

drafting Wills for heterosexual people. For example, if you are giving all or most of your property to your lover, you may want to consider putting a specific clause in your Will disinheriting your family. This clause would make it clear that you had not forgotten your family, but really chose to give your property to your lover.

The most difficult area for lesbians and gay men is providing for guardianship of their children. Many of us who have custody of our children live in a situation where our lover is, for all practical purposes, the children's other parent. It would seem natural and in the children's best interest that that person should care for the children upon our death. However, it is extremely unlikely that a Court will go along with this arrangement, even if it is explicitly spelled out in the Will. Unless the other biological parent can be proven to be unfit, that person will probably become the children's guardian upon the death of the custodial parent. What can be done in your Will is to elaborate all of the reasons why the other biological parent should not be the custodial parent for the children. The same should be done for any member of either your family or the other biological parent's family who might conceivably fight for custody of the children. You should also put into your Will all of the reasons why you are naming your lover, or whoever you are naming, as your choice for guardian.

In addition to using your Will as a chance to tell the Court why your children's best interests would be served by honoring your appointment for guardian, you can also make it financially difficult for anyone to contest your guardianship choice. A guardianship fight between a natural parent or family member and a lesbian or gay man is going to be an extremely expensive fight. Your Will, in your property distribution section, could give your choice for guardian all sums necessary to cover their attorney's fees and costs in waging any guardianship contest. Your Will could also provide that no one who contests your guardianship choice should be paid any attorney's fees or costs from your estate, regardless of the outcome of the guardianship contest. If you are naming particular members of your family to receive any property under your Will, but you do not want them to be guardian of your children, you could provide that they do not receive that property should they wage a guardianship contest. You can also provide that your choice for guardian, if that is also your choice for trustee of the children's money, to continue to be trustee even if she or he is not permitted to serve as guardian. All of those measures can make it financially unappetizing for anyone to contest your choice for guardian.

Another provision in the Will that long-term, committed lesbian and gay couples may want to consider is a provision making

your Wills mutual Wills. A mutual Will is one which provides for a common plan for distribution of your property upon the death of both of you. You may decide, for instance, that after both of you have died, you want one-half of what is left of both of your properties to go to one person's side of the family, and the other half to go to the other person's family. A mutual Will (which is actually two separate Wills) puts that plan into both of your Wills and provides that neither of you will change their Will without notice to the other person. A mutual Will also provides that upon the death of one of you, the other person cannot then change their Will. This locks both of you into your agreement on property distribution, unless the other person is given notice that there is to be a change.

**Life Insurance Trusts.** Many people have life insurance policies and want the proceeds of the policy to be used for their children's benefit, with their lover as the person they want overseeing the spending of the money. If the children are named as beneficiaries on the life insurance, upon the death of the parent, the life insurance company will not pay the money directly to the children, if they are minors. The life insurance company will wait until a conservator is appointed by the Court to receive the proceeds. The Court is most likely to appoint as conservator the children's other biological parent or a blood relative of the deceased parent. This is true, even though your Will may name as trustee your lover or some other person. The life insurance proceeds do not pass through the Will and the Court is not bound by who you name as trustee in your will.

There are two ways to avoid this result. One is to name your estate as beneficiary in your Will, and to set up a trust provision in your Will naming who you want as trustee. Then the life insurance proceeds would pass through your Will and your choice of trustee would most likely be honored. The disadvantages to this method is that the cost of probate would go up, because the cost of probate is based on the amount of property that passes through your Will; it would probably take longer for the trust to get set up because it goes through probate; and your trustee would have to make annual accountings to the Court.

The other method is to get a trust set up in your lifetime, which would be funded upon your death by the proceeds of the life insurance policies. This is a separate document that a lawyer would draw up. This trust agreement would name your choice as trustee, and provide for the terms of the trust. You would then notify your insurance company of the existence of the trust and find out from the insurance company how they want the beneficiary on your policy designated so that the trust becomes the beneficiary.

**Medical Authorizations.** In the event of a

medical emergency, our society gives the right to prescribe treatment for you in the event you are unable to prescribe it for yourself to your heterosexual spouse or your blood relatives. You can have drafted for you a document which states that you want some other person to make medical decisions for you, in the event you cannot make them for yourself. That document is commonly called a medical authorization. It can also provide that you want the same visiting rights as would be extended to your family to be extended to the person that you name in the medical authorization. If the medical authorization is also drafted so that it is a limited power of attorney, it should be honored by doctors and hospitals. As a practical matter, where life-threatening treatment is involved, the doctor or hospital may require that you go to Court to get the medical authorization enforced.

**Powers of Attorney.** A Power of Attorney is a document that gives another person the right to do that which you could do yourself. The Power may be general, giving the other person the right to do anything you could legally do. The Power of Attorney may be specific, and spell out exactly what it is you are giving the other person the right to do. (For example, to sell your car for you.) A number of people have talked to me about

drafting Powers of Attorney that will allow their lover to handle their affairs in the event they become incapacitated. It is somewhat unlikely that this kind of Power of Attorney would ever be honored, because the person who you want to honor it will have no way of knowing whether you are incapacitated. If you should become incapacitated, someone will have to apply to the Court to be appointed your conservator and guardian. Normally, the Court gives first preference to your legal spouse or a blood relative. However, if your lover has a Power of Attorney to take effect when you become incapacitated, this might encourage the Court to appoint your lover, rather than the other persons who normally get preference.

If you decide that you want some of the documents that I have described in this article, you should see a lawyer, or get a good self-help handbook. Peoples Law Books, Inc., is in the process of publishing a good self-help book on Wills that will cover problems faced by lesbians and gays. They can be reached at P.O. Box 14223, Portland, Oregon 97214, or by calling 295-2459. The anticipated date of publication of this book is March 1, 1984. There is much that we can do ourselves or through lawyers to prevent the heterosexual presumptions of the law from ruling our lives.

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