RECOGNIZING AND HONORING YOUR RELATIONSHIPS: LEGAL ISSUES FOR THE GLBT COMMUNITY

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A. Frequently Asked Questions

How can I be sure my partner/chosen family has the right to manage my affairs if I should lose the mental or physical ability to do it myself?

If I get sick or have an accident, who can make health care decisions for me if I'm unconscious?

My partner has equal rights to own the things in our house if something happens to me, right?

If I die without a Will, who will inherit my estate?

Who decides what happens to my body when I die?

Is there anything partners can do to grant each other the rights and powers straight married couples enjoy?

B. Decision-Making During Life

1. Power of Attorney (POA). Powers of Attorney are necessary in order to provide for management of assets in the event of disability. A POA grants another person the ability to manage your financial affairs. The power of your agent exists along with your own ability to control your assets. You give none of your own authority away by granting this power. POA's may be written for a limited purpose, such as carrying out a particular transaction, or may be quite broad. POA's in Oregon are all "durable" unless they say otherwise, which means that they remain in place even if the person granting the power, the "principal", becomes incapacitated. However, a POA loses all effect at the death of the principal.

2. Conservatorship. If you lose the capacity to handle your financial affairs and have not set up an alternate decision-maker, the court is the only entity who may appoint someone to manage your finances. This court-appointed person is called a conservator. Once you have a conservator, you are considered a "protected person". The proposed conservator must undergo a detailed court process to obtain authority over your assets. Once appointed, they must account to the court each year and explain their use of your money. This is a cumbersome process, a "pound of cure", if you will, that could be avoided with the Power of Attorney "ounce of prevention". If someone requests this power and there are no objections, the court generally appoints the applicant. If there is a dispute, the court prefers next of kin. This can be troublesome if you would prefer a decision-maker who is not part of your biological family.

3. Advance Directive (AD). The Advance Directive is a document used to authorize another person, and a back-up, to make health care decisions in the event of your incapacity. Two doctors must agree that you are incapable of making medical

decisions before your named health care representative may act. Your health care representative may make any type of medical decision for you, but requires specific authorization to make decisions regarding tube feeding and life support. You must clearly indicate that you intend to grant them this authority. Further, you may provide instructions to your health care representative. This way they know what choice you would make in particular situations in which tube feeding or life support become possibilities. The Advance Directive is another "ounce of prevention". Without it, the "pound of cure" is a guardianship.

4. Guardianship. Much like the authority a parent has over a child, a guardian had control over the protect person's day to day living choices. For example, the guardian decides where the protected person lives, who they see, which doctors they visit, etc. Again, like with conservatorship, the court defaults to next of kin in the event of a dispute between the biological family and your chosen family.

5. Nomination of Guardian and Conservator. There is good news. You may execute a document that names a person, or more than one person in a line of succession, of your choosing to serve as guardian and conservator. This nomination will serve as evidence of your wishes even if you become incapacitated. The nomination can contain language that specifically acknowledges a relationship with a partner or close friend. The nomination can explain why you chose this person to make your decisions. For many people it is a pleasure to complete this document as it expresses the depth and seriousness of their chosen relationships in plain language.

C. Property Ownership

1. Joint Property Declaration of Personal Property. To avoid any confusion about who owns the stereo, television and toaster oven, you can execute a document that states your personal property is the property of both you and your partner. Without this document, your biological family may be able to argue that they have the right to your "stuff" if you die or become incapacitated. You may prefer the property to remain with your partner or chosen family.

2. Joint Ownership with Right of Survivorship - Bank Accounts. Banks and other financial institutions allow people to own accounts together. This way, any money placed in the account may be used by either owner, regardless of who deposited the money. Most often these accounts also provide that one joint owner becomes the sole owner at the death of the other joint owner. Double check to be sure your accounts are held in a way that reflects your life choices.

3. Joint Tenancy with Right of Survivorship - real property. If you own your home as Joint Tenants with Right of Survivorship, then the other joint owner is automatically the owner at the death of one owner. If one person owns the home in her or his own name, then the property doesn't pass automatically. Neither does the other person have any rights in the property during life. Sometimes owning real property as joint owners with right of survivorship is a good idea, but sometimes it is not. It may be a good idea to obtain advice from your tax or legal advisor.

D. Decisions After Death

1. Wills & Trusts. Wills and Trusts both direct the distribution of property at your death. In addition, Trusts provide for management of assets during life. Without a document to direct distribution at death, property passes according to the laws of the State of Oregon, or "intestacy". Intestacy follows the lineal blood line. This means that

if you fail to direct where your property should go at your death, your biological family will inherit.

Wills are public documents and are filed with the court at death. The court then monitors the distribution of assets. This approach ensures that your wishes are carried out.

Trusts are more private since they are not admitted to court. The creator of the Trust names another person to take over control of assets and make distributions at death.

2. Beneficiary Designations. Many assets, such as life insurance or IRA's, have beneficiary designations. It is important to name the person you want to receive the property at your death. Without designations it will pass to your estate or to selected family members under the plan document. A Will does override these designations. Remember that if you have not executed a document (such as a Will or Trust) that directs your estate to your chosen beneficiaries, your biological family will receive the assets. You may name your Trust as the beneficiary.

3. Disposition of Remains. Without a designation to the contrary, your next of kin has the right to direct the disposition of your remains at death. You may execute a document that names another person to made that decision. You may also provide some guidance and instructions in the document about your wishes.

It is important that you deliver the documents discussed above to your chosen decision makers. Otherwise, they won't know they have the powers granted and won't be able to use them.