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."

Lambda Legal
making the case for equality

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.

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