

A Legal Primer for Lesbian and Gay Families

by Nora Landon

"Gay and lesbian people at this point are largely without civil rights and particularly without rights to form families legally."

With these words Heather Wishik began her discussion of the legal issues facing lesbian and gay families at the recent Vermont Law School seminar, "Legal Perspectives on Lesbian and Gay Concerns in the 1990's."

These issues are a particular interest of Wishik, and she knows a lot about them. She has practiced law in Vermont since 1977 as a private attorney, as a faculty member at Vermont Law School, and as a lobbyist for lesbian and gay civil rights in the Vermont Legislature. She currently serves as counsel at the Vermont Department of Public Service.

Wishik described the emotional climate in which many gay men and lesbians seek legal advice, noting that many do not feel good about being gay. The majority are closeted in at least some part of their lives and are afraid of discovery. They often have poor relationships with their families of origin. These factors make them particularly vulnerable in the legal system. Because of that, lawyers need to educate themselves about and be sensitive to the special circumstances of their gay and lesbian clients.

Wishik addressed three topics: the legal needs of gay and lesbian individuals, of couples, and special issues concerning children.

Although gay men and lesbians do not have the legal protections that heterosexuals take for granted, laws do exist in Vermont and other states which provide some protection for people in alternative living arrangements. It is vital for gay people to

learn about the tools that are available and how to make use of them.

Individual gay and lesbian adults, in or out of relationships, with or without children, have special legal needs. In cases of incapacity, the law assumes that the best people to make decisions are blood relatives, usually parents or siblings. However, Vermont has a strong and durable power of attorney for health care which enables you to designate someone else to make these decisions if you are incapacitated. Vermont also has a power of attorney for business relationships.

Although it is essential for lesbians and gay men to make wills, they are just as likely as straight people to avoid doing so. In order to leave the contents of your estate to those you wish, you must have a will, and it must be legal. To be legal in Vermont, a will must have three witnesses. It is helpful to include burial instructions in the will or in a separate letter. If you choose not to leave anything to your family of origin, you should state that *explicitly*, to reduce the risk of a contest.

Because of difficult family relationships, the wills of lesbians and gay men are often contested. A good way to dispose of part of your estate is through life insurance, where there is no probate and the insurance company must honor your beneficiary designation. However, if you name your partner as primary beneficiary and the relationship ends, don't forget to change the beneficiary.


Federal law permits claiming an unrelated person as a dependent on your income tax return if he or she is living in your household, receiving more than half of their support from you, and earning less than \$1,000. This means, for example, that you can claim a partner who is a full-time

student or a partner's child as a dependent if he or she meets these conditions. You cannot, however, file as a head of household, since that requires a legally defined relationship with the dependent.

Gay people cannot get married anywhere in the world except Denmark, where there is a form of legal union giving couples most of the advantages and disadvantages of marriage except the right to adopt or obtain joint custody of children. Some religious denominations in this country, for example the Unitarian-Universalists, will provide commitment ceremonies for gay and lesbian couples.

Many couples visit lawyers because they want their relationship to be recognized in some way. Often, this means setting up a household and/or buying a house together. The couple should have a cohabitation (partnership) agreement to sort out how they are going to run their household *before* they start buying joint property and co-mingling assets. Wishik urges couples in this situation to consult a lawyer, as he or she can then help them make the decisions and arrangements that will enable them to live their lives together the way they choose, avoid problems with the IRS, and sort out their affairs with a minimum of complication should the relationship end.

A couple buying a house together should have a contract governing financial issues such as the downpayment or mortgage payments, and disposition of the property in the event of death of one of the partners or break-up of the relationship. Wishik feels strongly that these and other contracts should include an agreement to seek binding arbitration in case of a dispute - that it is in the best interests of all concerned to stay out of court. When cases go
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Mountain View

 Animal Inn

Carol Skon

Claudia Cook

R.D.1 Box 1980 Fairfax, Vt. 05454 802-524-4574

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