



LIFELINES

DOCUMENTS
TO
PROTECT
YOU
AND
YOUR
FAMILY

NCLR

NATIONAL CENTER FOR LESBIAN RIGHTS

INTRODUCTION



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**The audacity to fight for justice.
The perseverance to win.**



This packet contains information about essential documents that will help you protect yourself and your loved ones in the event of illness, disability, or death.

These documents include:

-  Information on wills and trusts;
-  Documents protecting your personal choices about medical care, funeral arrangements, and the persons who can visit you in the hospital;
-  Documents identifying those who will have authority to deal with your finances if you are incapacitated; and
-  If you have children, documents identifying those who can consent to medical treatment of your children and the persons you choose to be legal guardian(s) of your children in the event of your death or incapacitating illness.



Although serious illness and the end of life may be difficult to think about and discuss, it is important for all people—and particularly for lesbian, gay, bisexual, and transgender (LGBT) people—to consider what they wish to happen if they become seriously ill or incapacitated, and to put documents in place reflecting these wishes.

Without these documents, your partner may be excluded from visiting you in the hospital or may have no say in decisions regarding your medical care or your funeral arrangements. Your partner might also lose all the belongings you acquired together, including the home you may have shared for years. The good news is it doesn't have to be that way. By putting these basic documents in place, you can ensure at least a basic level of protection for yourself and your chosen family.

These documents are also important for people who are not in committed relationships. Regardless of whether you have a life partner, you are entitled to designate whom you wish to make medical decisions on your behalf and to deal with your finances if you are incapacitated. You are also entitled to determine who will inherit your property and how you wish your funeral to be conducted.

DOCUMENTS PROTECTING YOUR LOVED ONES IN THE EVENT OF DEATH

For all LGBT individuals and same-sex couples, it is important to create legal documents that identify who you consider your family. When you have not created legal documents to define your own personal choices, the law usually will give preference to your legal heirs or relatives with regard to inheritance, medical and financial decision-making, and funeral arrangements. With the exception of a small, but growing, number of states, same-sex partners are not considered legal heirs or relatives.

As of February 2008, more than ten states offer some type of legal recognition to same-sex couples—although the exact protections granted differ from state to state. Massachusetts is the only state where same-sex couples can marry, although decisions on this issue are pending in several other states. In Connecticut, New Hampshire, New Jersey, and Vermont, same-sex couples can enter into a civil union. In California, the District of Columbia, Maine, Oregon, and Washington, they can register as domestic partners with the state. In Hawaii, same-sex couples are eligible to register as reciprocal beneficiaries. To benefit from these protections, it is not enough simply to live in one of these states—you must officially register your relationship with the state government. The legal situation for same-sex couples is changing rapidly as a growing number of states consider marriage, civil unions, or domestic partnerships. For the most current information on the law in your state, please consult our website at www.nclrights.org.

Everyone should take the time to complete these documents—even people who live in states that provide comprehensive protections for same-sex couples. This is necessary to ensure that you and your family will be protected no matter when or where tragedy may strike. For example, even if your state automatically gives you the right to make medical decisions for your partner, you may have difficulties exercising this right if you encounter hospital staff unfamiliar with the law or if something happens to your partner in another state—unless your partner has a medical directive in place.

While it may seem expensive now to pay an attorney to help you draft these documents, the cost is much less than the financial and emotional price of having to fight to protect your family because you didn't have these protections in place. One day we may live in a country that gives our relationships full legal protection and recognition. Until that day arrives, however, we must protect ourselves from the reality of homophobia and a legal system that too often ignores who we are to each other.



DOCUMENTS PROTECTING YOUR LOVED ONES IN THE EVENT OF DEATH

How can I make sure that my loved ones inherit my assets and are otherwise protected if I die?

A will is a legal document that allows you to designate who will receive your property when you die, and how and when they will receive it. If you die without a will, your property automatically will be distributed to your legal heirs, as defined by the laws of your state. Usually these people are your spouse, your children, or, if you have neither, to your other closest relatives. This is called intestate succession. With the exception of a few states, a same-sex partner is NOT considered to be a legal heir and therefore, is not legally entitled to inherit your property if you die without a will. This is true regardless of how long you have been with your partner and regardless of your relationship with your relatives.

As of February 2008, same-sex partners in legally recognized relationships in several states have the right to inherit without a will if their partner or spouse dies intestate. Even in these states, however, if you die without a will, the percentage of your property given to your legally recognized partner will depend on whether you have other living relatives when you die and, if so, how many. Thus, even in a state in which your partner has intestacy rights, you need to draft a will or prepare a trust to control what and how much your partner will receive after your death.

Making plans about the distribution of your assets is important for everyone, including individuals who are not in committed relationships. If you do not designate how to distribute your assets, they will go to your legal heirs, even if you are estranged from your family or otherwise do not want them to receive your assets.

In addition to allowing you to determine who will get your property, a will also allows you to say who you want to supervise the distribution of your assets. You can also include preferences in your will about funeral arrangements, disposition of your remains, and who will be in charge of your funeral or memorial service. Finally, if you have children, you can include a provision in your will naming a guardian to care for your children after your death. A court is not bound to honor a nomination of guardianship but, in the absence of any challenge, usually will do so.

Is there any way to distribute my assets without probate?

Another way to designate who will receive your property upon your death is through a revocable living trust. A living trust is similar to a will in that it allows you to say who should get what; it differs from a will in that your assets do not go through the probate process. In probate, your will must be proven valid and your debts paid before the property is distributed. With a living trust, this process is avoided and the property goes directly to the people you have named in the trust. In some circumstances, transferring property through a living trust rather than a will also helps you reduce or avoid some estate taxes.

A revocable living trust permits you to transfer your ownership of your assets to the trust, while still maintaining control over those assets during your lifetime. Although the trust is technically the owner of the property, you maintain management and control of the property as the trustee.

Trusts do not make sense for everyone. There are some drawbacks to using a living trust and, depending on the type of assets you have, the costs may outweigh the benefits, so you should consult an estate planning attorney before making a decision about whether a revocable living trust makes sense for you.

WARNING:

You should never rely on a pre-packaged trust bought on the Internet or in a commercial publication. To protect yourself, it is essential that you consult a knowledgeable attorney who is familiar with the law in your state. The law usually will give preference to your legal heirs or relatives with regard to inheritance, medical and financial decision-making, and funeral arrangements. With the exception of a small, but growing, number of states, same-sex partners are not considered legal heirs or relatives.

DOCUMENTS PROTECTING CHOICES OF MEDICAL CARE



In the event you are seriously injured or incapacitated, you may be unable to make medical decisions about your care. In most states, if you do not provide written directions, healthcare professionals will turn to your legal relatives to make these decisions. This is true no matter how long you have been with your partner and regardless of whether you have a good relationship or even any relationship with your relatives. As of February 2008, the only exceptions are for same-sex partners in legally recognized relationships in a few states. For information on your state, please consult our website at www.nclrights.org.

Regardless of your rights in your home state, we strongly encourage all couples to leave written instructions in case you become ill or incapacitated in a state that refuses to honor your relationship or your choices about who you consider to be your family. Completing medical directives is important for all individuals, even those who are not in relationships. If you do not feel close to your blood relatives, you should make sure that your closest friends and loved ones have the right to make important medical decisions for you.

You should carry copies of your authorization with you at all times, but especially when you anticipate undergoing medical treatment.

How can I ensure that my partner or someone else I trust can make healthcare decisions on my behalf?

A durable power of attorney for healthcare (which is also sometimes called a “healthcare proxy”) empowers another person to make medical decisions about your care if you become unable to make these decisions for yourself.

Even when you have specified your wishes in a living will or medical directive, there may be some situations in which healthcare providers need additional information in order to decide what action should be taken.

Unless you have designated someone to make these decisions for you by executing a durable power of attorney for healthcare, your healthcare providers will turn to your relatives to make these decisions.

DOCUMENTS PROTECTING CHOICES OF MEDICAL CARE

In most states you can use a durable power of attorney for healthcare to appoint someone you trust to make medical decisions for you. In some states, the living will, medical directive, and durable power of attorney for healthcare are included on the same form. It is critical that you consult a knowledgeable attorney in your state to make sure that you have executed the correct forms and that your forms are up-to-date.

How can I communicate my choices about what sorts of medical intervention I want in the event I am incapacitated?

A living will or medical directive is a document that spells out what measures you want to be taken when you are no longer capable of communicating your choices regarding prolonging your life and other medical care issues. Depending upon the state, the document may be called by any one of several different names, including: living will, medical directive, healthcare directive, directive to physicians, or declaration regarding healthcare.

How do I obtain my state's medical decision-making forms to review?

States have different requirements for these documents. You must use a form that complies with the law in your state. You can download state-specific forms from The National Hospice and Palliative Care Organization at <http://caringinfo.org>. Although you can obtain the forms online, we strongly urge you to use the services of an attorney to help prepare these documents.

WARNING:

Few issues are as important as ensuring that someone you trust will make medical decisions for you if you are unable to make them yourself. The laws regulating this issue vary significantly from state to state, and are constantly being revised. For your own protection, it is critical that you consult a competent, knowledgeable attorney who can make sure that you are complying with the law in your state. For information on how to find an attorney, see page 15.

Who needs to have copies of my medical directives and other forms, once they are completed?

Once you and your attorney have completed and properly executed the forms, you should make sure to keep a copy of your directive and other documents for yourself and give copies to:

- Your partner, if you have one;
- Any physician with whom you now consult regularly;
- Any person named as a healthcare proxy;
- Officials at the hospital or other care facility in which you are likely to receive treatment; and
- Any family members, friends, or other people or institutions whom you think should know about your medical intentions.

How do I spell out my wishes about my funeral arrangements and the disposition of my remains?

Unless you leave written instructions, nearly every state gives your legal relatives the right to control the disposition of your body when you die, including funeral arrangements and the decision of whether to authorize an autopsy. A surviving same-sex partner does not automatically have this right—except for those in legally recognized relationships in some states. For information on your state, please consult our website at www.nclrights.org.

DOCUMENTS PROTECTING CHOICES OF MEDICAL CARE

Written instructions let you express your wishes regarding these issues and name the person you would like to carry them out. In most states, these instructions are legally binding. Even if you live in one of the states listed previously and are in a legally recognized relationship, NCLR strongly encourages all couples to leave written instructions in case you or your partner die while in a state that refuses to honor your relationship. You should carry copies of your authorization with you at all times. As with all other legal documents, the laws regarding such instructions vary by state. You should speak to an attorney to ensure that your documents comply with the relevant state law.

How do I make sure that my partner or other loved ones can visit me when I'm in the hospital?

A hospital visitation authorization allows you to designate who you would like to be able to visit you in the hospital if you are no longer able to communicate this yourself.

Same-sex partners in legally recognized relationships in some states have an automatic right to visit each other in the hospital. Nonetheless, we strongly encourage couples who have legally recognized relationships in these states to complete a hospital visitation authorization in case one or both of you are hospitalized in another state. Couples in all other states are not necessarily entitled to visit each other in the hospital and must complete authorizations to make their wishes known in advance. Make sure that your doctor and your hospital have copies of your hospital visitation authorization on file; you should also carry copies of it with you at all times.

How can I designate whom I want to manage my finances if I am incapacitated?

A durable power of attorney for finances allows you to designate a person, your "agent," to take care of your finances if you are unable to

do so yourself. A general power of attorney for finances authorizes your designated agent to control a broad range of financial matters, including paying your bills, cashing your checks, and receiving benefits.

You can limit the powers of your agent, in a limited power of attorney for finances, to a specific timeframe, or to specific functions. Executing a general or limited power of attorney for finances can save the expense and difficulty of a conservatorship or guardianship proceeding. It can also prevent relatives from intervening in your financial affairs if you are incapacitated.

The designation of power of attorney should not be taken lightly. By designating a person to be your agent, you are giving that person very broad rights to handle your finances, including the ability to empty your bank account without your knowledge. Your agent should be someone who not only knows how to handle money, but also someone you trust without any reservation.

You should provide copies of your durable power of attorney for finances to your bank and other financial institutions. Many institutions require you to use their own form, so you should check with your bank and other institutions first to determine if this is the case.

How can I ensure that my partner or co-parent(s) can make medical decisions for our minor children?

An authorization for consent to medical treatment of a minor allows someone other than a child's legal parents to authorize a doctor or other healthcare professional to provide medical services to a minor child.

Especially in states that do not recognize both parents in a same-sex couple as legal parents, this form can be important to ensure that your

WHY DO I NEED AN ATTORNEY TO HELP ME DRAFT THESE DOCUMENTS?

partner can consent to emergency medical treatment for your child if you are not available. Even if both you and your partner are recognized as legal parents, it is advisable to execute this document in case you are traveling in a state that refuses to recognize your relationship or parental status.

You should give a copy of the authorization to your child's doctor and carry a copy with you at all times.

For lesbian couples who are about to have children, it is very important to complete this document before the birth mother goes into the hospital. While this form may not be legally binding, hospitals will usually honor the authorization.

How can I name a guardian to care for my children if I die or become unable to care for them?

A nomination of a guardian or conservator assigns the care and custody of a child to another responsible adult if the child's legal parent dies or becomes physically or psychologically unable to care for the child. Usually, a person who is appointed to be the child's guardian is given physical custody of the child and authority to manage the child's financial matters.

While a nomination is not legally binding, most courts will give great deference to a clear nomination of guardianship in cases where there is no other legally recognized parent.

Because the required format of these guardianship documents varies significantly from state to state, you should have the nomination drafted by an attorney who is aware of the requirements in your state.



WHY DO I NEED AN ATTORNEY TO HELP ME DRAFT THESE DOCUMENTS?

For your own protection, it is essential that you have an attorney help you draft these documents. Although some do-it-yourself legal forms are available for purchase or online, very often these forms are incorrect or out-of-date, or simply do not make sense for your individual circumstances. The legal requirements for creating a valid will or other life planning documents vary from state to state and often are strictly enforced. The laws affecting same-sex couples are constantly evolving. A lawyer can make sure that your documents comply with the current rules and requirements in your state. In addition, because of discriminatory state and federal laws, estate planning can be more complicated for same-sex couples. A lawyer can help you navigate these pitfalls and best protect you and your family.

The cost of paying an attorney to help you prepare these documents upfront is much less than the financial and emotional costs of finding out too late that the documents you have drawn up on your own are invalid. Moreover, relying on a knowledgeable attorney will give you the peace of mind that your affairs are in order and that your family will be protected and taken care of should anything happen to you.

It is a good idea to review your documents on a regular basis. Your family circumstances can change, and federal and state law may change as well. When things change, you should review your documents with your lawyer to ensure that they conform with current law and to your current circumstances and intentions.

How do I find an LGBT-friendly and LGBT-knowledgeable attorney?

Talking about end-of-life issues can be challenging and is especially difficult if you are concerned that your attorney is not comfortable with your sexual orientation or gender identity. But withholding information about your financial or personal situation may prevent an attorney from fully protecting you and meeting your needs. So it is important to find a trustworthy attorney with whom you feel comfortable.

For information about how to locate an attorney in your area, you can contact the National Center for Lesbian Rights' Legal Helpline at www.nclrights.org/gethelp, by calling, toll-free **800.528.6257**, or emailing info@nclrights.org. You can also contact other national, state, or local LGBT legal organizations. For a list of local LGBT bar organizations, visit <http://www.nlgla.org/affiliates.html>. You can also ask friends and colleagues for referrals, or even consult the yellow pages or ads in local LGBT publications.

WARNING:

You should not assume that an attorney who runs an ad in an LGBT publication or advertises to the LGBT community on the Internet is necessarily reputable, competent, or knowledgeable about LGBT legal issues. Before hiring an attorney, you must make sure she or he has the expertise to represent LGBT individuals and same-sex couples. A lawyer who knows about family law issues for heterosexual people, for example, may know little or nothing about how the law applies to our families. There is no substitute for interviewing an attorney to make sure she or he has the qualifications to help you.

What questions should I ask an attorney before I hire her or him?

Here are some questions that can help you determine whether a lawyer is the best fit for you:

- [Do you specialize in estate planning?](#)
- [Have you done estate planning for same-sex couples before?](#)

What questions should I ask an attorney before I hire her or him? (continued)

- How many?
- Are you familiar with the current state of the law regarding same-sex couples in this state? Around the country?
- When can you be reached?
- Can I contact you via email or phone if I have questions?
- What is the estimated time table for completing these documents?
- What is the estimated cost for completing these documents?

You should not hire any attorney who refuses to answer these or other questions you may have. If you are not satisfied with of the attorney's answers to your questions, or if you do not feel comfortable with the attorney for any reason, you should keep looking. Hiring an attorney is like making any other consumer decision. You must look out for your own interests, research your options, and get all of the relevant information before making a decision.

Remember that you are never under any obligation to retain a particular attorney. If you become dissatisfied with your attorney, you are always free to terminate the relationship.