

They simply want their relationship recognized, say Pam Monette and Elise Campbell, who have been partners for five years. But without the benefit of marriage, the law does not always recognize their relationship, especially when faced with death or disablement.

"Because we can't be married," Monette says, "there are ways we can't be there for one another if something happens."

As a remedy, she and her partner each recently established a revocable living trust as part of their estate plans. In doing so, they have found a way to honor their relationship and to provide for each other within a legal context. Like Campbell and Monette, many same-sex couples are learning how the relatively simple contractual arrangements of a living trust can provide some of the same benefits that come with marriage.

"A gay or lesbian couple might have been together for 50 years, but when one of them passes away without a will or a trust, the other one is out in the cold," says Richard B. Schneider, a Portland attorney who specializes in estate planning for sexual minorities. "We try by private contract to fill in the gaps that are missing and to provide the protections that are missing under the law that are there for married couples."

Floreid Walker, a senior financial adviser with Waddell & Reed, works with Schneider to offer a comprehensive approach to asset management for gay men and lesbians. She explains one of the major goals of estate planning is to retain control over what happens to your property. "Do you want the court to be making decisions for you?" Walker asks.

Without an estate plan, the state intervenes and makes decisions, often favoring immediate family without regard to your partner or your personal wishes. Even with a will, your estate proceeds through probate, the legal process through which a court oversees the distribution of your estate's assets. Your will becomes a public record, and the probate process can be expensive and time-consuming, often taking as long as a year to conclude.

A revocable living trust, on the other hand, provides benefits of particular interest to sexual minorities.

Depending on the complexity of your estate, for example, a living trust might be less expensive. More importantly, however, is that a living trust avoids probate, and this offers two key advantages. Unlike a will, a living trust does not become public record and therefore provides a greater degree of confidentiality.

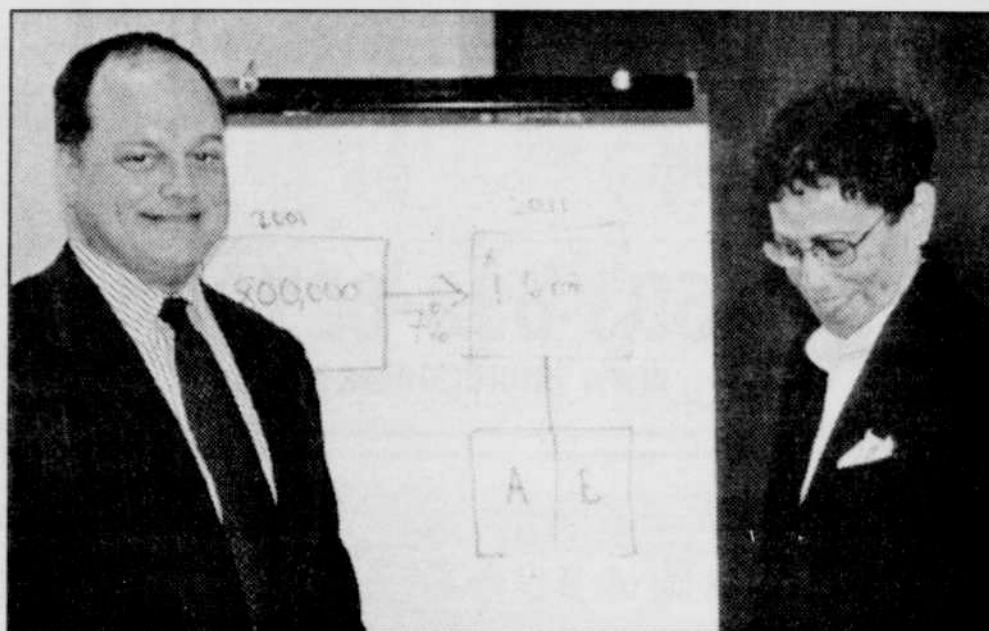
WHERE THERE'S A WILL...

A living trust is an attractive estate planning option for sexual minorities

by Timothy Krause



Elise Campbell and Pam Monette



Richard B. Schneider and Floreid Walker

Because a trust is managed privately and not administered through the courts, the disposition of the estate usually is much quicker and less likely to be contested. Additionally, if you own property in more than one state, a living trust avoids multiple probate proceedings.

Establishing a living trust is straightforward. You name yourself as the trustee and either your partner or yourself as the beneficiary. You transfer to the trust ownership of major assets such as stocks, bonds and real estate.

You also outline how and when your assets

are to be distributed when you pass away. While you are still alive, however, you retain control of the trust, using its assets as you wish or even dissolving the trust at any time.

Upon your death, no assets remain in your name; therefore, no probate is necessary. Whoever you name as your successor trustee controls the distribution of the assets in accordance with your instructions.

A living trust also can be useful if you are facing serious health issues. Should you become incapacitated, your successor trustee, rather than someone appointed by the court,

steps forward to manage your estate for you. This often is paired with other estate planning devices so one partner may act on behalf of another, just as one married spouse would for another.

According to Schneider, the process to establish a living trust takes as little as 30 days. Fees vary, but his office charges \$1,575 to \$1,750 for individuals and \$2,575 to \$2,750 for couples. Once the legal agreement is established, you simply transfer your assets into the name of the trust.

"The thing to remember," Walker suggests, "is to keep your trust current." That includes keeping up-to-date designations of successor trustees and beneficiaries and continuing to transfer assets as you acquire them. Even with a will, assets not held by the trust are handled through regular probate proceedings.

Other considerations, too, need to be evaluated before implementing a living trust. The size of your estate is one example. Although Schneider and Walker suggest estates less than \$140,000 might not benefit from a trust, your holdings consist of more than just your home and investments. Personal property and insurance proceeds are examples of other assets that should be considered part of your overall estate.

"Aside from some of the technical things, I think there is an emotional side," adds Walker, who says the process often spurs among couples the examination of crucial relationship issues. "It kind of pulls people together. I think that it opens up the discussion and helps to solidify the relationship. It's another piece that says, 'We are a unit.'"

Monette agrees. "In our struggle to be recognized and validated in our relationships, I think this is one way to do it." □

COMPREHENSIVE COVERAGE

Estate planning professionals recommend a revocable living trust be complemented by other instruments in order to be more effective.

A pour-over will, for example, can be set up to transfer, upon your death, any remaining property from your estate into your trust. Although the property goes through probate, this provides a mechanism for the disposition of any remaining assets and allows you to appoint guardians for minor children.

Should you become incapacitated, a durable power of attorney acts in similar fashion to a pour-over will. If you left assets out of your trust, your successor trustee can move them into your trust on your behalf.

Particularly important for gay men and lesbians is an advance directive for health care, which empowers a representative of your choice to make treatment decisions for you, such as following your wishes about life support.

Directions for the disposition of remains is another tool used to retain control over the body after a partner dies. Without it, the rights to determine disposition fall to immediate family.

Rather than draw on the assets of the trust, a simple life insurance policy can be set up to pay for the final expenses of trust administration. A policy benefiting the trust is also a simple way to infuse wealth into the lives of heirs or charitable institutions. Other insurance can provide for long-term health care without having to tap the assets of a trust.

A partnership agreement is similar to a prenuptial agreement and covers a couple's assets in the event of dissolution of the relationship.

RICHARD B. SCHNEIDER and FLOREID WALKER jointly offer free estate planning workshops specifically for sexual minorities. The next two sessions are scheduled for 6:30 p.m. Oct. 16 at Kennedy School, 5736 N.E. 33rd Ave. in Portland, and 6:30 p.m. Oct. 18 at Greenwood Inn, 10700 S.W. Allen Blvd. in Beaverton. Contact Schneider at 503-241-1215 or www.rbsllc.com. Walker can be reached at 503-238-6036 or www.waddell.com.

Although he watches *The Practice* and balances his checkbook, TIMOTHY KRAUSE says this article should not be relied upon as a substitute for professional legal or financial advice as to any particular situation.

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