



Take the Power

Tools for Life and Financial Planning

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Take the Power!

Life planning is important for everyone. While LGBT people have made incredible progress in the fight for equality, the fact is that we're still building the case for fairness, and our country is an enormous construction zone. Just as you shouldn't be without a hard hat on a construction site, you and your family shouldn't be without certain simple but critical legal protections.

ARE YOU PREPARED IF AND WHEN ANY OF THE FOLLOWING HAPPENS? Consider these situations.

If you and your partner or spouse break up...

- What happens to your home, assets and financial support?
- How will you determine custody of your children?

See inserts "Tools for Protecting Yourself in Your Relationship" and "Tools for Protecting Your Children."

If you're hospitalized and/or unable to make medical or financial decisions for yourself...

- Who will make medical decisions on your behalf?
- Will your partner be able to be by your side if you're hospitalized or in a long-term care setting? What if she or he is challenged or blocked by the hospital, facility or other family members?

See inserts "Tools for Protecting Your Health Care Wishes."

- Who will make financial decisions for you (and perform tasks like paying your bills and filing your taxes) if you are hospitalized or otherwise unable to do this yourself?

See insert "Tools for Protecting Your Assets in Life."

When you pass away...

- If you have children under 18, who will get custody of them?

See insert “Tools for Protecting Your Children.”

- Who will get your home, financial assets and belongings?
- Who will administer your estate and execute your wishes?
- Have you taken all steps possible to ensure your loved ones are financially provided for after your death?

See inserts “Tools for Preparing Wills and Trusts” and “Tools for Protecting Your Assets After You’re Gone.”

- Who will carry out your wishes for your funeral arrangements?
- How can you ensure that the funeral home or other family members will abide by your wishes?

See insert “Tools for Protecting Your Wishes for Your Funeral.”

- Do you want to help create a better future for LGBT people and people living with HIV?

For ideas, see insert “Leaving a Legacy for Equality.”

If you need legal guidance or advice on how to implement and manage your life-planning objectives and documents...

- Whom do you go to for advice and counsel?
- How can you tell if your advisors understand the unique issues affecting LGBT people and people living with HIV?

See insert “Tools for Selecting an Attorney.”

Tools for Preparing Wills and Trusts

Many of us avoid talking about death, but we all know that death touches our lives eventually. A will (and possibly also a trust) is a key component in your life plan, and often the only way to make sure the people you love are protected after your death. Lambda Legal client Keith Bradkowski found this out the hard way after his partner Jeff Collman was killed in the September 11th attacks on the World Trade Center. Jeff had not written a will, so on top of his grief, Keith was forced to endure the anxiety of hostile negotiations with Jeff's parents and employer over benefits and basic possessions. Take the power now to protect the people you love from added grief after your death by writing a will.

Please note: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation.

FIRST STEPS

1. Think about what you own—from cash, accounts and real estate to personal property like jewelry, books and cars—and whom you want to inherit those assets after you die.
2. Think about who would be the right person to be your **executor** or **administrator** (see "Terms to Remember" at the end of this insert for all terms in **bold**) when you die, to carry out your instructions, go through all your belongings and make all the necessary arrangements.
3. For legal help, consult Lambda Legal's Help Desk at 866-542-8336, www.lambdalegal.org/help or the other resources in the insert "Tools for Selecting an Attorney."

A WILL

TAKE THE POWER! Create a **will** so you can direct what should happen to your personal belongings after your death, including your home, cash, bank accounts, car and pets.

Why do I need this power tool?

When you don't have a will, you die **intestate**, which means state law dictates how your property will be distributed. Depending on circumstances like where you live and whether your relationship is respected legally in your state, the state may automatically hand over your assets to a blood relative, ignoring the people to whom you actually want to leave what you have. While everyone should have a written will, it is essential for LGBT people and people living with HIV, who often come up against discriminatory laws as well as extra challenges from family members.



Martha Stark, former Finance Commissioner for New York City, took the power and prepared a will. Martha says, "My mother died at 46. She didn't have a will. I want to make sure my family is provided for if I die or become ill."

How it works: Create a legal document called a will, which governs the distribution of your possessions after you die. In the will, you identify **beneficiaries**, people and/or organizations who receive things under the will. You also name an executor or administrator, the person who makes sure the directions in your will are followed. The legal process of sorting out a deceased person's affairs is called **probate**. All the property that will be distributed to beneficiaries becomes part of what is called an **estate**. Before any money goes to beneficiaries, the estate must pay any applicable taxes and other fees, which reduce the size of the estate.

Here are some things to think about before writing a will.

- If you are concerned that a relative may challenge your will, it is important to evaluate the concern with an attorney. Attorneys have developed ways of dealing with people who might challenge your will. If you live in a state that does not respect your relationship legally, your attorney may also have advice about how big a role a life partner should or should not play in creating the will, to avoid claims by hostile relatives that your partner exerted "undue influence" over you for his or her own financial gain.
- Consider whether to provide instructions in your will for the estate to pay your funeral and burial expenses. Doing so helps ensure that your wishes are fulfilled—and that your loved ones will not have to pay for these expenses out of their own pockets. You also may want to instruct that funeral expenses not be paid by the estate unless your wishes for funeral arrangements are respected. (See insert "Tools for Protecting Your Wishes for Your Funeral.")
- Some of your assets, such as pension benefits, life insurance proceeds and jointly owned property, may go automatically to particular beneficiaries without being specified in your will, because you designate these beneficiaries through steps specific to those assets. (See insert "Protecting Your Assets After You're Gone.") (Be aware that the value of those assets may nevertheless be included in your estate for tax purposes, which may increase the taxes owed by your estate and lower the amount left for beneficiaries in the will.) Alternately, you might want to consider a **trust**, which offers more privacy (because it does not go through a public probate process) and potentially less opportunity for legal challenge, but which can be cost-prohibitive for smaller estates due to the increased legal oversight required.
- If you have children, your will is one way to designate a guardian to care for your children, to protect against both the court appointing someone you would not want and your children becoming wards of the state. Because the process for probating a will can be very lengthy, you should also take other steps to

secure your children's well-being separate from your will. (See insert "Tools for Protecting Your Children.") If you used assisted reproductive technologies to bring children into your family, you might consider including provisions disposing of any remaining reproductive materials and defining whom you consider to be your intended children and/or grandchildren regardless of biological or genetic connections.

- There are some do-it-yourself guides for writing a will, and many attorneys agree that a self-made will is better than no will at all if the cost of hiring an attorney is prohibitive for you. However, LGBT people and people living with HIV do well to have a lawyer's expertise to help counter the discrimination that is built into many states' laws, as well as to navigate the particular requirements your state has for creating a valid will.

A LIVING TRUST

TAKE THE POWER! In addition to a will, which you always need, consider working with an attorney to create a **living trust** to avoid some disadvantages of the probate process.

Why do I need this power tool? A living trust is an arrangement which allows you to transfer ownership of your assets to a legal entity—the trust—and designate either yourself or someone else to control those assets while you are still alive. You personally will no longer own those assets, the trust will; but if you specify yourself as your trust's initial **trustee**, you will still control them

during your lifetime (and you may always dissolve the trust as long as you remain in control, if you change your mind). Placing some or all of your assets in a living trust has several advantages:

- The assets that remain in your trust after your death can be distributed more quickly to beneficiaries after you die because the process is less time-consuming and, in some states, significantly less expensive than probate.
- A trust is harder to contest than a will, and can provide more privacy for your beneficiaries after your death than does the probate process.
- Critically, a trust document allows you to designate someone else as a financial trustee if you are still living but become incapacitated, which can be of special significance to same-sex couples in jurisdictions where their relationships are not legally recognized as well as to single people who need to designate a friend or family member to act on their behalf.

Trusts are, however, more expensive to establish than simple wills, and require regular maintenance to ensure that your assets are properly titled to ensure that they are covered by the terms of the trust. Check with your attorney to see whether the cost of setting up and maintaining a trust makes sense for your estate planning needs.

How it works: With an attorney's help, create a document that

establishes a living trust and then transfer as many assets as you'd like into that trust. For this trust, you are the **grantor** (who puts assets into the trust), the trustee (who decides what goes in and out of the trust and whether to make any changes to the assets in the trust) and the beneficiary during your lifetime (who gets money from the trust). In addition, it is possible to structure the trust so that you can change or eliminate it at any time, just as you can do with a will during your lifetime. (You should still have a will, in part to make sure your wishes are honored for any assets that are not placed into the trust.) Lastly, the trust document provides for the appointment of a successor trustee—someone to take over for you if you should become disabled or when you die. Here are some things to think about before creating a living trust:

- Don't forget to re-title your assets so that your trust, rather than you, is the legal owner for any assets you put in the trust, otherwise you may wind up with an empty trust (meaning that it might as well not exist). An attorney can explain how this re-titling is done. You also may want to add a provision to your will called a "pour-over" to ensure that assets accidentally omitted from the trust in your lifetime will be automatically legally transferred into it as part of the probate process.
- A trust may be a good vehicle to use if you own real property in more than one state because it should allow you to avoid potentially expensive and

time-consuming probate proceedings in multiple states.

- Just like jointly-owned property and life insurance, the assets placed in the trust during your life are outside the process of probate but are still considered part of your estate for tax purposes.

- Putting assets into some kinds of trusts does not shield them from creditors.

- There are other types of trusts you can explore with an attorney to meet personal priorities or achieve tax benefits, such as the wish to provide for a beneficiary but have someone else in charge of spending the

money for that beneficiary, or the wish to maximize your giving to charity while still providing for yourself (see insert “Leaving a Legacy for Equality”).

TIPS TO CONSIDER BEFORE YOU TALK TO AN ATTORNEY

- Think about whom you want to name as your executor (sometimes called an administrator): someone you trust who is willing to take on the job. Have the name of a second person for the role, too, in case the first person dies before you or cannot serve for any other reason. Be sure to talk to these individuals to make them aware of what you are asking of them.
- People you leave money to may die before you, even if they are children now, so consider naming “secondary” or “contingent” beneficiaries, which can be individuals or organizations.
- An attorney will want to know details about all of your assets, such as the amount of money in your bank and retirement accounts, because the amounts will determine how your attorney handles certain issues in your will, especially taxes. The attorney also may ask about other things in your life, including whether anyone might object to your will if you leave them nothing, because that can change how the will is drafted. If you are anxious about sharing information about your property and the people in your life, keep in mind that attorneys are bound by strict rules of confidentiality and ethics, and those with integrity take the rules very seriously. (To help evaluate an attorney’s competence and integrity, see insert “Tools for Selecting an Attorney.”)
- Think in advance about two ways you can provide for beneficiaries in your will. One is to make a specific bequest, such as giving \$10,000 to someone. Another is to make a **residuary** bequest, which is usually a percentage of the estate after all taxes, debts, funeral expenses and specific bequests have been paid.
- Be aware that in states that extend legal respect for your relationship, your spouse or partner may have rights after your death separate from the will or trust regarding access to property during the probate process and inheritance. Ask your attorney about these protections and how they might affect your estate planning.

VASQUEZ v. HAWTHORNE

Many years prior to Washington state achieving full marriage equality, Frank Vasquez and Robert Schwerzler shared a life together in rural Washington—a home, business and other property—for 28 years. But when Schwerzler died suddenly, leaving behind no legal documents stipulating his wishes or identifying Vasquez as his partner, Vasquez was left without clear legal rights to their shared assets. Schwerzler's siblings—his legal heirs—demanded that Vasquez move out of the house and turn over the business and all the couple's other assets to them. After a long legal battle, the state high court agreed with Lambda Legal and Vasquez in a decision that broke new legal ground for same-sex couples in Washington, and the case settled with Vasquez finally having a clear right to stay in the couple's home.



Power Tool Tip: Denying same-sex couples legal protections in the case of a separation or one's death, while also denying access to marriage, leaves these couples with few means to protect or resolve questions of property and surviving partner benefits. And if you are single or even if your relationship is recognized in your state, you may want to make plans that are different from the government default estate distribution rules. Plan ahead for the unexpected by drawing up a will and other documents that protect your wishes for your family and loved ones.

TIPS TO THINK ABOUT AFTER THE WILL OR TRUST IS DONE, SIGNED AND LEGALLY BINDING

- Review your will every three to five years, or when something significant in your life changes, like a purchase or sale of property, the ending of a relationship or the beginning of a new one, the addition of children to your family or the death of a beneficiary. This will help you make sure that your will or trust continues to represent your wishes and will benefit the people and organizations you care about most. Remember that some legal life changes such as marriage, entering a civil union or statewide registered domestic partnership, or getting a divorce can, in some states, make a will null and void, but usually will not nullify jointly-held property allocations or beneficiary/"payable-on-death" designations. This can be true even if your marriage is to the same person you designated as the beneficiary of your will, so be sure to check with your lawyer about the status of your will if you marry or divorce.
- For assets like life insurance and some retirement benefits which are left directly to named beneficiaries (and thus are outside of a will and the probate process), make sure you keep your beneficiary designations up to date. Too often people lose out on their partner's retirement benefits because the partner named an ex-partner or someone else as a beneficiary long ago and never updated the paperwork. You should also include contingent beneficiaries in case your primary beneficiary dies before you. Check routinely to verify that your beneficiary designations are accurate, too.
- Keep your estate planning documents in a secure place like a fireproof, waterproof safe in your home, or in your lawyer's office, and make sure that select people know where the documents are and have access in the event that something happens to you. It doesn't help to have a plan in place if your loved ones cannot implement it.

TERMS TO REMEMBER

Beneficiary: A person or organization that inherits your assets.

Estate: All your property that will be distributed to your beneficiaries upon your death, or during your lifetime through a living trust.

Executor (also Administrator): The person you designate to make sure the directions in your will are followed.

Grantor: A person who puts her or his assets into a trust. May be the same person as the trust's trustee.

Intestate: The status of your estate should you die without a will. State law will dictate how your property will be distributed.

Living Trust: An arrangement which allows you to transfer your assets to beneficiaries while you are still alive. You will no longer own those assets, but if you specify yourself as your trust's initial trustee, you will still control them during your lifetime.

Probate: The legal process of sorting out a deceased person's financial and legal affairs.

Residuary: Any assets remaining in the estate after all gifts are made to beneficiaries and costs of probate (including taxes) are paid. Many wills provide for a beneficiary of these remaining assets, also known as a "residuary clause."

Trustee: The person who decides what assets go into or are taken out of a trust, and whether to make any changes to assets named in a trust. May be the same person as the trust's grantor.

Will: a document in which you specify what should happen to your property after your death, including your home, cash, investments, cars and pets.

Tools for Protecting Your Health Care Wishes

In health care settings, the right documents will help make sure your wishes are respected. Health care providers are required to respect these documents, including those presented by same-sex couples. This change in policy came about in the aftermath of a tragedy, when Janice Langbehn's partner of 15 years, Lisa Pond, collapsed with a brain aneurysm. Even though Janice faxed their health care proxy documents to the hospital, the staff denied Janice and the couple's three children access to Lisa, who ultimately died alone. While Lambda Legal's lawsuit on the family's behalf was unsuccessful, the hospital ultimately changed its visitation policies as a result of the related advocacy campaign. After calling Janice to thank her for her bravery, President Obama directed the Department of Health and Human Services to promulgate policies requiring hospitals across the country to respect visitation and health care decision-making documents without regard for the sexual orientation or gender identity of patients and their loved ones.

Please note: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation.

FIRST STEPS

1. Consider what you would want to happen in the event of a medical emergency. Who would you want to be by your side? What kinds of medical care or life-sustaining procedures would you want?
2. Give some thought to who's the best person to understand what decisions you would make for your health care if you couldn't make them yourself. This should be someone you trust who is willing to take on the job. Be sure to talk to this individual to make her or him aware of what you are asking.
3. For legal help, consult Lambda Legal's Help Desk at 866-542-8336 www.lambdalegal.org/help or the other resources in the insert "Tools for Selecting an Attorney."

DESIGNATING AN AGENT TO MAKE MEDICAL DECISIONS

TAKE THE POWER! Create a document to make sure that the right person makes medical decisions for you when you can't make them yourself, and that everyone knows your wishes about key health care decisions that could become necessary.

Why do I need this power tool?

If you are in a serious accident or you become sick enough that you can no longer make medical decisions for yourself, you want the person of your choice to be legally empowered to make those decisions. If you do not take steps to designate the person you want to make these decisions, you run the risk of health care providers turning to blood relatives, who may be recognized as legal next-of-kin, to make these complicated and personal medical decisions for you.

How it works: You create one or more legal documents, which may be called a **health care proxy** (see “Terms to Remember” on page 5 of this insert for all terms in **bold**), a **durable power of attorney for health care** or a **medical power of attorney**, depending on what state you live in. You are the **principal**, and the person you appoint to make medical decisions for you is the **agent**. The document should say that medical personnel are authorized to release medical information to your agent under the federal Health Insurance Portability and Accountability Act (HIPAA), which mandates that protected health information be kept confidential. Note that you might need a separate HIPAA release in addition to a **health care proxy**. Not only do some health care settings require them; a HIPAA release may provide for more than one person, or a “class” of people, to access your information.

Here are a few tips for creating and using a health care proxy.

- The call your loved ones dread— you're critically hurt or ill— often comes while they're at work, school or otherwise away from home. Most people will rush to your side, not go home for your health care documents. Keep in mind that even if you carry your documents with you, if you are incapacitated you can't authorize access to any items you may have been carrying. Many same-sex couples use satchels created for passports and airline tickets to carry each other's documents. You also can carry your documents in



Janice Langbehn's partner of 15 years, Lisa Pond, collapsed with a brain aneurysm while the family was in Miami, Florida, for a cruise. Even after Janice had faxed their health care proxy documents to the hospital, the staff still denied Janice and the couple's three children access to Lisa's bedside, asserting that the family had no rights because they were "in an antigay city and state." Tragically, Lisa died alone. Lambda Legal sought redress for the Langbehn-Pond family; while the case was unsuccessful in court, the hospital ultimately changed its visitation policies as a result of the related advocacy campaign. And when President Obama called Janice from Air Force One to thank her for her bravery in taking a stand, she realized that her tragedy and courage had led to changes in national laws to ensure that hospitals across the country will be required to respect documents for hospital visitation and health care decision-making, without regard for sexual orientation and gender identity of the patient and their loved ones.

digital form on your mobile phone or other handheld device or on a memory stick, or you can register for a paid service that makes your documents available online from anywhere in the world. It can be helpful to have copies of any certificate of marriage or civil union, or domestic partnership registration, and papers evidencing your legal relationship to your children, as well as your health care documents.

- To make it easy for your agent, family and friends to find your documents in a crisis, here's an old trick: put your important documents in a waterproof zipper bag in the freezer, and tell your loved ones that you're keeping them there—before an emergency strikes. The papers will be easier to locate in your freezer than in a desk drawer or filing cabinet.
- Talk to your attorney about whether you should supplement a health care proxy with a document (**designation of pre-need guardian**) naming the person you'd want to be a “guardian” or “conservator” for you if you become incapacitated and your needs—such as the

For all documents, sign multiple copies so you have extra originals in case health care staff says a photocopy is insufficient. Sign in blue ink to reduce the chances that health care staff will claim it's not an original.

need to make financial decisions on your behalf—go beyond those usually covered by a medical power of attorney or other documents that grant limited authority. See insert “Tools for Protecting Your Assets in Life.” A court should look to such a designation if it is asked to appoint a guardian with authority to make the full range of decisions for you, though practice will vary from state to state.

- If you are transgender, you may want to add an instruction that your gender identity be respected, to further empower your proxy to advocate on your behalf, though health care providers that receive any federal funding (which is almost all of them) are already required not to discriminate on the basis of gender identity under the Affordable Care Act.

LIVING WILL

TAKE THE POWER! Creating a **living will** ensures that your wishes about life-sustaining procedures will be honored, and that your loved ones will have the information they need to advocate for your wishes.

Why do I need this power tool?

You may feel strongly about whether or not you want resuscitation or insertion of a feeding tube if you are in a persistent vegetative state or likely to die soon. For good reason, in hospital settings it can be very hard to block or end procedures that keep a person alive. A **living will** gives guidance about your wishes on this very serious matter and is all the



When Cindy Meneghin, a plaintiff in one of Lambda Legal's marriage equality cases, was rushed to the emergency room with meningitis, hospital staff at first ignored her partner of 30 years, Maureen Kilian. Terrified of losing consciousness without Maureen in charge of medical decisions, Cindy yelled, “She's my partner!” several times. But that didn't work, so she screamed, “She has my power of attorney!” That worked like a charm.

more important if your loved one's authority to carry out your wishes is more likely to be questioned, as often is the case for unmarried partners and friends with no legal relationship.

How it works: A living will is not a last will and testament. It is your wishes in writing for what should happen if you need certain medical interventions to stay alive. A living will tells medical professionals and your advocates whether you wish to receive specified life-sustaining treatment such as resuscitation, insertion of tubes for breathing or

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feeding, and medication to relieve pain. Because it is guidance given in advance, this document often is called an advance directive. Many hospitals keep living will forms on hand and some states have an official form to make things easier. In some states, the living will is incorporated into a power of attorney or health care proxy. A couple of things to remember:

- Given the gravity of the decision to prolong or terminate life, health care providers are all the more cautious if your relatives object to the directions in your living will. Consider telling your wishes and your reasoning to anyone who might raise objections.
- Ask your attorney if your state has an official form for the living will, which may reduce the potential for doubts or objections.

VISITATION DIRECTIVE

TAKE THE POWER! Create a document that directs health care providers to allow your loved ones to visit you in the hospital or in a long-term care facility.

Why do I need this power tool?

If you have a health care emergency, hospital staff may treat the people who have significant roles in your life like strangers. Staff at a Maryland hospital kept Lambda Legal plaintiff Bill Flanigan from seeing his dying partner for six hours, until his partner's mother arrived. A **visitation directive** is the clearest way to ensure that the person you want by your side can be there. Federal law requires hospitals

and long-term care facilities to respect a patient's desires regarding who may visit and may not deny or limit visitation based on sexual orientation or gender identity. Having your intentions regarding visitation in writing makes it much harder for hospital or facility staff to avoid those obligations. Though they should also recognize any legal relationship you have with your same-sex partner or your designation of your partner as your agent in a health care proxy as evidence of your consent to visitation, having a visitation directive reduces the potential for discrimination.

How it works: A visitation directive designating who can visit you in health care settings can be part of another document like a health care proxy or living will, or it can be a stand-alone document. The best choice depends partly on the state you live in. For example, state law may allow your health care agent to visit you regardless of whether you have decision-making capacity. Such a law would confirm the use of a health care proxy document to cover visitation privileges, too. States use different approaches, however, so you need an attorney licensed to practice in your state to guide you. Here are a couple of tips:

- Federal regulations state explicitly that hospitals and long-term care facilities must recognize a patient's right to designate a same-sex spouse or partner, another family member, or a friend for visitation. In your directive, it may be helpful to include a reference to these regulations, which can be found at <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/surveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-11-36-Part-I.pdf>, as a reminder to facility staff of their obligation to treat you appropriately. This can be especially important when you travel outside your home state.

Depending on how you feel about your legal relatives, you also may want to consider naming individuals who you do not want to visit you (if you wish to avoid naming one person in particular, you might refer generally to your relatives or subgroups of your relatives). Being explicit that you wish to exclude some people can reduce the stressful haggling your spouse/partner or close friends may have to do over dividing the time spent with you, and may signal to hospital staff in a helpful way what visitors you most welcome.

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IN RE GUARDIANSHIP OF KOWALSKI

Sharon Kowalski and Karen Thompson were together for four years when a drunk driver struck Kowalski and her niece, paralyzing Kowalski and killing her niece. Kowalski's parents learned of their daughter's relationship with Thompson only after the accident and refused to acknowledge Thompson as Kowalski's partner. Kowalski's father assumed guardianship of her, despite her requests to be placed in Thompson's care. Kowalski's father then moved her to a nursing home 200 miles away from Thompson, who was denied visitation rights. Thompson began the lengthy legal battle to bring her partner home. Lambda Legal filed supporting legal arguments on her behalf. Finally, eight years after the accident, Kowalski returned home with Thompson.



Power Tool Tip: Thompson's legal vulnerability was a wakeup call for many in the LGBT community. Thompson's battle was the first of its kind in the courts—and drove home the importance of same-sex couples drawing up basic legal documents, such as a medical power of attorney and appointment of a guardian, for protection in times of crisis. It also underscores why we must win equal access to marriage and all of family law, so the same recognition and default legal protections are available to all devoted couples.

TERMS TO REMEMBER

Agent: A person appointed to make medical decisions on someone else's behalf, through a health care proxy, durable power of attorney for health care or medical power of attorney.

Designation of pre-need guardian: A legal document naming someone to be a "guardian" or "conservator" for someone else who becomes incapacitated and whose needs go beyond those usually covered by a medical power of attorney or a durable power of attorney—such as to take care of financial or health matters that are expected to be long-term. This document can also specify your choice in the event a court is asked to appoint a guardian with authority to make the full range of decisions for you.

Health care proxy (also known as durable power of attorney for health care or medical power of attorney): A legal document which empowers a person of your choice to make medical decisions on your behalf if you're hospitalized or otherwise unable to make these decisions yourself.

Living will (also known as advance directive): A legal document which specifies a person's wishes about life-sustaining procedures, and which provides loved ones with the information they need to advocate for that person's wishes.

Principal: The person who appoints another person (see Agent) to make medical decisions on his or her behalf should the principal become incapacitated. The principal specifies their agent through a health care proxy, durable power of attorney for health care or medical power of attorney.

Visitation directive: A legal document that directs health care providers to allow your loved ones to visit you in the hospital or in a long-term care setting. Can be part of another document, like a health care proxy or living will, or it can be a stand-alone document, depending partly on the state you live in.

WHAT DO I DO IF MY DOCUMENTS ARE IGNORED?

Dealing with the discrimination of others means having to be your own advocate. Here are some tips if your relationship or your documents are not respected:

- Ask to speak to a supervisor. Take your request up the chain of the hospital or facility's administration, including to their lawyers. Pursue any internal grievance systems.
- Directives may be enforceable in court, where a judge may be able to order the health care provider to follow the directives or the decisions of the designated agent.
- If a health care provider refuses to follow a patient's desires regarding visitation or designation of an agent, you may also be able to file a complaint with your state's agency that oversees compliance with federal requirements (<http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Complaintcontacts.pdf>).
- If you feel you have been discriminated against because of your race, color, national origin, disability, age, sex (including gender identity and sex stereotyping) or religion by a health care provider, you can file a complaint with the Office of Civil Rights of the U.S. Department of Health and Human Services (<http://www.hhs.gov/octr/civilrights/complaints/index.html>).
- Be aware that under some circumstances, health care institutions and providers may be able to refuse to follow directives regarding particular *types* of care for reasons of conscience, but there are no conscience exceptions to recognizing a *person* who has been designated as an agent for health care decisions.
- Call Lambda Legal's Help Desk at 866-542-8336 or visit www.lambdalegal.org/help.

Tools for Protecting Your Assets in Life

Financial responsibilities—paying bills on time, managing medical expenses, financing your home—often can be a source of stress, even in times of health and harmony. In some circumstances, such as if you are hospitalized or become unable to make financial decisions, you may need to rely on someone else to make those decisions and protect your assets on your behalf. Whether or not you can access built-in state and federal legal protections through marriage, taking extra steps to protect your assets can be critical in case you are made vulnerable by disability or other unexpected life hardships.

Please note: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation.

FIRST STEPS

1. Start at the beginning: Think about your current and potential financial responsibilities as well as your assets, including cash, accounts and property.
2. Think about who would be the best person to manage your bills and assets if you are critically injured or for some other reason can't handle your financial matters, and discuss your wishes with this person to ensure that they are comfortable assuming that role for you.
3. For legal help, consult Lambda Legal's Help Desk at 866-542-8336, www.lambdalegal.org/help or the other resources in the insert "Tools for Selecting an Attorney."

FINANCIAL POWER OF ATTORNEY

Take the power! Take the power! Create a **financial power of attorney** (see “Terms to Remember” on page 5 for all terms in **bold**), a document used to appoint someone you trust to take care of things like paying bills if you can’t do it yourself.

Why do I need this power tool?

If you become incapacitated and are unable to take care of financial matters like paying your bills, other people may have to start a long and costly process to appoint a guardian for you. Additionally, courts may consider your relatives to be first in line to take over your finances, even if you would have made a very different choice. That means, for example, that your parent or sibling may get financial control instead of your partner of 30 years. Though a spouse will likely be given priority to take on this role by a court in a state that recognizes same-sex relationships, appointing someone to make financial decisions for you may avoid this intrusive process entirely.

How it works: In a financial power of attorney, you are the **principal** and the person you name is your **agent**. Your agent will be able to manage your finances if you can’t. At any time, as long as you are legally competent, you can cancel the power of attorney; you are not required to give any reason. Otherwise, the appointment ends at your death, when the executor of your will takes over your assets. Here are a few things to remember:

- A will is not a substitute for a financial power of attorney,

because it only takes effect after you die.

- Appoint someone you trust to control your finances, because the authority granted is very serious. You can consider limiting the number of powers you grant, perhaps approving payment of your bills but not selling your car or house. Keep in mind, though, that assets may need to be sold to pay for your care.
- Generally, if you create a **durable power of attorney**, your agent has power once you sign the document. If you create a **springing power of attorney**, your agent only receives the power if something that you specify happens (often, it’s you becoming incapacitated). A disadvantage of the durable power of attorney is that it may be misused by your agent while you are still capable of making your own decisions. A disadvantage of a springing power of attorney may be delays in the determination of whether you are incapacitated. Consult an attorney about what is right for you.
- If you become incapacitated, your biggest immediate financial need may be to have bills paid from your cash accounts, and you should check with your bank. Some banks will not honor a financial power of attorney but instead require that their own forms be filled out. Your state’s law may prohibit banks from requiring more than a financial power of attorney, but some people decide it is not

worth the fight and just fill out the extra form in advance so there is no problem later.

JOINT CASH ACCOUNTS

Take the power! Consider creating a joint cash account so another person you trust can be responsible for paying bills when you can’t.

Why might I want this power tool?

It may be that you can’t afford an attorney, or for some other reason you do not create a financial power of attorney. Or you may want the ease of having two people authorized to do transactions through an account with specified resources in it, especially if you and the other person are in a relationship involving shared expenses and financial planning.

How it works: With a joint cash account, both you and another person can make deposits and withdraw money to pay bills. If you have other types of accounts, perhaps containing stocks and bonds that could be sold for cash, you might consider exploring limited access for a person you trust. Consultation with a financial planner is very important for such planning. For joint cash accounts, keep these tips in mind:

- Any interest earned on the accounts is income for tax purposes and must be declared on one or both account holders’ tax returns.
- If you have a spouse or partner, an advantage of holding joint cash accounts with “**right of survivorship**” is that these

accounts automatically belong to the survivor if a partner dies. But while married couples (both different-sex and same-sex) benefit from federal tax exemptions, the federal government still denies such exemptions to unmarried same-sex couples including those in civil unions or domestic partnerships, so they may face gift and estate tax considerations regarding joint accounts. There may also be state tax considerations. Consult with a financial planner about the advisability of each spouse/partner documenting contributions to a joint account that serves to cover mutual expenses like mortgage payments.

- If you would rather not have your joint account holder automatically own the account when you die, consult your bank about ways to set up the account to allow access only while you are living.

HEALTH INSURANCE

Take the power! If you're in a position to be choosy, you can take the power by looking for an employer that provides benefits to same-sex spouses/partners.

Why do I need this power tool?

If you are in a committed same-sex relationship, especially if you have children, access to family health insurance through your employer or another affordable group plan can have a huge impact on your family budget and your peace-of-mind. Without it, you may have uninsured family members and

possibly be subject to tax penalties or need to buy extra individual coverage, especially if one of you is a stay-at-home parent. If the family needs multiple policies, there may be multiple deductibles to pay down and that could increase your financial struggle. For older married couples, being covered by a spouse's current employer's group health plan will also allow you to delay enrolling in Medicare.

Keep in mind: Find out if your employer provides benefits to same-sex spouses/partners. In some circumstances, the value of any health insurance benefits you get for your same-sex spouse/partner (and for your spouse/partner's children) may be taxable as income to you at either the state or federal level, even if you are married (different-sex spouses are in the clear). Some employers have opted to make up for that extra tax burden by increasing impacted employees' salaries accordingly—you may want to advocate for that in your workplace.

Also, while federal law requires most employers to allow workers to pay for and keep their health insurance, including coverage for a same-sex spouse and his or her children for some time after employment ends (called "COBRA" coverage), that law does not require similar access for a couple that is not married or that has a status like a civil union or registered domestic partnership. This federal law does not *prevent* employers from providing such coverage, however. If your employer does not offer COBRA coverage for former employees' same-sex spouses/partners and children, consider

advocating for your employer to provide that important (and fundamentally fair) change.

If your current employer does not offer equal family benefits for workers with a domestic partner or same-sex spouse, you can request these benefits, either through an LGBT workplace group or through your company's human resources department.

If you cannot access equal family benefits through your employer, be aware that the Affordable Care Act prohibits discrimination against LGBT people and people living with HIV in the health insurance marketplaces and the plans sold on them. As a result, you should be able to find coverage without being discriminated against because of the composition of your family or the specific kinds of care you may need.

DISABILITY AND LONG-TERM CARE INSURANCE

Take the power! If you can afford it, consider purchasing:

- **disability insurance**, to give you the financial cushion you may need if you lose your ability to work; and
- **long-term care insurance**, which provides a similar cushion for in-home health care or a long-term care facility.

Why do I need these power tools?

If you become ill or injured and can no longer work, you will need a source of income. You may not have enough money to live on without disability insurance. You may be entitled to employer, state

or federal disability benefits. If you are in a legally recognized relationship, your spouse may qualify for some Social Security disability benefits, too.

If you are without health insurance, medical bills can mount up rapidly and, if you are a homeowner, you could lose your house as well as most of your other assets if a serious illness strikes. Separately, if you need in-home health care or a long-term care facility, you may not have the money required, even if you've worked and saved your whole life.

How it works: Like all types of insurance, disability and long-term care insurance provide added protection. When shopping for insurance products, you should first find out what coverage you may already have (for disability, that would come from an employer, the state or the federal Social Security Administration). If you think you will need more money, you should choose a policy that best meets your needs:

- For help with questions about insurance, contact your state's insurance department. Begin with the National Association of Insurance Commissioners' consumer website: www.insureuonline.org
- For disability insurance, consider a policy with coverage linked to your inability to do your *current* job. Otherwise, you may not get benefits if the policy allows the insurance company to say you can do other jobs, regardless of your qualifications.
- For long-term care insurance, it is critical to consider coverage

for in-home health care in addition to care in a long-term care facility. Although long-term care facilities are legally prohibited from discriminating against LGBT people and people living with HIV, practically it may be preferable to have the option of home care depending on your circumstances and choice of care facilities

RETIREMENT BENEFITS

Take the power! Same-sex couples should consider identifying additional retirement plans to participate in, and make sure those plans allow same-sex spouses/partners to be named as beneficiaries.

Keep in mind: There are many ways to get income in retirement: company pensions, 401(k)s, 403(b)s, IRAs, Social Security, and so on. Find out what retirement benefits might work for you. Because federal law's recognition of same-sex spouses is still unfolding, lesbian and gay couples in retirement are not automatically protected the way heterosexual couples are by the Social Security spousal benefits that they have helped pay for with their taxes. For example, while some legally recognized same-sex couples may have the choice for the lower wage-earner to get increased retirement benefits based on the higher wage-earner's Social Security record, others may not depending on where they live and when they formalized their legal relationship. Much of the private sector has moved toward 401(k), 403(b) and IRA plans that permit designation of any beneficiary. Federal law requires most private companies

to recognize same-sex spouses. But some government employers and companies continue to offer pension plans that either restrict beneficiary eligibility to married spouses and legally-related children or refuse to recognize same-sex relationships. Such discriminatory rules often leave those in same-sex relationships without basic protections for family members, no matter how long they have worked and paid into the retirement system.

Why do I need this power tool?

As any financial planner will tell you, it's important for everyone to start saving for retirement as early as possible, so that our nest eggs grow steadily over the span of our working years. Because same-sex couples can't count on all the safety nets to the same degree as different-sex couples, early and consistent retirement planning is even more important.

TERMS TO REMEMBER

Agent: A person appointed, in a financial power of attorney (see Financial power of attorney), to manage someone else's (see Principal) finances on their behalf.

Disability insurance: Insurance which provides a financial cushion if you lose your physical ability to work.

Durable power of attorney: A type of power of attorney (see Financial power of attorney) which gives your agent (see Agent) power of attorney immediately, without regard for your physical or mental capacity. A disadvantage of the durable power of attorney is that it may be misused by your agent while you are still capable of making your own decisions. See alternate, Springing power of attorney.

Financial power of attorney: A document used to appoint someone you trust (see Agent) to take care of tasks like paying bills if you can't do it yourself.

Long-term care insurance: Insurance which provides a financial cushion for in-home health care or a long-term care facility.

Principal: The person who, through a financial power of attorney (see Financial power of attorney) appoints someone (see Agent) to make financial decisions on his or her behalf.

Right of survivorship: A contingency that may be attached to assets with joint owners, like homes and bank accounts. It specifies that that if one of the joint owners dies, the asset automatically belongs to the surviving joint owner.

Springing power of attorney: A type of power of attorney (see Financial power of attorney) which gives your agent power of attorney if something you specify happens (such as if you become incapacitated). A disadvantage of a springing power of attorney is that there may be delays in the determination of whether you are incapacitated. (See, alternatively, Durable power of attorney.)

EXTRA TOOL IN THE BOX:

Inherited IRAs

Thanks to Pension Protection Act laws passed by Congress in 2006 and 2008, people who are the beneficiaries of an IRA, 401(k) or 403(b) account (or any workplace savings plan) from someone other than a spouse now have the option of rolling those assets directly into an "Inherited IRA" rather than having to take them in a lump sum cash payment with a larger tax hit.

Other Tools for Protecting Your Assets After You're Gone

Amalia Hervella and Margaret O'Neil were partners for 20 years, but were never able to establish a legal relationship. When Margaret died without having done any advance planning, her cousins claimed her assets and evicted Amalia from the couple's San Diego home. If Margaret and Amalia had owned their home "jointly with rights of survivorship," or if there had been some life insurance money to cover housing costs, Amalia, unable to afford new housing in her community, might not have been forced to move elsewhere. Lambda Legal was able to help get some justice, but there could have been so much more support for Amalia with advance planning. Take the power now so you or your loved ones aren't left saying "If only..."

Please note: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation.

FIRST STEPS

1. Think about how much money your loved ones will need if you die and who will get ownership of any home and/or assets you own.
2. Review how assets like investment accounts, bank accounts and real property are titled (i.e. who is listed as the owner(s) of the asset and in what form), as well as whom you have designated as a beneficiary or beneficiaries of any retirement plans or life insurance policies you may have.
3. Create a will—see the insert "Tools for Preparing a Will."
4. For legal help, consult Lambda Legal's Help Desk at 866-542-8336, www.lambdalegal.org/help or the other resources set out in "Tools for Selecting an Attorney."

PROPERTY OWNERSHIP WITH RIGHTS OF SURVIVORSHIP

Take the power! If you own a home, bank or investment accounts, or other assets, consider owning them with rights of survivorship, to make sure the person you want takes full ownership when you die.

Why do I need this power tool?

You may have a person in your life, whether a same-sex spouse or partner or someone else close to you, whom you want to be sure receives a particular piece of property or asset after you die. If you are married to or have a legal relationship with that person, you may be able to access the protections offered automatically to spouses who own property together, as well as spousal inheritance protections if you die without a will. If you cannot or decide not to access inheritance protections through marriage or another legal status in your state, and then you die without a will, your state's laws will require that your property go to your children, parents or other relatives rather than a partner with whom you have no legally recognized relationship. Even

if you do leave a will giving property to your spouse/partner, relatives might challenge the will during the legal process of **probate** (see “Terms to Remember” at the end of this insert for all terms in **bold**) which settles a deceased person's affairs. While such challenges are far less common for LGBT people today, they still occur, especially when blood relationships are hostile or estranged. But property owned with rights of survivorship passes directly to the survivor regardless.

How it works: If you use this tool, both you and the person with whom you share the property will own the entire property together rather than each owning a separate share of it. If one of you dies, the other still owns the entire property. The words in your deed establish this right. You will need an attorney to prepare the deed for you. Spouses can access additional forms of joint ownership with survivorship rights, whether through community property rules or by establishing “tenancy by the entirety,” but any two (or more) people can establish joint ownership with rights of survivorship. Here are other key points to remember:

- Even though you may take your home or other property out of the will and probate process, the property is still considered part of your estate for federal tax purposes. Married couples get a tax break under federal law, but unmarried couples (including those in civil unions or registered domestic partnership) do not. For such couples, the property is considered 100 percent owned by the deceased partner for federal tax purposes unless the survivor can prove otherwise. In other words, unless your surviving partner can document the contributions (either to the purchase or the improvement) he or she made to the property of their own resources, your estate will be taxed more heavily and there will be less remaining for your loved ones. There may also be estate tax issues at the state level depending on whether your state has its own estate tax and on whether your relationship is legally recognized. Consult a financial planner or attorney about the trade-offs in your circumstances.

EXTRA TOOLS IN THE BOX

Consult an attorney for other ways to title assets so that they will go to the person or people you choose whether you die with or without a will. These may include:

Payable-on-Death Accounts (a “POD” or Totten trust)

Ask your bank about this kind of account, which you establish and own, and which then is automatically transferred upon your death to a beneficiary you have named.

Transfer-on-Death Deeds (a “deed TOD”)

If allowed in your state, this type of deed secures your full ownership and control of real property until you die, and then automatically transfers ownership to the beneficiary you have named.

Transfer-on-Death Vehicle (a “car [or other vehicle] TOD”)

If allowed in your state, this document gives you total ownership and control over a vehicle, such as a car or boat. Upon your death, the vehicle is transferred to a beneficiary you have named.

- If you are not buying the home and sharing its ongoing costs together, and you simply want to add your partner to the deed, the federal government may consider that a gift of property and tax it. Also, a gift of real property made by changing the deed is not easy to revoke should your relationship end, unlike a gift planned for the future through a will, which can be changed easily at any time during your life. The efficiency of avoiding probate after your death may be less important to you than retaining greater control during your life. Consult a financial planner or attorney about whether giving ownership now or later is best for you.
- If the state you live in denies you the tax protection it gives to married different-sex couples, your death may lead to a reassessment of the property value. This is the unfair result of state tax systems that discriminate against same-sex couples. One way to reduce the impact of this type of discrimination is to take out life insurance, so when you die your spouse or partner has money to pay the increased taxes in the future.

LIFE INSURANCE

Take the power! Investigate whether you should purchase a life insurance policy.

Why do I need this power tool?

If you are lesbian, gay, bisexual, transgender or living with HIV,

you may confront discriminatory forces—some that are written into the law itself—that put your loved ones at greater financial risk when you die.

How it works: When you purchase an insurance policy on your own life, you choose the amount of death benefit and the policy beneficiary. The size of the death benefit, the type of policy (e.g., term, whole life, universal life) and your health determine your premium payments, which can be paid at intervals ranging from annually to monthly. When you die, the death benefit goes directly to the beneficiary you have named, 100 percent income tax-free.

- Even though the life insurance proceeds are paid directly to your beneficiary with no income tax, the death benefit is still part of your taxable estate. This can make a big difference in the amount of taxes your estate owes and how much is left over for your loved ones. Ask a financial planner or attorney about approaches to remove insurance proceeds from your taxable estate, including:
 - 1) transferring the ownership of your insurance policy to a partner. This gives your partner control over your life insurance and ensures the death benefit is not subject to estate tax at your death. You must, however, live at least three years after you make the transfer or the policy proceeds will be drawn back into your estate;
 - 2) creating an **irrevocable life insurance trust** that benefits your partner. In this arrangement, the trust applies for and owns the insurance

policy. The trust is also the policy beneficiary. Your partner can act as trustee for access to and control over the policy and any additional trust assets.

- 3) having your partner purchase and own the policy from the outset. In many cases, partners own insurance on each other's lives rather than owning their own policies. The purchase of a new policy rather than the transfer of an existing policy avoids the three-year look back (the requirement that you live at least three years after you make the transfer for it to be exempted from estate tax).

- Before you purchase a life insurance policy, consult a financial planner to help you determine the right amount of insurance, the type of policy best suited to your needs and the premium most appropriate for your budget. Keep in mind that insurance becomes more expensive as you age. You will never be as young and perhaps never as healthy as you are today, so take a good look at how life insurance can protect and benefit the ones you love.

TENANCY IN COMMON

Take the power! An alternative to joint tenancy is a form of co-ownership called **Tenancy in Common**.

Why do I need this power tool?

Tenants in common are considered to have distinct shares of the property. Only the share belonging to the first partner to die will be considered part of his or her taxable estate, thus

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avoiding the proof problem described above that occurs with property owned in joint tenancy.

How it works: If you use this tool, you and your spouse/partner will each own a separate share of the property. Unlike joint tenancy with rights of survivorship, property held by two people as tenants in common will not pass directly to the survivor upon death of the other.

If you hold property as tenants in common with your spouse/partner and want them to inherit the property, you may have to provide for that inheritance upon your death through your will or trust (depending on your state and your marital status). If you fail to do so, your spouse/partner may be in the undesirable position of co-owning the property with your legal heirs—who may be unfriendly or remote family members—and being subject to a forced sale of the property by those co-owners. Consult with your advisors to determine whether tenancy in common, joint tenancy with rights of survivorship, tenancy by the entirety, or another option is the better option for you.

TERMS TO REMEMBER

Irrevocable life insurance trust: A trust in which life insurance is the asset, and the proceeds are exempted from the insured person's taxable estate when he or she dies.

Life insurance: An arrangement for an insurance company to pay your beneficiaries an amount of money after you die, in exchange for which you make monthly payments during your lifetime. The proceeds are considered part of your taxable estate, unless you take an approach which keeps life insurance proceeds out of your estate, such as by transferring ownership of your policy to your beneficiary, or by setting up an irrevocable life insurance trust.

Ownership with rights of survivorship: A term in the deed to certain types of property that ensures that the person with whom you jointly own with the property takes full ownership when you die. Examples include tenancy by the entirety (spouses only in certain states), community property (spouses only in certain states), and joint tenancy with rights of survivorship or JTWRROS (any two or more people).

Tenancy in Common: A term in the deed of certain types of property that ensures that the person with whom you own the property continues to separately own only his or her share when you die. If you want that person to inherit your share, you must specify that in your will or trust.

Tools for Protecting Yourself in Your Relationship

We've seen great progress in recent years in the availability of legal protections for same-sex couples, including the quest for full marriage equality. The dismantling of the federal Defense of Marriage Act (DOMA) extended federal marital rights and responsibilities to many married couples who were previously excluded from those protections. Despite these gains, however, the inconsistencies in the law across the states, the legacies of historical discrimination and the limiting of many critical protections to spouses may leave same-sex couples and their families legally vulnerable. For these reasons, if you are in a same-sex relationship, you should take certain steps to protect yourself and your family to the fullest extent that the law allows in the way that best reflects your family's needs and values. Lambda Legal can help you take the power to secure those protections.

Please note: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation.

FIRST STEPS

1. Consider what is right for your family regarding the decision to marry or enter into a more limited status like civil union, registered domestic partnership or reciprocal beneficiary.
2. Think about how you would like things to go if your relationship were to end due to a breakup or the death of either of you, and discuss your wishes with your partner.
3. Consult the following resources for legal help:
 - Lambda Legal's website, www.lambdalegal.org, for more information about the variation in relationship protections around the country.

Continued on page 2

Continued from cover

- Lambda Legal's Help Desk for general information and referrals in your geographic area at 866-542-8336, www.lambdalegal.org/help or the other resources in the insert "Tools for Selecting an Attorney."
- There are several excellent resources available now in print and online to help you and your lawyer build your legal protections. To get an idea of different approaches to drawing up partnership agreements, see samples in the book *Estate Planning For Same-Sex Couples*, by Joan M. Burda, published by the American Bar Association. For additional guidance as to whether entering into marriage or other legal relationship is the right decision for your family, see *Making It Legal: A Guide to Same-Sex Marriage, Domestic Partnerships & Civil Unions*, by Emily Duskow and Frederick Hertz.

MARRIAGE, CIVIL UNIONS AND REGISTERED DOMESTIC PARTNERSHIPS

Several states now honor the freedom to marry. Many others have created civil union, broad domestic partnership, or more limited laws to give some or most of the protections and responsibilities of marriage.

Take the power! If your home state respects the right of same-sex couples to enter into marriage, civil union or a form of domestic partnership, or respects such relationships when entered into elsewhere, consider whether this is the right step for your family.

Why do I need this power tool? There can be many tangible protections to entering into a formalized relationship, such as inheritance rights, health insurance benefits, income and estate tax benefits, hospital visitation and medical decision-making power, and parentage presumptions.

OTHER CONSIDERATIONS

Marriage, civil union and domestic partnerships are not right for everyone. Some couples opt not to formalize their relationship, whether due to personal conviction, a desire to remain financially distinct, or particular legal barriers. For example:

- These forms of recognition usually have property ownership and tax consequences that you may prefer to avoid.
- Entering a formal legal status with a same-sex partner may affect your ability to continue receiving alimony or other benefits from a former spouse or

your eligibility for means-tested safety net programs.

- Some foreign countries may not permit a person with a same-sex spouse or registered partner to adopt from that country.

You should consult an attorney about any of these issues that may affect you before deciding to marry or otherwise to enter a formal legal status with a same-sex spouse or partner.

Finally, even if your state does respect your marriage or otherwise grant you broad state law rights, you are still at risk if you travel or move to another state. Taking the range of Power Tool steps laid out in this toolkit will provide you and your loved ones with additional security in circumstances where your legal relationship may not be recognized, whether by ensuring your ability to be by each other's side and make decisions in medical emergencies or protecting each of your relationships with your children or securing each other's financial wellbeing. These tools are crucial while we continue to work for equal respect for the relationships and families of LGBT people.

PARTNERSHIP AGREEMENT

No matter what state you live in, if you're in a same-sex relationship you may benefit from having what often is called a "**partnership agreement.**" This agreement allows you to put into writing details about your relationship, such as who owns what property and whether you have promised to support each other financially, which can be helpful in negotiating your relationship jointly while

you're together or if you split up. Even if you have a marriage or civil union respected by the state you live in, a partnership or pre- or post-nuptial agreement will help you address in advance areas where your intentions concerning your property, financial arrangements or other matters differ from what state law would apply as a default in the absence of written agreements. This can be especially important when one partner earns a lot more than the other or significant assets are involved. A written agreement can clarify what you both intend so your wishes can be honored in these and other situations.

Take the power! Create a document that helps protect your relationship from discrimination and can protect you if your relationship ends.

Why do I need this power tool?

Having an agreement setting out your intentions for property, financial matters, and support provides a basis for addressing future disputes, whether through mediation or in the courts. If your state gives legal recognition to your relationship, you may have access to a legal process, like divorce, that allows for fair division of property, but current or past discrimination in the law can leave a lasting legacy that does not always address the realities of same-sex couples or families of choice. Inconsistent recognition of relationships other than marriage by federal agencies like the IRS or the Social Security Administration and by state entities can also leave you vulnerable. An attorney in your state can explain how a contract



Jim Darby and Patrick Bova (pictured left to right) were plaintiffs in Lambda Legal's suit for marriage equality in Illinois. Even though they were together for over 50 years, they weathered indignities as an "unmarried" couple, including the inability to get a mortgage together, to make healthcare decisions for each other without additional paperwork, and even the inability to purchase plots together at a veterans' burial ground. When Illinois' law changed, Jim and Patrick were finally able to marry.

like a partnership agreement or pre- or post-nuptial agreement may help you secure your assets and intentions.

Some couples have an even bigger need for a written agreement, like those in the following situations:

- one partner supports the other financially, for instance, if one partner is a stay-at-home parent
- one partner has far more assets or debts than the other
- each partner has substantial assets that are being merged
- you and your partner have been together for many years before entering into a legally recognized relationship

In any of these circumstances, if your relationship sours, an agreement can guide a court's consideration of your family's

history and reality in the divorce process. More critically, if your state does not give you access to divorce court, the importance of an agreement grows because it may be your only protection.

Splitting up can get contentious, regardless of a couple's sexual orientation. Unfortunately, some people who have been in a same-sex relationship have actually used antigay arguments against their former partners in court in order to invalidate prior agreements or arrangements between them. This tactic has yielded terribly unfair results and established damaging legal precedents. Creating an agreement in advance can help partners avoid harming each other, their children and everyone else.

How it works: You and your partner create a document, with attorney guidance. At the very least, the document has practical and moral

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significance because you both have worked through issues and agreed to things on paper. As to its legal significance, your attorney(s) can tell you whether the agreement is enforceable in your state or if it can serve as helpful evidence if there is a dispute in court. Keep the following tips in mind:

- Children are best protected in a separate “co-parenting agreement” (see insert “Tools for Protecting Your Children”).
- Consider listing the significant property that each of you brought to or acquired during the relationship, and then explain whether and how you envision ownership of that property. That will help reduce disputes during your relationship and if your relationship dissolves.
- You may want to put into writing how your respective incomes will be allocated to expenses. This could later affect the size of assets placed in a deceased partner’s taxable estate.
- If you have pets, you can use this document to declare how you will carry out your responsibilities to those pets if your relationship fails.
- Consider adding a provision that commits you both to counseling, mediation or arbitration in the event that your relationship dissolves. These are important alternatives to litigation, which is costly and can be unfair to people in same-sex relationships who may face discrimination in the courts.



Nancy Michael and Jane Fenton (pictured left to right, with son Drew) were one of three plaintiff couples in *McGee v. Cole*, the suit Lambda Legal launched seeking the freedom to marry in West Virginia. Nancy worried that Jane would not be recognized as Drew’s other mother in an emergency, or otherwise as a person authorized to make medical decisions for him. Because Jane and Nancy had been unable to secure their family relationship through marriage, they paid for alternate, but still inadequate legal documents to protect their family. Same-sex couples can now marry in West Virginia, but until marriage equality is the law in all states, Nancy and Jane must remember to carry these documents wherever they go.

- Have your attorney advise you on choices for dividing property fairly if your relationship ends—for instance, appraising it or refinancing it—and put your decisions in the agreement to avoid disputes later.
- If you have entered or are planning to enter a legal relationship in any state or country, consult with your attorney about how that affects any agreements you enter. States have different approaches to how agreements are viewed in regard to a couple’s marriage or other legal status.
- Your attorney will have a special responsibility when

helping you create a domestic partnership agreement because you and your partner may have conflicting interests. There are important ethical rules about attorneys representing two people with potential conflicts. Your attorney should raise options with you, such as an informed waiver, which allows the attorney to continue to represent both of you, or the possibility of retaining a second attorney for one of you.

- Because relationships often change, it’s a good idea to check the agreement every few years to make sure it still reflects your respective wishes.

EXTRA TOOL IN THE BOX:
DISSOLVING YOUR RELATIONSHIP

It is critical to keep in mind that it is much easier to enter into a marriage or civil union/registered domestic partnership than it is to end those legal relationships. Most states that deny same-sex couples the right to marry or enter another spousal status also deny them the right to divorce. And because nearly all states require that at least one spouse be a resident for a significant period of time in order for the state's courts to grant a divorce, you may be limited to the court system of the state where you currently reside—which may or may not recognize your legal relationship for the purposes of dissolving it—should your relationship end. Not being able to divorce will mean that you are legally tied to your spouse even if the relationship has ended. You will be recognized as spouses for many purposes, including taxes and other federal programs, and you will not be able to enter into a new legal relationship with anyone else. The difficulty of obtaining a divorce should be a significant consideration if you live in or might move to a state that does not respect the legal relationships of same-sex couples.

Some states that allow same-sex couples to marry or enter into civil unions or registered domestic partnerships also allow those couples to access the courts of those states to end the relationship, but only under certain circumstances. If you are considering traveling to another state to marry or enter a civil union, inquire into whether that state would allow you to do so and what the court would be empowered to adjudicate. For couples who have entered into more than one status with each other, it is also important to dissolve each of those statuses, whether through a court process or through filing the appropriate forms with the relevant agency in the state that issued the status.

Tools for Protecting Your Children

Every year more LGBT people are experiencing the joys of parenthood. This baby boom has increased the visibility of families headed by LGBT parents—but it has also increased the calls to Lambda Legal as same-sex and transgender parents confront the horrors that can occur when one parent is not legally tied to their child. For instance, a non-legal parent can be forced to argue again and again that she or he has the authority to make important decisions about school or medical care. There is even the risk of losing the child to relatives or the state if the legal parent dies and the relationship between the other parent and the child has not been secured legally. If you and your spouse or partner are raising your child together, it is critically important to take the steps to formalize both parent-child relationships legally.

Please note: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation.

FIRST STEPS

1. Talk with your spouse or partner about your goals and expectations about each other's roles with regard to your child, and your plans for what happens in the event of separation, disability or death.
2. Look into whether your state allows **co-parent adoption** (see "Terms to Remember" on page 4 of this insert for all terms in **bold**) for second parents or for step-parents. You can start by clicking on your state at our website, www.lambdalegal.org. Consider other ways to protect your family's legal connections to each other, whether through judgments, agreements, wills or other documents.
3. For legal help, consult Lambda Legal's Help Desk at 866-542-8336, www.lambdalegal.org/help or the other resources in "Tools for Selecting an Attorney."

CO-PARENT ADOPTION & PARENTAGE JUDGMENTS

Take the power! If you and your partner are parenting children together but one of you is not a legal parent, get a co-parent adoption—if your state allows it—to establish the legal relationship between the child and each of his or her parents.

Why do I need this power tool?

Securing the legal relationship of both parents provides your child with the protection of having two legally recognized sources of parental care and support in all circumstances. Both parents must have the unquestioned authority to make decisions for their children at school, in medical settings or if the other parent dies. Your children also may need access to health insurance and Social Security disability or survivor benefits, all of which depend on having a recognized relationship with a parent. Additionally, LGBT couples are no more immune to relationship failure than any other couples, and protections for children can be essential if their parents' relationship falls apart. Without an established legal relationship, a person who has lived with and functioned as a parent for all of a child's life may nonetheless be excluded from making any legal decisions or playing any role in that child's life.

How it works: A **second-parent adoption** is a legal proceeding in which a child with one legal parent is adopted by a second parent without ending the first parent-child legal bond. There may be an evaluation of the home and family as part of the process, so the judge can make sure the adoption is in the

best interest of the child. Couples in states that recognize their marriage, civil union or registered domestic partnership may be able to take advantage of the process for **step-parent adoption**, which works the same way, but may skip some of these steps and move a little bit more quickly. The earlier in a child's life that a couple seeks an adoption the better, because difficulties can arise at any time. For couples anticipating a child's birth together, much of the work can be done even before the baby is born. An attorney is instrumental to success. When the adoption has been completed, the child has two legal parents, and each parent stands on equal legal footing with regard to the child.

REMINDER: Even if you live in a state that respects your marriage, civil union, or statewide registered domestic partnership, adoption is still a critical way to ensure that your child(ren) are adequately protected. Although a child born to spouses is legally presumed to be the child of both adults—and may in fact have both of those parents listed on his or her birth certificate—a judgment from a court confirming joint legal parentage will receive a greater level of respect across the country than a birth certificate or legal presumption. For instance, you may travel or move to other states that bar recognition of your committed relationship and may require proof of parent-child relationships in emergency or other situations. For maximum protection of your family, attorneys recommend that same-sex couples secure all

parent-child relationships legally through adoption or other court judgments regardless of the couples' own relationship status.

When adoption is unavailable or impractical, some states may allow you to seek a **parentage judgment**—a court judgment confirming the legal parental status of the non-biological or non-adoptive parent. These judgments usually make a legal determination that an adult is a legal parent of a child based on the adult's conduct with respect to the child. For example, you may have planned with another adult (often your spouse or partner) for creation of a child using donated genetic material and medical assistance. A non-biological parent in this position often also welcomes the newborn child into her or his home and holds the child out publicly as her or his own, either with the child's other parent or as a single parent depending on the circumstances of the child's birth. The conduct of helping to bring a child into the world and/or of forging an emotional bond with a child, providing a home and publicly affirming one's parental responsibilities to the child can give a court the factual basis for ruling that a person is a parent, and should be held to those commitments and have corresponding rights and obligations.

Generally speaking, adoption is considered a more secure way to establish parent-child ties because adoption judgments are common in every state, and parentage judgments are far less common. If an adoption judgment is not

available, however, a parentage order is much better than no court order at all. The availability and form of parentage judgments varies widely from state to state. Consult an attorney in your state to learn more about whether this type of judgment is available to you.

REMINDER: Even with an adoption or parentage court order, you still should anticipate that something could happen to both of you together and identify a guardian of your children in your will or other life planning documents. See the sidebar on page 4, “Extra Tools In the Box.”

CO-GUARDIANSHIP & CO-PARENTING AGREEMENTS

Take the power! If you live in a state where you cannot get a second-parent or step-parent adoption or a parentage judgment, create what protection you can for your child through a more limited court order of **co-guardianship** or through an agreement. Depending on where you live this may be called a **co-parenting, shared custody, or guardianship agreement**.

Why do I need this power tool?

You should do what you can to authorize both parents to make decisions affecting your children, and to make sure that your children’s interests are protected if your relationship with your partner falters or fails.

How it works: Though the process and requirements for co-guardianship differ from state to state, it allows a legal parent to ask the court to name the non-legal parent as a co-guardian, giving

him or her the ability to act with the legal authority of a parent, including in educational and medical contexts. The court will assess whether the appointment is in the child’s best interests, and it is a temporary status that can be terminated upon the request of any person, including the legal parent.

A co-parenting agreement sets out the parties’ intentions to co-parent to the fullest extent possible. It will not have the legal effect of an adoption or parentage judgment, but depending on the state you live in, it may be enforceable; at the very least, it can give important guidance to the court about your shared intentions should you later have a serious dispute. You should have an attorney help you draw up any kind of parenting agreement. You may want to consider the following elements for the agreement:

- A provision stating that, although only one of the parents is recognized as a legal parent, both parties consider themselves and each other to be equal co-parents to the child with full parental rights and responsibilities.
- A provision stating that the non-legal parent has the authority to agree to medical care for your child or children.
- A provision stating that both parents have joint financial and other responsibilities for your child or children.

- A provision stating that both parents will name each other as a guardian in any will or other estate planning document. Make sure you take the time to express your wishes in legal documents, so your child or children are not left in the care of the state or relatives if you both die.
- Provisions to safeguard the best interests of your child or children if your relationship with your partner dissolves, including your intention to continue co-parenting and your desires regarding custody, visitation and financial support.
- Consider including a statement such as the following from the legal parent: “As the legal parent of [child or children], I am hereby exercising my constitutional right to share permanently all my parental rights and responsibilities existing under state and federal law with my spouse/partner [name], and to establish to the maximum extent permissible by law this family that I believe to be in my child’s [or children’s] best interest. Intending to provide permanent protection and stability to my child [or children], I hereby waive my right to revoke this agreement and statement in the future.” Such a statement should make clear that the legal parent is waiving his or her exclusive right to care and control of the child in favor of co-parenting with the other parent.

EXTRA TOOLS IN THE BOX:

Walking proof Even if you have legal authority to make decisions for your child(ren), it may be questioned by school, medical or law enforcement officials, or by airline and customs personnel when you travel. Have your documents with you at all times, consider leaving copies with your child(ren)'s school and doctor's office, and check what additional documents might be required for travel.

Your will Make sure you have identified a guardian for your child(ren) in your will, even if both parents have a legal relationship to the child(ren). There is always the chance that you both may die before the child(ren) reach adulthood.

Authorizations If one of you is a non-legal parent, consider having your attorney draft two stand-alone documents:

1. A document that authorizes the non-legal parent to agree to medical treatment for the child so health care staff will not have to sift through everything in a lengthier, personal agreement addressing multiple subjects.
2. A similar, context-specific document that authorizes the non-legal parent to act whenever school officials require parental involvement or approval (such as for parent-teacher discussions, extracurricular activities, disciplinary hearings).

Life and disability insurance You may need more insurance to protect your children if you or your spouse/partner dies or becomes disabled given the inconsistent treatment of LGBT families in some benefits programs (see inserts "Tools for Protecting Your Assets in Life" and "Tools for Protecting Your Assets After You're Gone").

TERMS TO REMEMBER

Co-guardianship: A limited legal proceeding allowing a legal parent to ask the court to give the non-legal parent the ability to act with the legal authority of a parent in certain contexts.

Co-parent adoption: A legal proceeding that establishes a legal parent-child relationship between a child and a person who will be an equal co-parent with the child's biological or previously adoptive parent. Second-parent and step-parent adoptions are types of co-parent adoptions.

Co-parenting agreement (also Shared custody agreement or Guardianship agreement): A contract in which a legal (biological or adoptive) parent agrees to share parental rights and responsibilities with another adult. May be considered where parentage judgments or orders (see Parentage judgment) or second- or step-parent adoption (see Second-parent adoption or Step-parent adoption) are not available or not available to same-sex couples.

Parentage judgment (or parentage order): A determination by a court that a person is the legal parent of a child of whom she or he is not the biological or adoptive parent. May be considered where second- or step-parent adoption (see Second-parent adoption or Step-parent adoption) are not available or not available to same-sex couples.

Second-parent adoption: A legal proceeding which gives someone, typically the partner of a legal (biological or adoptive) parent, joint legal parentage of their child.

Step-parent adoption: A legal proceeding which gives the spouse of a legal (biological or adoptive) parent joint legal parentage of their spouse's child.

T.B. V. L.R.M.

The lesbian parents in this case, identified by their initials to protect their child's privacy, had been in a long-term relationship and raised their child together for three years in Pennsylvania. After their breakup, L.R.M., the biological mother, refused to allow T.B. to visit with their daughter, despite T.B.'s daily parental role in the child's life. Though second-parent adoptions were available in the state, the couple had not gone through the process, and T.B. was left without a legal tie to her child. Lambda Legal helped T.B. eventually win justice in the Supreme Court of Pennsylvania, which ruled that a lesbian or gay parent may seek visitation or custody of a child when she or he assumed parental status by performing parental duties over time.

Power Tool Tip: T.B.'s battle to be in her child's life was a protracted and painful one. Securing an adoption or other court judgment establishing both parents' rights while the couple was still together would have provided T.B. immediate, legally binding protections and assured her custody and visitation rights with her child after her relationship with L.R.M. ended. Check to see if second-parent/step-parent adoption or other options are available in your state and take the power to protect your child's rights as well as your own.

Tools for Protecting Your Wishes for Your Funeral

After death, will your wishes be respected? Other people may make many decisions about the disposition of your body and funeral arrangements. In a state that doesn't respect or recognize the marriages or partnerships of same-sex couples, you don't want to risk that your legally recognized "next of kin"—such as a parent, sibling or even a more distant relative—excludes your partner or spouse from decisions about your funeral. To be sure that the person you want to guide this planning is legally empowered and knows what you want, you should act now. Lambda Legal plaintiff Sherry Barone had planned ahead with life partner Cindy Friedman to have their documents in order. It's a good thing they did, because after Cindy died, a Pennsylvania cemetery refused to carry out her wish to engrave "Beloved Life Partner" on her headstone when her mother objected. Because Cindy had put her wishes in writing, Lambda Legal could enforce her wishes in court. Cindy's headstone now says exactly what she wanted it to say.

Please note: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation.

FIRST STEPS

1. Think about what you want to happen to your body after you die, whether you want a funeral or other memorial service and what kind, and who you want to control the carrying out of those wishes. Be sure to discuss your wishes with that person to make him or her aware of what you are asking.
2. For legal help, consult Lambda Legal's Help Desk at 866-542-8336, www.lambdalegal.org/help or the other resources in "Tools for Selecting an Attorney."

FUNERAL AND REMAINS

Take the power!

Take the power! Create a document—known as a **funeral directive** or “**disposition of remains**” **directive**—that lists your instructions for any funeral arrangements, including who should be in charge, and for what to do with your body.

Why do I need this power

tool? If you do not record your wishes in a legal document, the law defaults to the person or people your state defines as your “next of kin” to make these decisions for you—usually a blood relative. If you have a spouse or registered domestic partner legally recognized in your state or the state where the death occurs, that person probably will stand ahead of your blood relatives. You’ll want to establish who will be in charge, and also make your wishes about the arrangements clear in writing so as to prevent arguments. If you do not leave binding written instructions, someone you haven’t chosen could decide everything from whether your organs will be donated to whether you will be buried or cremated, from what your memorial service will be to the clothing you will be buried in, from the language of your headstone to how your gender identity is listed in an obituary. In Nebraska, Lambda Legal client Doreen Moritz had to fight with the blood relatives of her deceased partner, Elsa Friendt, when they demanded the opposite of what Elsa had put in writing. They told the funeral home to host a viewing of Elsa’s body, to hold a religious ceremony, to prevent any mention

of Doreen during the service and in Elsa’s obituary, and to deliver Elsa’s ashes to them. Doreen objected and was told by the funeral home director that she wasn’t “family” under law. But Doreen had the necessary documents for a quick and successful threat of legal action.

How it works: In a written document, detail your wishes regarding any anatomical gifts, your remains generally, and funeral arrangements. Depending on the state you live in, that document can stand alone or it can be incorporated into other documents such as a will and/or health care proxy. Things to remember:

- Putting details about your remains and funeral arrangements in a will may not be enough, because the will may not be opened until the funeral is over and because a funeral home director may not respect the will until it goes through the legal process called “probate,” which settles a deceased person’s affairs. Having confirmation of your funeral directive instructions in your will can, however, be helpful if there is a dispute.
- If there is a copy of the will that can be shown, it may also help if it says that your estate will only pay for funeral-related expenses when your separate list of instructions has been followed. That may give pause to a funeral home director or obstructive relatives who would be responsible for funeral expenses if the estate does not pay.

- Some states let you empower a health care proxy (or medical power of attorney) to make funeral-related decisions on your behalf. If yours does, ask your attorney whether it’s a good idea also to have a separate document that specifies how you want that authority used, in case there is a dispute about the continued validity of the health care proxy after death.
- You should not only sign and date your document with instructions for remains and funeral arrangements, but also have the signing witnessed by a notary public.

Below is a checklist of questions to consider for your document about funeral arrangements. Keep in mind that after you determine who has authority, and responsibility, to carry out your wishes, you may want to leave some decisions to that person or to specify exactly what you wish done. Sometimes it is helpful to tell your loved ones in detail what you would like, and sometimes others can find comfort in making these arrangements. It is sensible to think ahead about what will best meet your needs and the needs of those closest to you.

CHECKLIST:

- Who should have authority over your remains?
- Do you wish to be an organ donor? If so, have you indicated that on your driver's license? In your health care proxy and/or funeral directive? Do you wish to make any restrictions on the organs available for donation and are those wishes documented?
- Who should have authority to make funeral-related decisions?
- Do you have wishes for a particular funeral home and how much money should be spent? Do you have particular wishes for a casket?
- Do you want a wake or "viewing"? If so, do you have preferences as to whether your casket is open or closed, or what clothing and makeup should be used?
- Do you want cremation?
- Do you want burial, regardless of whether or not you are cremated?
- Do you have strong feelings about what should happen at your memorial service? Do you want your service to invoke a religious tradition?
- Do you have wishes about a particular cemetery, headstone and maintenance of the plot, or about some alternative way that you wish to be remembered in the future?
- If you have a spouse or partner, how do you want that person described in your obituary? How would you like your gender identity described and what name and pronouns should be used? Do you have any other specific wishes for how you and your life are described?

Leaving a Legacy for Equality

Leaving a legacy gift for Lambda Legal is one of the most significant charitable acts you can make to secure and protect the full equality of lesbians, gay men, bisexuals, transgender people and people living with HIV. A legacy gift is a wise investment that may provide valuable tax benefits and income both for you and your loved ones. For instance, a legacy gift allows you to make a meaningful difference now without affecting your income.

Upon making a legacy gift, you become a member of the Guardian Society—a growing group of individuals who have taken the extra initiative for the future of equality by including us in their estate plans. It's simple: Just make Lambda Legal a beneficiary in your will, retirement plan, life insurance, trusts or other estate planning vehicles, or establish a charitable gift annuity (CGA).

To find out more, call Lambda Legal at (212) 809-8585. Here's how you can establish your legacy for equality at Lambda Legal.

Please note: This information is not legal or tax advice. Consult a professional regarding your specific tax and other potential legal obligations.

BEQUESTS

Use your will to make a charitable bequest to Lambda Legal.

Including Lambda Legal in your will (making a bequest) allows you to make a meaningful impact on the fight for equality without having to give up crucial assets needed during your lifetime.

How it works: A charitable bequest to Lambda Legal made in your will can take many forms:

- You can designate a percentage of your estate.
- You can designate a specific sum of money.
- You can leave an asset, such as real estate, securities or other property.
- You can leave the remainder of your estate after other beneficiaries receive the portions you designate.
- You can make Lambda Legal the contingent beneficiary of your estate if your spouse/partner or other beneficiaries pass away before you.
- You can also create a charitable trust in your will to benefit Lambda Legal.

With all of these methods of bequests, you can designate exactly how you want the funds to be used or you can make an unrestricted bequest, which allows Lambda Legal to use your contribution wherever it is needed most.

For bequests conveyed to Lambda Legal through a will, you receive no

tax benefits during your lifetime, but when you die the value of the bequest may be deducted from your taxable estate, relieving your loved ones of possible added estate tax burdens. Our full name and Tax ID number, respectively, are Lambda Legal Defense and Education Fund, Inc., 23-7395681.

RETIREMENT ASSETS

Make sure that the beneficiary designations for your retirement assets include Lambda Legal as a beneficiary.

You worked hard to save money for your retirement. Donating to Lambda Legal is a way to make sure that the remaining funds in your retirement account will help support the issues you care about. Retirement assets left to anyone but a married spouse can be subject to high estate taxes.* When left to Lambda Legal, the full value of your remaining retirement assets will go directly to the organization. That's why many donors name Lambda Legal as the beneficiary of their retirement plans.

How it works: To make a gift of retirement assets, such as a 401(k), 403(b), IRA or pension fund, you can simply name Lambda Legal as the beneficiary or contingent beneficiary of all or part of your retirement account, at least for those in plans that allow you to name beneficiaries. When you die or if your primary beneficiary does not survive you, the remaining assets will go to Lambda Legal. Please note that there are significant taxes associated with leaving retirement assets to individuals.

Depending on the type and amount of retirement assets you own, the estate taxes could cut those assets nearly in half, and income taxes on the proceeds to your beneficiary could then cut the leftover amount even more! But retirement assets left to a nonprofit organization are not taxed at all.

LIFE INSURANCE

Include Lambda Legal as the beneficiary of your life insurance policy.

For many people, life insurance policies are less important later in life, when financial obligations like the cost of raising and educating children and paying a mortgage tend to decrease. This makes a gift of life insurance an excellent planned giving vehicle. It enables supporters to leverage relatively modest premium payments into a significant contribution toward Lambda Legal's fight for equality. In short, this tool helps you get the most value for your money.

How it works: There are a number of ways to make a gift of life insurance to Lambda Legal. You can name Lambda Legal as the beneficiary of all or a portion of the proceeds of your policy, or you can transfer ownership of the policy to Lambda Legal outright. You can also name Lambda Legal as the contingent beneficiary of your policy.

- When you donate your life insurance policy to Lambda Legal, you can claim an immediate income tax deduction for the current value of the policy and your future

*The assessment of estate taxes for same-sex spouses is an evolving issue in the aftermath of the Defense of Marriage Act's demise. Please consult a tax practitioner regarding your own financial situation.

premium payments are also deductible.

- If your beneficiary is also an heir to your estate, estate taxes could reduce the proceeds he or she receives by as much as half. If you own a substantial life insurance policy and want the proceeds to pass to your beneficiaries tax-free, then you may need an Irrevocable Life Insurance Trust (ILIT). An ILIT is a trust that owns life insurance policies and thus removes the insurance proceeds from your taxable estate, as long as certain conditions are met.

CHARITABLE TRUSTS

If you have significant assets, establish a charitable trust to provide for your loved ones while they are alive and have the remainder in the trust go to Lambda Legal.

Charitable trusts offer supporters a way to provide for their loved ones while also supporting Lambda Legal—either immediately through a “charitable lead trust,” or after a period of time through a “charitable remainder trust.”

How it works: Charitable remainder trusts are created by transferring assets into a trust, which provides income to your spouse/partner, children, a friend or even to yourself over a period of time. After a period of time passes, the principal transfers to Lambda Legal. A charitable lead trust functions like a mirror image of a charitable remainder trust. You create a charitable lead trust by transferring assets into the trust. The trust then pays Lambda Legal an annual income for a fixed

number of years, after which the principal held in the trust reverts to either you, your spouse/partner, children or any other beneficiaries you name.

When you create a lifetime charitable trust, you will receive an immediate tax deduction based on Lambda Legal’s remainder interest in the trust and avoid estate taxes. If you create a lifetime charitable trust with an appreciated asset, you also defer capital gains taxes.

CHARITABLE GIFT ANNUITIES

Establish a charitable gift annuity (CGA) with Lambda Legal to provide you or your beneficiary income during your or their lifetime, with the remaining balance transferred to Lambda Legal upon the beneficiary’s death.

An important concern for many retirees is living income. Finding the right investments and uses for cash, securities and other property that you may have accumulated during your working years is an important part of a solid retirement strategy. When left to your spouse/partner or other loved ones, these assets may be subject to high estate taxes. That’s why it’s important to use your assets to generate income so that you and your spouse/partner can enjoy them during your lifetime—before the government takes a sizable bite out of them.

How it works: Lambda Legal’s CGA program offers supporters starting at age 55 a way to generate income in retirement, while helping us make the case for equality on behalf of LGBT people and those living with HIV. You can establish a CGA with an irrevocable gift of

CHARITABLE GIFT ANNUITY (CGA) RATES

CHARITABLE GIFT ANNUITY (CGA) RATES VARY DEPENDING ON THE AGE OF THE BENEFICIARY. THE OLDER THE BENEFICIARY, THE GREATER THE ANNUITY RATE. HERE IS A SAMPLING OF THE RETURN YOU MIGHT RECEIVE ON YOUR ONE-LIFE LAMBDA LEGAL CGA:

AGE*	RATE
60	4.4%
65	4.7%
70	5.1%
75	5.8%
80	6.8%
85	7.8%
90+	9.0%

*Rates as of 7/1/13
(at time CGA established)

\$10,000 or more to Lambda Legal. Depending on your age and the size of your gift, you will receive guaranteed fixed payments for life at rates that are often higher than you might receive on another investment.

You will receive an immediate tax deduction based on Lambda Legal’s remainder interest in the annuity, and part of your annuity income will be tax-free. If you fund an annuity with appreciated securities, you can defer capital gains taxes as well.

LAMBDA LEGAL OFFERS THE FOLLOWING TYPES OF CGAS:

One-life CGA: Only you or your designated beneficiary (minimum age of 60) will receive income from your contributions. The rate of return is greater than if two people are designated to receive income.

Two-life CGA: You can provide income for you and a designated second, successive beneficiary. The age of both will be used to calculate your rate of return and the tax deductible portion.

Deferred CGA: Ideal for younger donors or those who have not yet retired. It can be purchased at age 55 or older. You can defer receipt of payments on your one-life or two-life CGA until after you (and/or your designated beneficiary) reach age 60.

HOW TO INCLUDE LAMBDA LEGAL IN YOUR WILL

If you're like many of us, you've probably overlooked some aspects of life planning. Now is the time to assess any gaps in planning for your future and to be as thorough as possible in reviewing the best options for yourself and your loved ones.

To make a bequest to Lambda Legal, you will need to use the correct language in your will: "I hereby give and bequeath [cash amount, percentage amount, or property you are giving] to Lambda Legal Defense and Education Fund, Inc. New York, New York, for its general purposes." To ensure that your wishes are followed exactly, we suggest including Lambda Legal's full name and address in your will:

LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

120 WALL STREET, 19TH FLOOR

NEW YORK, NY 10005-3919

501(C)(3) TAX ID NUMBER: 23-7395681

Tools for Selecting an Attorney

Many of the life planning documents discussed in this toolkit require an attorney. But finding the right attorney who will support your rights as a lesbian, gay, bisexual, transgender person or person living with HIV can sometimes be a confusing or intimidating process. We've put together a series of questions to help guide your search. These questions are intended to start a conversation with potential legal advisors and should be adapted to your particular circumstances. Note that some questions may be answered on the attorney's website before your visit or by an introductory presentation by the attorney's office. Keep in mind that you may have to gear your expectations to the community you live in, because many places do not have attorneys familiar with issues faced by LGBT people or people living with HIV. In other words, you may be limited to finding a lawyer with a willingness to learn about the issues.

Some resources for attorneys in any state who are willing to learn include: Estate Planning for Same-Sex Couples by Joan M. Burda, published by the American Bar Association; Making It Legal: A Guide to Same-Sex Marriage, Domestic Partnerships & Civil Unions by Frederick Hertz with Emily Doskow, a resource for lawyers and non-lawyers alike published by Nolo; A Legal Guide for Lesbian and Gay Couples by Denis Clifford, Emily Doskow and Frederick Hertz (Nolo). Transgender Family Law: A Guide to Effective Advocacy.

FIRST STEPS

Consult the following resources to locate attorneys in your area:

- Lambda Legal's Help Desk, 866-542-8336 or www.lambdalegal.org/help (for legal information on LGBT and HIV-related issues or help identifying an LGBT/HIV-friendly attorney in your area)
- The National LGBT Bar Association's list of state affiliates (for referrals to local LGBT bar associations)
- friends and professional colleagues. Other LGBT families are likely to have similar issues and may have already worked with local attorneys.
- your local LGBT center or community organization or HIV/AIDS service organization
- www.lawhelp.org (for referrals to legal aid and public interest law offices in your area)
- Findlegalhelp.org, the American Bar Association's referral site to local legal resources and attorneys, including free or reduced-fee services
- your local state or city Bar Association

ASK YOUR PROSPECTIVE ATTORNEY: ATTORNEY'S BACKGROUND AND EXPERIENCE

How many years have you been in practice?

How much of your practice is devoted to drafting wills and trusts?

What is your experience with documents like health care proxies, living wills and financial powers of attorney?

Have you represented clients whose estate or financial planning is more complex because of their sexual orientation, gender identity or HIV status, and if so, how often? What were the challenges?

Would you be comfortable putting me in touch with other LGBT clients you have represented?

If you've not had that experience, would you be willing to obtain the necessary background to handle such challenges?

Have you represented heterosexual clients whose estate planning posed additional challenges because they were in a committed lifetime relationship but not married?

For a same-sex couple whose relationship is not honored under state law, or an unmarried different-sex couple, what strategies do you suggest to ensure visitation rights if one member of the couple is in the emergency room?

What are your strategies for funeral decision-making?

What are your strategies concerning taxation of joint property or bank accounts?

Do you have any personal doubts about the right to equal treatment based on sexual orientation, gender identity or HIV status?

Would anyone in your office who might be involved in the work for me have similar doubts?

Are you willing to accept help (for example, consultations, articles, lists of cases) from organizations that have expertise about the legal rights of LGBT people or people living with HIV?

Are you aware of recent changes at the federal and state levels concerning the recognition of same-sex relationships and the impact of those changes?

KEEPING ME INFORMED

How will we stay in touch as the work for me proceeds?

When and where can you best be reached?

Will you provide me with regular updates about the work?

Do you prefer to answer questions over the phone, by email or letter, or in person?

How long do you expect the work to take?

Can you give me an outside deadline?

ATTORNEYS' FEES AND COSTS

Is there an initial consultation fee?

How do you bill for your services?

If by the hour, what are the hourly rates for you and others who would do work for me?

What other costs might be involved?

Will you bill periodically as the work progresses?

Will you supply itemized bills?

What do you estimate will be my total attorneys' fees and costs?

Are You Prepared?

What kind of long-range vision do you have for your future and that of your loved ones? Have you taken the necessary legal and financial planning measures to protect that vision? Answer the following life planning questions to find out how prepared you really are—or what life planning issues you need to start thinking about now.

HAVE YOU COMMUNICATED YOUR WISHES?

- Do you have a will?
- Have you named an executor or trustee who is willing and able to carry out your wishes?
- Do you have a living will detailing your health care wishes, and a medical power of attorney naming someone you trust to make decisions for you in case you cannot? Do you have a hospital visitation directive? Where needed, do you have a separate HIPAA (Health Insurance Portability and Accountability Act) waiver?
- Do you have a financial power of attorney authorizing someone to make decisions for you if you are unable to make them for yourself?
- Have you stated your wishes concerning funeral arrangements in a funeral directive? If you want to limit funeral expenses to ensure that your wishes are respected, have you said so in your will?
- Have you expressed in writing any wishes you have concerning a memorial service, an obituary or other public statements about you?
- Have you made your wishes known regarding organ donation and disposition of your body?
- Have you stored all your important documents someplace where your agent, executor or loved ones can access them?

HAVE YOU PROTECTED YOUR LOVED ONES?

- ❑ Do your primary and contingent beneficiary designations in your will and other documents (such as insurance policies, retirement accounts and pensions) reflect your desires?
- ❑ Have you named a guardian for your children in your will?
- ❑ Have you named primary and contingent beneficiaries for bank, retirement and investment accounts that allow the funds to skip the probate process? Are these beneficiary designations up to date?
- ❑ Have you considered owning your property and/or financial accounts jointly to allow direct transfer outside of probate, and considered the possible tax implications of doing so?
- ❑ Have you considered disability insurance to protect yourself and your loved ones if you are unable to work?
- ❑ Does your estate have enough liquidity (cash or assets easily convertible to cash) to pay any taxes due so your executor need not sell your assets at a “fire sale” discount?
- ❑ Have you considered life insurance to protect your loved ones and/or pay any taxes due on your estate after your death?
- ❑ Have you considered an irrevocable life insurance trust to exclude the insurance proceeds from being taxed as part of your estate?
- ❑ Have you considered a living trust to enable your survivors to avoid the time-consuming and expensive probate process?
- ❑ If you have a living trust, have you titled all your assets in the name of the trust and added a “pour-over” provision to your will?
- ❑ If you are the sole owner of a business, do you have a succession plan? If you own a business with others, do you have a buyout agreement or other succession plan?
- ❑ Have you secured your children’s relationships with both parents through adoption or other court judgment? Do you have a parenting agreement?

HAVE YOU DONE ENOUGH TO REDUCE YOUR ESTATE TAXES?

- ❑ Have you reviewed how you own property with your spouse, domestic partner or others to help minimize any estate taxes?
- ❑ Is your planning based on an up to date valuation of your estate?

HAVE YOU LEFT A LEGACY FOR THE ISSUES YOU CARE ABOUT?

- ❑ Have you integrated charitable giving—and expressed your commitment to equality—in your estate and life planning?

HOW DO YOU SCORE?

If you’re like many of us, you’ve probably overlooked some aspects of life planning. Now is the time to assess any gaps in planning for your future and to be as thorough as possible in reviewing the best options for yourself and your loved ones.

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Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

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