NATIONAL CENTER FOR LESBIAN RIGHTS

FAQ: Documents and Protections for LGBTQ People and Their Families During COVID-19 Crisis

In the current Covid-19 (Coronavirus) pandemic, LGBTQ+ people may be considering how to protect themselves and their families, and what they wish to happen if they become seriously ill or incapacitated.

This FAQ provides information about documents and other legal protections LGBTQ+ people can create to reflect their wishes.

If you have more questions about your legal rights, or would like help finding an LGBTQ-friendly attorney, please contact NCLR's Legal Information Helpline by phone at (800) 528-6257, e-mail at Info@NCLRights.org, or use our online form: www.nclrights.org/GetHelp. Many attorneys are doing video consultations to help people create the documents they need.

GENERALLY

Do we need any additional documents if we are married?

Yes, even if you are married, it is important to create medical documents about who you want to be able to visit you or make medical decisions for you if your spouse is incapacitated. This is especially important if you do not want your family of origin to make those decisions.

Whether you are married or not, you may also want to have a will or other estate-planning documents if you do not want the state's law to determine by default what happens to your property if you die.

And if you have children, there are other legal documents you should create, especially if one of you is not a biological or adoptive parent.

This fact sheet is intended to provide accurate, general information regarding legal rights in the United States. Because laws and legal procedures are subject to frequent change and differing interpretations, the National Center for Lesbian Rights cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency.

HOSPITAL VISITS AND MEDICAL DECISIONS

Who can visit me in the hospital?

Because of the pandemic, it is more important than ever that you have the right documents to show who you want to be able to visit you. This is especially important if you become unconscious or unable to speak. Visitation in hospitals is severely restricted for everyone right now, and these documents will not change general rules hospitals have in place.

Hospitals that receive federal funding must allow patients to decide who may visit them, regardless of biological or legal relationship. Hospitals can set limits on visits (for example, to prevent transmission of infectious diseases). But they cannot restrict visitation only to legal relatives if you tell them who you want to visit.

Hospitals must also allow patients to pick a support person who can make decisions about visitors on their behalf if the patient cannot. A patient can pick anybody to be their support person, regardless of legal relationship.

If a person was not able to express their wishes about a support person, the hospital should do their best to determine who the patient would have wanted to be their support person, and should not base their decision only on a biological or legal relationship to the patient.

Ahead of time, you can ask your hospital for a visitation authorization form to fill out, or put in writing who you want to be your support person. You can also send a copy of this authorization to your primary care doctor and your support person.

How do I ensure that my wishes for my medical treatment are followed, and/or that the person I choose will make medical decisions for me?

A living will or medical directive allows you to say what medical treatments you do or do not want if you become unable to speak or otherwise communicate your wishes.

A durable power of attorney for healthcare (which is also sometimes called a "healthcare proxy") gives another person the legal power to make medical decisions about your medical care if you become unable to make these decisions for yourself.

In some states, the living will or medical directive and the durable power of attorney for healthcare are on the same form.

States have different requirements for these documents. You can download the medical decision-making forms for your state here:

https://www.nhpco.org/patients-and-caregivers/advance-care-planning/advance-directives/downloading-your-states-advance-directive

This fact sheet is intended to provide accurate, general information regarding legal rights in the United States. Because laws and legal procedures are subject to frequent change and differing interpretations, the National Center for Lesbian Rights cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency.

Many states require that these forms be notarized or witnessed by two people who are not named in the directive to be valid. Usually the person designated as your agent (the person who will make medical decisions for you) **cannot** also serve as a witness.

Depending on your state, you may be able to find a notary who can notarize your signature remotely. However, many states do not allow remote notarization.

Alternatively, you may want to explore if neighbors or friends can serve as witnesses to your signature, while taking steps to avoid the possibility of virus transmission. For example, they could watch you sign through a house or car window, or from a safe distance, then pick up the document later to sign their witness statement.

FUNERALS AND OTHER DECISIONS AFTER DEATH

How do I ensure that my wishes are followed for my funeral and/or how my body is handled if I die?

Unless you leave written instructions, nearly every state gives your legal relatives the right to control what happens to your body when you die, including whether to authorize an autopsy, and to make funeral arrangements. Having such a document is especially important for transgender people, to ensure that your gender is respected after death. A surviving partner does not automatically have the right to make these decisions— unless they have a legally recognized relationship (e.g., a legal marriage, registered domestic partnership, civil union, or other legal recognition).

Written instructions let you say what you want to happen with your body and name the person you would like to carry out your instructions. These written instructions could also be included in a will or estate plan. In most states, these instructions are legally binding. You should make copies of these instructions and keep them in a safe place and provide a copy to the person you want to carry out your wishes. As with all other legal documents, the laws regarding such instructions vary by state. You should speak to an attorney to ensure that your documents comply with the relevant state law.

FINANCES & PROPERTY

How do I ensure the person I choose will handle my finances if I cannot?

A durable power of attorney for finances allows you to designate a person, your "agent," to take care of your finances if you are unable to do so yourself.

A general power of attorney for finances authorizes your designated agent to control a broad range of financial matters, including paying your bills, cashing your checks, and receiving benefits.

You can limit the powers of your agent, in a limited power of attorney for finances, to a specific timeframe, or to specific functions. Executing a general or limited power of attorney for finances can

This fact sheet is intended to provide accurate, general information regarding legal rights in the United States. Because laws and legal procedures are subject to frequent change and differing interpretations, the National Center for Lesbian Rights cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency.

save the expense and difficulty of a conservatorship or guardianship proceeding. It can also prevent relatives from intervening in your financial affairs if you are incapacitated.

The designation of power of attorney should not be taken lightly. By designating a person to be your agent, you are giving that person very broad rights to handle your finances, including the ability to empty your bank account without your knowledge. Your agent should be someone who not only knows how to handle money, but also someone you trust without any reservation.

You should provide copies of your durable power of attorney for finances to your bank and other financial institutions. Many institutions require you to use their own form, so you should check with your bank and other institutions first to determine if this is the case.

Some states provide a statutory form to use for a power of attorney. You do not need to use a statutory form, but these are forms that the state legislature created and that comply with the state's law about a valid power of attorney.

We are providing links below to those forms in California, and New York, two of the states with high numbers of cases of Covid-19 infections. We are also providing a link to a form created by a legal services agency for residents of Washington state.

However, we encourage you to speak with an attorney in your state if possible about creating a durable power of attorney, to ensure that it accurately reflects your wishes. You can contact NCLR's helpline for assistance finding an LGBT-friendly attorney in your state.

California:

http://file.lacounty.gov/SDSInter/dca/1021444_4.18.17_UniformStatutoryFormPowerofAttorney.pdf

New York:

https://www1.nyc.gov/assets/hra/downloads/pdf/services/homelessness-prevention/poa.pdf

Washington:

Washington does not have a statutory form, but Northwest Justice Project has created a power of attorney form for the State of Washington:

https://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/A41F4CCC-8F4E-4572-82A5-527F464F7B28/9608en_power-of-attorney-documents.pdf

How do I make a valid will or estate plan to decide what happens to my property if I die?

Each state has different requirements for a will to be valid. Often there are requirements that a will must be properly witnessed when it was signed, though there may be exceptions to witness requirements in some states. For example, California allows for a will to be valid if the material

This fact sheet is intended to provide accurate, general information regarding legal rights in the United States. Because laws and legal procedures are subject to frequent change and differing interpretations, the National Center for Lesbian Rights cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency.

provisions and signature are in the handwriting of the person whose will it is, even if it was not validly witnessed when signed.

We strongly encourage you to speak with an attorney if possible about drafting a will or making other estate plans. You can contact NCLR's helpline for assistance finding an LGBT-friendly attorney in your state.

CHILDREN

How do I ensure that the person or people I choose will care for my child(ren) if I am not able to?

A nomination of a guardian or conservator identifies the person you want to take care of your child if you die or become physically or psychologically unable to care for your child. Usually, that person will be given physical custody of the child and authority to manage the child's financial matters.

While a nomination is not legally binding, most courts will respect a parent's wishes about who should take care of their child if they die or are unable to take care of them, and if the child does not have another legal parent.

The format of these guardianship documents varies from state to state. For that reason, you should have the nomination of guardian or conservator drafted by an attorney who is aware of the requirements in your state.

Also, depending on the particular circumstances and state law, a non-biological, non-adoptive parent may still be a legal parent or have other legal rights to care for their child. If you are a non-biological, non-adoptive parent, and the child's other parent is no longer able to care for your child, you should contact an attorney to ensure that your and your child's rights are protected. You can contact NCLR's helpline for assistance finding an LGBT-friendly attorney in your state.

Updated March 2020

This fact sheet is intended to provide accurate, general information regarding legal rights in the United States. Because laws and legal procedures are subject to frequent change and differing interpretations, the National Center for Lesbian Rights cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency.