

Protecting Your Family and Future: Essential Estate Planning for the LGBTQ+ Family

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Estate planning is a critical part of securing the future for any family, and for LGBTQ+ individuals, it is particularly important given the legal complexities and challenges that may arise in the current political climate. There have been several legal shifts that affect LGBTQ+ families' rights and protections, which makes it even more essential for LGBTQ+ families to ensure their estates are properly considered, planned, and protected.

Below is a simple checklist of estate planning documents that LGBTQ+ families must consider to safeguard their interests, particularly during a time of legal uncertainty and inequitable policies:

Last Will and Testament

When one thinks of an estate plan, a will is what likely comes to mind: it is considered a fundamental estate planning document. A will directs how a person's property, whether real or personal, should be distributed after death. For LGBTQ+ individuals, a will is especially important because, without one, state laws dictate who inherits your estate and in what proportion. With only limited exceptions, state laws do not recognize non-biological family members, such as a partner or even a registered domestic partner: close friends who are more like family are not recognized in any state. A will provides clarity to ensure that your relationships and wishes are honored, regardless of your family makeup.

Why a will matters for LGBTQ+ individuals: If you have a partner but are not legally married, or if you want to leave property or assets to a close friend or chosen family member, a will ensures that these individuals are recognized as your beneficiaries. It also allows you to name the person you choose to oversee the distribution of your assets. While many states require that your biological family is informed of your death and provided a copy of your will, most courts are fiercely protective of directives in a will. As a result, documenting those wishes is imperative to ensure your wishes are carried out in the way that you desire. Without a properly executed will, most states simply distribute assets to your biological family members.

Healthcare Directives

Advanced healthcare directives such as a healthcare proxy and living will specify both the person you wish to speak for you in a healthcare setting and the type of care you would want (or refuse) in the event you cannot articulate those wishes. The health care proxy appoints an agent who knows you, understands your wishes, will communicate those wishes, and advocate for your rights in a health care setting. The living will outlines the *type* of care you want including memorializing your preferences for medical treatment or discontinuance of treatment. A living will sets forth whether you want life-sustaining treatment and how you would like to be treated in end-of-life scenarios.

Why healthcare directives matter for LGBTQ+ families and individuals: In the event of incapacitation, biological family members may not always know or respect your wishes, particularly if your biological family does not support your identity,

lifestyle, or relationships. Naming a healthcare proxy and having a living will in place ensures that your healthcare decisions are in line with your desires, even if your family disagrees or is uninvolved in your life. Without a healthcare proxy, a family member (who may not understand or accept your relationships) may gain control over your medical decisions. Without documentation, most states allow your next of kin to make these decisions, potentially preventing your partner from being involved in your care. Nominating your partner or chosen friend provides them with the legal authority to make decisions consistent with your wishes.

Durable Power of Attorney

A durable power of attorney (POA) allows you to designate someone, referred to as an agent, to manage your financial matters upon your incapacity. A POA can be tailored to the specific powers you wish to bestow upon your agent. For example, your agent can access your bank accounts, pay your bills, apply for public benefits, and manage investments on your behalf.

Why a durable power of attorney matters for LGBTQ+ individuals: LGBTQ+ couples are not recognized as legal next of kin unless they are legally married and, therefore, will face complications if their relationship is not legally formalized, as most financial institutions are unable to speak with others without authority. This is especially essential if partners financially depend on one another but have separate financial accounts; without a POA in place, your partner cannot access your finances in the event of your incapacity. Having a POA ensures that your partner, rather than a biological family member who may not be involved in your life or support your relationship, has the authority to handle your finances, if necessary.

Trust

A trust is a key estate planning tool that allows you to manage your assets efficiently during your life and distribute your assets after your death without the necessity of probate (which is required with a Last Will and Testament). A trust also allows you to appoint a successor trustee, a person in charge of your trust assets if you can no longer manage your own trust assets. There are different types of trusts that can accomplish many goals within an estate plan, but the common theme is that assets funded in a trust avoid probate, a lengthy and expensive court process. In addition to avoiding probate, trusts do not have to be authenticated by a court or shared with your biological family members, as is the case with a Last Will and Testament.

Why a trust matters for LGBTQ+ individuals: A trust can ensure that assets are passed on according to your wishes, even in cases where state inheritance laws might not recognize your partner or chosen family. Trusts can also be structured to provide for specific needs, such as the care of a dependent partner or a loved one, long after you die. Importantly, trusts are much more difficult to contest than wills, thus ensuring that estranged biological family members will not be able to easily upend your carefully constructed estate plan if they do not agree with your choices or your relationships. A trust is also a private document that others cannot access in the same way as a Last Will and Testament, which is a public document that is published in court.

Beneficiary Designations

Beneficiary designations ensure that your assets pass directly to your loved ones without going through probate. A beneficiary designation can be made on bank accounts, brokerage accounts, insurance policies, and retirement accounts. Relationships can change over time, and therefore, beneficiary designations should be reviewed and updated regularly to reflect your current wishes.

Why beneficiary designations matter for LGBTQ+ individuals: If you have a domestic partner or chosen family members, it is crucial to ensure that your beneficiary designations align with your intentions. In most cases, financial institutions will not recognize a domestic partner or non-biological family members unless you have explicitly named them as beneficiaries on your financial accounts and policies. Beneficiary designations are also private and financial institutions are not at liberty to disclose those named as beneficiaries on your accounts after your death.

Letter of Intent

While not legally binding, a letter of intent can provide your loved ones with important details and intentions regarding why you

constructed your estate plan the way that you did. For example, if you decide to disinherit a biological family member from an estate distribution, the reason for the exclusion can be articulated in the letter in a way that cannot be explained in the estate planning document itself.

Why a letter of intent matters for LGBTQ+ individuals: If your estate plan is one that leaves out next of kin or biological family members, a letter of intent can provide further proof of your wishes related to your estate distribution. Letters of intent can also ensure that your funeral or memorial service reflects the way you wish to be remembered, celebrating your identity and your values. Letters of intent can also be entered into a court proceeding as evidence in an estate contest to further outline your rationale for the disinheritance of estranged family members.

Guardianship Documents for Children

It is vital for any parent to document guardianship of their minor child in the event of the parent's death. Documenting a guardianship designation ensures that upon your passing, your children will be cared for by the person or the people you designate, not the person that a court may choose.

Why guardianship documents for children matter for LGBTQ+ individuals: If you are an LGBTQ+ parent, establishing guardianship is incredibly important, especially if you are not biologically related to your child. In some cases, your biological family members may challenge your partner's ability to care for your children upon your death, particularly if you are in a non-married partnership. Establishing guardianship and memorializing your choice of guardian for your minor children provides clarity, protects your partner's rights to care for your children, and safeguards the sanctity of your family structure.

Estate planning is a crucial step for every individual, but it takes on an added level of importance for LGBTQ+ individuals, especially during times of legal uncertainty and political turmoil. With the right documents in place, you can be confident that your wishes will be respected and that your loved ones are protected, regardless of legal challenges or changes in administration. Estate planning empowers you to take control and secure the rights of your partner, your children, and your chosen family.