



LAST WILLS FOR SAME-SEX COUPLES

FREQUENTLY ASKED QUESTIONS

1. *Why do I need a Will?*

A Last Will and Testament is your opportunity to decide who will inherit your property when you die, and if you have children or grandchildren, to provide for them until they are adults. If you die without a Will, state law will determine who inherits everything you own. Because Michigan does not recognize your same-sex partner as legally related to you – even if you are married or had a civil union in another state or country – he or she has no statutory right to inherit from you. Instead, every item of your property will become the property of your legal relatives based on how closely they are related to you. Having a Will, and in some cases a trust, is the best way to provide for your partner and to make sure everyone know your wishes.

2. *How can a Will protect my partner's relationship with my children?*

A Will allows you to appoint a guardian (such as your partner) to care for your children until they are 18. This will be effective upon your death, unless the children have another legal parent who chooses to seek custody. In a Will you can also create a trust to manage your children's finances until they are ready to do so, and you can make anyone you wish (such as your partner) the trustee. Without a Will that appoints a guardian and establishes a trust, a court will decide who will take care of your children and will appoint a conservator to manage their money, and it will give preference to blood relatives.

3. *I don't have children or much money – do I really need a Will? Surely my family wouldn't take any property of mine they know I would want my partner to have, would they?*

Sadly, this type of thing happens all the time. Even when the relationship between a partner and other family members has been good prior to the death, there always seems to be someone who feels “the family” is entitled to everything that is legally theirs, including not only any money you may have, but also all of your personal items such as your clothes, jewelry and other cherished possessions, and even the gifts your partner has given you. Even things that you don't think are worth much can have sentimental value to your partner and to your family. Imagine your partner having to stand by as “the family” goes through all of your possessions and takes whatever they want.

4. *What about the things my partner has helped pay for, like the house mortgage and the car?*

The money your partner has spent to make your payments or maintain your property does not give your partner legal title to the property. If your house, car, or other property is titled in your name only, it will become part of your estate when you die. Without a Will, property in your estate will pass to your legal heirs (not to your partner) by state law. Even the things you and your partner purchased jointly could be ordered sold so that “the family” gets their (your) half. There have been many cases in which the surviving partner has been evicted from the home with only his/her own clothes and the few items the partner could prove were his/hers.

5. *Isn't the easy solution to have everything titled jointly?*

Most of the personal property you own doesn't come with a legal title, so those things will still pass to your legal relatives unless you have a Will. There are some things you can jointly title (such as real estate, cars and boats), but doing so may not be a good idea. For example, if you are financing these things, the lender will require that both parties qualify for financing and be obligated on the debt. In addition, many problems can occur if property is jointly titled and the relationship ends, especially jointly-titled real estate. There is no divorce court for same-sex couples; you can find yourself in a legal nightmare.

6. *Do I need a lawyer to prepare a Last Will?*

While it is legally possible to write your own will, it is definitely not a good idea. While there are legal forms and software packages that provide generic will provisions, they are no substitute for the advice and experience of a lawyer who can sit down with you, talk about your legal needs in detail, and help you choose the right legal tools to carry out your wishes. A properly drafted Will is far more than just “filling in the blanks”; it is part of a larger estate plan that takes into account your individual circumstances and what you are really trying to accomplish. That plan will include the proper titling of assets, the proper designation of beneficiaries of non-estate assets, and a determination of whether, in addition to a Will, a living trust and/or testamentary trust are appropriate to provide for your loved ones. A lawyer's help is essential in making your estate plan work out the way you intend it to, and in making sure your partner and loved ones don't have to untangle a legal knot you didn't intend to create.

7. *Isn't it expensive to have a lawyer prepare Wills and other documents?*

Well, lawyers do cost money. They either charge a “flat fee” or an hourly rate, or maybe both, depending on what you need them to do. Just like other professionals who have had years of training, we lawyers have put a lot of time into learning the law, developing our skills, and mastering the details that go into legal documents. To make sure those documents fit your individual legal needs, a lawyer will spend time talking with you, analyzing your legal needs, consulting with you about your options, preparing your documents, making any changes you want to make, finalizing the documents, and then going over them with you, paragraph by paragraph, to make sure you understand them. That's a lot of work, but it's essential to doing a good job for you. At Rainbow Law Center, PLLC, we provide a free initial consultation, and based on what your needs are, we will give you an estimate of our fees, which we think you will find very reasonable for the high quality of the services we provide.