

ESTATE PLANNING FOR LGBT COUPLES IN NORTH CAROLINA

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The legal landscape for LGBT civil rights is changing, but the LGBT community still needs careful and timely estate planning to ensure protection for the ones they love.

MARRIED LGBT COUPLES

As North Carolina LGBT adults are aware, on October 10, 2014, the United States District Court for the Western District of North Carolina issued an order that struck down the ban on same sex marriage in North Carolina. The ruling allows LGBT couples to seek the rights and privileges of marriage in North Carolina. Legal LGBT marriage has improved estate rights in two areas.

Legal LGBT Marriage – Two Estate Rights Improvements

1. Second Parent Adoptions

Although North Carolina adoption law is still evolving, both spouses in a LGBT marriage should now be able to legally adopt the same child. Legal “second parent” adoption for married LGBT couples will solidify the rights of both LGBT spouses to care for and raise the children should something happen to one spouse. Because legal LGBT marriage is still so new in NC, adoption laws remain tricky and untested. When adopting in NC, it is important for the married LGBT couple to consult with an North Carolina family lawyer familiar with LGBT family issues.



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2. Intestate Succession – Better Protection for Surviving Married LGBT Spouses When There is No Will

When an adult in North Carolina dies without a will (called

dying intestate), the probate court will look to a complex set of North Carolina laws called the NC intestate succession statutes. Generally, only spouses, legally adopted children and genetic or “blood” relatives inherit under these statutes when there is no will. Unmarried partners, friends, and charities get nothing.



When an adult in North Carolina dies without a will (called dying intestate), the probate court will look to a complex set of North Carolina laws called the NC intestate succession statutes.

Because LGBT marriage is now legal in NC, if one spouse dies without a will, the surviving spouse should inherit as allowed by the NC intestate succession statutes.

Despite the above two improved estate law protections, married LGBT spouses should still create valid wills in order to pass down their property according to their wishes after death. A proper will also allows a married LGBT couple to name their choice of guardians for their children, which is normally upheld by the courts.

UNMARRIED LGBT DOMESTIC PARTNERS

North Carolina law provides no statewide protections for domestic relationships related to sexual orientation, gender identity, or gender expression that are not within marriage. Proper estate planning is absolutely critical for unmarried LGBT domestic partners.

As discussed above, if an unmarried LGBT domestic partner in NC dies without a will, a court will look to the NC intestate succession statutes to determine who will receive inheritance. NC’s intestate succession statutes provide the strongest inheritance rights to married spouses, genetic or legally adopted children, and close “blood” or genetic relatives.



Through a proper will, an LGBT partner can “will” or “bequeath” property to the other domestic partner.

Without a valid will, an unmarried LGBT domestic partner will likely inherit nothing from the deceased partner.

North Carolina law does, however, allow people to select whomever they wish as “beneficiaries” and “fiduciaries” in their estate documents. Through a proper will, an LGBT partner can “will” or “bequeath” property to the other domestic partner.

LGBT domestic partners who do not plan properly may not be able to care for each other should one partner become seriously ill. If an LGBT domestic partner becomes mentally

incapacitated, hospitals or courts may look first to blood relatives to make health care decisions for the incapacitated partner, instead of to the other domestic partner.

To ensure that they will be making each other’s health care decisions in cases of serious illness, LGBT domestic partners must execute proper Health Care

Power of Attorney documents listing each other as the highest priority agents for making each other’s health care decisions in case of incapacity.



Help keep the peace after you pass. Obtain a well-drafted will so that your friends and family are certain of your wishes and no one fights or litigates over differing interpretations of your intentions.



In response to the great need for partner security in North Carolina, we have prepared the following advice for the North Carolina LGBT community:

- ◆ Do not let the courts make your critical estate planning decisions for you after you are gone. Obtain a valid will so that YOU decide:
 - ◆ who is considered part of your family;
 - ◆ the guardian for your children;
 - ◆ the terms of a family trust to provide for your family;
 - ◆ what happens to your pets; and
 - ◆ what happens to your property.
- ◆ Help keep the peace even after you pass. Obtain a well-drafted will so that your friends and family are certain of your wishes and no one fights or litigates over differing interpretations of your intentions.
- ◆ Complete a valid will as soon as possible. If your family or your wishes change, you can update your will.
- ◆ Complete both your Health Care Power of Attorney and your Living Will documents so that the partner you trust will be able to maintain control of your healthcare if you become medically incapacitated.
- ◆ Obtain a Durable Power of Attorney document to select an agent to take care of your business and legal affairs when you are unable to care for those yourself. Make sure a licensed attorney prepares this document; otherwise, banks and other institutions may refuse to recognize the document when it is needed.



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