Life: Assembly Required

We're constantly making plans—to finish school, get a better job, find ways to save money and make time for family. Creating plans helps us reach our goals and organize life's priorities. Of course, there are some areas of life planning that are often put off because they seem complex or unpleasant—drawing up a will, for example, or deciding who will make medical decisions in the event of an emergency. Nevertheless, it's necessary that everyone take steps to plan for these events.

As Benjamin Franklin once said, in this world, nothing is certain but death and taxes. But for lesbian, gay, bisexual and transgender (LGBT) people and those living with HIV, there's an added certainty: we must take extra measures in life and financial planning to protect ourselves and our loved ones from the potentially devastating effects of pervasive social bias and a discriminatory legal system.

Lambda Legal has prepared this toolkit so that you can take the power and create a more secure future for yourself and your family.

The Marriage Factor

Though everyone should lay down basic plans for the unexpected, same-sex couples and their families are particularly vulnerable because the law often discriminates against them. States control a great many family law and property rules that govern our family lives. Yet only a minority of states offers those in same-sex relationships a way to access those protections. In addition, at last count, the United States General Accounting Office reported that one's marital status determines whether one receives favorable or less favorable treatment in more than 1,100 places under federal law. Due to the so-called "Defense of Marriage Act," however, the federal government considers married lesbian and gay couples "single," regardless of how long they have been married and whether or not they have binding obligations under state law. That means different-sex married couples automatically receive federal rights and protections, and bear responsibilities to each other and society, while same-sex married couples do not. With state and federal law working together, different-sex married couples, for example, generally do not encounter legal problems when trying to keep their home, a joint savings account or retirement assets if either spouse dies—and the survivor may keep or inherit these things without paying a cent of tax. In contrast, as discussed more inside this toolkit, same-sex couples face legal challenges in these and other respects.

Full marriage equality for same-sex couples now is being won in the courts and legislatures of an increasing number of states across the country; other states are opting to provide broad legal protections to same-sex couples and their families through an alternate formal status with an unequal label such as "civil union" or "registered domestic partnership." This progress in the number of available rights does not mean, however, that lesbian and gay couples with formalized domestic partnerships or civil unions, or even those who are married, are in the clear. The federal government still refuses to honor the legal status of same-sex married couples and to treat them as it treats other married couples. And most states that don't allow same-sex couples to marry also won't respect a same-sex couple's lawful marriage from another state or country (even though states today uniformly do respect different-sex couples' out-of-state marriages, whether or not the couple could have married in-state). Indeed, the complex landscape of differing rights and duties offered by states across the nation means that even a state with marriage equality may not respect a civil union or domestic partnership from another state, and vice versa. So the danger of confusion and discrimination remains present at home, when traveling to other states and in interactions with the federal government.

IN RE GUARDIANSHIP OF KOWALSKI

Sharon Kowalski and Karen Thompson were together for four years when a car accident dramatically altered their lives. Sharon and her niece were struck by a drunk driver—Sharon was left paralyzed, her niece killed. This tragedy and the resulting aftermath would quickly gain the attention of the nation. The focus: a hospital bed in small-town Minnesota. Sharon's parents, who learned of their daughter's relationship with Karen only after the accident, refused to acknowledge Karen as an important figure in Sharon's life. Sharon's father assumed guardianship of his daughter, despite her requests to be placed in the care of her partner. Sharon's father then moved her to a nursing home 200 miles away from Karen, who was denied visitation rights. Karen then 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, Sharon returned home with Karen.

Power Tool Tip: The horror of Sharon Kowalski's legal vulnerability following a devastating tragedy was a wakeup call for many in the LGBT community. Thompson's drawn-out battle to reunite with and provide care for her life partner was the first of its kind in the courts—and drives 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.

In addition, transgender people should remember that the issuance of a marriage license is not a guarantee that the validity of one's marriage will never be challenged in the future. The disconcerting reality is that transgender people must live with uncertainty about how a particular state may determine their legal gender should a dispute about their marital status arise in the future. This means that, after years of believing themselves to be married, they may be deemed by law to be in a same-sex relationship rather than a different-sex relationship, contrary to their own gender identity and, perhaps, outside the state's family law protections as a result. It is that much more important for anyone in this situation to take all possible legal steps to make one's relationship more secure, such as executing wills naming one's spouse as beneficiary and granting medical powers of attorney.

Every day Lambda Legal is taking power in the courts to win fairness and equality for our communities. But we still have a long way to go. Until all LGBT people and those living with HIV are treated equally coast-to-coast, it's critical that you do everything in your power to protect yourself and your family. Fortunately, you can take the power by creating your own life plan—and Lambda Legal can help.

Moving Forward

For more than three decades, Lambda Legal has been at the forefront of the struggle for the civil rights of all LGBT people and we have led the way against HIV-related discrimination for 25 years. From the right to be open at work and go to school without fear to protecting your rights as a parent and insisting that you have fair and equal access to medical care, we have been fighting for the life you deserve with the most powerful tool we have: the law. We choose our cases carefully, making sure that each one will affect the greatest number of people, set good legal precedent and educate America on the need for fairness. That way, we make a powerful, positive impact on the lives of as many people as possible throughout the nation.

We've created this kit to help you navigate an unfair legal and social system and begin to create a more secure future. Go ahead: take the power.

Step One

Create You Blueprint

LGBT people have made incredible progress in the fight for equality. But 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 in a construction site, you and your family shouldn't be without certain simple but critical legal protections.

Similarly, if you're living with HIV, you have vulnerabilities and concerns in life planning. Three decades into the epidemic, people living with HIV are still subject to prejudice and stigma in hospitals, nursing homes and other caretaking settings. Therefore, it is imperative that you plan ahead to protect your rights, your assets and your dignity.

Think of the things that matter most:

- Who will make medical decisions for you if you are unable to make them for yourself?
  See Tools for Protecting Your Health Care Wishes
- Who will inherit your belongings when you die?
  See Tools for Preparing Wills and Trusts and Leaving a Legacy for Equality
- Who will make financial decisions for you if you become incapacitated?
  See Tools for Protecting Your Assets in Life
- Who will care for your children if something happens to you?
  See Tools for Protecting Your Children
- What happens if you and your partner break up?
  See Tools for Protecting Youself in Your Relationship
- Who will carry out your wishes for your funeral arrangements?
  See Tools for Protecting Your Wishes for Your Funeral

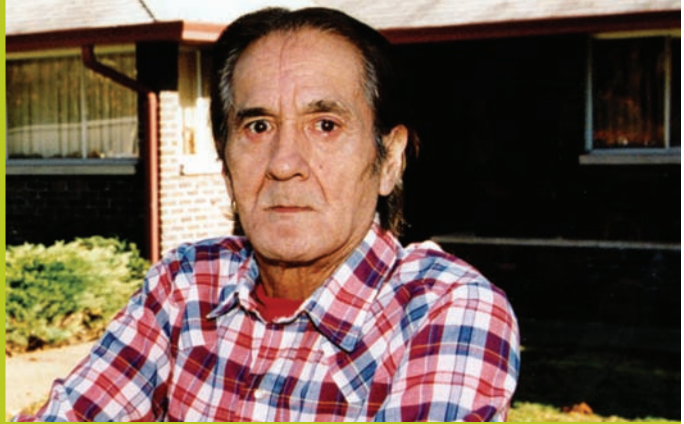
IN RE CECIL LITTLE

When 50-year-old Cecil Little, a Louisiana man living with HIV, suffered a stroke and two aneurysms, he fell into a coma and needed life support. His family rallied around his hospital bed, willing his survival. When he finally came out of his coma, beating the odds and his doctors' assertions that he wouldn't live, his sister and mother began plans for his long-term care. Six nursing homes, all of which initially agreed to receive Cecil as a patient, later retracted their offers upon learning of his HIV status. Gloria, Cecil's sister, contacted Lambda Legal and we filed a discrimination complaint, prompting one of the homes, Kentwood Manor, to accept Cecil into its care.

Power Tool Tip: Cecil's struggle illustrates the prejudices and stigma still surrounding HIV within nursing homes, hospitals and other health care facilities. Prepare ahead: Keep your documents—health care proxy, medical power of attorney, will and other relevant documents—stored in an easy-to-find location in your home so that your loved ones immediately can access them in an emergency. And be prepared to assert your legal rights—and the rights of your loved ones—should health professionals try to discriminate against you rather than simply providing equal care to all patients, as the ethics rules of the American Medical Association require.

VASQUEZ v. HAWTHORNE

Frank Vasquez and Robert Schwerzler shared a life together—a home, business and other property—for 28 years in rural Washington. But when Robert died suddenly, leaving behind no legal documents stipulating his wishes or identifying Frank as his partner, Frank was left without clear legal rights to their shared assets. Robert's siblings—his legal heirs—demanded that Frank move out of the house and turn over the business and all the couple's other assets to them. A trial court ruled for Frank after Robert's siblings sued for the estate. However, Robert's relatives appealed and the decision was overturned. Lambda Legal then worked with Frank's lawyer and filed friend-of-the-court briefs, urging the Washington Supreme Court to reverse the ruling that stripped a man of almost three decades of work and investments he had shared with his partner. After the state high court agreed in a decision that broke new legal ground for same-sex couples in Washington, the case settled with Frank 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. Plan ahead for the unexpected by drawing up a will and other documents that protect your wishes for your family and loved ones.

If you haven't thought about questions like these, it's time to start. And if you have thought about these questions but have put off doing anything, it's time to take the power and build a more secure future for yourself and the people you love. It's a fact: the person you may want to be provided for, or to be by your side if something happens to you, may face a number of barriers because of factors outside of your control. By taking the power to create a life plan now, you can help ensure fair treatment later.

Consider this:

- If you are unable to make medical decisions for yourself, the person you want to step in may have no say in your care unless he or she has your medical power of attorney or another legal document authorizing decision making. For married couples in every state, a spouse automatically acquires authority to make medical decisions.
- If you die without a will, in many states your partner may get nothing, and in other states your partner may suffer from prohibitively large taxes. The same is true for civil union and state-registered domestic partners.

  While more states are offering same-sex couples default inheritance protections through marriage, civil union or registered domestic partnership, most states still do not; in contrast, different-sex married couples do not have the same concerns anywhere in our country, and the death of one does not threaten financial devastation for the other in these ways.
- If you are not a legally recognized parent of your child and your partner dies or you both split up, you are at risk of losing custody and/or visitation rights.

Step Two

Choose Your Power Tools

Life planning is important for everyone. Everyone should have a will. Everyone should have contingency plans for disability. Everyone should save for retirement. And all parents should have a formal legal relationship with all of their children and name a guardian for them in case tragedy strikes. But LGBT people and those with HIV must take extra care to address these issues. Whether you're partnered or not, young or old, of wealthy or modest means, you need a life plan and the tools to put it in place. Here are some basic tools you'll need to protect yourself and your loved ones:

A WILL This legal document states how your assets (money, real estate and other belongings) will be distributed after your death. You also can use your will to name a guardian for your children in the event of your death, and to express your wishes with regard to disposition of your body (a **funeral directive** also is very useful for clarifying your wishes).

MEDICAL POWER OF ATTORNEY You can use this document (also called a **health care proxy**) to appoint someone to make medical decisions for you should you become unable to do so. (A **designation of a pre-need guardian** also can be helpful as it allows you to identify, while you are legally competent to state your wishes, who you want to serve as your guardian should the need arise in the future.) You will also need a HIPAA release provision, which in some states should be in a separate document.

A LIVING WILL This document allows you to make your wishes known to your loved ones if you later become unable to speak for yourself regarding life-sustaining medical procedures. (In some states the living will is incorporated into a medical power of attorney, or a health care proxy.)

FINANCIAL POWER OF ATTORNEY You can name someone to pay bills or make financial decisions for you should you become unable to do so.

BARONE v. HAR JEHUDA CEMETERY

Sherry Barone and Cynthia Friedman had been together for 13 years when Cynthia passed away from cancer at the age of 35. In several discussions before her death, Cynthia had asked that Sherry include the inscription on her headstone: "Beloved life partner, daughter, granddaughter, sister and aunt." Days after Cynthia's death, Sherry signed a contract with Har Jehuda Cemetery in Pennsylvania for two adjoining plots and a headstone. Cynthia's religious principles meant the headstone should have been unveiled one year after she died, but the cemetery had refused to act on Sherry's instructions to follow her loved one's wishes that "life partner" be included. After filing suit on Cynthia's behalf, Lambda Legal settled with the cemetery outside of the courtroom. The cemetery agreed to erect the headstone in accordance with Cynthia's wishes and also to compensate Sherry $15,000.

Power Tool Tip: In addition to conversations with partners, spouses and other loved ones, recording your wishes about your death in a legally binding document—from distribution of property to funeral arrangements—is key to increasing the chances that your choices will be honored. Furthermore, in cases of discrimination by hospitals, insurance carriers or cemeteries, these documents aid attorneys and organizations like Lambda Legal in fighting for your rights.

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 before. 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 rights as a nonbiological parent.

ADOPTION AND PARENTAGE JUDGMENTS Depending on the state you live in, you may be able to file in court for a second-parent or step-parent adoption, which creates a legal tie between a child and a second parent without ending the child's relationship with the first parent. These adoptions make both members of a same-sex couple legal parents of their children, allowing them to share parental rights and responsibilities, when only one was a parent initially through biology or adoption. A less common option is a court judgment determining that a nonbiological or nonadoptive parent should be recognized as already a parent based on parenting conduct.

BENEFICIARY DESIGNATIONS Choose the person(s) who will be beneficiaries of your life insurance policy or retirement plan. Life insurance will allow you to provide for your loved ones if you die unexpectedly, while disability insurance protects them if you become disabled and are unable to work. Likewise, to protect retirement assets, it is critical that you name your loved ones when possible as the beneficiary of any retirement accounts or plans you own. Talk with an estate planning professional about steps to minimize possible tax consequences.

REAL ESTATE OWNERSHIP How you own property can have significant implications for how easily—or not—your property passes to your partner or other loved ones when you die, and whether taxes will be due on that transfer. Depending on your circumstances, you can use certain ownership arrangements, such as joint tenancy, to help protect the property you share and to ensure that your wishes about ownership transfer are respected after your death.

FUNERAL DIRECTIVE This document sets out your wishes for funeral arrangements and disposition of your remains, and is where you can make clear that your partner has decision-making authority regarding those issues.

Step Three

Build Your House

You don't need to be a lawyer or to spend a lot of money to begin building your life plan. You will need to consult with an attorney or financial advisor, but with the tools and resources included in this kit, you can be informed and empowered to voice your wants and needs in the process.

Inside this kit you'll find tips and resources for understanding the documents you'll need and the arrangements necessary to protect yourself and your loved ones, such as:

- What you need to know about what's in a will
- Why you might keep some legal documents at work and copies at home
- Where to go online to get even more informed
- How to find out if you can file for a second-parent or step-parent adoption in your state

If you've put off thinking about your life plan, don't delay any longer. Your life and the people you love are too important.

In a world where people are denied access to appropriate housing and health care because of their sexual orientation, gender identity or HIV status; separated from loved ones in the hospital when they need them the most because they are not seen as family; and lose homes and businesses when a longtime partner dies because they are not married, it's easy to feel powerless. But you're not. You can take the power and build a far more secure future for yourself and your loved ones.

FLANIGAN v. UNIVERSITY OF MARYLAND HOSPITAL SYSTEM

Bill Flanigan and his life partner, Robert Daniel, were on a cross-country trip to visit relatives when Robert suddenly became ill and was admitted to a Maryland hospital. Hospital staff told Bill that only family members were permitted in patients' rooms—and that partners did not qualify. Bill was unable to advise Robert's doctors that Robert wished to forego life-prolonging measures such as a breathing tube, and to be at Robert's side during the crisis. Several hours later, when Bill finally was allowed to visit because Robert's mother had arrived, Robert had lost consciousness, his eyes had been taped shut and doctors had inserted a breathing tube. Robert did not regain consciousness and died three days later, never hearing Bill's goodbye. With Robert's mother at our side, Lambda Legal sued the hospital on Bill's behalf, but the local jury refused to recognize the wrong done to both men.

Power Tool Tip: Bill Flanigan and Robert Daniel's story is a worst-case scenario—one that nobody wants to imagine, but that has happened all too often due to discriminatory laws and cruel private biases. The story has motivated state and local legislators around the country. Realistically, however, even with civil unions, registered partnerships and private documents to help, same-sex couples and people living with HIV should anticipate discrimination and be prepared to assert their rights firmly in a medical crisis. Start now by taking the basic steps to protect yourself and your family so you have the rights you may need later.

Tools for Preparing Wills and Trusts

Many of us avoid talking about death. But we all know that death touches our lives eventually and that there's no good reason to put off creating a will. A will or 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. Most of this could have been avoided with a will or trust. 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. Start at the beginning: Identify the right person to be your "executor" or "administrator" when you die, to go through all your belongings and make all the necessary arrangements.
2. Consult the following resources for legal help:
   - Lambda Legal's Help Desk, 866-542-8336, or send email by visiting www.lambdalegal.org/help/online-form (for legal assistance on LGBT and HIV-related issues or help identifying an LGBT/HIV friendly attorney in your area)
   - www.lawhelp.org (for help determining whether there is an affordable attorney or legal aid organization in your area)
   - www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

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."

A WILL

Take the Power! Create a will so you can state what should happen to your personal belongings after your death, including your home, cash, bank accounts 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 possessions to a blood relative you haven't seen in years, ignoring the people you care about. While everyone should have a written will, it is essential for LGBT people and those with HIV who often come up against discriminatory laws.

How it works: Create a legal document called a will, which governs the distribution of your possessions, (except for assets which you have placed beyond the reach of the will, such as life insurance policy proceeds or jointly owned property with the right of survivorship—see separate insert in this toolkit, "Protecting Your Assets After You're Gone"). 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 settling 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 biological 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–for instance, offering them a small amount of money on the condition that they'll forfeit it if they challenge the will, or naming potentially worrisome people in the will and explaining that they were left out in favor of others who were closer to your heart. Attorneys may also have advice about how big a role a life partner should or should not play in creating the will, to avoid charges of "undue influence." That concern diminishes when your state has opened marriage to same-sex couples or offers another legal status that entails the same rights regarding inheritance and estate administration, and you have decided that formalizing your relationship is the right step for you.
- 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 separate insert in this toolkit, "Tools for Protecting Your Wishes for Your Funeral").

- Some of your property and insurance proceeds may go automatically to individuals outside of your will (see separate insert, "Protecting Your Assets After You're Gone"). But the value of the property and proceeds often is included in the estate for tax purposes. That can increase the taxes owed by the estate and lower the amount left for beneficiaries in the will. Alternately, you might want to consider a trust, which offers more privacy and less opportunity for challenge, but which can be cost-prohibitive for smaller estates.
- If you have children, there are very important things to consider, such as providing for a guardian to protect your child(ren) against becoming wards of the state (see separate insert in this kit, "Tools for Protecting Your Children").
- 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 those living with HIV do well to have a lawyer's expertise to help counter the discrimination that is built into federal law and many states' laws.

A LIVING TRUST

Take the Power! In addition to a will, which you always need, consider creating a living trust to avoid some disadvantages of the probate process

Why do I need this power tool?
A living trust allows you to remove some of your assets from the probate process, while still providing for your beneficiaries. This has several advantages. The assets 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. Also, a trust document can provide for a financial trustee if you become incapacitated, which can be of special significance to same-sex couples whose relationships are not legally recognized. 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, because the trust is "revocable," you can change or eliminate the trust 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, if you become disabled or die. Here are some things to think about before creating a living trust.

- Don't forget to make the necessary changes to the paperwork for the assets you will put in the trust, such as property or bank accounts; otherwise you may wind up with an empty trust. An attorney can explain how this is done. You 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 transferred into it.
- A trust may be a good vehicle if you own real property in more than one state because it should allow you to avoid probate proceedings in two different 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 they are still considered part of your estate for tax purposes.
- Putting assets into a revocable living trust does not shield them from creditors.
- There are other trusts you can explore with an attorney to meet personal priorities, 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 separate insert in this toolkit, "Leaving a Legacy for Equality").

TIPS TO CONSIDER BEFORE YOU TALK TO AN ATTORNEY

- Name an 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.
- 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 the separate insert in this toolkit, "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.

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

- Review your will every two to three 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.
- 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 selected 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.
- 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.

Tools for Protecting Your Health Care Wishes

In health care settings like an emergency room, the right documents will help make sure your wishes are respected. If you're procrastinating about creating those documents, think about the experience of Cindy Meneghin, a Lambda Legal plaintiff in one of our marriage cases. When she was rushed to the emergency room with meningitis, hospital staff at first ignored her partner of 30 years. Terrified of losing consciousness without her partner 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.

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. 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.
2. Consult the following resources for legal help:
   - Lambda Legal's Help Desk, 866-542-8336 or send email by visiting www.lambdalegal.org/help/online-form (for legal assistance on LGBT and HIV related issues or help identifying an LGBT/HIV friendly attorney in your area)
   - www.lawhelp.org (for help determining whether there is an affordable attorney or legal aid organization in your area)
   - www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

HEALTH CARE PROXY, OR DURABLE POWER OF ATTORNEY FOR HEALTH CARE

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 you choose to be empowered to make those decisions. Otherwise the first relative who arrives at the scene might be called upon to make complicated and personal medical decisions for you. In one Lambda Legal case, Paula Long's same-sex partner was hospitalized unconscious with heart, lung and kidney failure, and staff refused to give Paula information, instead telling her they needed contacts for blood relatives. Lambda Legal eventually put things right, but a health care proxy likely would have helped Paula avoid, or at least reduce, the emotional nightmare in the first place.

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.

How it works: You create one or more legal documents, which may be called a health care proxy, 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). 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

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

to carry each other's documents. You also can carry your documents in digital form on your mobile phone or other hand-held device or on a memory stick. 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 proxy.

- 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 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 your needs go beyond those usually covered by a medical power of attorney or a durable power of attorney for financial matters and a court is asked to appoint a guardian with authority to make the full range of decisions for you.
- If you are transgender, you may need to add an instruction that your gender identity be respected, to further empower your proxy to advocate on your behalf.

LIVING WILL

Take the power! Create a document to make sure that your wishes will be honored for life-sustaining procedures, 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 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 intervention 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 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:

Though **Cindy Meneghin and Maureen Kilian** had been partners for 30 years, Cindy had to fight with hospital staff to allow Maureen to be by her side in an emergency. Fortunately, they had taken the power by preparing legal documents in advance to protect them in a hospital setting.

- 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.

HOSPITAL VISITATION DIRECTIVE

Take the power! Create a document that directs health care providers to allow your loved ones to visit you in the hospital.

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. Even if you are married to your same-sex partner, and even if your spouse/partner has the right under your health care proxy to make decisions about your medical care, she or he may still be barred at the door of your hospital room and/or denied information about you. And although you may have created a health care proxy appointing your loved one or best friend as your agent, medical staff often refuse to honor the role of a health care agent unless a patient is incapacitated. Yet you still may be conscious but too ill or distraught to advocate effectively for your needs.

How it works: A "directive" designating who can visit you in the hospital 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, a state law describing the role of a "health care agent" also can provide that the agent may visit the principal regardless of whether the principal has decision-making capacity at a particular time. Such a law would confirm the use of a health care proxy 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:

- Hospitals prioritize "family" for visitation. The Joint Commission, which evaluates and accredits hospitals all over the United States, defines family as: "The person(s) who plays a significant role in the individual's [patient's] life. This may include a person(s) not legally related to the individual." In your directive, it may be helpful to include a reference to the Joint Commission and its definition of family because hospital staff will recognize the name of the commission and may treat you more appropriately. This can be especially important when you travel outside your home state. (If you do have trouble, call the Joint Commission's complaint line at 1-800-994-6610, or email complaints@jointcommission.org.)
- Depending on how you feel about your legal relatives, you also may want to consider naming individuals whom 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 subgoups 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.

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, you may need to rely on someone else to make decisions and protect your assets on your behalf. While different-sex couples can access built-in state and federal legal protections through marriage, even married same-sex couples must take extra steps to protect their assets in case one or both 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 rega rding anyone's specific situation.

FIRST STEPS

1. Think about who would be the best person to manage your bills 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.
2. Consult the following resources for legal help making your plan:
   - Lambda Legal's Help Desk, 866-542-8336, or send email by visiting www.lambdalegal.org/help/online-form (for legal assistance on LGBT and HIV related issues or help identifying an LGBT/HIV friendly attorney in your area)
   - www.lawhelp.org (for help determining whether there is an affordable attorney or legal aid organization in your area)
   - www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

FINANCIAL POWER OF ATTORNEY

Take the power! Create a financial power of attorney, 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 incapable of taking 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 aunt may get financial control instead of your life partner of 30 years, possibly even if you are legally married.

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.
- Your biggest need may be to have bills paid from your cash accounts, and you should check with your bank: Some banks require that their own forms be filled out and will not honor a financial power of attorney. 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 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 do I need 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 committed 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 different-sex couples benefit from tax exemptions, the federal government still denies such exemptions to same-sex couples even when they are married, so they face gift and estate tax considerations regarding joint accounts. Consult with a financial planner about the advisability of each spouse/partner documenting equal 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.

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. Within the federal Social Security system, if you are married to a person of a different sex, your spouse may qualify for some disability benefits, too, while your children are young. But if you're in a same-sex relationship, you will not qualify for this spousal benefit, even if you are married or in an alternate status such as a civil union or broad domestic partnership, and even though you have had deductions involuntarily taken out of your paycheck to support the federal Social Security system.

Without health insurance, medical bills can mount up rapidly and, if you are a homeowner, you may 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. Many long-term care facilities still discriminate against LGBT people and those living with HIV, so it is preferable to have the option of home care.

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 or need to buy extra individual coverage, especially if one of you is a stay-at-home parent. If the family needs two policies, there will be two deductibles to pay down and that could increase your financial struggle.

Keep in mind: Find out if your employer provides benefits to same-sex spouses/partners. If so, the federal government probably will tax the value of any health insurance benefits you get for your same-sex spouse/partner (and for your spouse/partner's children) as income to you, 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 employers to allow workers to pay for and keep their health insurance for some time after employment ends (called "COBRA" coverage), that law does not require similar access for a same-sex spouse and her or his children. This federal law does not prevent such coverage, however; if your employer does not offer COBRA coverage for former employees' same-sex spouses/partners and children, consider advocating for 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. For more information on advocating for health care benefits at work, see Lambda Legal's toolkit "Out at Work: A Guide for LGBT Employees," available at www.lambdalegal.org.

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 still explicitly bars recognition of same-sex spouses, lesbian and gay couples in retirement are not protected the way heterosexual couples are by the Social Security spousal benefits that they have helped pay for with their taxes. For example, heterosexual married 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. Likewise, although much of the private sector has moved toward 401(k), 403(b) and IRA plans that permit designation of any beneficiary (though still with preferential tax treatment for different-sex spouses), some companies continue to offer pension plans that restrict beneficiary eligibility to a different-sex spouse and legally-related children. 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 available to different-sex couples, early and consistent retirement planning is even more important.

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 heterosexual 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.

Tools for Protecting Your Assets After You're Gone

Amalia Hervella and Margaret O'Neil were partners for 20 years. But when Margaret died without a will, her cousins claimed her assets and evicted Amalia from the couple's San Diego home. Unable to afford new housing in her community, Amalia was forced to move elsewhere. 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 house you own.
2. Create a will—see separate insert "Tools for Preparing a Will."
3. Consult the following resources for legal help:
   - Lambda Legal's Help Desk, 866-542-8336 or send email by visiting www.lambdalegal.org/help/online-form (for legal assistance on LGBT and HIV related issues or help identifying an LGBT/HIV friendly attorney in your area)
   - www.lawhelp.org (for help determining whether there is an affordable attorney in your area)
   - www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

JOINT OWNERSHIP WITH RIGHTS OF SURVIVORSHIP

Take the power! If you own a home, consider owning it jointly 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 same-sex spouse or partner and live in a state that denies same-sex couples the protections offered automatically to different-sex married couples who own real estate together. If you cannot or decide not to access inheritance protections through marriage or an 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. And even if you do leave a will giving property to your spouse/partner, relatives might challenge the will during the legal process of "probate," which settles a deceased person's affairs. While such challenges are far less common for LGBT people today, will "contests" still occur, especially when blood relationships are hostile or estranged. But a home owned jointly with rights of survivorship passes directly to the survivor regardless.

How it works: If you use this tool, both you and your spouse/partner 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.

- Even though you may take your home out of the will and probate process, the property is still considered part of your estate for federal tax purposes. Married different-sex couples get a tax break, but because of discriminatory federal laws, same-sex couples, even when married, do not. So for federal estate tax purposes, the property is considered 100 percent owned by the deceased partner unless the survivor can prove otherwise. In other words, unless your surviving spouse/partner can document the contributions he or she made to the property, your estate will be taxed more heavily and there will be less remaining for your loved ones. Consult a financial planner or attorney about the trade-offs in your circumstances.
- If you are not buying the home and sharing its ongoing costs together, and you simply want to add your spouse/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 partner has money to pay the increased taxes in the future.

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.

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

Advance planning could have protected Amalia Hervella (pictured) from being forced to leave the home she shared for many years with partner Margaret O'Neil after Margaret's death.

an insurance policy on your own life, you typically make monthly payments on the policy. At the time of purchase, you choose an amount (with larger amounts requiring larger monthly payments), and when you die that money goes to the beneficiary you have named.

- As with jointly owned property, even though the life insurance proceeds are paid directly to your beneficiary when you die—whether or not you left a will and outside the time-consuming probate process—that money is still part of your estate for tax purposes. That can make a big difference in the amount of taxes your estate owes and how much is left over for your loved ones. Consider approaches that take the insurance proceeds out of your taxable estate. Ask a financial planner or attorney about transferring ownership of the insurance to a partner, or setting up an irrevocable life insurance trust that benefits a partner. Both of these options involve giving up control over the life insurance, and there are conditions that have to be met. Alternatively, your partner could buy insurance on your life and vice versa.
- Consult a financial planner or attorney before purchasing a policy and deciding on the right amount of insurance, balancing the monthly costs during your lifetime against your loved ones' likely needs after you are gone.

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? Because tenants in common are considered to have distinct shares of the property, only the share belonging to the first spouse/partner to die will be considered part of that taxable estate, thus 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 will have to provide for that inheritance upon your death through your will or trust. 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, or another option is the better option for you.

Tools for Protecting Yourself in Your Relationship

We've seen great progress in recent years in the quest for full marriage equality. Despite these gains, however, many states still do not respect same-sex couples and their families, and explicitly withhold the rights and protections of marriage. Importantly, the antigay federal law misnamed as the Defense of Marriage Act ("DOMA") limits marriage for federal purposes to the legal union of a heterosexual couple, denying same-sex couples federal marital rights and responsibilities, including federal income, estate, and gift tax benefits; the right to draw on a spouse's Social Security earnings; and more. 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. 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 civil union or registered domestic partnership.

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
   - Lambda Legal's Help Desk in your geographic area at 212-809-8585 (toll-free: 866-542-8336) or

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legalhelpdesk@lambdalegal.org (for general information)

- www.lawhelp.org (for help determining whether there is an affordable attorney in your area)
- www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

4. There are several excellent resources available now in print and online to help you and your lawyer build your legal protections; the following two are good places to start. 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, available online. For additional guidance as to whether entering into marriage or legal registration is the right decision for your family, see *Making It Legal: A Guide to Same-Sex Marriage, Domestic Partnerships & Civil Unions*, by Frederick Hertz (with Emily Doskow).

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, you should consider whether this is the right step for your family.

Why do I need this power tool?

There can be many tangible benefits to entering into a formalized relationship, such as inheritance rights, health insurance benefits, state income and estate tax benefits, hospital visitation and medical decision-making power, and parentage presumptions. And, of course, the emotional significance of marriage for some people, and the dignity that comes with equal treatment under the law, cannot be overstated.

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 state tax consequences that you may prefer to avoid.
- If one of you is an immigrant to the U.S. without permanent legal status, you could find it more difficult to remain in this country if you enter a formal legal status with a same-sex partner.
- 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. Most states will not grant you and your spouse or partner basic spousal dignities like hospital visitation and medical decision-making for each other unless you both have completed the right legal documents. Likewise, your and your spouse's relationships with your children may be challenged if you have not secured all of your parental bonds legally. In other words, you both need to take the range of other Power Tool steps laid out in this toolkit so that you and your loved ones are as secure as possible.

DOMESTIC 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 "domestic 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, that may not be enough because you may have different intentions concerning your property, financial arrangements or other issues than 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.

Jill and Pauline Guillermo-Togawa (pictured, left to right, with daughter Carmel) are one of the six plaintiff couples in *Young v. Lingle*, the suit Lambda Legal launched seeking civil union status in Hawai'i in July 2010. The Guillermo-Togawas worried that "reciprocal beneficiary" status, the best available to same-sex couples at the time, would not sufficiently protect them from roadblocks to adopting a second child, or vulnerabilities Carmel might face as she starts school.

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? Even if your state gives legal recognition to your relationship, the reality is that biased attitudes often persist after the law changes and you still are likely to face blatant discrimination when you move to or travel in some other states. You also are vulnerable when you deal with federal agencies like the IRS or the Social Security Administration. An attorney in your state can explain how a contract like a domestic partnership 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, as with a stay-at-home parent

Dawn (middle left) and Jen BarbouRoske of Iowa City, pictured with their daughters McKinley (left), and Breeanna, were plaintiffs in Lambda Legal's 2009 groundbreaking victory establishing the right of same-sex couples to marry in Iowa, thanks to the Iowa Supreme Court's unanimous ruling in their favor.

- one partner has far more assets or debts than the other
- each partner has substantial assets that are being merged

In any of these circumstances, married different-sex couples might sign a prenuptial agreement. If their marriage sours they have the benefit of divorce, a legal process that allows for fair division of property, and the agreement signed in advance can be very helpful. If you're in a same-sex relationship and your state gives you the benefit of divorce court (as with a marriage, civil union or broad domestic partnership), it still may be wise to draft a written agreement beforehand. On the other hand, 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, which 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 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 separate insert in this toolkit, "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 often face discrimination in the courts.
- 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.
- 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 enlisting 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

If you are considering traveling to another state to marry or enter a civil union, or moving away from a state in which you were legally joined or that respects your out-of-state union, you should also keep in mind that you may have trouble ending your legal relationship in other places. Most states that deny same-sex couples the right to marry or enter another broadly protective status also deny them the right to divorce. And because all or nearly all states presently require that at least one spouse be a resident in order for the state's courts to grant a divorce, you may be limited to the court system of your home state—which may or may not recognize your legal relationship for purposes of dissolving it—should your relationship end in the future. Registered domestic partnerships sometimes are easier to dissolve, but state laws vary and you still should be cautious.

Tools for Protecting Your Children

Every year more same-sex couples are experiencing the joys of parenthood. This new 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 couples 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 are raising your child together with a same-sex partner and you intend your partner to be recognized as your child's other parent, you must 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. Look into whether your state allows second-parent or step-parent adoptions. You can start by clicking on your state at our website, www.lambdalegal.org.
2. Consult the following resources for legal help:
   - Lambda Legal's Help Desk, 866-542-8336 or send email by visiting www.lambdalegal.org/help/online-form (for legal assistance on LGBT and HIV related issues or help identifying an LGBT/HIV friendly attorney in your area.)
   - www.lawhelp.org (for help determining whether there is an affordable attorney or legal aid organization in your area)
   - www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

SECOND-PARENT AND STEP-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 second-parent adoption if your state allows it. Same-sex couples in states that recognize their marriage, civil union or broad domestic partnership also may be able to do a step-parent adoption.

Why do I need this power tool? Both parents in a same-sex couple 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, same-sex couples are no more immune to relationship failure than different-sex couples, and protections for children can be essential if their parents' relationship falls apart.

How it works: A second-parent or step-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 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 interests of the child. The earlier 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 adoption is unavailable or impractical, you might consider seeking a court judgment confirming the parental status of the nonbiological or nonadoptive 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.
Adoption generally is considered a more secure way to establish parent-child ties because adoption judgments are common in every state, and parentage judgments are still unusual in some areas. If an adoption judgment is not available, however, a parentage order is much better than no court order at all. Accordingly, if you consult with an attorney about requesting a court judgment of parentage in your state, keep in mind that such orders should confirm your parental status based on your actions as a parent, not your actions as a domestic partner or same-sex spouse, because many states and the federal government still deny legal respect to same-sex couples' relationships. Your lawyer can increase the likelihood that your parentage order will be respected in other jurisdictions by basing the order only on your actions as a parent.

- Even if you live in a state that respects same-sex relationships and you are married or have a civil union or broad domestic partnership, your child(ren) may not be adequately protected. 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.
- 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.

CO-PARENTING, SHARED CUSTODY OR GUARDIANSHIP AGREEMENT

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 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: At minimum, the agreement works to the extent that the two of you abide by it. 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.

- Include a provision stating that the non-legal parent has the authority to agree to medical care for your child or children.
- Include a provision stating that both parents have joint financial and other responsibilities for your child or children.
- Include a provision stating that the legal parent will name the non-legal parent 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.
- Include provisions to safeguard the best interests of your child or children if your relationship with your partner dissolves. Address custody, visitation and financial support.

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 so health care staff will not have to sift through everything in a more lengthy, 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 due to the discrimination against same-sex couples in some benefits programs such as Social Security (see separate inserts in this toolkit, "Tools for Protecting Your Assets in Life" and "Tools for Protecting Your Assets After You're Gone").

- 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."

Tools for Protecting Your Wishes for Your Funeral

After death, how will your wishes be reflected in the many decisions people make about the disposition of your body and funeral arrangements? 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 unrecognized spouse from the 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 the kind of memorial service you would like and who should control it. Then discuss your wishes with that person.

2. Consult the following resources for legal help:
   - Lambda Legal's Help Desk at 212-809-8585 (toll-free: 866-542-8336) or legalhelpdesk@lambdalegal.org
   - www.lawhelp.org (for help determining whether there is an affordable attorney in your area)
   - www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

FUNERAL AND REMAINS

Take the power!
Create a document 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 what your state defines as your "next of kin" to make these decisions for you. If you have a legally recognized spouse or registered domestic partner, 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 what your memorial service will be or 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 life 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 provides 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.
- If you are in a state where you can use a health care proxy (or medical power of attorney) to assign authority to someone for funeral-related decisions, ask your attorney whether it's still a good idea to have a separate document that specifies how you want that authority used, in case there is a dispute.
- You should not only sign 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?
- ☐ Who should have authority to make funeral-related decisions?
- ☐ Do you have wishes about a particular funeral home and how much money should be spent?
- ☐ Do you want a "viewing"? If so, do you have preferences as to 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 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 life partner, how do you want that person described in your obituary? How would you like your gender identity described? Do you have any other specific wishes for how you and your life are described?

Leaving a Legacy for Equality

Making a planned gift to Lambda Legal or another nonprofit organization is a wise investment that can provide valuable tax benefits and income both for yourself and your loved ones. At Lambda Legal, when you make a planned gift, you become a member of the Guardian Society, a growing group of individuals who have taken the extra initiative for equality by including Lambda Legal in their estate plans. It's simple: You just make Lambda Legal a beneficiary in your will, retirement plan, life insurance, trusts or other estate planning vehicles. Here are some of the ways you can take the power by including Lambda Legal in your life and estate plans.

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 the issues and organizations you value most and consider the ways to help them through planned giving vehicles.

2. Consult the following resources for legal help:
   - Lambda Legal's Help Desk, 866-542-8336 or send email by visiting www.lambdalegal.org/help/online-form (for legal assistance on LGBT and HIV related issues or help identifying an LGBT/HIV friendly attorney in your area)
   - www.lawhelp.org (for help determining whether there is an affordable attorney or legal aid organization in your area)
   - www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

3. For additional free and confidential information about planned giving opportunities at Lambda Legal, please contact our Planned Giving Office at 212-809-8585 or plannedgiving@lambdalegal.org.

BEQUESTS

Take the Power! Use your will to make a charitable bequest to Lambda Legal.

Why do I need this power tool?

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 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

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

Why do I need this power tool?

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 different-sex 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, 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 non-profit organization are not taxed at all.

Ric Wieland, one of Microsoft's first employees, was a longtime supporter of Lambda Legal and left a tremendous legacy for equality when he passed away in 2006. Ric took the power and through his will established a $46 million fund for 10 LGBT and HIV organizations—the largest single bequest ever made to the LGBT and HIV civil rights community.

LIFE INSURANCE

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

Why do I need this power tool?

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 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 GIFT ANNUITIES

Take the Power! 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.

Why do I need this power tool?

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 $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 SEVERAL TYPES OF CGAs

One-life CGA: Through this annuity only you or your designated beneficiary (age 60 or older) will receive the income from your contribution. The rate of return on this type of CGA is higher than if two people are designated to receive income.

Two-life CGA: Through this type of annuity you can provide income not only for yourself but also for another beneficiary, such as your same-sex partner or spouse. The age of both recipients (minimum age: 60) will be used to determine your rate of return and the portion of your gift that is tax-deductible.

Deferred CGA: An ideal choice for younger donors or those who have not yet retired, a deferred CGA allows you to defer receipt of your payments on your one-life or two-life CGA after your initial contribution. To make a deferred CGA, you and/or your beneficiaries must be at least 55 years old and payments must be deferred until at least age 60.

CHARITABLE TRUSTS

Take the Power! 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.

Why do I need this power tool?

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 passes 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.

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 with HIV can sometimes be a confusing or intimidating process. We've put together a series of questions to help simplify your search. These questions are intended as guidelines 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 those living with HIV. In other words, you may be limited to finding a lawyer with a willingness to learn about the issues.

One resource for attorneys in any state who are willing to learn is Estate Planning for Same-Sex Couples *by Joan M. Burda, published by the American Bar Association. A resource for lawyers and non-lawyers alike is* Making It Legal: A Guide to Same-Sex Marriage, Domestic Partnerships & Civil Unions *by Frederick Hertz with Emily Doskow, published by Nolo.*

FIRST STEPS

Consult the following resources for legal help:

- Lambda Legal's Help Desk, 866-542-8336 or send email by visiting www.lambdalegal.org/help/online-form (for legal assistance on LGBT and HIV related issues or help identifying an LGBT/HIV friendly attorney in your area)
- www.lawhelp.org (for help determining whether there is an affordable attorney or legal aid organization in your area)
- www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

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 or their HIV status, and if so, how often? What were the challenges?

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?

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?
- ❑ 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 con cerning funeral arrangements in your will or in a funeral directive? If you want to limit funeral expenses, have you said so?
- ❑ 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?

- ❑ Are your primary and contingent beneficiary designations in your will up to date?
- ❑ Have you named a guardian for your children in your will?
- ❑ Have you named primary and contingent beneficiaries for bank accounts, retirement and investment 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 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?
- ❑ 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 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.

Tax Considerations

The pursuit of marriage equality for same-sex couples brings much-needed focus to the everyday needs of lesbian and gay couples. Without full legal recognition and protections, same-sex couples confront a variety of complicated legal and financial issues—including numerous tax matters. Lambda Legal has assembled this general information to assist same-sex couples as they meet with professionals for legal and tax advice specific to their situation.

Lambda Legal recommends that your life and financial planning team include an attorney, a financial advisor, and, depending upon your circumstances, a certified public accountant, all with experience addressing the issues that affect same-sex and/or unmarried different-sex couples differently from heterosexual married couples.

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

FIRST STEPS

1. For tips regarding titling and ownership of shared property and a discussion of related estate and gift tax consequences, see "Tools for Protecting Your Assets During Life," Tools for Protecting Your Assets After Death," and visit www.lambdalegal.org/taxconsiderationsforsamesexcouples

2. Consult the following resources for legal help:

   - Lambda Legal's Help Desk, 866-542-8336 or send email by visiting www.lambdalegal.org/help/online-form (for information about LGBT and HIV-related legal issues or help identifying an LGBT/HIV friendly attorney in your area)
   - www.lawhelp.org (for help determining whether there is an affordable attorney in your area)
   - www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

INCOME TAX FILINGS

Due to the discriminatory provisions of federal law, the Internal Revenue Service will not respect a same-sex couple's marriage, no matter where the couple married or makes their home. Married same-sex couples thus must file their federal income tax returns separately, each with a "single" filing status, which can be financially disadvantageous. State income tax treatment of same-sex couples who are married or who have entered into a civil union or registered with the state as domestic partners varies by state.

Take the Power! If you are married but required to file "single" status, consult with a local tax practitioner to evaluate your options under state law, and consider filing a disclosure statement with your federal and possibly state tax return(s).

Why do I need this power tool?

Some tax professionals advise married couples who must file "single" to affirm their married status in their returns to ensure that those "single" returns cannot be used against them in other contexts in which they can and wish to be recognized as married.

How it works: Below is a sample disclosure statement to review with your tax professional, who can advise you as to whether this is a wise approach for you.

SHARING A FINANCIAL LIFE

Some couples choose to co-mingle their finances; others prefer to remain economically distinct. Same-sex couples may own together some or all of their assets, such as their home, bank accounts, investments, etc. Joint ownership of assets can make life simpler in many ways and may expedite transfer of property upon death of one partner. However, assets transferred during life or passed upon death possibly can become subject to federal (and in some cases, state) estate and gift taxation.

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

HEALTH INSURANCE

Health insurance provided by employers for an employee's domestic partner or same-sex spouse is subject to federal income taxation (the same is not true for different-sex spouses), and thus employers who provide such insurance must report its value as taxable income imputed to their employees. State tax treatment of this insurance varies.

Take the Power! Consider talking with your employer about increasing your base salary to account for this discriminatory impact.

COMMUNITY PROPERTY

In May 2010 the IRS advised that both members of a California registered domestic partnership who have community property under that state's broad domestic partnership laws must report one-half of the couple's jointly owned "community income" on their respective individual federal income tax returns, whether that income is from wages or from property sources. This policy change may have implications for people living in a "community property" state that also has broad domestic partnership or marriage recognition for same-sex couples (such as California, Nevada and Washington). For helpful information about this issue, go to www.lambdalegal.org/ttp-community-property.

SAMPLE ATTACHMENT TO FEDERAL TAX RETURN

This form accompanies the federal income tax return for taxpayer ______________________________ .

The above named taxpayer married a person of his/her same sex in [place] in [year]. The taxpayer has not filed as "married" on the federal income tax return and/or filed a joint federal tax return solely because, pursuant to the Defense of Marriage Act, the federal government defines marriage as a legal union between a man and a woman. By filing as "single," the taxpayer is in no way disavowing his/her marriage.

Signature:____________________________

Date____________________________

Social Security #:____________________________