



MORGAN AND DiSALVO, P.C.
attorneys at law

RICHARD M. MORGAN, Esq.
rmm@morgandisalvo.com

LORAIN M. DiSALVO, Esq.
ldisalvo@morgandisalvo.com

OF COUNSEL
DIANE B. WEINBERG, Esq.
dweinberg@morgandisalvo.com

Same Sex Couples: If You Really Care About Building a Life With Your Partner... You Need to Do the Planning Now!

By Richard M. Morgan & Loraine M. DiSalvo

Everyone needs comprehensive estate planning. However, even though same sex couples who are legally married under the laws of a given state or foreign jurisdiction can now receive federal recognition of their marriages for all purposes, most states, including Georgia, still treat same sex couples as strangers for purposes of state. This means same sex couples in Georgia and many other states still cannot rely on state laws to help protect their interests. Consider the following questions:

1. **Hospital/Emergency Room Visitation**

Do you care whether your partner is able to visit you if you are in the hospital? Many hospitals restrict visitation to legally-defined family members, and your partner could end up shut out if the hospital decides, or your blood relatives decide, not to allow him or her to visit you.

Recommended Solution: Have an Advance Directive for Health Care which names your partner as your agent for health care decisions, thereby showing clearly that you want your partner to be able to visit you.

2. **Health Care Decisions**

Do you care whether your partner is able to make medical decisions for you if you are ill or injured and unable to make those decisions for yourself, or would you rather have your biological relatives come in and take over your care?

Recommended Solution: Have an Advance Directive for Health Care which names your partner as your agent for the purpose of making medical decisions on your behalf, and which specifically instructs doctors, hospitals, and other medical providers to deal with your partner if you can't act on your own.

3. **Financial Decisions**

Do you care whether your partner can make financial decisions and take other actions to manage your financial affairs if you are unable to do so for yourself, or would you rather have people outside of your relationship butting in?

Recommended Solution: Have a Durable General Power Of Attorney which names your partner as your agent for the purpose of handling financial and property-related matters if you are unable to act for yourself.



4. **What Happens Upon Your Death**

Do you care whether your partner receives your assets after your death, or would you rather see your biological relatives come in and take your property, excluding your partner? Do you care whether your partner is able to manage your estate, or would you rather have other family step in and take over?

Recommended Solution: Make sure you have at least a Will and, possibly, a Revocable Living Trust to go with the Will. Also make sure that your assets are owned correctly and that your beneficiary designations for life insurance and retirement accounts are stated properly.

5. **What Happens Upon Your Death with Children In The Family**

If you have or want to have children, do you care whether your partner is able to continue caring for your children after your death, or would you be okay with having other family members interfere? In addition, do you care how your children are to be supported financially?

Recommended Solution: Again, make sure you have at least a Will which appoints your partner as the guardian for any biological or adopted children you may have. Also, you should consider other steps towards protecting your parent/child relationships which may be available during your lifetime, such as a Second Parent Adoption by your partner. A Shared Parenting Agreement, discussed below, can also help clarify the relationship which your partner and your child have during your life, and can help support your partner's role with regard to your children after your death in the event of a challenge from other family members.

6. **Post-Death Disputes**

Do you care whether your legally-defined heirs attempt to challenge your desires after your death, entangling your partner, your estate, and any children you may have in a dispute which could last for years and cost many thousands of dollars?

Recommended Solution: Have at least a Will *and* a Revocable Living Trust, make sure your assets are transferred into the Revocable Living Trust during your lifetime, and take extra care to ensure proper ownership of assets and beneficiary designations.

7. **Relationship Ending During Your Lifetime**

Do you care that a future break in your relationship could result in a settlement process which could be more painful than the break-up itself, as you and your partner work out the division of the assets you have accumulated together and the settling of any child support, visitation, and custody questions?

Recommended Solution: A Domestic Partnership Agreement, like a pre-nuptial agreement for opposite-sex couples, can help smooth out the relationship dissolution process by ensuring that



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RICHARD M. MORGAN, Esq.
rmm@morgandisalvo.com

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dweinberg@morgandisalvo.com

important questions have been worked out and addressed in advance, at a time when emotions were more positive and you and your partner were more likely to have been thinking clearly.

8. Relationship Involving Children Which Ends During Your Lifetime

Do you care about the best interests of any children who may be a part of your relationship, and would you want to keep your relationships with the children intact if your relationship should break up in the future?

Recommended Solution: A Domestic Partnership Agreement and/or a Shared-Parenting Agreement, as discussed above, can help smooth out the process of dissolving a relationship by allowing difficult and emotionally-charged issues to be addressed in advance, in writing, at a time when both parties to the agreement are likely to be happy and thinking clearly. Where children are involved, a Shared Parenting Agreement, worked out at or before the birth or adoption of a child, can be especially helpful in reducing the possibility for drawn-out battles over custody and other child related issues in the event that your relationship comes to an end during your lifetime.

9. Other Potentially Beneficial Documents

Do you want to go the extra distance to do whatever you can, within reason, to increase your odds that all will go well and as intended with you, your partner, and any children?

Consider: Consider creating an Ethical Will so that your values can be shared by your family after your death. Also consider creating special documents which can help clarify for others that you want your partner to be allowed to act on your behalf in various situations, such as a Authorization of Medical Care which clarifies that your partner can access your medical information, or a School Authorization Statement which names your partner as a person who is allowed to deal with your children's school issues.

The **answer** to most or all of the above questions is that you probably not only care about these issues, but you care greatly about them. So, what should you do to begin to protect your interests and those of your partner and children? Call and make an appointment for an estate planning consultation with one of the lawyers at Morgan & DiSalvo. We have focused specifically on helping life partners protect themselves and their interests and ensure that their wishes are carried out. The initial consultation is free. Take the time to begin protecting yourself and your loved ones soon.

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