Making it Legal

Essential Arrangements for Same-Sex Couples

By Frederick Hertz

In most states, private contracts regarding child-rearing are not entirely enforceable by the courts. I still recommend that you draw up such an agreement, as the process of writing up such an agreement is usually very beneficial to both of you. It will force you to discuss your true intentions and your deepest fears, needs, desires, and motivate you to resolve these issues early on in your relationship.

Yours, Mine or Ours

Whether you're rich or poor, and whether you are a renter or a homeowner, you are bound to have some assets (and maybe some debts) which need to be categorized as

unfortunately, except for those Vermonters who are able to register for a civil union, a formal wedding ceremony—even a religious one—does not by itself bestow any legal rights or obligations on the couple. In order for your relationship to have legal standing, some real work needs to be done by the two of you. Face it, this will be a more difficult and more expensive process than you wish.

But what might appear to be a tedious chore can actually bring the two of you closer together as you talk out your legal and financial concerns and strive to formulate your agreements. At the end of the process, you'll actually feel more empowered and more closely connected to one another than most married couples.

The Benefits of Benefits

If you are contemplating adopting a child, or if one of you already has a child from prior to the relationship, it's essential that you begin by figuring out who is going to be the legal parent. If it is allowed in your particular state, seriously consider whether you want to apply for a second-parent adoption, as this is the best way to protect both parents and your child. The process can take several months, and you will probably need the assistance of a local attorney experienced in handling these matters.

If only one of you is going to be the legal parent, you should nonetheless sign guardianship forms and medical authorizations, which will allow the non-parental legal to have some authority in case of an emergency.

Be careful that you put the appropriate names on credit cards, bank accounts, car titles and lease agreements, so you don't create a "paper trail" which is at odds with the legal realities of your relationship.

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important is that you confront the financial and emotional issues openly and you do what is comfortable for both of you. As part of this discussion, you should acknowledge that once either of you makes a financial gift to the other one, that gift can never be repossessed, even if the love or commitment dissipates.

Illness, Disability or Death

This happens to the best of us, often when we least expect it. It's critical that every same-sex couple sign powers of attorney (both for financial matters and health care decisions) and draft up either a will or a trust. Powers of attorney can either be in effect from the outset, or can come into effect when one person is ill or unconscious. Your will or trust determines what happens to your property upon your death, and in most states can also cover the sitter of funeral arrangements.

Since you may not have any warning of injury or sudden death, it's important that you take care of these affairs while you are healthy. If you haven't signed these critical documents ahead of time, your partner may be totally disenfranchised if there's an accident or sudden illness—especially if your next of kin is not supportive of your relationship.

The Gay Divorcee

Lots of folks are clamoring for legalizing gay marriage. I, instead, wish we had the right to an expanded "gay" divorce. Because the rules in most states are so vague and because the family law courts won't make on same-sex dissolution, for the most part we are left to our own agreements on these vital matters. And, since there's a serious chance your relationship will go astray—despite the best of intentions—it's essential that you do some pre-divorce planning. Take rest word for it, talking about this stuff won't cause a split.

The key items for you to deal with are (1) who gets what assets and who handles what debts, (2) in case of a break up; (2) whether either of you is entitled to post-separation financial support, and (3) how much and for how long (alimony); and (4) whether you'll agree now that you will resolve your disputes through mediation and/or arbitration, in case of a subsequent conflict. If you have any significant assets or if either of you is making any serious promises of long-term support, it's essential that you put your agreement in writing—oral agreements are far too vague and hard to prove, in case of a subsequent dissolution.

Remember that preparing for the future will ensure a more stable and fulfilling present for both of you.