

Living together and the law

by Cindy Cumfer

Every one of us who decides to live together in some committed way with a lover is familiar with some of the issues this kind of commitment brings — interpersonal issues, issues with other friends and lovers, issues with each person's family, dealing with employers and co-workers, and neighbors. What often remains hidden — often until too late — are the legal issues a decision to live together brings. Legal issues may arise when a couple breaks up, when a creditor comes after one or both of you, or when one person gets sick or dies or can no longer handle their affairs. Our society for the most part presumes that all committed couples are heterosexual and married. For married heterosexual couples, various laws (e.g., divorce laws, intestacy laws for those who die without a will) cover what happens when one of these legal issues arises. No presumptions protect lesbians and gay couples, although in most cases we can, by agreement and pre-planning, protect ourselves. This article covers some of the planning ahead that can be done by gay and lesbian couples (and any unmarried couple).

Living Together Contracts. When a couple begins living together, and especially if the couple is buying property together, their financial affairs almost always become intermingled to some extent. Many couples pool their money and make all of their purchases from common funds. Other couples pool some of their money and keep some of their money separate. Some couples keep their monies entirely separate. Couples differ as to whether they consider inheritance and gifts to be common monies or individual monies. Some couples purchase homes together, and many purchase items of furniture or major appliances together.

Most of the couples who have consulted me as an attorney have not come to any clear agreement about their expectations concerning their money and their property. Most of us have a hard time talking about and dealing with money, especially with people we are very close to. However, it is far easier to do this when we are getting along than when we are not getting along!

A living-together contract is an agreement between two people who live together, spell-



ing out what their understanding is concerning their money, their debts and expenses, and their property. An agreement typically states whether the parties are pooling their money, partially pooling their money or keeping it separately. The agreement will state how the expenses are shared. The agreement will also spell out which party owns what property. If the parties own a home, the agreement spells out how the mortgages, taxes, and insurance are paid, and what equity each party has in the property. The agreement may also spell out what happens to the home and property if the parties decide not to live together.

Oregon courts have stated that they will recognize these types of agreements between unmarried couples, whether the couples are male and female or same sex couples.

If one of the parties has children and the other party is co-parenting the children, the agreement may spell out what the parties have agreed to do about the children should the parties no longer live together. This could include issues of where the children live, visitation, and whether one party pays the other party for support of the children. Both people need to take into account whether the children have another biological parent who might try to oppose these arrangements, possibly by

bringing a custody suit against the parent who has the children. Courts do not always consider themselves bound to agreements concerning children, even where the parties are heterosexual and married. You should be aware of this when considering what agreement you want to make concerning the children.

Deeds and Titles. Deeds and contracts to purchase "real property" (homes and land) can be written up two different ways where more than one party is the purchaser. One way is to simply list you and your lover as buyers, or to list you and your lover as "tenants in common." Doing either of those things means that you own the property in such a manner that should one of you die, that person's interest does not necessarily pass to the other person, but will pass through the dead party's will, or if there is no will, as the law provides. (See below.) The second way to write up the deed or title is to write both of your names in as buyers, "not as tenants in common, but with the right of survivorship, that is that the fee vests in the survivor." When a deed is written in this fashion, upon the death of one of the parties, the property passes immediately and automatically to the other party. The property does not even go through probate.

Motor vehicle titles may also make a provision for the other party to receive full title to the vehicle upon the death of one of the owners. Look for the words "or the survivor thereof" after both of your names on the title.

Most bank accounts also have this survivorship provision. You can ask your bank, or look on the bank card that you signed and left with the bank at the time you opened your account.

Breaking Up Contracts (or Breaking Up Is Hard to Do). A number of people have come to me after they have broken up, trying to figure out what to do about their property. Sometimes people see me after they have agreed with their ex-lover as to how to handle dividing up the property, have paid off the ex-lover, did not write up their agreement, and then the ex-lover comes back for more. This is most likely to occur where the parties have purchased a home together. Whether or not you have done a Living Together Contract, if you have any substantial amount of property, you should have a contract in writing after your break-up, setting out the terms of your agreement as to how the property and debts are to be handled, and containing a statement from each party that this agreement is a full and complete satisfaction and release of rights and claims concerning the relationship and property you accrued together. At this time, each party would sign off on all jointly held property that does not continue to be held jointly.

Wills (or If You Die Without A Will, Your Lover May Want to Kill You). In the State of Oregon, if you die without a Will, all of your property will be divided equally between your legally married spouse and your children. If you have neither of those, your property will go to your parents. If your parents are dead, it will go to your sisters and brothers, or to their direct descendants. In no event will it ever go to your lover (unless your lover happens to be one of those people I have just named). This is true even though you may have told everyone in the state that you want your lover to have your property.

If you do want to have your lover, or anyone else not named in the above list, to have some or all of your property, you must make a Will. The Will must be witnessed by two people, who watch you sign it, hear you say that it is your Will, and hear you say that you know what is in the Will, and to watch each other sign it.

Some property passes at your death, regardless of whether or not you have a Will. Deeds and titles held with survivorship language, as discussed above, will pass to the survivor, regardless of the provisions of any Will. Life insurance proceeds will pass to your named beneficiary, regardless of the provisions of your Will. You may want to arrange to have your property pass outside of your Will for several reasons — to keep the cost of probate down, to assure a little more privacy in how your property is disposed of, or to get the property more quickly to the person who is to receive it.

The purpose of a Will is to dispose of all of your property, except for that which does not pass through the Will, and to handle your other affairs upon your death. Typically, a Will will name the persons who are to receive your property, name a guardian for any minor children, name a trustee and set up a trust for any property that is going to minors or persons to whom you wish to leave the property in trust, and name the person who is to be responsible for seeing that the terms of your Will are carried out.

Many people also state in their Will what they want done with their body after their death. Oregon law gives the right to your family to dispose of your remains. At this point, the law is not clear as to whether your wishes expressed in your will would overcome your family's right to make this decision.

Because of society's lack of acceptance of lesbians and gay men, drafting our Wills require more thought and consideration than

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