

PROPOSAL FOR FAIRNESS

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and lesbians to pursue legal recognition of their relationships is part of a larger picture of an evolving society. In that picture, people are struggling to escape traditional oppression.

"It's a product of the shifting nature of family," says Tinker. "Marriage is evolving from a way for the state to control inheritance of property rights into a chosen love relationship."

This evolution, says Tinker, is taking a toll on legal marriages that weren't necessarily healthy to begin with.

"An upheaval in straight marriages is taking place," says Tinker, adding that many of those backing so-called "defense of marriage" legislation probably favor traditional, oppressive marriages and are "trying to shore that up by imposing a rigid structure.... When you talk to them about same-sex marriage, they have to admit that they believe in discrimination."

Like most forms of discrimination, the damage done is not simply hurt feelings. There are drastic economic and social ramifications to the fact that same-sex couples can't obtain legally recognized marriages.

According to the Boston-based Gay and Lesbian Advocates and Defenders (GLAD), there are "1,049 federal rights and responsibilities and hundreds of state rights and responsibilities associated with civil marriage."

Susan Nestor, a Portland CPA who considers

herself a lesbian feminist, is achingly familiar with the financial nitty-gritty of those 1,049 rights and responsibilities.

The fiscal disadvantages faced by same-sex partners, relative to their legally married mixed-gender counterparts, "are absolutely legion," says Nestor, who adds that her client base includes "a significant portion" of same-sex domestic partnerships.

One prime example she points to is health benefits. "There are a lot of companies and governmental agencies allowing domestic health benefits," Nestor acknowledges—before explaining the catch. "At tax time, it can be a



rude awakening to see this included as income."

While an employer may be progressive and fair-minded in extending health benefits to employees' domestic partners, the Internal Revenue Service refuses to walk the same line. Thus, at the end of the year, an employee who's been taking advantage of this particular benefit will find that premiums paid to include a domestic partner will be tagged on to his or her W-2 as taxable income, Nestor explains.

Some disadvantages, says Nestor, can be particularly glaring at times in couples' lives when they may seem most hurtful: during death or divorce.

"If I die, my partner doesn't get my Social Security benefits," she says, explaining how an injury—the death of a spouse—can be met with institutionalized insult.

And that's not all. Nestor goes on to explain that an independent retirement account can't be rolled over (a tax-free transfer) to the survivor of a domestic partnership, while this is commonplace for legally-married couples. Same-sex survivors also face a cap on what they can inherit from a deceased partner tax-free, whereas no such limit exists for legally-married survivors.

When a same-sex marriage dissolves voluntarily, it's easily just as complicated and costly. Nestor uses the example of splitting a 401K retirement plan. Legally-married couples routinely split these accounts without facing a tax liability in the event of a divorce. No such allowance exists for same-sex couples, leaving them "totally subject to taxes," says Nestor.

As an accountant, Nestor may have a more rational way of looking at these situations, and she seems to find the lack of rules particularly troubling.

"In divorce, there's a complete set of rules for division," she explains. "For domestic partner relationships, there are no rules. It can make an unsettling time even more so."

Nestor grants that legally-married couples do face a disadvantage in taxes with the so-called "marriage penalty." Under existing IRS tax rules, married couples filing jointly generally suffer a higher tax liability than would the same couple filing singly as same-sex partners must. In light of all the penalties same-sex partnerships endure, however, she discounts the unfairness as trivial by comparison.

"We've got one thing where people who are married are treated unfairly," she admits. "But if they get theirs equal, can we get ours equal?"

Jamie Troy, a gay lawyer practicing in Portland, has dealt with some of the same issues while working in family law. Until same-sex marriage is legalized, like Nestor, he'll continue applying his professional acumen to drafting documents that insulate same-sex partners from the disadvantages of their situation.

But, whereas Nestor is pleased by the number of partnered clients who choose to use her services as a couple instead of as individuals, Troy pragmatically must lean in the latter direction.

WHEN A HOUSE IS NOT A HOME

by Patrick Collins

Suppose you've been with your significant other for a while and that the two of you are comfortable sharing everything from closets to toothpaste. Of course, if you're the same gender, one thing you don't share is a marriage certificate. And suppose you're ready to take that next giant step and buy a house together.

Before you get too wrapped up in the eternal white picket fence fantasy, consider the story of Richard and Tim, two ordinary queer men who came to Portland a few years back and embarked on what seemed a dream come true—but turned into a nightmare.

The couple purchased a home in Northeast Portland. Built in the 1940s, the house had two bedrooms and hardwood floors, recalls Tim, adding that he spent considerable amounts of time and money tending to the incidentals of home ownership. There was landscaping, replacing electrical outlets, removing wallpaper, painting, and replacing linoleum on the bathroom floor.

Barely six months into their ownership adventure, the couple split. Tim moved out. Richard searched in vain for a roommate and eventually decided to rent the house. About a year and a half after purchasing the house for \$96,000, Richard sold it for approximately \$128,000. Richard paid Tim the \$800 Tim had put toward the down payment, which, Richard estimates, was nearly \$8,000, and considered the matter closed.

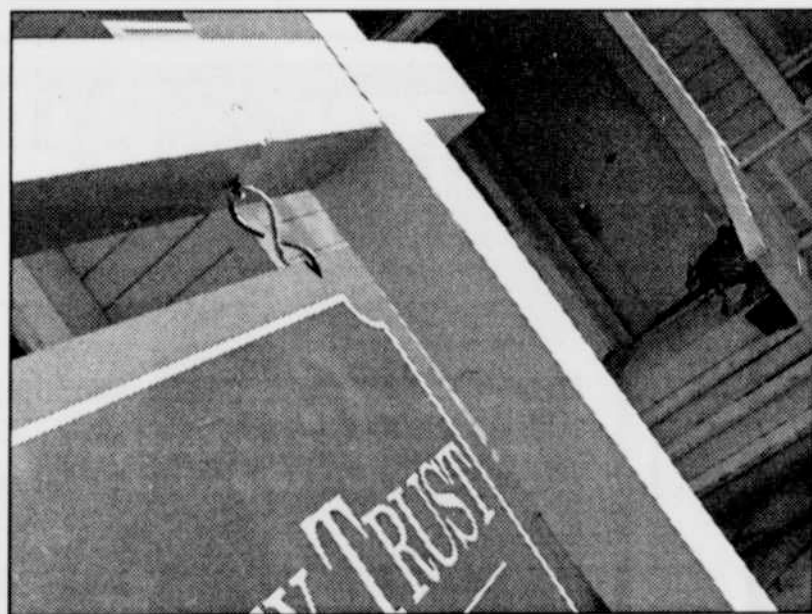
"I assumed that when he sold the house I'd see some money," says Tim.

Says Richard, "I thought it was pretty clear that I was the one who purchased the house and that Tim was, basically, a renter."

Tim doesn't see it that way at all. He remembers the down payment as being \$3,000 (not the \$8,000 Richard recalls). In order to seal the initial purchase, Tim says, he wrote a letter to the mortgage brokers stating that his \$800 contribution to the down payment was a "gift," thereby waiving his right to have his name on the title. The reason for this, he

explains, is that his credit was so damaged that having his name on the title would've been a liability.

"I took my partner's word for it since he was



the one dealing with all the mortgage people," Tim says now.

Richard contends that he has more than held up his end of the bargain.

"Every major expense came out of my pocket," Richard insists. According to him, Tim covered only \$250 of the \$850 monthly mortgage payment, and that it was he, not Tim, who paid the various taxes and put \$6,000 of his own money into replacing the furnace, the dishwasher, stove, washing machine, clothes dryer and garbage disposal. It was also his responsibility, he says, not Tim's, to take care of the property after the couple had moved out and rented the house.

"When he left the house, he walked away," Richard says. "It's funny that he now thinks he owned part of it."

To Tim, it's not funny at all. "We had a relationship, and we bought a house together," he says retrospectively. "To me, that's a partnership."

To Marlene Findling, a Portland attorney who specializes in family law, which includes dissolution of domestic partnerships, Richard and Tim's story is not at all unusual.

"There is a court of appeals case that says very specifically that just because the house is not in both names doesn't mean that both people don't own it," she says. "In my experience,

gift letters [such as the one written by Tim when he and Richard were making their initial financial arrangements] are not conclusive evidence as to whether the money was intended as a gift or a loan."

What's important, Findling says, is intent—both explicit and implicit. "For instance, do you live like a married couple?" she offers. "Were the two of you shopping for a house together and picking it out together, or was one of you considerably more involved than the other? These are the sorts of questions to ask, but, of course, there's always another side to the other side."

Had Tim and Richard been a legally-married couple, "It would certainly change everything," Findling speculates. "The general rule in a marriage—we call this a legal presumption—is that any property acquired during the marriage is a marital asset and presumed to be contributed to equally by both people in the marriage. Under most circumstances, it would be divided equally upon divorce."

Nevertheless, same-sex couples can still save themselves lots a grief—not to mention time and money—says Findling, if they consult with an attorney before they buy property together.

"People are afraid of lawyers interfering with the intimate nature of their relationship," she says. "But if it's difficult talking about these topics at the beginning of a relationship, imagine how hard it can be when you're breaking up."

For do-it-yourselfers, Findling recommends a book that walks couples through the process: *The Legal Guide for Unmarried Couples in Oregon*, by Cynthia Cumfer (Integrity Press, 1995).

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