

LIFE AND ESTATE PLANNING

FOR GAY, LESBIAN,
BISEXUAL AND
TRANSGENDER
AMERICANS



HUMAN
RIGHTS
CAMPAIGN
FOUNDATION

A Basic Guide for Your Protection and Answers to Commonly Asked Questions

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LIFE AND ESTATE PLANNING

FOR GAY, LESBIAN, BISEXUAL AND TRANSGENDER AMERICANS

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The information in this publication is not intended as legal advice. For legal advice, please consult an attorney.

INTRODUCTION WHY PLAN? THE CHALLENGE FACING GLBT AMERICANS

Why should everyone make life and estate plans? Why should anyone for that matter? Whether you are 25 or 75, single or in a relationship, planning now can protect you and your loved ones and ensure your wishes and intents are followed. Consider just a handful of experiences:

- Jerry's family never approved of him being gay and from an early age did not give him any financial support. Knowing he had to be entirely self-reliant, Jerry worked and saved for his retirement, and to ensure that the mortgage on his residence would be paid off, too. While many of his planning skills succeeded, and he achieved a strong measure of independence, he gave little added thought to the eventual uses of his estate. Upon his death, the balance of Jerry's estate – the value of his home – went to the state for taxes and to his family according to state inheritance law, which made a generous contribution in his name to their fundamentalist church.
- Rita and Helen spent more than 16 years together not only as partners in a successful florist shop, but also as loving partners at home. Helen's illness and unexpected death last year, however, brought many of their shared dreams to a tragic end. In the absence of a will for Helen, and a failure to carefully document many of their shared assets, Rita could not afford the unforeseen costs and legal complications to protect her stake in the business and their home. Her unexpected financial difficulties and new liabilities seriously compounded her emotional loss.
- Tom has been in the intensive care wing of the hospital for nearly four months, in a coma brought about by a hit-and-run car accident. His partner, David, has only seen him on rare occasions and has routinely been blocked by hospital rules that acknowledge spouses only, as well as by Tom's once-friendly family who now have turned hostile. Tom's plans, wishes and desires that he once shared with David have all been put aside. His life is now precariously in the hands of his doctor and his parents who will not consult with David on any decisions.

These are real stories, but fictional identities. All of us need to think about our future expectations and

consider what we would want should death or disability interrupt or stand in the way of our expectations. Life and estate planning are ways of thinking seriously about the future and making smart choices that meet our needs.

When it comes to life and estate planning, gay, lesbian, bisexual and transgender Americans face a greater challenge, as we do in so much of our lives. By failing to make informed choices, the legal system instead will choose for us. The law will always intervene if we do not plan for ourselves, and the law is written primarily and almost exclusively for non-gay, married couples and traditional families. These choices, if made under existing state law, generally do not reflect the wishes of most people. We will continue instead to see our relationships dishonored, our needs unstated, our desires unmet and our precious savings dedicated to causes we do not support or to federal and state taxes that might well be avoided.

The three personal examples here are meant to get your attention. Bad things can happen to good people who do not plan ahead. Although these circumstances may seem unique or unusually distressful, they are not all that rare. You do not need to have a large income or to amass great personal wealth; if you care about your partner, or are concerned about where your hard-earned savings may someday flow, then you should understand some of the basic principles of planning. They are designed for you and for all of us – so we may ask the right questions, obtain professional guidance and make the choices that are right for us.

In our examples, there are a number of possible ways to plan ahead:

- In Jerry's case, he might have made his wishes clearly known by writing a will, or by creating a living trust combined with a will.
- For Rita and Helen, they should have considered preparing a buy-sell agreement funded with a life insurance policy.
- Under Tom's circumstances, he might have prepared by drafting a "healthcare power of attorney" and/or an advance directive known as a "living will."

More on these points will follow, as you continue to read.

The purpose of this primer is not to give you all the answers here, but rather to stimulate your thinking, and to identify the basic facts about life and estate

planning. This is not a substitute for the smart advice of an attorney, financial planner or accountant. We hope, instead, that this will encourage you to take the next step and ask yourself whether you have achieved the protection and peace of mind you desire.

Planning is a very good way to start.

CHAPTER 1 WHAT YOU NEED TO KNOW ABOUT PLANNING

In the absence of a will, the state will make final estate decisions and distribute your property according to its own rigid laws – with no reference to your individual wishes. Particularly for GLBT Americans, the result can be misguided at best and tragic at worst.

- Without proper planning most states will not recognize your partner, your friends or the charities of your choice. But it may give assets to family members whom you feel are already adequately provided for or whom you may not even like. If the state is unable to locate close relatives, then all of your assets are most likely to become the property of the state.
- Distribution of an estate by law may not only be counter to your wishes, but it also may make little, if any, tax sense. The tax laws are also set up to favor traditional families, and while there are some things that can be done to mitigate their effect somewhat, they all require advance planning.
- Only through your will can you name an executor of your own choice to carry out your directions and go through all your personal possessions – someone sensitive to your wishes and whom you judge to be responsible.

Consequently, whether your assets are large or small, only planning can direct them as you wish at your death. If you have no will, state law will direct where those assets go. For most people who do not have legally recognized relationships, your estate generally will go to your children, if you have any, or, if not, to parents if they survive you, or to more distant family members who may not share your views at all. State intestacy laws can have dramatic variations. In most jurisdictions, however, parents and linear family members are the beneficiaries.

In short, if you don't make decisions for yourself, the state will then make them for you. Don't miss your opportunity to leave your legacy to the people and organizations you love and support.

CHAPTER 2 INTRODUCTION TO PERSONAL PLANNING

What Are the Basic Elements of Planning?

An estate plan generally consists of one or all of the following legal documents which are described in slightly more detail in the next two chapters. The choice of which ones depends on the laws of your state and the size and complexity of your estate, as well as your wishes. Again, this is an area where you should consult with your attorney and other qualified professionals who know your circumstances.

- A Will and/or Revocable Trust
- A Durable Power of Attorney for Healthcare
- A Durable Power of Attorney for Asset Management
- A Living Will (Health Directive to Physicians)
- A Cohabitation or Joint Living Agreement

How Much Will It Cost?

It simply makes very good sense to turn to an experienced attorney. GLBT Americans, in particular, tend to run a higher risk of having their plans challenged by family members or others unsatisfied with their wishes. It is generally wise therefore to rely on experienced legal counsel to prepare the documents in your estate plan to ensure that you meet all state requirements.

You may want to consider an attorney who is uniquely familiar with the issues that arise in our so-called “non-traditional” families. Preparation of the necessary documents is not necessarily difficult. Making sure you have thought through the issues is extremely important. Since legal charges are often based largely on the amount of professional time needed, that depends on how extensive and complicated your estate is and the number and extent of changes in the plan that arise during the estate planning process. For time-based billing, it's wise to establish a ceiling before engaging the attorney. Still, many attorneys will charge a flat rate, so it's worthwhile to look around first. If the necessary information is at hand, and you have a reasonably firm idea about how you want that plan to look, the expense will be reduced. Expenses will range considerably from

\$250 to \$5,000, because of details and size of the estate. These costs are minor compared with what can happen without proper planning.

You may want to interview several attorneys in your community. Most will not charge for an introductory conversation during which you both can assess your needs. Ask before and during the estate planning process for estimates of charges, as often as you want or need them.

CHAPTER 3 THE BASICS OF THE ESTATE PLAN – LIFETIME NEEDS

Many in the lesbian and gay community are aware of tragedies that have occurred when people have neglected to plan for the management of their property when a disabling accident or illness then arose. There are separate documents that detail the instructions and wishes of the individual regarding their financial assets and their personal physical care. Your attorney will probably discuss:

A Durable Power of Attorney for Healthcare

This document allows you to name an individual (typically not an institution) to make medical decisions on your behalf. This includes, again subject to your specific wishes and directions, the decision to withdraw or withhold treatment and in so doing to allow a natural death to occur if you are unconscious and there is no reasonable chance for your recovery. This is an area where state laws may vary widely. Your attorney should be very knowledgeable about these exceptions and differences and advise you accordingly.

Directions Regarding Life-Sustaining Treatment – a “Living Will,” Sometimes Referred to as an “Advanced Directive”

This document ordinarily constitutes a specific direction to your own physician not to prolong your life if you are unconscious and there is no reasonable chance of your recovery. All states have some legal method for recognizing the individual’s desires regarding life-sustaining measures. It is also possible to stipulate in the living will specifically what procedures you wish to be included as “extraordinary measures,” such as nutrition, hydration and antibiotics.

A Durable Power of Attorney for Asset Management

This legal document allows you to name a trusted individual or an institution to act in your best interests

if you are unable to act personally. Generally speaking, this person will have legal authority to execute all financial or business transactions – from writing checks to selling property. Care should be taken to choose a responsible and trustworthy individual or institution. These documents can become effective immediately, be used only if needed or become effective only if your physician certifies that you are unable to manage your assets yourself. This ability is vital and convenient in the appropriate hands. Mishandled, of course, it can be disastrous.

A Revocable or “Living” Trust

Such a trust can be compared to an “escrow” – a safe, supervised place – for your assets. You establish a trust with yourself, and anyone else you choose, including your partner, as sole beneficiaries. While you are alive, the trust assets support you, just as they did before you contributed them to the trust. In fact, you may not have to deal with them in a significantly different way.

While this is sometimes popular as a way to avoid the high costs of probate, discussed in Chapter 4, it also may be an important management tool for your assets while you are alive. You can plan in advance for illness by moving your assets into the trust even though you also have a will to dispose of your assets after your death. Your will should be coordinated with this trust. Typically, the will directs all assets not already titled to the trust to be deposited in trust. Should you become ill, your co-trustee or successor trustee takes over the trust’s management. Your wishes as to who will manage your assets will be respected, and no court intervention is necessary. Many attorneys favor the use of a Durable Power of Attorney for Asset Management at the same time, so that your agent can have similar powers over assets not in the living trust, including the power to move those assets into the trust should that appear to be advisable, again without the need for specific court permission.

Many people sometimes find the revocable trust process attractive because in most states, there is no requirement to publicly record the trust – unlike a will during the probate process. This can afford some protection from unwanted prying or against contests by family members.

A Cohabitation Agreement

When a couple is in love, it seems as though nothing can ever happen to alter their relationship. Straight or gay, it makes perfect sense, however, to plan ahead regarding property rights and obligations should

your relationship and shared living arrangements end. Legally married couples traditionally rely on existing law and the benefits of a judicial settlement; however, gay and lesbian couples must determine their own contractual arrangements and clarify these responsibilities in writing if they wish to avoid conflict and confusion later.

Such cohabitation or joint living agreements usually state who owns what individually, what the couple owns jointly and the proportion of expenses each will be required to meet, and the proportion of ownership, if any, that each enjoys. These agreements are a very good starting point in preparing for any contingency, and in setting a foundation for your life and estate plans.

CHAPTER 4 YOUR WILL

A will is a necessary component of your plan. It declares who should have your property when you die. It may transfer your assets to your living trust, in which case it will be much shorter, consisting primarily of a direction to that effect. The assets are then handled in accordance with the trust terms.

Concerning wills, you should understand:

- The requirement to name a personal representative (sometimes known as an executor) who is charged with overseeing distribution of property and other provisions of the will.
- Upon your death, your will usually must go through a legal process known as probate before any property can be distributed. Through this process, your will must be filed with the appropriate court, and your beneficiaries and creditors notified. Once the value of your estate is known and your debts paid including all taxes owed, the property may then be distributed to your heirs. *Note: Avoiding probate does not affect estate taxes. There are, however, many estate planning tools available to assist you in reducing your exposure to federal estate taxes while benefiting not-for-profit organizations.*
- The sexual orientation of a person writing a will, of course, is not by itself a valid basis for challenging one's wishes, but you can take certain precautions with family members who may not respect your choices. You may consider letting family members

know your directions in advance so that you can reach reconciliation about any provisions before trouble arises. In this instance, it is usually wise to write a will while you are reasonably healthy and not hospitalized or under stress to minimize other challenges from family members.

For people who have minor children, a will can be used to name guardians for those children. For individuals who were previously married and never divorced, a spouse is entitled to a portion of your estate by law, regardless of what your will may say. The existence of a spouse or minor children should always be disclosed to your attorney. A revocable living trust, if you have one, becomes irrevocable at your death and governs the gathering of your assets, reporting of their values if required by state or federal law and distribution of those assets as you have specified. In this case, the trustee of your trust serves like the personal representative or executor of a will. He or she will likely find that there is no court supervision and that the only obstacle to distribution is the estimation and payment of estate taxes. You'll find more on estate taxes in Chapter 6.

Will marriage, a civil union or a domestic partnership ensure that your partner receives your property if you pass away intestate (without a will or trust)?

It may in some situations. Relying on state intestacy laws to determine who your heirs will be could complicate matters immensely. In most states, your partner would not be considered a potential heir because the states have no laws recognizing your relationship. For example, if you and your partner are residents of Tennessee and went to Connecticut to form your civil union, then the civil union would most likely have no effect in Tennessee.

Although several states have recently passed marriage, civil union or domestic partnership laws that grant inheritance rights to the surviving partner, you should be very careful if you are not a resident of the state in which your partnership was formed or if you have any property outside of that state. If you die intestate, the controlling state intestacy laws will be the state in which the property is located. This is another reason why it is of utmost importance to have a will or trust written to ensure that your wishes are carried out completely.

For example, Alex and Bobby were married in Massachusetts, where they were residents. They kept their house in Massachusetts and moved to Virginia,

where they bought another home. Alex also owns a piece of land that was left to him by his family in North Carolina. Alex passes away and dies without writing a will. What will happen? Under the intestacy laws of each state, Bobby will be recognized as Alex's partner in Massachusetts and would receive Bobby's share of their Massachusetts home. Alex's share of their Virginia home would be passed on according to Virginia intestacy laws that do not recognize their Massachusetts marriage. North Carolina intestacy laws similarly would reject Bobby's claim to Alex's family property in North Carolina.

Sounds bad, doesn't it? Well, it gets even worse. As a general rule, real property is deemed to be located in the jurisdiction in which it is physically situated, but personal property, stocks, bonds, cash, automobiles and other personal effects follow the decedent and are located in their state of domicile at their time of death. So, in this situation, Alex's share or interest in all of their cash, stocks, bonds, automobiles and other personal property would also fall under Virginia law, which would leave Bobby completely shut out from receiving what could be a majority of their joint assets.

Another point of concern would arise that may affect your child if your partner is the biological parent of your child and you are the non-biological parent and you have not undergone adoption proceedings. In such a situation, your child may also be excluded from receiving any of your property if you were to pass away intestate. A will or trust would have prevented such an unfortunate situation from happening. Remember – family, life and estate planning are vital to the well-being of your family once you are gone.

The potential implications of dying intestate could be disastrous for your partner and your family. You should take caution and make every effort to protect your partner and your family from these unfortunate situations. Thinking ahead, being prepared and taking care of your estate planning is the greatest gift that you could give your family during what will inevitably be a hard time for them.

Some common questions about living trusts:

How Does Trust Administration Differ from the Probate Process?

It offers privacy and simplicity. Your will is a matter of public record in virtually every state and for every individual. Your living trust is not. It therefore protects information about your assets and their disposition from the curious. But remember: even though living trusts fall

outside mandatory court supervision, a trustee still may be required to seek instructions from a court to resolve disputes with beneficiaries over the administration of the trust. This can prove awkward and costly at times.

You'll find that, as with every other legal technique, trusts are appropriate for some people and not for others. For many, the desire to minimize court intervention can be a key factor in estate planning. Courts all too often do not respect our choices, particularly when surviving family members object to those choices. Use of living trusts can be an important method of reducing or eliminating court intervention.

Do Revocable Living Trusts Save Taxes?

No! A common misconception, encouraged by some popular authors and occasional advertisements, is that holding assets in trust somehow causes them to escape estate taxation. It does not. But all tax strategies available when using a will to dispose of your assets are equally available should you choose to use a revocable living trust as your principal instrument of disposition.

Trusts can be effective during one's lifetime, or can become effective at death through one's will. The lifetime trusts can be either revocable or irrevocable. The revocable trust works well for planning for a disability and in part to avoid contests of one's will. Irrevocable life insurance trusts can be used to remove a life insurance policy from a person's estate, avoiding estate taxes on the insurance proceeds.

What Is an Irrevocable Trust?

This is an arrangement under which you transfer assets irrevocably to a trustee during your lifetime. Generally, this strategy is employed to benefit other people. Such a trust can hold any kind of property, including a life insurance policy. As its name implies, after you establish an irrevocable trust, you cannot later change or revoke most of its key provisions.

Why Would I Want a Trust as Part of My Estate Plan?

There are two likely reasons: first, the desire to hold property for your partner, a dependent child, a friend or family member for a specified period of time, and second, to achieve efficient estate planning by minimizing costs, delays, publicity and contests.

How Would I Set Up a Trust for My Child?

Many parents naturally are concerned about their offspring's welfare and future needs. There are generally two ways to approach a trust. First, you may

set aside assets during your lifetime to provide funds for a child's college education or to begin creating a wealth base for a child. Second, you may include a trust as part of your will or revocable living trust to delay distribution of assets to your children until they reach a suitable age. In either case, trusts allow you to manage and distribute assets according to your objectives.

How Would a Trust for My Children Save Taxes?

Proper use of all of the techniques discussed in this publication can dramatically increase the amount of resources available for children. Gifts and trusts may allow you to take advantage of all the provisions in the tax code to mitigate transfer taxation (which is the subject of Chapter 6).

The trust is important for GLBT people with children. You can put your money in trust for the child and you can name the trustee, the person who will manage the assets, execute your wishes and decide if and when the child gets the money. This option is particularly important to individuals who have custody of a child following a divorce. Upon the death of a child's custodial, biological parent, the child's non-custodial, biological parent may claim custody even when the surviving partner may have been raising the child. If you have established a trust to manage assets for your child, your named trustee will manage the assets. You should always name an alternative trustee in the document, in case facts or situations change with relationships.

CHAPTER 5 CHOOSING YOUR PERSONAL REPRESENTATIVE AND TRUSTEE

Why Is This so Important?

These are the people who will make your estate plan operate as you direct. They will deal with your heirs and beneficiaries and make administrative and business decisions. They stand in your place to implement your plan.

Who Can Be the Trustee of My Revocable Trust Before I Die?

This varies by state. In most states, you can be your own trustee. If you have a partner, one or both of you can serve as a trustee. Another person of your choice,

corporate trust departments or professional fiduciaries are also options. Institutional fees, however, may be higher.

Who Should Act When I Die?

Again, just to keep it simple, the job of a personal representative or executor is to gather your assets, invest them conservatively while your estate is being administered, report their value to the government and pay any tax due, pay your creditors, account to your beneficiaries and to a court and distribute the assets.

The job of the trustee of a revocable trust is similar, although it may be simpler. Many people choose a family member, although one will want to consider whether they will be sufficiently sensitive to their wishes and values. Others find that they prefer to combine a family member with a professional trustee, such as a bank or trust company. Still others pair a family member or trusted friend or adviser with investment professionals for a similar result.

Whom Should You Choose?

These are highly personal decisions. Attorneys will, however, advise you what aspects of your plan require special expertise and help you select the appropriate trustee(s).

CHAPTER 6 WHAT YOU NEED TO KNOW ABOUT TAXES

What Are Transfer Taxes and Why Are They Important in Planning?

Almost every transfer of assets, whether by gift during your lifetime or by bequest upon your death, can have both state and federal tax consequences. At death, all of the assets you own are transferred to your heirs or beneficiaries for tax purposes, either under the provisions of your will or revocable trust or according to state intestacy laws if you don't have a will or trust. Either choice could have potentially serious tax consequences at both the state and federal levels. Fortunately, there are significant relief provisions from the tax, and careful planning can ensure that you qualify for them.

What Kinds of Transfer Taxes Are There?

In 2001, Congress amended several provisions relating to transfer taxes with the Economic Growth and Tax Relief Reconciliation Act. The most significant of the

various transfer taxes covered by this act is the unified federal estate and gift tax. The unified federal estate and gift tax is a tax upon your estate that is determined at your death. The size of your estate is determined by adding up the value of all of your assets (cash, investments, life insurance, personal and real property, etc.) and subtracting the value of all of your liabilities (mortgages, credit card debts, student loans, unpaid income taxes, etc.).

The federal estate tax will apply to your estate if the total value of the assets you transfer to others during your lifetime and at your death exceeds the federal estate tax exemption. In 2001, this exemption was set to \$1 million. Due to changes in the federal law, the federal estate tax exemption has increased in increments and will continue to increase until 2011, whereupon it will revert to the 2001 level. From 2006 to 2008, the gross value of an estate that does not exceed \$2 million will be excluded from federal income tax filing requirements. For 2009, that amount will increase to \$3.5 million. For 2010, the federal estate tax will be completely repealed, meaning that no individual dying in calendar year 2010 will pay any federal estate taxes. Again, in 2011, the federal estate tax exemption will return to \$1 million. These amounts and dates may change if Congress extends the estate tax repeal in the future.

NOTE: If you own a home and have savings, a business, a retirement account and a life insurance policy, it isn't difficult today to own assets of \$1 million or more. With some exceptions (described in Chapter 9) the federal estate tax rate in 2006 is 46 percent, which will decrease to 45 percent in 2007. In 2011, the tax rate will return to its 2001 level of 55 percent.

You probably will find that the state you live in also imposes a tax on the transfer of your assets. Some states have repealed these taxes entirely but many still remain in effect. These taxes can take a variety of forms, ranging from whatever amount of credit the federal estate tax regime allows you for state estate taxes, to a separate transfer tax system all their own. It's important to remember that each state's tax rules and tax rates are very different. Frequently, estates that don't owe any federal taxes still owe state taxes because many states provide a much smaller tax exemption than that allowed by the federal government; on the other hand, state estate tax rates are generally much lower than the federal government. Again, you should check with a qualified professional for the rules in your state.

In addition, you should remember that state estate tax laws will apply according to wherever your property is

located. If you own property in Louisiana, New Jersey and California, then you would have to pay state estate taxes on whatever assets are located in that state according to each state's laws.

When Does the Tax Apply?

Deferring payment of the tax is one major goal of estate planning. A major problem for gays and lesbians is that the primary means of deferring estate taxes relates to transfers between legally married couples. This means of reducing estate taxes is not available to virtually any of us, since the federal government does not yet recognize gay and lesbian relationships.

This makes it more important to consider other estate planning techniques, such as 1) the \$12,000 annual gift exemption, discussed in Chapter 10; 2) charitable gifts, discussed in Chapter 11; 3) irrevocably transferring ownership of assets, typically to a trust, during your life so they are not included in your taxable estate. Some of these, especially the latter, involve more than the basic estate planning requirements. The advantages and disadvantages of these – and other – techniques vary with each individual situation, and this is not an area for do-it-yourselfers. If you have estate tax concerns, you are well advised to consult a competent professional. The money you spend in professional fees will likely be saved many times over through a lower estate tax bill. It is especially important to note that changing title to assets during your life may result in a gift that is subject to gift tax. One example may be when one person purchases a home and later puts the title in joint names.

While the focus of this chapter is transfer taxes, there are also income tax considerations for unmarried couples. For example, it is not possible to file federal joint income tax returns, and if there are children, only one person at a time may claim a child as a dependent.

CHAPTER 7 YOUR BUSINESS

What Are the Special Considerations About Your Business?

In some instances, a business you own may have been founded by you and a partner. If you do not plan carefully, your partner may not be able to

retain control of the business after your death. If, for example, the business is part of your estate and you do no estate planning, your interest in the business will be disposed of in the same way as the rest of your estate. If your life partner is also your business partner, he or she could find him/herself running the business with your family after your death. Planning for business succession is essential if your partner is to continue to control the business and to minimize taxes.

What If I Am Just Starting a Business?

The best planning begins early in the life of a business. You may be able to pass on your interest in your business without estate taxes, or at least with the liquidity to pay estate taxes due, through use of legal devices such as buy-sell agreements and voting trusts. This is definitely a time when decisions ought to be made upon the advice of competent professionals as to your best options.

My Business Is Already Established and Successful. What Are My Succession Planning Options?

Insurance on your life may be used to fund the sale of or the taxes levied upon your business interest at your death. You may have loyal employees who could run the business after your death; in that case you might consider ultimate transfer of stock through a tax-advantaged employee stock option plan (ESOP). Or you might find that it's best to give or sell a controlling interest during your life to one or more family members. Many of these options also can be financed through insurance benefits (see Chapter 8).

How Can We Avoid That “Pay-As-You-Go” Estate Tax?

“Cross-owned” life insurance, an old planning strategy, is an excellent way to enable your heirs to pay estate taxes with the policy's proceeds, which are already owned by your heirs and hence not taxed (or owned by an irrevocable trust).

CHAPTER 8 YOUR INSURANCE

What Tax Planning Can Be Done with Life Insurance?

This depends on the reason you are acquiring the insurance policy. If it is meant for your partner to live on after your death as a replacement for your income,

you may not need special tax planning, depending upon the value of your estate and the corresponding tax considerations. You could also use a revocable life insurance trust for a partner, as well as for a business.

On the other hand, if it is meant to pay estate taxes, special planning prevents the insurance proceeds themselves from being taxed. You establish a trust directing how the trust assets will pass, typically in a manner that matches your estate plan. You name a trustee who purchases the policy with funds you provide. The trustee can pay the annual premium with funds you provide from time to time. At your death, the insurance trust receives the death benefit from the life insurance, and can use these proceeds to buy estate assets, providing tax liquidity yet still passing your assets as desired. Life insurance is an ideal asset for “removal” from your taxable estate through the use of an irrevocable trust. Insurance can also be used to leave a meaningful bequest to charities.

CHAPTER 9 HOW TO PLAN FOR PASSING RETIREMENT BENEFITS

The subject of passing on retirement benefits is extremely difficult for gay men and lesbians. Many company plans expressly provide that the benefits can only be passed to a surviving spouse or natural or legally adopted children. This may, however, vary with the types of benefits. Such self-funded programs as IRAs, 401(k)s or other employer-sponsored pre-tax savings plans or Keogh plans allow you to choose any beneficiary you want.

All GLBT Americans should take two crucial steps:

First, make sure your estate planner reviews your company plan, if you have one, to see whether there are any restrictions on who may receive your benefits.

Second, if your company retirement plan is restricted and you are in a tax and employment situation where you can take advantage of IRAs or Keogh plans, you may want to set up plans to benefit your partner or other beneficiaries of your choice.

Retirement plan accounts can be excellent sources for charitable bequests. Naming charitable beneficiaries in these accounts results not only in no estate taxes, but no income tax as well.

CHAPTER 10 GIFTS: WHY AND HOW?

What Are the Tax Reasons for Making Gifts?

Gifts are important in estate planning because of the ultimate transfer-tax dollars they may save. Tax-wise giving requires sensitivity to three key points: amount of the gift, timing and nature of the asset. Of paramount importance is first to determine if making gifts is affordable. Your financial security comes first.

How Much Can I Give Without Incurring Tax?

Each person may give \$12,000 per year per recipient to any number of people without incurring tax and, more significantly, without using any of the lifetime, cumulative federal gift and estate tax exemption described in Chapter 6. Again, the tax laws discriminate against GLBT Americans, because married couples effectively can double their exclusion to \$24,000 a year. Nevertheless, the \$12,000 exclusion should be considered strongly, especially if you intend to divide your assets widely. The \$12,000 exclusion applies to each donee, or recipient. In addition, payment of educational expenses is not subject to the gift tax either.

In other words, you can give \$12,000 to each of five recipients and transfer \$60,000 a year to reduce or avoid your estate or gift taxes. The gift must be of a “present interest”; outright gifts qualify as do certain, but not all, gifts in trust. For people with children or grandchildren, this is particularly worth considering.

What If I Want to Give More in Any One Year?

When your yearly gifts exceed the \$12,000 per donee exemption, you begin to reduce the \$1 million exemption against estate taxes. In cases where a high net worth indicates large estate tax bills are certain, it may make sense to use the exemption during your lifetime when the gift is of an asset that is expected to appreciate significantly; this avoids taxation of the appreciation from the date of the gift through the date of your death.

What Kinds of Assets Are Best for Gifts?

Cash gifts present no problem for valuation purposes. They are counted at their face value. Gifts of appreciated property can create other tax considerations. The answer to this question requires analysis of the amount of appreciation in the asset at the time of the gift and the amount of appreciation projected between the date of the gift and your death.

When you make a lifetime gift of property other than cash, the asset’s income tax “basis” (i.e., the amount

you paid for it, plus the cost of any improvements, minus any deduction previously claimed for depreciation) transfers to the recipient. By contrast, a special provision in the tax law allows a recipient to inherit property with the basis “stepped-up” to its fair market value as of the decedent’s death. Of course, obtaining the stepped-up basis requires that the asset be subject to the payment of an estate tax if any is due after application of the unified credit (i.e., the \$1 million tax-free transfer).

This difference is important: if the recipient subsequently sells the asset, he or she must pay capital gains tax on the difference between the asset’s basis and its sales price. Thus, if you have an asset with a relatively low basis, there can be a strong incentive to transfer the property at your death rather than during your life. Doing so effectively eliminates all the capital gain that the asset accumulated over the years you owned it.

Thus, if you are wealthy and want to avoid as much capital gains tax as possible, by either you or your partner, it frequently makes sense to hold on to your low-basis properties and assets until death and give away cash and other high-cost basis assets. If you own property independently from you partner, and you find you need cash immediately, if you are in a higher tax bracket than your partner, you might consider giving your partner the property so that they recognize the tax gain, presumably at a lower tax rate. On the other hand, capital gains tax rates have been reduced recently, making the decision to make gifts of low basis, but “likely to appreciated assets,” more attractive.

A general rule of thumb: maximized use of annual exclusion gifts of cash are ideal tax savers. Again, if you want to capitalize on income tax consequences such as this you must consult a knowledgeable tax adviser to make sure you handle the transaction correctly.

CHAPTER 11 CHARITABLE GIVING

Many of us volunteer our time and make gifts to causes close to our hearts. We are often generous supporters of GLBT organizations. This spirit of giving is important to us in life, and an important consideration in how we plan for our estates, too.

On page 11 are common scenarios in which individuals find themselves while considering charitable donations and estate planning during their lifetime. Please note this is but a sample of some of the more popular options available to you.

The important things to understand are that lifetime gifts to charity will reduce your income taxes and gifts upon death will reduce your estate taxes.

Some people find that a private foundation fills this need. You and others you select control and administer the fund, making distributions annually of amounts determined by the IRS, generally amounting to 5 percent or more of the fund. The fund can continue in perpetuity.

A popular alternative is a community trust fund. Your gift enters a common pool professionally managed by a non-profit organization. Your gift can be administered as you direct, but you do no administrative work.

CHAPTER 12 GIFTS TO THE HUMAN RIGHTS CAMPAIGN AND THE HUMAN RIGHTS CAMPAIGN FOUNDATION

There are countless groups and causes in every community that advance the concerns of GLBT Americans. You may already be familiar with these causes, and participate in one way or another. The Human Rights Campaign, the nation's largest GLBT civil rights organization, is engaged at the forefront of every major issue affecting the GLBT community.

Gifts to the Human Rights Campaign or to the HRC Foundation can allow you to achieve some of your philanthropic goals, as well as provide some sophisticated and effective estate planning techniques.

Gifts can be as simple as cash gifts, bequests and volunteer work. Or they can be more involved, such as charitable remainder trusts and lead trusts. These gifts can create income tax deductions, defer capital gains taxes, augment one's income streams during your life and generate estate tax deductions, as well as support the GLBT civil rights movement and our goal of ensuring equality under the law.

The HRC Foundation is an entirely non-political, educational organization. The HRC Foundation was

founded in 1985 as a non-profit Washington, D.C., corporation, classified as a tax-exempt Section 501(c)(3) organization by the IRS. All contributions to the HRC Foundation are fully tax-deductible. It was established to help advance and sponsor basic educational research and to promote the visibility of GLBT issues.

The Human Rights Campaign lobbies directly on Capitol Hill, implements inter-agency strategies and works across the country helping to mobilize and educate GLBT constituents on civil rights issues and public policy concerns. Contributions to HRC and its political action committee are not tax-deductible.

Form of Bequest

You can make a lasting contribution toward ensuring equality under the law for all Americans by considering a bequest gift to the Human Rights Campaign or to the HRC Foundation.

On behalf of the HRC Foundation, here is the recommended language:

"I hereby give and bequeath [amount in dollars or percentage amount] to the Human Rights Campaign Foundation having federal tax identification number 52-1481896, for its general purposes."

For the Human Rights Campaign:

"I hereby give and bequeath [amount in dollars or percentage amount] to the Human Rights Campaign, having federal tax identification number 52-1243457, located in Washington, D.C., for its general purposes."

BRIEF SUMMARY OF GIVING TO THE HUMAN RIGHTS CAMPAIGN FOUNDATION

If your goal is to:	Make a quick and easy gift	Avoid tax on capital gains	Make a revocable gift during your lifetime	Defer a gift until after your lifetime	Make a large gift with little cost to you	Avoid the twofold taxation on IRA or other employee benefit plans	Avoid capital gains tax on the sale of real estate	Create a hedge against inflation over the long term	Secure a fixed life income while avoiding market risks	Reduce gift and estate taxes on assets you pass to children or grand-children
Then you can:	Simply write a check now	Contribute long-term appreciated stock or other securities	Name HRC as the beneficiary of assets in living trust	Put a bequest to HRC in your will	Contribute a life insurance policy you no longer need	Name the HRC Foundation as the beneficiary of the remainder of the assets after your lifetime	Donate the property to the HRC Foundation, or sell it to the HRC Foundation at a bargain price	Create a charitable remainder unitrust	Create a charitable remainder annuity trust	Create a charitable lead trust that pays income to HRC for a specific term of years
And your benefits are:	An income tax deduction and immediate impact for HRC!	A charitable deduction plus no capital gains tax!	Full control of the trust terms for your lifetime!	Your donations are fully exempt from estate tax!	Current and possibly future income tax deductions!	You leave your family other assets that carry less tax liability!	An income tax deduction, plus reduction or elimination of capital gains tax!	It pays you a variable income for life and gives you tax benefits!	It gives you tax benefits and often boosts your rate of return!	It has the estate tax benefits of a gift, but your family keeps the property!

*The information in this publication is not intended as legal advice. For legal advice, please consult an attorney.

HUMAN RIGHTS CAMPAIGN FOUNDATION

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