

## DOLLARS & SENSE

# Necessary paperwork

If you're a gay man or lesbian, coupled or single, there are some documents you may need to protect yourself

BY GIP PLASTER

**M**arriage comes with a number of rights that can't be fully simulated for gay and lesbian couples who, as you likely know, are not allowed to marry legally. A few carefully prepared documents, however, can make a big difference in protecting a couple's rights.

While there are a number of documents that gay and lesbian couples may want to consider having prepared, two items are crucial, according to Denis Clifford, a co-author of *A Legal Guide for Lesbian and Gay Couples*.

### The transfer document

"Without some sort of transfer document, the only people with the right to inherit your property are your family," explains Clifford.

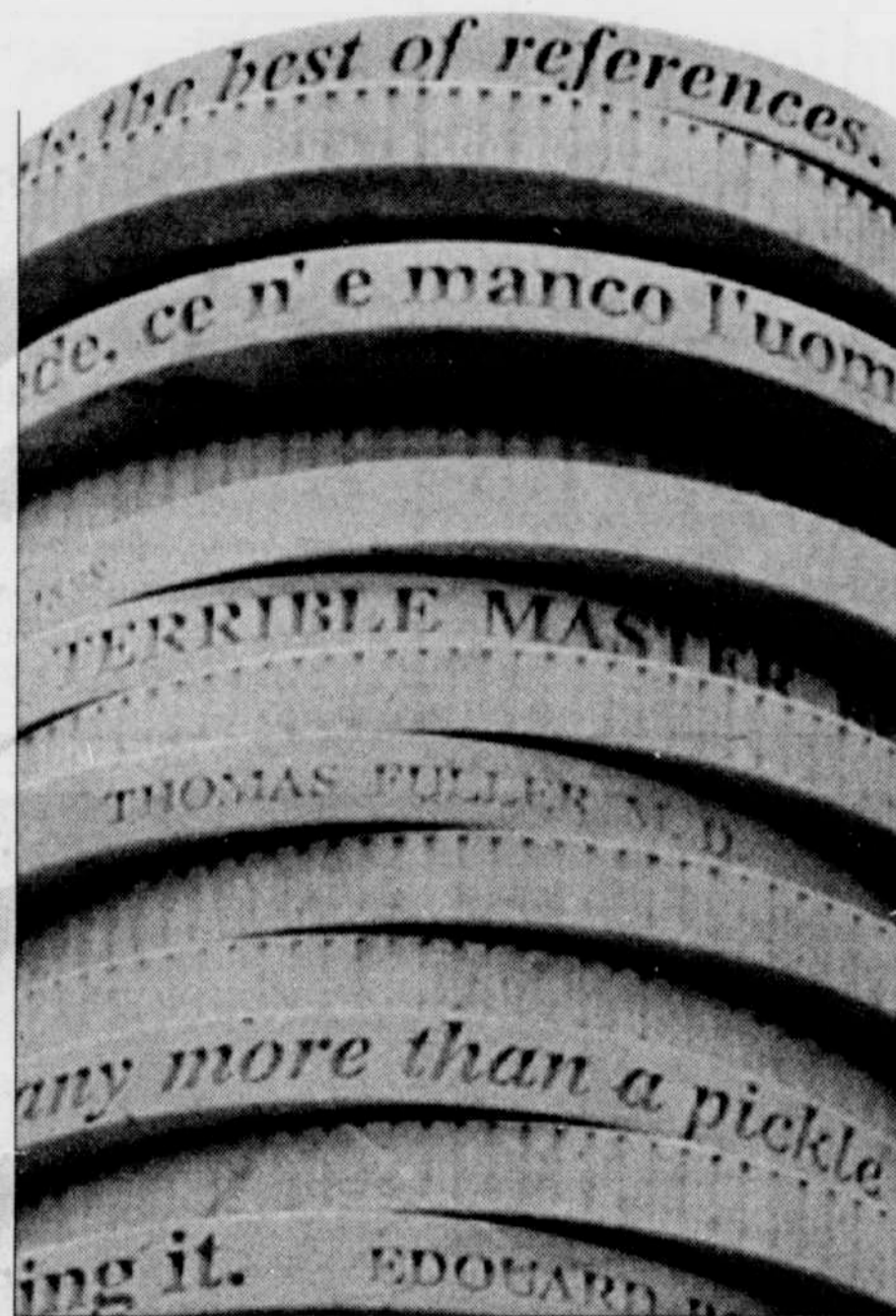
That means most people need a last will and testament. In most situations, property that is owned jointly will pass to the surviving joint owner, but that is not always the case—a court that does not respect the rights of gay men and lesbians could get in the way. It is much more difficult to undo the doings of a will.

"If there is a will, the court has to honor it," according to Harold Lustig, author of *4 Steps to Financial Security for Lesbian and Gay Couples*.

Members of a same-sex couple are not legally considered family, so they cannot inherit property from a partner who dies without a will.

Simply put, a will provides for the transfer of certain assets to people whom the deceased person designates before his or her death. Wills only come into effect after death, and they can be changed anytime before death. A will doesn't affect assets like life insurance or retirement accounts for which a beneficiary is named in advance.

Some lawyers tout "revocable living trusts" as an alternative to a will so that probate costs—expenses related to legally processing a will—can be avoided. Estates may still go into probate, however, if everything is not named in the trust, so their use may be limited.



Clifford says people who are older, in poor health or living with HIV/AIDS could benefit from a revocable living trust, but others will do fine with a will.

Laziness is not a good course of action for any gay man or lesbian, Clifford adds, because the state makes decisions when documents are absent.

"If you just want everything to go to your family members as state law requires, I guess you don't have to do anything," he says.

### A health care document

The most important document for a gay or lesbian person, whether in a couple or not, is a durable power of attorney for health care, says Lustig.

"If you end up in the hospital, the only way you can survive is with an advocate in there," he says.

That advocate needs to be someone familiar with the patient's medical situation and, even more importantly, someone the patient trusts.

"No one except possibly some person in your family has the authority to make your health care decisions for you unless you give them the power to," Clifford says.

When people are incapacitated and unable to make medical decisions, health care providers usually turn first to the family to determine what the patient might have wanted. Partners are not legal relatives and are not consulted.

A durable power of attorney for health care allows the designation of someone to make health care choices rather than having the decision fall on a family member.

Once created, the document should be distributed widely. All health care providers, immediate family members and the person designated to make health decisions need to get copies of the document.

### Other documents

While Clifford and Lustig agree that a will and a durable power of attorney for health care are the most important documents a couple can have, other paperwork can be useful.

A durable power of attorney for financial decisions can allow someone to make legally binding pecuniary choices on behalf of his or her partner. The document would allow a partner to make any and all financial decisions, so it is a powerful instrument. He or she could change pension options or access a bank account, for example.

The term "durable," however, means the document takes effect only when a person is physically or mentally incapable of making a decision for themselves.

A limited power of attorney could also be put in place. It allows a partner to make decisions at any time, but it is not valid if the signatory partner is incapacitated.

Both the limited and durable powers of attorney expire upon the death of the signatory partner.

A living will is another document to consider. People with strong preferences about whether they should be resuscitated can benefit from this document. It also takes a burden off family members who could be consulted about life-support measures. (Partners, of course, are not consulted because they are not legally considered family.)

### A sunny side

While gay men and lesbians lack some basic rights, looking at the brighter side reveals that unwed couples are free from the legal obligations marriage carries with it.

"Not being allowed to legally marry certainly constitutes legal oppression and discrimination," says Frederick Hertz, another co-author of *A Legal Guide for Lesbian and Gay Couples* and author of *Legal Affairs: Essential Advice for Same-Sex Couples*.

Hertz is an attorney in Oakland, Calif., who provides legal counsel to same-sex partners on the formation and dissolution of their relationships.

"At the same time, however, it also provides you the opportunity to design your own kind of partnership," he adds. "You can choose whether or not to merge your assets and whether or not to provide post-separation support to your partner."

But making good choices requires some knowledge.

"I urge you to seize the opportunity to form your own legally sound relationship in the happy times so that you can avoid the conflicts and expense that can arise in the harder times," Hertz says.

■ Have you planned for your future, whatever it may bring? Want to share your thoughts publicly and in 500 words or less? Submit a letter to the editor at [www.justout.com](http://www.justout.com); e-mail it to [justout@justout.com](mailto:justout@justout.com); or mail it to P.O. Box 14400, Portland, OR 97293-0400.

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still do not. That means that a single gay or lesbian person with no offspring will not have the benefits that children and grandchildren can provide. The emotional toll of the loneliness that can result is obvious, but it has a financial toll, too.

Without children, there is no family to pay for trips to the movies or dinners out. There is also no one to buy gifts that help furnish a retirement home. All those expenses come out of the retiree's pocket.

Single gay and lesbian people, many experts recommend, need to plan for retirement just as carefully as couples do, because single queers will likely need more income than single straights, who may be more likely to have a family support system.

### Freer spirits

While corporate employment usually comes with a retirement plan, self-employed people and those who work at companies

without retirement plans need a way to put money aside for retirement, too. Just like for heterosexuals, an IRA could be at least part of the answer.

An IRA is a shell into which money is placed for retirement. It is not an investment itself. Each IRA participant chooses to invest the money in his or her account in one or several of a wide range of investment vehicles. Some select mutual funds, individual stocks, bonds, certificates of deposit.

Until 1997, there was only one kind of IRA, now known as a traditional IRA. Since then, however, those planning for retirement have had the option of the newer Roth IRA.

Up to \$2,000 a year can go into a traditional IRA (unless income is less than that). Taxes are not paid on the money earned by the investment until it is taken out of the account upon retirement. The advantage is that the money saved by deferring taxes is added to the invested amount and therefore increases the earnings. Retirees are often in a lower tax bracket, too. Money can be withdrawn as early as age 59 and a half.

The Roth IRA is a bit different, and it carries fewer restrictions. Contributions can continue past age 70 and a half (when

they must stop for a traditional IRA), and contributions can be withdrawn at any time, although the earnings cannot. However, contributions to a Roth IRA, which can be up to \$2,000 a year, are never tax deductible. Roth IRAs are also not available to people with higher incomes.

Of course, an IRA is only one part of sound retirement strategy. Other important parts could include money in stocks, bonds and mutual funds, as well as a supply of money in a savings or money market account for easy access in an emergency.

With these things in place, half the battle is won. A financial planner or other advisor can help maximize each investment.

Because same-sex couples in the United States cannot marry, establishing and maintaining financially sound relationships is more difficult for gay men and lesbians than for straight people. Retirement planning is the right thing to do, to protect your future and your partner's.

■ GIP PLASTER is a Texas-based journalist writing for gay and lesbian publications worldwide. He has written extensively on gay-related consumer and financial issues.