

LEGAL BRIEFS: This month -- Planning Ahead, Writing Your Will

Susan Murray and Beth Robinson
OITM Columnists

MIDDLEBURY -- None of us really wants to think about our own mortality. However, it is extremely important that gays and lesbians -- whether single or coupled or otherwise -- make plans to specify what will happen to our property when that inevitable day arrives. The simplest and most direct way to control who will inherit your property and possessions after you die is to write a will. (There are other legal means you can utilize, such as trusts, life insurance, and joint tenancy, but they are topics for another column.)

If you die without a will, Vermont law generally provides that your property (such as real estate, personal possessions, investments and savings that are not held jointly with another person) will go to certain relatives, such as a spouse, child, parents or siblings. It is not uncommon to hear about family members who suddenly appear to claim a deceased relative's property, even though the surviving partner had assumed that (s)he would be able to keep the possessions. If the deceased person did not have a will, the surviving partner can file a lawsuit to argue that (s)he has rights to the property, but the lawsuit may not be successful. A will would provide much more protection.

Most people know that a will allows you to specify who gets your property after you die, but there are other benefits as well. You can designate the person who will work with the probate court in distributing your property. (Contrary to popular belief, this person can certainly be your lover.) If you are a parent, you can generally appoint a guardian to care for your child. You can also give instructions about your burial/cremation, or indicate that your partner can make those arrangements. (If you do not specify this, your blood relatives will have the authority to make this decision.)

There are lots of advantages to a will. You can leave your property to anyone you'd like, and you do not have to state your relationship to the beneficiary; you can change your will at any time (unlike a joint tenancy); you do not have to tell anyone the contents of your will (but there is nothing to stop you from doing so).

The "downside" to writing a will is that it will have to be "probated"; that is, filed with the probate court, where your assets will be identified and your debts paid before your property is released to your named beneficiaries. Although it is popular to try to "avoid probate" by not writing a will, the failure to write a will could have far more disastrous consequences than the mere inconvenience of having your estate go through probate. (Besides, probate in Vermont, unlike some big states like Florida and New York, is fairly efficient and painless.)

You can write your own will, but you have to follow certain strict requirements. You must sign your will in the presence of three witnesses, and those witnesses must in turn sign the will in the presence of each other. Further, none of the people you name as beneficiaries in your will can act as witnesses. Before you sign the will you should state out loud that you intend it to be your "Last Will and Testament," so if asked, the witnesses will be able to say that they knew you were signing your last will. You will need to sign your name the exact same way at the bottom of every page and at the end of the document. Finally, you should use the same typeface or handwriting and ink throughout the entire document.

You can store your will in a safe deposit box or any other safe place, but make sure your beneficiaries will have access to it after your death. You can also file it at the probate court for safekeeping. You can give copies of your will to anyone, but do not sign the copies; there should be only one original, signed copy. If you write a will in Vermont, it will be valid even if you move to another state, but it is a good idea to update your will periodically anyway; having a "record" of wills which consistently identify your partner (or whomever you choose) as your beneficiary will only help to confirm your wishes in the event your will is challenged.

It is possible for a relative to challenge the validity of your will on the grounds that you were not of "sound mind," or that you acted under duress or were unduly influenced. To minimize the chance that these claims will be successful, your beneficiaries (especially your partner) should not be in the room when you sign your will. In fact, it is our policy not to have any discussions about a person's will in the presence of that person's partner. It is also important to ensure that the witnesses get to know the person well enough so that they can testify as to the person's mental soundness and the voluntariness of the signing. (Friends make good witnesses for this reason.) Finally, if you have given your property to your lover and disinherited your family, it is helpful to include specific language in the will stating why you have done so.

Many books, guides and software are available to help you write and execute a will yourself. However, if there is any possibility that some other person, such as a family member, might challenge your will, we strongly recommend that you consult a lawyer. We also recommend that you talk with a lawyer if you have a significant amount of property (say, over \$50,000 net), since you may need more sophisticated estate planning than just a will.

Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, whose practices include employment issues, family matters, estate planning, personal injury and worker's compensation cases, and general civil litigation.

Over the coming months, this column will feature timely information about legal issues of interest to our community. We will provide information about important laws and court cases that may affect our rights, as well as practical nuts and bolts advice for protecting ourselves and our families. If you would like to see us cover a particular topic, please feel free to write OITM or call us at (802) 388-6356. ▼

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