

Planning for the unexpected

LEGAL BRIEFS

By Elizabeth F. Schwartz

Yesterday I went to a funeral. Unfortunately, it was not the kind at which eulogies were heard about the long life lived and full potential reached. This was a tragic case of a young, vibrant life suddenly cut short by a sick person with a gun. A 39-nine year old who probably fully expected to return home after work that day, hug her life partner, and share dinner together, but who would never get the chance.

The victim of this murder was a healer, athlete, and friend. But the reason that she inspired this column is that she was a lesbian. She was proud and happy and in a committed relationship for seven years with a wonderful woman with whom I went to law school.

The funeral service was beautiful. A celebration of her life and the legacy of love she left behind. Her life partner gave a eulogy touching on the magic they shared with each other and all who knew them. She spoke of the unexpected peace she felt when, three days after the tragedy, she felt the ocean waves wash over her, soothing the pain.

So the lesbo lawyer in me had to wonder if she would have been able to experience that peace if she and her beloved had not taken the time to have their estate planning documents done before it was too late. I knew that there was some family hostility in the past and feared that my friend would be in a very bad position had those documents evidencing and safeguarding their intentions not been drawn up. Death brings out the worst in people, especially family looking for someone to blame. I have seen far too many horror stories unfold, and know that it's enough to simply survive grief, without legal hassles.

And sure enough, they had their documents done. No one could kick her out of the home



she and her partner had shared, or deny her access to her beloved's possessions.

Sitting there in the funeral surrounded by so many single and coupled lesbians, I felt the sudden urge to bound to the podium and give a spot estate planning lecture. Since my gut told me that would be wildly inappropriate, I opted to use the space TWN gives me for my column on legal issues affecting lesbians to visit the topic. So listen up, folks - gay or lesbian, single or coupled, these are *your* issues to face. Give yourself and those you love the respect of self-protection.

What exactly is "estate planning?"

Estate planning means using certain tools the law provides to state what you want to have happen to yourself and your stuff in the event of incapacity or death. Because our relationships are not recognized by

the law (even after seven years my friends were considered "legal strangers" to one another) we have to worry about making our intentions known in a legally recognizable way that married couples take for granted.

The law presumes that, if you are not married, you want all of your property to go to and medical decisions to be made by your "next of kin," which may be your kids or parents, but will never be your same-sex partner. Fortunately, you can prepare an estate plan through which you make different choices about how you want those matters handled when the time comes. You can make *your* wishes come to pass, whatever they might be.

Everyone needs a will

Yes, even if you do not have much money or own any real estate, a will is a simple way to make your intentions clear. Otherwise, your lover or family of choice will be at the mer-

cy of your family. Even if they seem cool now, they might be less so when they are asked to give up rights and property which, while even if morally obligated from one point of view, they have no legal obligation to surrender.

A will also provides the opportunity to specify who you wish to be the guardian of any minor children, as well as to name the personal representative of your choice, a person you trust, to administer your estate through the probate process.

Making medical decisions

We've gotten countless calls in our office from distraught lovers who cannot get access to their lovers in the hospital because they are not considered "family." By drafting a Designation of Health Care Surrogate, you can state who you want to make important medical decisions for you in the

event that you are unable to communicate them yourself.

If you become incapacitated (in other words, if a court determines you are unable to handle your medical and financial decisions) a guardian may be appointed for you. Drafting a simple Designation of Preneed Guardian would avoid a fight between your lover and your family because it allows *you* to let you state for yourself whom you would want to serve as your guardian if you ever needed one.

Property ownership

Often called the "poor man's estate planning," titling your home and bank accounts jointly, with designated rights of survivorship, means that in the event of death the property automatically passes to the surviving lover. To be clear, the title must specifically state joint tenants with rights of survivorship, or J.T.W.R.O.S. for ownership to pass to the survivor. Otherwise, the presumption is that the property was held as "tenants in com-

mon," which means each person's half passes, according to Florida law, to the next of kin if there is no valid will in place stating otherwise. That can result in a real mess if there is no estate plan in place.

Summing up

So these are some of the basics. This topic can get quite complicated depending on your circumstances, so it's best to consult legal counsel to be sure you are protected. Please do not wait for tragedy to befall before you handle these matters. Mortality is never a fun issue to face, but the results of avoiding it can be heartbreaking. Give yourself peace of mind, because you never quite know what twists and turns life's path will have for you. Protect yourself; you are worth it!

As always, I appreciate any feedback or suggestions for future columns. Feel free to e-mail me at eschwartz@sobelaw.com.