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Relationships 102

Making Your Love an Enduring Refuge: the legal part

By Tracy Morris

We know that there's far more to our GLBT families than what the state legally recognizes. Still, there's the reality that we have to live within—while trying to change it at the same time. Our partner relationships—our families—can be legally and financially risky ventures. For most of us, it is well worth the risk. Human beings are social animals; our relationships make our world go around. Though progress is being made toward protecting the legal rights of individuals in GLBT relationships, for now there are issues that must be addressed, things you need to know, and things you need to do in order to keep safe what may be the most valuable asset you'll ever have: your family.



Attorney Mitchell Katine

"The wisest course of action for financial planning for GLBT couples is to put everything in writing."— financial advisor Kimberly Shockley, CPA.

Love might move metaphorical mountains, but the tangible reality is that love is not all you need. Tax consultant and financial advisor Kimberly Shockley, CPA, states plainly, "The wisest course of action for financial planning for GLBT couples is to put everything in writing, and I mean everything. Same-sex couples wanting to have parallel rights of married, heterosexual couples need to recreate those rights via legal documents."

Virtually no other legal institution in the United States is as powerfully protective as marriage, yet marriage is not a legal option for GLBT citizens in 49 states, including Texas. State laws are not the only consideration, however. As Shockley points out, "Although domestic partnerships or civil unions are recognized by California, Vermont, Connecticut, New Jersey, Maine, and Hawaii—and Massachusetts allows gay marriage—the federal government does not recognize these unions. The federal government's not recognizing these unions and marriages means couples miss out on federal income tax benefits accorded to married, heterosexual couples."

A blatant example of the difference between straight and gay couples' financial rights is reflected in the federal gift tax, usually only of concern to higher income earners. Briefly, the person giving the gift customarily pays the gift tax. The Internal Revenue Service allows each of us to give up to \$1 million in noncharitable tax-free gifts over our lifetime (the "lifetime exclusion"). If you give someone more than \$12,000 in cash or goods within a calendar year (the "annual exclusion"), you—the giver—are required to file a form notifying the IRS. Once the IRS informs you that you've reached your lifetime limit, a tax is owed.

Not so for legally married couples, says Shockley who works with clients through her firm Shockley Tax Advisors. "A husband can give his wife, say, \$3 million worth of gifts in a year, and no one has to file anything. The amount isn't applied to the lifetime gift tax exemption." Over time, if a man marries, divorces, and remarries—no matter how many times—innumerable amounts of gifting can occur without the IRS batting an eyelash.

Contrast that with this scenario presented by Shockley: "Say Joe and John were together for some years. During the course of their union, Joe gave a total of \$500k to John. Then, they 'divorce' and Joe goes on to have a civil union or marriage in Massachusetts to Albert. Joe gives Albert a cumulative total of \$600k over time—at that point, regardless of their Massachusetts-sanctioned union, Joe now has to start paying gift tax on the amount that exceeds \$1 million. All because the federal government doesn't recognize gay unions or marriages."

The Basics of Legitimate Love

Do a little Internet research and you'll turn up loads of books and software for do-it-yourself estate planning. Incredibly, though, you can actually spend less money by hiring a knowledgeable attorney to walk you through the process without a glitch—and without having to practically

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become a paralegal yourself to accomplish the task.

Attorney Mitchell Katine reports that the eight planning documents that he recommends can be prepared by an attorney for less than \$500. Clients who genuinely cannot afford a few hundred dollars may be eligible for assistance through local organizations. You can find details on those helpful groups, as well as more client-friendly information on every legal topic imaginable at TexasLawHelp.org, which includes a Legal Aid database. If you're looking specifically for free or low-cost legal assistance programs, click on the type of law you have questions about (for example, "Wills & Estates"), select a subtopic to read more about (like "Drafting a Will"), then choose the tab "Find Legal Assistance." Additional useful information can be found on the State Bar of Texas website at www.texasbar.com.

Love's Legal Complexities

While it may not be the most romantic topic, Katine urges loving partners to go beyond the basics in their union forming. Some other steps that could be taken include properly designating beneficiaries on financial accounts and policies, entering into joint tenancy with right of survivorship agreements, and obtaining necessary court orders to establish the legal relationships that the law currently permits (adult and child adoptions, for example).

As both a family man and an attorney, Katine has a clear vantage point from which to see the necessary requirements for fortifying a love-based union into a lasting citadel. He and his partner, Walter, added their son and daughter to the family five years ago through adoption. While a family legal problem has never arisen for them, Katine says they are nonetheless prepared with all of the necessary documents in place. For example, he and Walter adopted their children together, making both of them legal parents.

Katine, a partner in the firm William, Birnberg and Anderson, LLP, says there are other alternative steps you can take to protect your partner. "My partner and I recently bought a house as joint tenants with rights of survivorship," he explains. "That means if either of us dies, the property automatically goes to the surviving co-owner. What's important to know is that sometimes mortgage and title companies, and realtors, will give inaccurate information because they're not familiar with gay and lesbian couples, or aren't familiar with this option, and they'll tell people 'you can't do this in Texas.' And that's just not true."

Katine says because it's a little more work to process the sale as joint tenants with rights of survivorship, happily buying couples may be persuaded to simply buy as co-owners, which is a mistake. "As co-owners, there's a chance that when one of them dies, their biological family—their mother, father, or siblings—could become co-owners with their surviving partner."

Similarly, same-sex couples sometimes worry about their wills being contested after they're gone, perhaps by estranged family members. It's simply a fact that must be addressed. "There is no way to stop someone from trying to invalidate what a person does," attorney Katine says, "but you can make it more difficult for them to succeed in their efforts—and then they may change their mind about how much trouble they're willing to go to." He offers the following suggestions for GLBT couples to consider, making their estate documents less likely to be challenged:

1. Visit a doctor near the time that you execute the documents. Have the physician make notations about your competency.
2. Have your documents prepared by an attorney, and have the attorney conduct the execution ceremony.
3. Do not have your partner present when the documents are signed. Do it alone and pay for it using your own funds. As terribly unromantic as this advice sounds, Katine says that this will defeat any later attempts by a third party to challenge the documents based on accusations of duress by your partner.
4. Have three witnesses on your will (only two are required by law).
5. Execute duplicate estate documents in the near future, such as six months or a year later. The reason for this, Katine explains, is that in Texas law, each set would have to be separately challenged, your competency evaluated at each distinct point in time. "If you've only executed documents once, someone could say, 'Oh, he was depressed then,' or 'he was on medication then,' something to more easily dismiss your competency."

Nearly everyone can relate to the normal fears, the what-ifs about the dissolution of a partnership. There, too, GLBT couples have obstacles that their hetero friends do not. As Mitchell Katine sums it up, "Texas does not recognize GLBT same-sex relationships as anything other than two unrelated individuals sharing a residence (as co-tenants), two business associates combining their money for mutual gain or loss (as in a general partnership or a joint venture), or friends who might designate the other to make personal, medical, or financial decisions for each other, as well as possibly raise children together."

Katine's "break-up tips" are excellent facts of life to know even when you're still starry-eyed:

1. If a couple owns real estate together, both co-owners have an equal right of access and control of the property. Either party can force a sale through a lawsuit.
2. Once another person is sharing your home, you may only evict him or her through a legal action at the local Justice of the Peace court. You cannot simply lock the door.
3. If you give a gift to your partner, you cannot get it back later if your feelings change. Once given, it is gone forever.
4. If you adopt children together, such adoption cannot be challenged or changed after six months from the date of the adoption. It is final.

Debra Hunt, also an attorney and an estate planner, says, "Most couples I meet with [for estate planning purposes] have been together at least a year before they feel comfortable making legal commitments to each other. There certainly is no magic number, but instead a desire to protect common interests that supports the process. There are a variety of scenarios that cause most couples to start or update their estate plans: purchasing real estate, having children, inheriting money or assets, and serious illness and/or surgery are some examples."

One of the basic documents that should be in a couple's estate plans, the power of attorney, illustrates the very serious nature of the legalization process for relationships. Hunt explains, "Certain powers-of-attorney documents give their appointed agents [for examples, partners] the right to 'sign' documents in their [partners'] name without any further notice. It involves giving significant authority to another human being, so it's certainly something we spend some time talking about in our client conferences." Even a properly executed power of attorney, Hunt adds, is limited in some respects. For instance, the power of attorney agent cannot revoke or change the principal's last will and testament or other powers of attorney.

Hunt, who frequently counsels GLBT families with her life partner and Moore and Hunt law firm partner, Connie Moore, warns that taking the steps to secure and protect your love's future is no guarantee of a lifetime together, but her professional experience leads her to describe a certain respectful quality in these partnerships. "I can't say for certain that estate planning helps solidify relationships," says Hunt, "but over the past 20 years I have found that when couples who have gone through the estate planning process end their relationships, they tend to behave a bit better and resolve their differences without as much drama than those who do not."

Hunt offers this somewhat romantic perspective on the seemingly dry topic: "Estate planning often helps couples understand that, even without marriage, there are still legal ways to protect their relationship. This gives them a sense of security for the future that they cannot get any other way at this point in time."

So, *security* ...if just reading the word sends chills up your spine in a bad way, then it may not be time for your relationship to head for the professionals' offices.

Tracy Morris is a Houston-based writer and editor. Morris has written the blog How to Make a Family (www.howtomakeafamily.typepad.com) since 1986 and is the health editor for the new online site SingleMindedWomen.com. This is her first contribution to OutSmart.

Marriage Rites Rights

The national nonprofit advocacy group, Family Equality Council lists the following as only a few of the more than 1,100 federal policies and protections automatically granted to legally married couples but not same-sex partners.

- custody
- Social Security survivor benefits
- child support obligations
- state and federal tax advantages
- recognition as legal parents in schools
- medical decisions
- immigration status
- passing on inheritance
- passport applications
- visitation rights
- family medical leave

More info: www.familyequity.org.

Seminar: MAKING LOVE WORK

Psychologist David Genac, Ph.D., and attorney Mitchell Katine work with many same-sex couples and GLBT families. Now the two professionals will share their expertise in a free seminar on February 28. At the evening event "Ups and Downs of GLBT Relationships," Genac and Katine will discuss the emotional and legal issues involved with relationships between gay, lesbian, bisexual, or transgender partners. This will include matters that affect "beginning or maintaining a

GLBT relationship, as well as the emotional and legal issues of ending such a relationship,” Genac says.

The 6–8 p.m. seminar held at 1712 Fairview is open to single individuals as well as couples. More information: Katine, 713/255-5321, or Genac, 713/899-3769.

Genac and Katine's seminar follows Freedom To Marry Week, the nationally observed advocacy event (see story, page 54). The local Foundation for Family and Marriage Equality organizes the February 11–17 activities in Houston, which include a Valentine's Day demonstration at City Hall for full marriage rights for same-sex couples followed by a protest at the Harris County clerk's office. Read the calendar of events for the week at www.outsmartmagazine.com.

Got a comment?—feedback@outsmartmagazine.com.

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