

Legal Briefs

Avoiding Probate, Part 2: Living Trusts and Designated Beneficiaries

by Susan Murray and Beth Robinson

In last month's column we discussed the advantages and disadvantages of creating "joint tenancies" in order to avoid probate. Assuming you've decided that you want to avoid probate, there are a few other common things you can do.

First, if you have a life insurance policy, you can name your partner as the beneficiary on the policy rather than simply naming your "estate." This has the advantage of allowing the insurance proceeds to go directly to your beneficiary upon your death, without the need for approval by the probate court. Further, unlike a joint tenancy, you can change your beneficiary designation at any time. This "beneficiary designation" technique can also be used for any other assets that allow such designations, such as a capital account in a partnership or perhaps a retirement or pension account.

You can also use a bank account to create a simple "pay on death" trust or "bank account trust;" this is also known as a so-called "Totten Trust." To set up such a trust, you simply deposit your money into a bank account and, on the appropriate bank form, indicate that you are the "trustee." You can then name a specific person — your partner or any other person — as the beneficiary of the account. That person then inherits whatever money is in the account when you die, and the account does not have to go through the probate process. During your lifetime, you would retain exclusive control over the account; you could deposit money into it or withdraw whatever amount you wished, or you could close the account altogether.

If you have more property than just a bank account, there is another kind of trust you can create to avoid probate: the so-called "inter vivos" or "living" trust. A living trust can be "revocable" or "irrevocable." The most common living trust is the "revocable" trust; like the simple "bank account trust," a revocable living trust can be revoked or canceled by you at any time before your death.

To create a revocable living trust, you need a trust document with a specific title indicating that it is your trust. In the trust, you would be named the "settlor" or creator of the trust, and would also name yourself the "trustee" or manager of the assets in the trust. A second person must also be named as a "successor trustee" to manage the trust after you die or become incapacitated.

In the trust you would also identify the beneficiaries, as you would do in a will. These are the people who will inherit the property in the trust after you die. Finally, you must identify the assets which you are putting into the trust, such as investment accounts, antiques, or your house. Any property that actually has a legal document of title (such as the title to a car, or the deed to your house, or the passbook for a bank account) must actually be transferred into the name of the trust.

If you want to transfer your house into the trust, you will need to have a deed prepared and have it recorded in the land records. This will trigger a Vermont property transfer tax (the tax is \$500 on a \$100,000 home, \$1,125 on a \$150,000 home, and \$1,750 on a \$200,000 home).

During your lifetime, a revocable trust is essentially a "paper transaction" that will have no practical effect on how you manage your affairs or your assets. You can spend the assets in the trust, or give them away, or sell

them at any time. You can also cancel the revocable trust altogether.

Upon your death, the trust does not have to go through probate. Instead, your "successor trustee" (who can also be a beneficiary, such as your lover or partner) will simply execute all the documents necessary to transfer the assets to the beneficiaries.

Some people may decide to set up an "irrevocable" living trust rather than a "revocable" one. As the name implies, you cannot revoke or cancel an irrevocable trust after you set it up, and, unlike a revocable trust, you cannot remove any property from an irrevocable trust after the property has been transferred to the trustee's name.

Why would anyone set up such a trust? The most common reason is for estate tax purposes. If you put property into an irrevocable trust, the IRS says that this property is no longer considered yours, so upon your death that property will not be counted toward the total value of your estate for purposes of calculating estate taxes.

Most people don't have to worry about estate taxes, though, so revocable trusts will usually be adequate. Currently, estate taxes are charged only if the total value of the estate is over \$600,000. (You should note, however, that all life insurance proceeds are counted toward this \$600,000, even if those insurance proceeds are distributed directly to your beneficiary, outside your Will.)

Estate taxes are extremely high, so if there is a possibility that your estate will be close to or over \$600,000 upon your death, you should consider getting estate planning legal advice to determine whether you should be setting up an irrevocable living trust or utilizing some other estate planning techniques. ▼

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

This column features timely information about legal issues of interest to our community. We hope to 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'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356.



Island Pond Health Center

A division of Northern Counties Health Care, Inc.

Laurie Ann Forest, D.D.S.
Family Dentistry

Middle Street
P.O. Box 425
Island Pond, Vermont 05846

802-723-4300
(VT) 1 800-339-0227
FAX 802-723-4544

The Great Gay Orientation:

What's out there in the community?
How can I find a gay friendly doctor/lawyer/etc.
How can I get involved?

October 23, 6:30-9:00 PM @ the Fletcher Free Library in Burlington

Part of a monthly series of workshops and forums
co-sponsored by The Men's Health Project
& The Young Men's Group @ Outright Vermont
check out the calendar listing for more details

You Know You're OUT When...

Find out just how OUT you really are by adding up all the points that might apply to you. The more you get, the out-er you are!

You're at a restaurant and...

- You and your partner constantly pick at one another's meals. (1 pt.)
- The waiter expects one of you to order for both. (2 pts.)
- You and your date have only one hand above the table for most of the meal. (3 pts.)
- She embarrasses you by spilling wine down the front of her tux. (4 pts.)
- You look around the room, watching for the signal to start the "kiss-in." (5 pts.)

You're at the airport and...

- You know where ALL the restrooms are. (1 pt.)
- Other passengers assume you're a flight attendant. (2 pts.)
- The flight attendants assume you're a flight attendant. (3 pts.)
- The security alarm gets set off by all your piercings and you have to calmly explain why you can't remove ALL of them there in the passenger line. (4 pts.)
- You don't care and proceed to remove them anyway. (5 pts.)

You're away on vacation and...

- You push the two beds together in your hotel suite. (1 pt.)
- All of the other cars on the highway have either rainbow stickers or Michigan plates. (2 pts.)
- You're getting seasick with thousands of other women. (3 pts.)
- You advise the desk clerk that there's been no mistake — you requested a room with only one bed for you and your partner. (4 pts.)
- You and your partner hold hands and kiss each other every time you walk past the White House. (5 pts.) ▼

G/L/B Film Festival Premieres in Northeast Kingdom

ST JOHNSBURY -- Catamount Arts of St. Johnsbury will present a Gay/Lesbian/Bi Film Festival the week of October 25-31. This is the first festival of its nature in the Northeast Kingdom.

The program includes the regional premiere of "Stonewall," the recent film about that historic event. Also included are "The Celluloid Closet" and a collection of award-winning short lesbian films from around the world entitled "Girlfriends." Two other noted films, "Bar Girls" and "Before Stonewall," fill out the festival roster.

The festival will begin at 7:00 p.m. Friday evening with a screening of "The Celluloid Closet." Singer/songwriter/female illusionist Noël will perform at 9:15. Noël will be joined by the Bad Puppy Trio.

Saturday's events begin at 1:00 with a screening of the Emmy-winning documentary "Before Stonewall," followed by a discussion with the film's producer, John Scagliotti. At 3:00, "Stonewall" will premiere. The evening shows begin at 7:00 with "Girlfriends" and continue with a second showing of "The Celluloid Closet" at 9:00.

Sunday show times begin at 2:00 with the hit lesbian film "Bar Girls," followed at 4:00 with "Girlfriends." Evening show times are 7:00 with "The Celluloid Closet" and "Stonewall" at 9:00.

The remainder of the week will feature "Stonewall" on Monday and Wednesday evenings at 7:00 and "Girlfriends" on Tuesday and Thursday at 7:00.

For further information, ticket prices, and directions to Catamount Arts, call 748-2600 or (800) 805-5555. ▼



Golden Threads

Discreet Contact Publication for
Lesbian Women over 50,
and younger

Sample Copy \$5

P. O. Box 65, Richford, VT 05476-0065

Susan McKenzie MS.

Licensed Psychologist—Master

Experienced therapist specializing in the individual and
relationship issues of Lesbian Women and Gay Men

Quechee

Montpelier

Norwich

802 295-5533

Insurance Accepted—Sliding Fee Scale