners.

And all of that pain and suffering could easily be avoided by writing down our wishes in advance!

In short, PLANNING for the inevitable is not about death and dying. It is about life and love.

I. Estate Planning 101

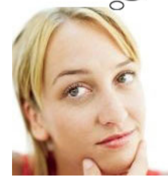
"Estate Planning," is just a high falutin' way of describing a written plan to make sure, after you die, your assets (the stuff you own) passes in an orderly and efficient manner to the person, persons or organizations you name. Estate Planning documents include (but are not limited to) Wills, Trusts, and Powers of Attorney.

I guess we really need to start at the beginning by dissecting the phrase 'Estate Planning' which is pompous sounding in and of itself…

A. What is an Estate?

The very word 'Estate' conjures up images of mansions and limos. If that is so, why would little ole you -- driving around in your Subaru and owning or renting a modest home – ever need to think about let alone plan for something you don't even have?

Well, if you own anything at all – whether it be real estate a bank account, a mutual fund, stocks, bonds, a car, jewelry, furniture – or even if you only own the *toaster-oven you received as your "coming out" gift* -- then you – in fact – have an ESTATE!



Another way of looking at it is this:

While you are living, if you want to get rid of all or some of your stuff, you simply sell it at a **yard, garage or moving sale**. Once you are dead, someone else will sell that very same stuff at an ***Estate sale***.

Thus, the word 'estate' merely describes the stuff you own at the time of your death – in other words your assets – no matter how much or how little you own.

B. What is a Plan?

Encarta Dictionary defines a plan as "a scheme, program, or method worked out beforehand for the accomplishment of an objective: as a **plan** of attack."

If you do not have your own written plan in place, your state's law has provided one for you. And the plan that your state's legislature has enacted (unless you live in Massachusetts) grants ALL rights to your legal relatives and NO rights to your partner.

For the purpose of Estate Planning, a Last Will and Testament and a Living Revocable Trust provides you with the opportunity to do the following (this list is not all inclusive):

- Name your partner (or someone else you trust) as your Successor Trustee (the person who takes over the management of your property -- financial and otherwise – through your Trust when you die or become incapacitated) and Personal Representative (the person who will settle or administer your 'estate' through your Will after you die – a.k.a. "executor");
- Name the people you want to inherit all or some of your estate;
- Disinherit (leave out) people who would otherwise – by law – have a right to inherit your estate.

Other documents (i.e. Advance Directives) give you an opportunity to name one or more person – in advance -- who will make medical and financial decisions for you if you become incapacitated:

- A Living Will allows you to decide what medical treatment you wish to receive – or not – when you are at the end of your life with no hope of recovery;
- A Durable Power of Attorney lets you appoint someone to manage your financial accounts;
- A Disposition of Remains gives you an opportunity to name the person you want to have rights to take possession of your ashes or make funeral or other arrangements after your death.

These documents (as well as others which are listed and discussed in detail here) provide you with an opportunity to make an already difficult period less stressful for your loved ones.

It may seem like a hassle to take time to do this but if you do not do it now, your failure to act may cause severe pain to your partner and/possibly your children who may lost their home and most if not all of their assets.

C. How do I Make an Estate Plan?

Once you have decided that you will create Estate Planning documents, your biggest challenge is getting up the gumption to do the work that is required to make your plan effective.

First: Make a list of the stuff you own – your 'assets.' A good first step is to sit down and make a list of all your valuable stuff – real estate, personal property, financial assets, etc. If you have a partner, you both need to do this -- together or apart. Put the list in writing. Next, separate the list into three columns, one list will include property that is owned by you, a second list is made of property owned by your partner and a third list of jointly owned property.

Second: Talk about your plan with your partner. After the lists are made, the fun really begins -- you need to talk to each other about your stuff. How will your stuff be divided if you split? Who will inherit your stuff when you die? Do you want our partner to inherit everything? What is your partner dies before you? What if you die together? Try to anticipate all possible scenarios and hammer out a plan for what you want to do with your stuff in case each scenario becomes a reality. This conversation can be very difficult. Don't let that keep you from going forward with your need to get all your ducks in a row!

Third: Make a list of your 'cast of characters.' Who do you want to inherit your stuff and who will you put in charge of making decisions about your health care and finances? List their names! Perhaps you want your partner to make medical and financial decisions for you if you become disabled – or maybe you would rather ask a trusted friend or family member to do so. Think about the possibility that the people on your list will predecease you – who would you want to take their share or make decisions in their place? Collect and make a note of the addresses and phone numbers of all of the people on your list.

Fourth: Talk to those people are naming as a 'decision-maker.' This is a great responsibility and you do not want to surprise this person someday with a burden they may not want to carry. Ask if they understand what you would like them to do and if they are willing to do so.

Fifth: Make a plan for your dependents – your children and/or pets. Who will care for them after you are gone? What can you do to provide financial support to whomever will care for them? Who will be your second choice if your first choice is unable to care for them?

Sixth: Tell important people in your life that you have created these documents. The last thing you would wish on your partner is to have disgruntled family members fighting over decision making powers and/or inheritance rights at this very stressful time -- *especially* since you will not be around to able to defend your wishes! We recommend that you *personally* tell your family and close friends you have signed these documents. Give copies to a clergy member or close friend who may be able to intervene calmly on your behalf. If you do this you will no doubt greatly ease the burdens of your partner and family who will be trying to care for you or are grieving your death.

II. List Making Worksheets:

A. List 1: My Stuff, Your Stuff, Our Stuff:

List your valuable assets (include separate a space each for your stuff, your partner's stuff and jointly owned stuff). Valuable assets may include real estate, automobiles, collections (books, art, music, etc.), antiques, family heirlooms, bank accounts, life insurance, etc. But, NOT your socks or toothbrush!

MY STUFF:

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MY PARTNER'S STUFF:

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OUR STUFF:

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B. List 2: Your 'Cast of Characters'

Who will make decisions for your health care and finances and who will inherit your estate? Get their full, legal names as well as their current contact information. In case your first choice predeceases (dies before) you, name an alternate for each person on your list. Also list those people you want to disinherit.

MY CHARACTERS:

____
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C. List 3: Your Partner's List:

Your partner (if you have one) should also make a Cast of Characters and an assets list. If you do not make your lists together, you should at least go over them to make sure that you are both on the same page. If there are misunderstandings, now would be the time to lay them to rest!

MY PARTNER'S CARACTERS:

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Take time to complete these tasks and then come back to read the next chapter!

II. CREATE YOUR ESTATE PLANNING DOCUMENTS

A summary and description of necessary Estate Planning documents will follow in a later chapter. First you need to ask yourself who will create your documents. Should you use an attorney? If so, how do you find one? Should you use a service like Rainbow Law or do-it-yourself?

The decision to use or not use an attorney is an individual decision and should be based on several factors. You are more likely to need an attorney if you have a complex personal, financial and/or business life. For example, if you have an estate that is valued at more than $1,000,000.00 or if you are involved in a battle for child custody you may want to consult with an attorney. Many people simply feel more comfortable if their documents are prepared by an attorney.

If you want to use an attorney but are not sure how or where to locate someone who is gay or gay friendly, contact your local LGBT organization or community center and ask for a referral. Rainbow Law also offers an attorney locator service on our online Directory at www.RainbowLaw.org/html/directory.htm and look for the link to your state. If you need more information, drop us an email at info@RainbowLaw.com or call (800) 891-8189.

Only you can determine which method is best for you and your partner. The most important thing to remember is that you must put your wishes in writing if you want to protect your rights and the rights of your loved ones. Otherwise you leave yourself and your family vulnerable to unsympathetic laws and judges.

You also need to remember to create your Estate Planning documents so that they address the unique issues facing same-sex partners!

III. SIGN YOUR DOCUMENTS

Even after you create your Estate Planning documents, they have no legal effect unless you get them properly signed and notarized. Take two copies of unsigned your documents to a place where you regularly do business (your bank, real estate agent, insurance agent, etc.) and who has a notary on staff. Ask the employees to act as witnesses. It is not a good idea to have your lesbian and/or gay friends witness and notarize your documents in case someone should challenge whether you were of sound mind or under undue influence at the time you signed. The signed copies are considered your "original" documents. Make sure you sign with blue ink to help you distinguish photocopies from originals.

Any person named as a beneficiary, successor trustee, agent, proxy, or attorney-in-fact should NOT witness or notarize your documents.

IV. WHAT TO DO WITH THE DOCUMENTS AFTER THEY ARE SIGNED

1. Make at least one photocopy of each original (signed) document and then do the following:

a. Medical Documents -- Give copies of your Living Will and Medical Power of Attorney to your doctors to keep in your file. Put a copy of your Living Will and Medical Power of Attorney in the glove compartment of your car. Give copies to the person you appointed to make medical decisions for you.

b. Financial Documents -- Take copies of your DPOA to your financial institutions and they will be less likely to give your partner or agent a hard time when the time comes. Also notify your financial institutions that you have created a Living Revocable Trust and ask them to assist you in putting your assets into your Trust.

2. **Where to Keep Original Documents.** Once your documents are signed and copies made, put the originals in a large freezer bag and place them in the freezer section of your refrigerator -- it is easily accessible and fire resistant. It is unwise to keep your originals in a safe-deposit box. If your agent or Successor Trustee does not have access to the key, or something happens to you during a long bank holiday, your agent may not be able to act for you until it is too late.

3. **Make sure you tell your agent where your documents are stored!**

V. WHAT AN ESTATE PLAN SHOULD DO

Planning for the inevitable may not be the most enjoyable thing you have ever done. However, with effective estate planning it is possible to transfer the greatest amount possible in the least amount of time to the people you love. Every estate plan should do the following:

- assure continuity of control over assets
- maximize access to assets
- increase the preservation of capital
- maximize privacy
- assure adequate management of assets
- minimize time to settle estate
- minimize cost of estate settlement
- efficiently transfer estate to desired beneficiaries

VI. ESTATE PLANNING NEEDS SPECIFIC TO THE LGBTQ COMMUNITY

1. **If Your Relationship is not Legally Recognized, You Are Invisible.** Period. You may think the love and responsibilities you share with your partner are exactly the same as your heterosexual family and friends, but unfortunately, that is not the case -- the law sees it another way.

   A marriage bestows concrete legal and tax benefits to heterosexual married couples. Sadly, the same laws that bestow those benefits do not recognize same same-sex couples – we are "invisible" in the eyes of the law and therefore have no legal relationship to one another.

   Since the law treats gay and lesbian couples like legal strangers, we must create legal rights and protections through the use of estate planning documents and contracts.

2. **The "Estate Plan" You Cannot Afford to Use!** If you and your partner have not created Estate Planning documents, including a Last Will and Testament, your State has prepared an estate plan for you -- *free of charge!*

   This free estate plan is referred to as "intestacy" or “intestate succession.” Under your State’s intestacy laws, your elected officials were kind enough to assume that they know best how you would want your estate to be distributed. And of course, since state laws tend to discriminate against same-sex couples (at the very least they do not acknowledge our right to exist), when we die without a Last Will the law assumes we would want our estate to pass to our ***biological*** relatives. And only after much of the value has been used up in a costly and time consuming probate proceeding.

   Your biological relatives consist of (in this approximate order of importance) your legal (heterosexual) spouse, your children, you parents, your siblings, your aunts and uncles, your nieces and nephews, your cousins, and so on. If you have no biological relatives then the State will inherit your estate. Nowhere on this list does it mention your same-sex partner. In order to include your partner, you must put your wishes in a legal writing!

3. **What is Probate and Why Should Same-Sex Couples Avoid It?** Generally, probate is a legal process in which your property is identified, inventoried, and distributed to your heirs after your death. A detailed description of the Probate Process is contained in Appendix B.

   There are three important reasons you want to avoid probate.

   A. It is often expensive.

   B. It may be time consuming and tie up assets for a long time. While the estate is going through the probate process, a lack of liquidity (cash flow) can create problems for your successor trustee/executor and/or beneficiaries. They may need to pay your mortgage or other debts, or keep your business running. They may need ready cash and run into difficulty because they cannot liquidate (sell off) assets before the probate is complete. An average probate can take 12 to 18 months and may result in severe financial problems for your partner, your and your business.

   C. The probate process can involve many visits, letters, and phone calls between attorneys and your successor trustee/executor, and can place a physical and emotional burden on your family. The grieving process is difficult enough without the bother and disturbance that is often involved in probating an estate.

4. **Legal documents necessary to protect your rights and the rights of your partner.** In order to ensure that your property will pass to your partner or other family members or friends, you need to create specific estate planning and other documents as well as advance directives that function produce particular results.

   For anyone in a relationship that is lacking legal recognition, it is important to have some form of estate planning in order to avoid disinheriting your partner. If you do not have an appropriate plan in place, state law will take over, your assets will be distributed according to a "one-way-fits-all" intestate succession system and your partner will receive nothing. The following documents will help you protect your family from unnecessary loss and emotional suffering.

   A. **Living Revocable Trust**. The centerpiece of your Estate Plan is the Living Revocable Trust. It is a “living” Trust because it takes effect while you are alive. It is “revocable” because you can amend (change) or revoke (cancel) your Trust at any time during your life. There are many types of Trusts that can be designed to do many things – for example, if you are wealthy, there are tax avoidance Trusts. If you are disabled and are receiving government benefits (like disability), there are Trusts that will allow you to continue to receive those benefits even if you are the beneficiary of your partner’s estate. After signing your Living Trust, you continue to own and fully control all of your assets.

      Because we want our documents to protect the majority of LGBT families, we provide a simple, Living Revocable Trust with our packages.

      A Living Revocable Trust is a contract between the Grantor (the person who creates the Trust who, incidentally, is you) and the Trustee (the person who will manage the Trust assets, who is also you!). In the Trust contract the Grantor (you) gives all of his or her assets to the Trustee (also you). Obviously, you never really give yourself anything. The concept of giving yourself stuff you already own is called a “legal fiction.” The Trustee agrees to manage the Trusts “assets” (everything that the Grantor “put into” the Trust) in a manner that will benefit the Grantor. After the Grantor’s death, the Successor Trustee (the person you appoint to take your place when you, the original Trustee, become disabled or die) agrees to distribute (give to your beneficiaries) the Trust assets according to the Grantor’s (your) wishes.

      In your Living Trust, you name the people or organizations who shall receive your assets after you die (your "beneficiaries")

      There are several reasons a gay and lesbian person would be better off having a Living Revocable Trust and not just a Last Will and Testament.

First, a Trust is a good way to avoid the probate process -- we discuss “probate” in more detail in Appendix B. More importantly, a Living Trust is less likely to be successfully challenged by disgruntled family members and/or others.

Notice we used the phrase “*successfully challenged*.” Any legal document can be challenged by a person who has a right to challenge it, i.e. a family member, a judge, a medical professional, etc. Therefore we create documents that will more likely than not *survive* a challenge.

A Trust takes effect at the moment it is signed. You live with your Trust (hopefully) for many years before anyone else assumes management. Financial institutions where you have accounts will have become accustomed to dealing with your Trust. So, when your partner (or another person you appoint as your Successor Trustee) “steps into” your shoes as the Trustee of your Trust, no one is surprised or indignant. It should be a smooth and easy transfer.

Contrast this with a Last Will and Testament that does not take effect until you die. Obviously, when you are dead you will not be available to “defend” your choices and therefore, a judge may be asked to determine whether or not your Will is valid. There may be questions about whether or not you were under any undue influence or were of sound mind at the time that you signed the Will. it is of no surprise to anyone involved. We will discuss a Last Will and Testament in more detail below.

In short, a Living Trust permits the smooth, inexpensive transfer of your assets after death, without the court-supervised probate process. It makes it easier for your partner and for your family. In addition, a living trust is much less open to challenge than a will. Courts are less likely to overturn it since you put the living trust into place and lived with it during your lifetime. In addition, a living trust is private. Unlike a Last Will and Testament (it becomes a public record after you die), the terms of your Trust are *private.* No one except your Successor Trustee and your beneficiaries have the right to know how you allocated your assets.

When you "fund" (transfer your assets into) your Trust, you will need to provide copies of certain sections of your Trust to your financial institutions. For example, they may want a copy of the cover page since it contains the name and date of the Trust. They may also request the signature page to show that the Trust is valid. And, the bank will no doubt need a copy of the page that appoints your Successor Trustees in order to recognize the person to whom you appointed to manage and settle your Trust.

The last page of your Trust, other than the label, “Schedule A,” is blank. This is the page where you will list the assets that are part of your Trust Estate (property you “put into” your Trust). Each financial institution where you have an account will provide the proper wording to list the asset on Schedule A.

B. **Last Will and Testament**. Even when you create a Trust, you still need to make out a Last Will and Testament -- otherwise, you die without a Will (Intestate) and your estate will be subject to “intestate succession” as discussed above and where your biological relatives or the state will automatically inherit your property.

A Last Will and Testament is similar to a Trust in that it is used to pass property to beneficiaries of your estate. Since your estate plan will include a Living Revocable Trust, your Last Will should contain a “pour-over” clause directing that all of your assets be given to the Trustee of your Trust. The pour-over clause will help to keep your estate out of Probate because any asset or property that you did not "put-into" your Trust prior to your death will "pour-into" your Trust estate after your death.

A Last Will and Testament is a useful document for stating your wishes as to the disposition of your remains (whether you want to be buried or cremated), and for appointing a guardian for your minor children.

There are three major drawbacks to using a Last Will and Testament without a Living Revocable Trust. First, any property passing to your partner, family, friends or other beneficiary pursuant to a will is subject to the costly and time-consuming process of probate.

Second, a Last Will can, and frequently is, contested by the biological family of the decedent, especially if they have not come to terms with choices during life.

Third, a Last Will and Testament is public. Anyone can go to the courthouse and read the contents of your Last Will after you die.

C. **Advance Directives**. These documents allow you to plan, in advance, for your medical treatment at the end of your life and to determine who will have the right to make decisions about your medical treatment and financial affairs.

i. Durable Power of Attorney for Finances (DPOA). A Durable Power of Attorney gives you the right to name someone you trust to manage your affairs (pay your bills, write checks on your account, buy and sell property, make investments, etc.) while you are in a state of incapacity – whether or not you will recover. You decide whether you want this power to become effective when you sign the document or if you would rather have it take effect when you become disabled. Your DPOA ceases to be effective upon your death.

If you do not create a Durable Power of Attorney and then you become incapacitated, your partner must request that a court appoint him or her as your agent. This can be expensive, time-consuming, and distressing to all involved, especially if there is a conflict between your partner and a family member.

ii. Medical Power of Attorney. This document lets you appoint an agent to make health care decisions for you if you become incapacitated and unable to speak for yourself. You may include language in this document that directs medical professionals to give your partner the right to visit you in any hospital or health care facility.

iii. Living Will. A Living Will gives you the right to make important decisions regarding your health care and your body. For example, you can state what medical treatment you want, if any, in the event that you succumb to an illness or injury with no hope of recovery. You can decide for yourself whether you want to be placed on life support or if you want artificial nourishment (tube feeding), etc.

D. **Joint Ownership of Property**. Owning assets jointly is another useful way to transfer property to your partner without going through Probate.

i. Joint Tenants with Rights of Survivorship. Joint tenants with rights of survivorship own the entire property equally -- they cannot own the property in unequal shares. If one joint tenant dies, the property automatically passes to the surviving joint tenant. This means the property is not part of the property included in a Living Revocable Trust or Last Will and Testament. Property owned jointly with rights of survivorship will pass to the surviving joint tenant -- with or without a Last Will.

ii. Tenants in Common. Tenants in common own the property in the shares they nominate when they buy the property, even if it is in unequal shares. If one tenant in common dies, their share of the property becomes part of their estate and passes according to their Living Revocable Trust, Last Will and Testament or Intestate Succession.

There is no hard and fast rule about which form of ownership you should choose. It is a matter of deciding which form of ownership is right for your circumstances.

However, you should keep in mind that joint tenancy does not *eliminate* probate, but only *delays* it. This is because although the jointly held property passes to the surviving joint

tenant without probate, the property is ultimately subject to probate upon the death of the last survivor unless they put the property into a trust.

One drawback of joint ownership is when you put an asset that is entirely owned by you into joint tenancy with your partner, you are making an immediate gift. If you break-up and later want or need that asset returned, you may not be able to get it back.

Remember: gifts between unmarried individuals is subject to gift tax. In addition, PROPERTY OWNED WITH SOMEONE ELSE AS JOINT TENANTS IS COMPLETELY SUBJECT TO THE CREDITORS AND LIABILITIES OF EACH JOINT TENANT. Thus, even though you contributed the funds to purchase the property, and you are a 50% owner of the property as a joint tenant, you may lose the property all together if your partner is the losing party in a lawsuit or has outstanding liabilities.

Another drawback few people consider when owning property as tenants in common is the lack of control over the property's ultimate disposition after the death of your partner. If you die first, and then your partner dies later, because the property is entirely owned by the remaining joint tenant, you will have no say or control over what happens with the property after your partner's death. He or she may sell the property or bequeath it to whomever they choose.

Although most of us want our property to be available to our partner after our death, we may prefer that the property will pass to our own families after our partner's death. In this case, you may want to consider giving your partner a Life Estate -- whereby your partner has the right to live in the property until he or she dies and then it reverts back to your family or other beneficiaries.

5. **Protecting your property and children.** The following will discuss documents that will protect your rights to your property in the event of a break-up and also protect your rights and your partner's rights regarding children.

A. **Partnership and/or Living Together Agreements.**

Heterosexual marriage is essentially a contract in which partners agree to a predefined set of privileges and obligations. While same-sex partners cannot legally marry, we can write our own contracts, selecting the terms and conditions we prefer, within the limits prescribed by law.

No such agreement can provide social security benefits for a widowed partner, or any other benefit deriving from legal marriage. However, a relationship agreement, like a prenuptial agreement, can be tailored to fit your individual situation and needs, especially regarding property ownership. For instance, it can allow for:

- A total separation of money and property.
- A total merger of affairs.
- Holding some property separately and some jointly.

Known variously as relationship, partnership, or living together agreements or contracts, the practical purpose is to put into writing the expectations of both partners to prevent potential misunderstandings or disputes. For example, the agreement can:

- Clarify ownership of property owned before living together, bought during the relationship, or inherited or received by gift during the relationship.
- Establish how household expenses are to be paid.
- Provide guidance for dividing property in the event of separation.
- Allow for a cooling off period, or counseling, if a conflict threatens to drive you apart.
- Specify a dispute resolution mechanism, such as arbitration or mediation, to avoid the slow, costly process of litigation.

Further, while this particular contract may be hard to do — because of its complexity and sensitive topics — it is well worth the work because it helps couples think about many facets of a relationship otherwise often unexplored.

B. **Documents to Protect Children.**

If you are parent to your partner's child, or are thinking of parenting with another person, you can safeguard your rights with several key documents:

- Co-Parenting Agreement. This agreement can spell out the rights and responsibilities of each partner and require their enforcement through private mediation.
- Nomination of Guardianship. If you are the custodial parent, you can add language to your will nominating your partner as the child's guardian in the event of your death.
- Consent to Medical Treatment. By signing this form, the custodial parent can allow the co-parent to authorize medical procedures for a child.

In addition to preparing these legal papers, it can help to jointly discuss your dual parenting arrangement with all workers in contact with your children (teachers, medical workers, etc.).

Fortunately, many states now allow same-sex couples the opportunity of accepting joint custody of their children through second-parent adoptions. These are legal proceedings in which both partners are appointed parents of an adopted child, or in which the custodial parent agrees to share custody of the child. These are permanent arrangements that can offer long-term security for both parents and children.

C. **Donor Agreements.**

If you and, your partner are planning to have a child using a private sperm donor, you might consider making a written agreement with the donor to clarify the arrangements you have agreed to. In particular the agreement might record the arrangements you have agreed to about the involvement, if any, the donor is to have in the life of any child conceived by use of their sperm and your respective rights and responsibilities in relation to that child.

i. Why make a donor agreement? Courts often must adjudicate disputes between donors and parents or co-parents about whether the donor should have contact with the child or children conceived with the donor's sperm.

To make determinations as to the intentions of the parties prior to the sperm donation, courts will look at a written agreement describing the rights and obligations of each of the parties to assist in "avoiding, pre-empting and resolving inter-personal disputes" in relation to a child. In short, Donor Agreements assist courts by providing a written record evidencing the intention of all the parties.

ii. What types of things might you include in a donor agreement? The donor agreement should include any or all of the following terms:

- whether the donor is to have any contact with the child and if so to what level
- is the donor to be informed that the birth mother has become pregnant
  is the donor to be informed of the progress of the pregnancy, the birth of the child, and/or the child's name
- is the donor's name to be included on the birth certificate
- is the donor to be provided with photographs of the child
- is the donor to be involved in raising the child and if so to what level
- is the donor to be involved in decisions about education for the child
- is the donor to have any ongoing financial involvement in raising the child
- a statement from the donor acknowledging and supporting the role of the birth mother and co-parent

- an acknowledgment from the birth mother and co-parent that they will not make any claim for child support against the donor
- provision for mediation

This is not a complete list of options. You can include whatever issues you consider are relevant and important to your own situation.

VII. RAINBOW LAW FREE ADVANCE DIRECTIVES:

Below is the Questionnaire for Free Advance Directives that comply with your state's law.

Please provide answers for both partners. Designate one as Partner 1 and the other as Partner 2 and maintain that designation throughout. If the information is the same for both of you, just answer "SAME" in the appropriate space.

	Partner 1	Partner 2
1. Full legal name(s):		
2. Home Address:		
3. Mailing Address:		
4. County where you reside:		
5. Phone Number:		
6. Date of Birth:		

7. Full name, address and phone numbers for person (or persons) you want to name as your first choice for Agent, Proxy and/or Attorney-in-Fact:

____
____
____
____

8. Full name, address and phone numbers for person (or persons) you want to name as your second choice:

____
____
____
____

9. Your Email Address (Please print legibly in block letters):

If you would like to order the complete document package that includes all Estate Planning Documents and/or Documents to protect rights to raise your children, please cut and past this URL into your web browser: https://www.formdesk.com/rainbowlaw/document_order_form/ or go to the Rainbow Law homepage at www.RainbowLaw.com and follow the links to the secure order form.

VIII. RAINBOW LAW'S LEGAL DOCUMENT PACKAGES:

To order a package, visit RainbowLaw.com and follow the links to order a package. Or, , click here or paste this URL into your web browser: https://www.formdesk.com/rainbowlaw/document_order_form/ **to go directly to the order form.**

The online order form is secure and is better for us in that it saves time of re-typing names, addresses and phone numbers and it also prevents misspellings and other errors because of difficulties reading handwritten responses.

Standard Living Trust Package - $275.00

The Standard Living Trust Package includes documents for two Partners: Living Revocable Trust, Last Will & Testament, Advance Directives, Supporting Documents, Letters and Instructions. The cost of the Standard Rainbow Law Package is $275.00.

Deluxe Living Trust Package - $295.00

The Deluxe Living Trust Package includes documents for two Partners: Living Revocable Trust, Last Will & Testament, Living Together or Partnership Agreement, Advance Directives, Supporting Documents, Documents for Children, Letters and Instructions. The cost of the Deluxe Rainbow Law Package is $295.00.

Standard Will Package - $195.00

The Standard Will Package includes documents for two Partners: Last Will & Testament, Advance Directives, Supporting Documents, Letters and Instructions. The cost of the Standard Will Package is $195.00.

Deluxe Will Package - $215.00

The Deluxe Will Package includes documents for two Partners: Last Will & Testament, Living Together or Partnership Agreement, Advance Directives, Supporting Documents, Documents for Children, Letters and Instructions. The cost of the Deluxe Living Trust Package is $215.00.

Single Living Trust Package - $125.00

The Single Living Trust Package contains documents for one person: Living Revocable Trust, Pour-Over Will, Advance Directives, Supporting Documents, Letters and Instructions. The cost of the Single Living Trust Package is $125.00.

Single Will Package - $99.00

The Single Living Trust or Will Package contains documents for one person: Last Will & Testament, Advance Directives, Supporting Documents, Letters and Instructions. The cost of the Single Will Package is $99.00.

Documents for Children - $75.00

The Documents for Children Package contains (for each of your minor children) a Parenting Agreement, Nomination of Guardian, Authorization to Consent to Medical Treatment (with language that also authorizes travel (in and out of the US), and making educational and other decisions for the child), and, if applicable, a Sperm Donor Contract. The cost of the Documents for Children Package is $75.00 -- regardless of the number of children.

Individual Documents - Group 'A' - $25.00

Individual Documents in Group 'A' include Deeds for Property (to add your partner's name, to transfer your property to another person or into a trust, etc. No more than 4 deeds included per order), any of the documents for children with the exception of a Parenting Agreement, any of the Supporting Documents such as a Disposition of Remains, etc. We are currently adding more documents to this list so check back in a couple of weeks! The cost of Individual Documents in Group 'A' is $25.00.

Individual Documents - Group 'B' - $50.00

Individual Documents in Group 'B' include a Living Together or Partnership Agreement. These contracts are designed specifically for your particular situation and may require multiple revisions while you discuss things over with your partner -- in other words, more work for us! The cost of Individual Documents Group 'B' is $50.00.

We accept all major credit cards, checks and money orders.

To pay by check or money order, pay and send to:
Rainbow Law
RR1 Box 266C
Wallace, WV 26448.

We will send the drafts of your documents within 24 hours of the next business day following the receipt of your order.

If you would like a free consultation, call us directly at 1-304-796-4245 or leave a message on our toll-free voice message and we will return your call ASAP – 1-800-891-8189.

APPENDIX 1 -- OPTIONAL FORM TO ATTACH TO YOUR LIVING WILL TO MAKE YOUR WISHES MORE CLEARLY KNOWN:

Nobody wants to think about a time when we -- or our loved ones -- will become sick, injured or die. However, stating in writing your wishes regarding your medical treatment is one of the kindest things you can do for your partner, your family and other loved ones.

On the next page you will find a form that you can fill out and keep with your Medical Power of Attorney and Living Will. This form will provide you with additional and more detailed information to guide your physicians, your health care agent, your family, and, if necessary, a court if they are faced with the task of determining your wishes at the end of your life.

INSTRUCTIONS FOR MY CARE AND TREATMENT AT THE END OF MY LIFE

I, ___________________________________**,** being of sound mind and eighteen (18) years of age or older, willfully and voluntarily make known my desire, by my instructions to others through this declaration or by my appointment of a health care proxy, or both, that my life shall not be artificially prolonged under the circumstances set forth below. I thus do hereby declare that if I am incapable of making an informed decision regarding my health care:

1. If I am diagnosed with an incurable and irreversible illness, disease, or condition and if my attending physician and at least one additional physician determines that my condition is terminal:

I do _____ or do not _____ direct that life-sustaining treatment which would serve only to artificially prolong my dying be withheld or ended.

I do _____ or do not _____ direct that I be given all medically appropriate treatment and care necessary to make me comfortable and to relieve pain.

I do _____ or do not _____ direct that life-sustaining be continued, if medically appropriate.

2. If I should become permanently unconscious, and it is determined by my attending physician and at least one additional physician that I have totally and irreversibly lost consciousness and my ability to interact with other people and my surroundings:

I do _____ or do not _____ direct that life-sustaining treatment be withheld or discontinued.

I do _____ or do not _____ direct that I be given all medically appropriate treatment and care necessary to make me comfortable and to relieve pain.

I do _____ or do not _____ direct that I be given the care necessary to provide for my personal hygiene and dignity.

3. If there comes a time when I am diagnosed as having an incurable and irreversible illness, disease or condition which may not be terminal, but causes me to experience severe and worsening physical or mental deterioration, and I will never regain the ability to make decisions and express my wishes:

I do _____ or do not _____ direct that life-sustaining measures be withheld or discontinued and that I be given all medically appropriate care necessary to make me comfortable and to relieve pain.

4. If I am receiving life-sustaining treatment that is experimental and not a proven therapy, or is likely to be ineffective or futile in prolonging life:

I do _____ or do not _____ direct that such life-sustaining treatment be withheld or withdrawn.

I do _____ or do not _____ direct that I be given all medically appropriate treatment and care necessary to make me comfortable and to relieve pain.

5. If I are in the condition(s) described in paragraphs 1 through 4, above, I feel especially strongly about the following forms of treatment:

I do _____ or do not _____ want cardiopulmonary resuscitation (CPR).

I do _____ or do not _____ want mechanical ventilation.

I do _____ or do not _____ want antibiotics.

I do _____ or do not _____ want maximum pain relief, even if it may hasten my death.

I do _____ or do not _____ transfusion of blood or blood products.

6. In the event that the only procedure I am being provided is artificial nourishment I wish the following actions to be taken:

I do _____ or do not _____ want artificial nourishment if it is the only procedure being provided.

I do _____ or do not _____ want artificial nourishment to be continued for ____ days when it is the only procedure being provided.

Donation of Organs

7. Regarding the donation of organs, tissues or body parts?

I do ____ or do not ____ want to donate all needed organs, tissues, or parts.

I want to donate:

. My entire body; or

The following organs or body parts:

lungs,
liver,
pancreas
heart,
kidneys,
brain,
skin,
bones/marrow,
bloods/fluids,
tissues,
arteries,
eyes/cornea/lens,
glands,
other_____________________________

IN WITNESS WHEREOF, I have hereunto set my hand and seal the _____________ day of ____________________________, 20____.

SIGNATURE:____

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

WITNESS:____

WITNESS:____

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of _____________________
County of _____________________

On this _______ day of _________________________, 20___, before me, personally appeared ____, ___________________________________, and ______________________________, the witnesses, who are personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

.

____
Notary Public
My Commission Expires:

APPENDIX 2 -- THE EFFECT OF THE DEFENSE OF MARRIAGE ACT (DOMA)

On September 21, 1996, President Clinton signed the Federal Defense of Marriage Act (DOMA) into law. Simply put, DOMA denies recognition of same-sex marriages.

Of course, there presently are no U.S. same-sex marriages to worry about. No state has sanctioned such unions, nor has there ever been any federal legislation defining marriage in any way — until now. The law was passed in response to the increasing likelihood that Hawaii's courts, acting under that state's Constitution, would require that the state grant same-sex couples a marriage license on the same terms as heterosexuals.

Varied Tax Consequences

Most of the fallout comes, not surprisingly, in the tax arena. Marital status is considered in many places in the federal tax code, although before the Defense of Marriage Act the rule was to define someone as "married" solely according to the law of the state where the taxpayer resides.

A married gay couple in a DOMA world would be prevented from filing a joint return. Each spouse would be "single." Ironically, if both spouses work this would often result in lower income taxes because the infamous "marriage penalty" would not apply. DOMA may therefore cost the Treasury a windfall it would receive if many gays wed.

On the other hand, an individual whose spouse does not work would not be able to take advantage of the spouse's personal exemption or deductible expenses. The general rule under DOMA, then, would be higher taxes for couples in which only one partner works or where incomes are very unequal, and lower taxes for couples with two relatively equal incomes.

Health, Pension Benefits Hurt

Once we look beyond the basics of income tax filing status, denying recognition of same-sex marriages is an unmitigated disaster for those couples. This is probably most evident in the health and pension area.

Over the past decade a growing number of employers have begun making health benefits available to the domestic partners of their employees. Unlike most employee health coverage, however, workers are often required to pay income tax when the coverage is extended to an unmarried living partner.

Being legally married would change this for lesbian and gay couples, but only if the federal government recognizes the marriage. Under DOMA a couple could get married under their state's own laws but would have to continue paying tax on benefits that other couples enjoy tax-free.

Pensions are an even bigger problem. In many households, especially for couples that have spent a long time together, one partner's pension, profit-sharing and IRA accounts may be the biggest single asset. Generally both partners count on this money for retirement security, though the accounts are in only one individual's name.

In the event of divorce these accounts often need to be divided if any kind of equitable settlement is to be achieved. The tax code provides that under a "Qualified Domestic Relations Order" one divorcing spouse can transfer retirement plan benefits into the name of the other spouse without any tax effect. The retirement money remains tax sheltered until it is withdrawn. If the original owner is under age 59½ no premature distribution is deemed to have occurred.

DOMA would cause enormous mischief in this situation. A couple could be legally married in their home state for decades, during which one partner might amass a huge retirement fund, but the "divorce" would not be recognized for federal tax purposes. No divorce, no Qualified Domestic Relations Order. Even if the spouse who amassed the benefit volunteered to give a share to the other partner, this would be treated as a taxable distribution from the plan. If the original owner were too young to receive regular distributions the 10% penalty tax would also kick in. The couple may face a choice of paying a hefty tax bill or leaving one partner without a source of retirement funds.

Estate Planning Woes

Denying recognition to same-sex marriages can cause even bigger problems in the estate planning area, though these problems will affect a smaller number of people near the high end of the wealth scale.

In the late 1970s a furor arose over the number of surviving spouses, mostly women, who were being forced to sell the family farm or business just to pay taxes on their late husband's estate. This is why Congress enacted an unlimited marital deduction for estate and gift taxes in 1981. Under the new system, the tax code looks at a married couple as a single economic unit. Assets that are passed from one spouse to another are generally received free of tax (as long as the recipient is a U.S. citizen), and gift or estate tax is finally imposed when wealth moves from an older generation to a younger one, such as when the second spouse dies and leaves an estate for the children.

DOMA would dictate that this fair and sensible treatment never applies to same-sex couples who are legally married. Instead, estate tax would be due at the death of the first spouse, which could result in a forced sale of the couple's business or real estate at fire-sale prices.

Gifts from one spouse to another also would be subject to tax, which raises all sorts of sticky issues. When a high-earning partner pays for the lavish lifestyle of a mate, are these payments taxable gifts? Or perhaps payment for 'services rendered' by the recipient, which would in turn be subject to income and self-employment tax? We have already seen some interesting Tax Court cases on this issue; DOMA may assure that we see more.

Outside the tax arena, DOMA would play havoc with the rights of people in same-sex relationship to obtain Social Security and other federal benefits. Presumably, it would also deny fringe benefits to the same-sex spouses of federal employees when those benefits are extended to other employees' spouses.

The public policy justification for imposing all these hardships is — what, exactly? When people undertake all the responsibilities and obligations that the law imposes upon one spouse toward another, what is gained by having the government strip them of health, pension, tax and inheritance benefits that everyone else receives?

APPENDIX 3 -- MARRIAGE EQUALITY - GET INVOLVED. MAKE IT HAPPEN!

The freedom to marry belongs to all Americans; Marriage is one of our "vital personal rights," and;
The right to marry is "essential to the orderly pursuit of happiness by a free people."
--US Supreme Court in Loving v. Virginia, 388 U.S. 1, 1967, overturning the state's ban on interracial marriages

Equal Marriage

In 1978, the United States Supreme Court declared marriage to be "of fundamental importance to all individuals" (*Zablocki v. Redhail*). The court described marriage as "one of the 'basic civil rights of man'" and "the most important relation in life." The court also noted that "the right to marry is part of the fundamental 'right to privacy'" in the U.S. Constitution.

Although marriage has been declared a fundamental right, no state yet recognizes same-sex marriages. Some states have passed laws specifically barring same-sex marriages, and the number of states with such laws is increasing. In recent years, the best news in the fight for recognition of same-sex unions came from Vermont, when the Vermont Supreme Court ordered its state legislature to come up with a system providing same-sex couples with traditional marriage benefits and protections. (Baker v. State, 744 A.2d 864 (Vt. 1999).)

With legal marriage now available to same-sex couples in Ontario and British Columbia, Canada and potentially in Massachusetts it is now more important than ever that the LGBT community makes our voice heard in Congress and in our state governments. This is an incredibly exciting time, and we should all celebrate these developments. We also need to prepare for the fact that those who oppose LGBT equality are now more highly motivated than ever to work to stop further advancement of marriage equality and other efforts to ensure fair treatment for LGBT Americans.

It is vitally important that we take action now to influence public policy and shape public opinion about equal marriage rights.

Marriage equality is a basic civil rights issue that we need to protect and advance. That is why it is so important that a proposed Constitutional amendment to ban recognition of marriages between same-sex couples in the United States not succeed. It is the ultimate trump card and the ultimate mechanism to build discrimination into the very document that should protect everyone. Such an amendment would be used by our opponents to not only negate any victories already achieved in courts but also to foreclose the future possibility of appealing to courts to secure marriage equality. Further, it would be used in the same way the sodomy laws were used prior to the Supreme Court's decision in the Texas sodomy case of Lawrence v. Texas - to justify other forms of discrimination.

We need 34 Senators or 144 Representatives to vote against the proposed amendment in Congress in order to stop it.

We need your help to educate and advocate on marriage equality in your communities and with your state and federal elected officials.

Rainbow Law is ready to work with you and state and local LGBT advocacy groups on this essential issue.

1. Lobby - schedule a personal visit with your senators, representative, governor, and state legislators.

2. Phone - phone your Senators and Representative - just call **(202) 224-3121** and ask to speak to your Senators and Representative. You can find out who represents you in Congress and your state house by visiting www.vote-smart.org. Let Rainbow Law know that you called and report what you were told by your elected official's office staff.

3. Have a Party - organize a house party to educate your friends and family about marriage equality. Invite a diverse group, both LGBT and non-LGBT, to motivate them to take action. Write letters to Congress and your state government at your party. **SHOW THE FILM *LESBIAN GRANDMOTHERS FROM MARS!***

4. Recruit your friends and family - tell 10 friends, family members, and colleagues about the proposed amendment and ask them to take action.

5. Opinion Editorials and Letters to the Editor - write an op-ed or a letter to the editor of your local newspaper in support of marriage equality.

6. Tell Your Story – No weapon is more powerful than speaking the truth. Being honest and open about your life and your family will expose the lies and negative stereotypes about the 'homosexual agenda' and the threat to 'traditional' families. The opposition will only succeed if we let their lies go unchallenged.

Send an e-mail to info@RainbowLaw.com if you are interested in having your story published on the Rainbow Law website. Tell us why marriage is important to you. You do not need to use your real name.

7. Build Support - meet with clergy, opinion leaders to enlist their support. Ask them to speak out in opposition to anti-gay efforts related to marriage in your state. Let Rainbow Law know the results! E-mail info@RainbowLaw.com or call (800) 891-8189.

8. Bring this issue up in discussions you have with like-minded people - LGBT group meetings, book clubs, parenting groups, volunteer groups, internet chat rooms, at the coffee shop, at the bar, at the bookstore... Talk to people about the importance of this issue and encourage them to get involved. They can join you in planning a house party, lobbying, writing letters, etc.

APPENDIX 4 -- *LESBIAN GRANDMOTHERS FROM MARS: One Couple's Journey for Marriage Equality*

An out-of-this-world story about a down-to-earth lesbian couple who take to the trails, freeways, and back roads of America to rally support for Gay Marriage. Supported by their family, community, and circle of friends, life partners Carrie and Elisia get on their bicycles and set off on the challenging Rainbow Ride Across America, from Golden Gate Park in San Francisco to the finish line in Yew York City, accompanied by filmmaker Keith Wilson.

On their three-month cross-country adventure, Carrie and Elisia encourage people to register to vote and ask them to discuss the marriage and civil rights issue with friends and family. These remarkable women achieve their goal and beyond, as they ride through America's sleepy towns and make some much-needed noise.

Some of the highlights (and lowlights) include a warm greeting from the mayor of Salt Lake City, Utah; an emotional protest outside the office of Colorado Representative Marilyn Musgrave (author of the Federal Marriage Amendment); and a visit to Matthew Shepard's Laramie, Wyoming; a counter protest from Fred Phelps and fifty of his flock in Topeka, Kansas, and a bike ride through Manhattan to end the ride before an excited crowd and five TV news crews. These inspiring grandmothers are far from the proverbial rocking chair, and it's a thrill to follow in their feisty footsteps.

See the trailer at http://www.lesbiangrandmothersfrommars.com.

APPENDIX 5 -- WRITE A LETTER TO YOUR ELECTED OFFICIAL

Even a handful of letters can have a tremendous impact on your elected officials and their decision on whether to focus on or support laws that protect LGBT rights and relationships. Letters do not have to be long-winded or full of statistics – in fact, short letters with personal stories are the most likely to be read.

If you don't know who your elected officials are or if you do not have their addresses, call your local library or go online to a site like www.vote-smart.org or www.congress.org. These Web sites allow you to enter your ZIP code and get the names and contact information of your elected officials; www.vote-smart.org also allows you to find out how your elected officials voted on a particular issue. Once you know who your elected officials are, www.congress.org gives you the option to write all of your legislators in a form on their web page, with one click.

WRITE YOUR LETTER

Remember that you probably know more than your elected official about LGBT issues. Follow these tips for making sure your letter has maximum impact.

- Type or write legibly.
- If you are writing about a specific bill, include the bill number in the first few sentences or a reference ("RE:") line above the salutation.
- Be brief and to the point (preferably one page or less). Short letters get read!
- Use your own words and avoid the appearance of a form letter.
- Give your reasons for supporting or opposing a bill.
- Use a personal story, if possible.
- Be courteous and reasonable.
- Use correct grammar and short sentences.
- Include a newspaper article/editorial or other reference that supports your view (if you do not have access to this information, please contact Rainbow Law (www.RainbowLaw.com, (800) 891-8189, and we will provide you with the latest news on the subject of LGBT equality).
- Personalize the heading and salutation for each legislator to whom you send a letter.
- Proofread and spell check.

ADDRESS YOUR LETTER

The correct method of address is:
The Honorable (Name of Legislator)
(Your State Name) State (Senate or Assembly/House of Representatives)
State Capitol Building Room _____
City, State, ZIP Code
The salutation is "Dear Senator/Assemblyperson/Representative (Last Name)"
Please forward a copy of your letter and the response you get from your legislator to Rainbow Law – via fax (813)-354-3464, email (info@RainbowLaw.com), or regular mail (RR1 Box 266C Wallace, WV 26448). This helps us in our efforts to change the law.

SAMPLE LETTER

NOTE: You may copy this letter or write your own.

To the Honorable ______________

As your constituent, I urge you to oppose any attempt to amend the constitution to discriminate against gay and lesbian individuals and couples.

The Constitution and its subsequent amendments were designed to protect and expand individual liberties, such as granting women the right to vote and establishing that separate is not equal. The Constitution was not designed to revoke or restrict these liberties.

If the amendment makes it through the difficult process necessary to amend the Constitution, this would be the first time in history that the Constitution was amended to restrict the rights of a whole class of people, in conflict with its guiding principle to provide equal protection for all.

Marriage, other forms of relationship recognition and basic civil rights protections are essential components that make all families, including gay and lesbian families, safer and more secure.

Please oppose the Federal Constitutional Marriage Amendment and any attempt to build discrimination into the very document that should protect everyone. I look forward to hearing from you on this extremely important issue.

Sincerely,
Your Signature

APPENDIX 6 -- PROBATE

(Everything you NEED to know but hope you never have to use)

Most people are aware of "probate" but do not know what it means. Especially in view of what is written in the popular media, most people want to avoid the hassle, time, and costs of this process.

Purpose of Probate

Probate is not designed to be an employment bill for attorneys. The probate process can be avoided, but most people do not take the time or effort to understand what this process is and how it can be avoided.

Probate is a legal process whereby a court validates the deceased person's will or determines that he or she died without a will. The court also appoints someone to handle the decedent's assets and pay the bills owed at death.

That someone is referred to as an executor, administrator, or administrator with the will annexed, depending on the circumstances.

An additional purpose of probate is to see if anyone was owed money at the time of death that creditor can come forward and make a claim to receive payment. There is a fixed period of time for creditors to come forward and demand payment.

Along with the payment of debts, the probate process is designed to see that taxes are paid. Income taxes for the personal income tax return up to the date of death must be paid. Income collected during probate requires the filing of a separate estate income tax return and the payment of tax. If the decedent owned over $1,000,000 of assets at the date of death a federal estate tax return is required and the tax due must be paid within nine months of the date of death.

Lastly, after all assets of the decedent are collected, assets are sold and taxes and debts are paid, then the executor or administrator must distribute the remaining assets in accordance with the decedent's will or the rules of intestate succession, if the decedent died without a will.

Assets Subject to Probate Process

While not all assets that the decedent owned are subject to probate, the following assets are subject to the probate process:

- Assets in the deceased person's name alone.
- If in a legally recognized relationship (married heterosexual or registered domestic partners, partners in a civil union, etc.), one-half of each asset registered as community property in the decedent's name with his or her spouse or partner.
- The deceased person's portion or share of an asset where the asset is registered as tenants in common with other people.
- Assets, which are owned but are not registered, such as furniture, jewelry, etc.

Some state’s laws provide that a probate is not necessary if the total value at the time of death of the assets, which are subject to probate, does not exceed the sum of $100,000. There is a simplified procedure for the transfer of these assets. The $100,000 figure does not include vehicles and certain other assets.

Assets not Subject to Probate

As mentioned, not everything is subject to probate. Even though there may be a probate for a portion of assets owned, the following assets are not subject to the probate process:

- Assets held in joint tenancy with another person or persons.
- Assets held in a living trust.
- Assets such as life insurance and IRA benefits, where a beneficiary is named.
- Assets in a bank or savings and loan account in the deceased person's name as "trustee" for someone else.

- Assets which can be registered in a person's name and which are "payable on death" (P.O.D.) or "transfer on death" (T.O.D.) to someone.
- Assets passing to the surviving spouse or partner (if in a legally recognized relationship). If the deceased person owned assets in his or her name alone but these assets are left by will or pass by intestate succession to the surviving spouse or partner, no probate is necessary.

STEPS INVOLVED IN THE PROBATE PROCESS

When someone dies, the first question is whether there will be a probate proceeding. If all of the assets are in a living trust or joint tenancy, then the answer will be no. If the deceased person has more than $100,000 of assets in his or her name alone and there is no surviving legal spouse or partner or the assets were not left to the spouse or partner, the answer will be yes.

If it is necessary to have probate, the second question is who will act? If the decedent left a will, he or she named someone in the will as executor. That person or persons does not have to be a United States citizen or resident. A friend may serve, the person's three children may serve jointly, or a bank or trust company may serve. No one has to serve if named. Will the person or persons agree to serve?

If there is no will then the nearest relative or relatives have the first right to serve or to nominate someone if they do not wish to serve. If there is no will, the person appointed by the court is called an administrator.

Occasionally, someone will die with a will, but the will does not name an executor or the person named is deceased or will not serve. Or possibly a bank is named and the bank declines because the estate is not large enough for the bank. The court then appoints the nearest *biological* relative who inherits under the will. That person is referred to as an administrator with the will annexed.

All of the above do the same duty once they get appointed even though their title varies depending upon the circumstances.

Appointment by Court

To start the probate process it is necessary to file a petition with the superior court in the county where the deceased person lived at the time of death. This petition is set for hearing approximately 30 days after it is filed with the court.

If there is an emergency and it is necessary for someone to act within the 30-day period, it is possible to get someone appointed within 24 hours as a "special administrator." This person handles estate assets until the executor or administrator gets appointed. If the decedent was the only signer on a business bank account and salary and other bills have to be paid immediately, a special administrator can be appointed.

After the petition is filed, a notice of the court hearing must be published three times in a local newspaper. In addition, a notice of the court hearing must be mailed at least 15 days prior to the hearing to everyone named in the will, all of the deceased person's heirs at law (those people who would inherit if he or she died without a will), and any other alternate executors named in the will.

If the will had special wording at the end of it where the witnesses sign, then it may be "self-proving" and no additional statements are necessary. If the will is not self-proving then a statement must be obtained from one of the witnesses to the will.

If a witness cannot be located, then there are several alternative ways of proving the will. If the will is handwritten, anyone who is familiar with the decedent's handwriting can sign a statement proving the will.

If the will does not waive a surety bond, then the executor or administrator must post a surety bond. The surety bond is nothing more than an insurance policy which insures the estate if the executor or administrator does something improper or steals from the estate. Unfortunately the premium of approximately $200-800 is paid out of the estate assets.

At the court hearing if everything has been done and there are no objections, the court will admit the will to probate and appoint the executor or administrator.

After the appointment the executor or administrator must file a special form with the court titled "letters testamentary" or "letters of administration." This is signed by the person, and he or she agrees to act as

executor or administrator. Later, when taking legal action or transferring assets, other parties will want a certified copy of these "letters" showing that the person has the legal authority to act. These "letters" usually cost less than $10 per copy.

Collecting Assets

After the appointment the executor or administrator must take possession of all of the decedent's assets subject to the probate process. Assets in joint tenancy, assets in a living trust or assets subject to a beneficiary designation are not part of the probate and are not collected.

The executor or administrator needs to change title to the assets and to put these assets in his or her name as executor or administrator. Mutual funds, stocks and bonds, brokerage accounts, bank accounts, real property, vehicles and other assets should be changed over.

After collecting all of the assets, it is necessary to prepare an inventory listing these assets. At the time that the executor or administrator was appointed the court also appointed a "Probate Referee." This individual has the responsibility of valuing all of the non-cash items with the fair market value as of the date of death. The referee receives a fee of $1 per $1000 for the value of the assets appraised. The value is the gross value excluding any loans or liens on the assets. If the home is valued at $300,000, even though there is a $180,000 mortgage on this home, the referee values it at $300,000 and receives a $300 fee for this.

There are legal procedures for contesting the referee's value if someone does not believe it to be accurate.

The appraisal of all of the assets is supposed to be filed with the court within four months of the executor's or administrator's appointment.

Payment of Bills and Debts

As soon as the executor or administrator is appointed by the court and obtains money, bills can be paid. Funeral, utility, credit card and other bills can be paid without any special legal formality.

Anyone can be required to submit a creditor's claim in the estate. This is a special court form, which must be completed by the creditor and approved by the executor or administrator. If the executor or administrator wants this form submitted by a creditor then a notice must be sent to the creditor.

Claims normally must be submitted within four months of the executor's or administrator's appointment. There is an exception if the creditor was not aware of the death. If that occurs, the creditor can petition the court after the four-month period for submitting a claim. The petition cannot be filed later than one year after the executor's or administrator's appointment.

If the executor or administrator rejects a creditor's claim, the creditor must file a lawsuit within three months of the rejection or lose all right to later sue. Before a lawsuit can be filed, the creditor must file a claim.

If John Doe is in an automobile accident and dies and other parties wish to sue his estate, they must file a creditor's claim within the required period before they can file a lawsuit.
Most estates do not involve any creditor's claims. The executor or administrator pays the outstanding bills and no one objects.

Sale of Estate Assets

It may be necessary or practical to sell some or all of the estate assets. Assets may have to be sold to pay taxes, fees and debts. Or the home may be vacant and the children do not wish to inherit it, so it is sold during probate.

There are two methods of selling assets in a probate proceeding, which the executor or administrator may chose. First, court approval may be obtained before any asset is sold. If the stocks or bonds are sold, a court order is necessary before selling them. If real estate is sold, a court hearing must be held and anyone may offer a higher price for the property in court and take it away from the original buyer.
Second, in some states, the executor or administrator may sell assets. The only requirement is to give written notice to any beneficiary who is affected by the sale at least 15 days before the proposed date of sale. If no one objects, then the sale may proceed. If someone objects, then the court must be petitioned for approval the same as alternative number one, above.

After appointment, the executor or administrator usually prepares a budget with an estimate of the federal estate tax, fees for the executor and attorney, administrative costs, cash bequests under the will, and debts or claims. If there is insufficient cash available, then a decision must be made as to what assets to sell. If there is sufficient cash available, then a decision must be made as to whether any assets such as the home should be sold.

Once the decision is made to sell assets, the executor or administrator should proceed with the sale. It makes little sense to allow the home to remain vacant for nine months and then put it on the market for sale. If the home is going to be sold, there seems little reason why it should not be marketed within 30 days of the appointment.

PAYMENT OF TAXES

The executor or administrator is liable to see all of the taxes due the state and federal government are paid. While she or he is not normally personally liable, her or his liability does extend to the assets that are in probate. If the executor or administrator distributes assets and the Internal Revenue Service or State Tax Board assesses a deficiency, she or he is liable for the value of the assets distributed.

One immediate concern is who will handle all of the tax work involved? It can be the executor or administrator if the person is skilled enough to do so. Or, it may be the attorney. More likely it will be the tax preparer, enrolled agent or certified public accountant who handled the decedent's tax matters prior to death. Whoever it is must be skilled enough to prepare and file all of the required tax returns.

Prior to Death Income Tax Returns

Even when someone dies, an income tax return has to be filed for the year of death. Mary Doe dies on July 21st. An income tax return will be required from the first of the year until the date of death-January 1st-July 21st. The return is due by April 15th of the following year. Only the income received and any deductions paid through the date of death will be reported on the return. Income such as dividends and interest received after the date of death will not be reported on the return but will be picked up on the estate income tax return, or by the surviving joint tenant if the asset was in joint tenancy.

Any medical deductions on the decedent's part paid within one year of the date of death may be deducted on the final return. All other deductions must have been paid before death to be allowable.

Estimated income taxes paid for the year of death should be reviewed. Depending upon the date of death, it may not be necessary to continue to make estimated payments after death.

The decedent's income tax returns for the four years prior to death should be retained, and the return for the year prior to death should be carefully reviewed to be sure all items of income and deductions are picked up.

If the decedent died after January 1st but before April 15th or even later, a return may still be due for the prior year. With extensions, it is possible to file your income tax return as late as October 15th for the prior year. If the return has not yet been filed, an extension can be requested and will usually be granted.

Fiduciary Income Tax Returns

Income that comes in after the date of death is not reported on the decedent's personal income tax return. If the interest, dividends or other income are paid to the estate, they must be reported on the fiduciary or estate income tax return. A separate tax identification number is obtained for the estate and used in lieu of the decedent's social security number.

A separate income tax return, called a fiduciary tax return, is filed annually for the estate. This form lists the taxable income such as dividends, interest, capital gains and net rents. The fiduciary return also takes off the allowable deductions such as mortgage interest, legal and executor's fees, taxes, and a few other deductions.

The tax return does not have to filed on a calendar year basis, as of December 31st. It can be filed on a fiscal year basis at the end of any calendar month. Once a fiscal year is picked, the return must be filed within 3-1/2 months of the end of the tax year.

At the end of the tax year if the estate has not been closed and distributed, the tax is then paid on the net income. That income is later distributed to the beneficiaries of the estate without additional tax. If the estate has been distributed during the tax year, the tax is not paid on the net income, but instead each beneficiary must list his or her proportionate share of the taxable income on his or her personal tax return.

Fiduciary tax returns are required until the estate is closed and distributed. If the estate is open for more than two tax years, estimated fiduciary taxes must be paid each year.

Other Taxes

Other taxes may also be due. State real estate taxes and/or sales tax may be due if there is a business selling some product.

If the decedent made a gift of over $11,000 to someone during the year of death, a gift tax return may be due. If there is real property in another state or country, it may be necessary to file a separate income tax return for the income in that state or country.

Liability for Taxes

As previously mentioned, the executor is liable for taxes if assets are distributed and additional taxes are later discovered to be due. Because of this, the executor or administrator will frequently request to be allowed to hold back some estate funds for a period of time as a reserve if additional taxes are due. This reserve may be kept for two to three years and then distributed without additional court order to the estate beneficiaries.

The period of liability for taxes is normally three years for the federal government. This period is from the due date of the return or the filing date if it is later.

CONCLUDING THE ESTATE

After the estate assets have been inventoried, the period for filing creditor's claims has expired and all claims paid or resolved, the necessary assets sold, and all required tax returns filed and taxes due paid, then the estate can be distributed.

To conclude the estate it is necessary to petition the court and to obtain a court order to make the distribution.

The executor must either file an elaborate accounting listing all receipts and disbursements or obtain a waiver of the accounting from all of the estate beneficiaries.

After the accounting is prepared or waived, a petition is drafted which is a summary of the estate and the actions taken. This petition lists the assets currently on hand and the proposed distribution of these assets. The fee that the executor or administrator and the attorney receive is computed and shown.

If everything is in order and there are no objections, the court will issue an order concluding the estate, ordering the fees paid, and the assets distributed.

Once the court order is obtained, checks may be written and assets reregistered in the names of the estate beneficiaries. After the assets are distributed a receipt for these assets is obtained from each estate beneficiary and filed with the court.

As previously stated, if the estate is relatively simple and no federal estate tax is due, it can be concluded in 6-9 months. If there is an estate tax due, the period will likely increase to 12-15 months. The estate should not be in probate for more than 18 months unless there is litigation or significant problems that prevent distribution.

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