LGBTQ+ Estate Planning —A Tale of Two Couples

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Chris and Jason would never leave anything to chance. They ordered their movie tickets online in case the show sold out before they got to the theater. They always bought travel insurance, on the off chance their vacation plans didn't pan out. They flossed daily, replaced smoke-detector batteries annually, and changed their furnace filters every six months.

Their friends Bill and Trevor often teased them about being so conscientious. But then Bill and Trevor took a different approach to life. When Bill got a flat tire and needed to use the spare, he discovered that it was flat, too. They once ran out of heating oil because Trevor forgot to order more. And they still laugh about the time they missed their cruise ship departure after enjoying one too many rum swizzles at a pub in Bermuda.

These differences extended to the way they approached estate planning, too.

Chris and Jason went to an estates and trusts attorney who was a fellow member of the LGBTQ+ community. After getting to know them, the attorney prepared wills that left everything to the survivor in case Chris or Jason died. He also drafted a power of attorney and advance healthcare directive for each of them. These documents would be essential, the lawyer explained, if Chris or Jason became incompetent and needed the other spouse to manage his finances or health care.

Chris and Jason knew this paperwork was important and were glad to have it prepared by a professional. What they didn't know was that there was more to estate planning than that.

The lawyer included language in their documents to cover their digital assets—things like frequent-flyer miles, social media accounts, and online shopping. The lawyer had them make an inventory of these assets, including their usernames and passwords, so the other spouse could access them if necessary. The inventory even included passwords for things like their laptops, smartphones, and iPads. They were also told to make sure the beneficiaries on their life insurance and retirement accounts were up to date to replicate the provisions in their wills.

Once the documents had been signed, Chris and Jason slept better. They knew they were as ready as they could be for whatever lay ahead.

Bill and Trevor, by contrast, did none of these things. They hadn't gotten married or registered as domestic partners, thinking that having "a piece of paper" wouldn't improve their relationship. They had been meaning to get wills but thought the process would be difficult and expensive. They also didn't want to think about the worst-case scenarios an estate plan was meant to cover.

Then the unexpected happened. On a rainy Sunday afternoon, Bill's car skidded off a slippery road and into a tree. His death was instant, and Trevor was suddenly faced with the very scenario he had been so reluctant to confront.

Because he had no will, Bill's estate passed through "intestacy." This meant that as an unmarried partner, Trevor inherited none of Bill's assets, except the house they owned jointly. Surprisingly, his car and bank accounts went to Bill's mother.

Bill had failed to name a beneficiary on his IRA, and because he and Trevor had never married, the money went to Bill's estate. This meant that Bill's mother also received this substantial asset. Bill had life insurance through his job, but he had set it up before he and Trevor met. The beneficiary was Bill's ex-boyfriend, so Trevor was entitled to none of the payout.

To add insult to injury, Trevor had no way to access Bill's laptop or iPad, which were both password-protected, or to listen to the messages that friends had left on Bill's phone when they heard about the accident.

It has been said that hindsight is always 20/20. If Bill and Trevor could start over, what would they do differently? They still might have stayed for that extra rum swizzle at the pub in Bermuda—that made for a good story. But they would definitely have called their friends' lawyer and had him prepare an estate plan for the two of them, rather than leave anything to chance.