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## LEGAL PLANNING FOR SAME-SEX COUPLES (Updated January 2013)

Same-sex couples are not very different from heterosexual couples. However, just because same sex couples are legally married under the laws of the Commonwealth of Massachusetts does not necessarily mean that they have the same rights as heterosexual couples, particularly as they pertain to estate planning and last illness. I would encourage same sex couples to consult a lawyer of their choice in order to craft basic legal documents designed for their specific circumstances.

1. There should be Wills in place to cover the event of a death of one of the partners. A Will would protect the surviving spouse as well as any children born either to the union or before the union, particularly if the surviving partner did not adopt the children of the deceased partner.
2. Health Care Proxies are imperative in order to control who the person is who will ultimately make medical decisions for you. The Health Care Proxy is the basic medical directive which everyone should have. Couples should also consider a Do Not Resuscitate order which can be obtained from their doctor and Comfort Care Order which is often obtained from Hospice personnel.
3. Same sex couples may want to consider prepaying their funerals as part of good estate planning. If the funeral is already paid at the time of death of one of the partners, then the next of kin is prohibited from entering the scene and making arrangements that might be contrary to what the partners have decided. In other words, if the funeral is arranged and paid for prior to death, then the next of kin do not have any control over the funeral arrangements or disposition of the body.
4. Marriage between same-sex people is legal in Massachusetts but not all same-sex couples, even ones of long standing, choose to get married. Marriage vests certain rights in each partner that may not exist if the couple is not legally married. This fact makes it extremely important for people to check the beneficiaries on life insurance policies, investments of any kind, ownership of the house or condo or time share unit to make sure the beneficiaries or co-owners as listed are just the way they want them to be.
5. Nursing Home regulations are another issue of paramount importance. The regulations recognize same sex marriage in Massachusetts which

means that same sex couples are treated the same as heterosexual couples for spend down and eligibility purposes.

All people, regardless of whether or not they are same sex couples, should see their attorney to be sure that Wills, Powers of Attorney and Health Care Proxies are not only in place but are also reviewed and updated every 5 years.

***The views expressed in this column represent general information. To address your particular and specific needs consult your own attorney or call the Franklin County Bar Association at (413) 773-9839 or the Worcester County Bar Association at (978) 752-1311.***

***The Elder Law Project, of W MA Legal Services, offers free legal services to persons age 60+. Call them at 413-774-3747 or 1-800-639-1309 for an appointment or more information.***