

LEGAL HANDBOOK FOR **LGBT** BELIZEANS



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BELIZEANS**

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Introduction

This handbook is intended to be an easy reference source for same-sex couples in Belize, on long-term planning, specifically related to health, family, and financial considerations. It contains useful legal and practical information on topics of special interests to our community, but its use is by no means limited to LGBT couples. Single Belizeans, including all unmarried couples, should find this booklet informative and helpful.

The material provided is based on the laws and practices of Belize and its agencies. It is not intended to be an exhaustive list of all the potential considerations when discussing issues relating to LGBT people. Rather, it provides information of a general nature and answers to some of the more frequent questions that LGBT Belizeans often have.

Whether you need information about Discrimination, Adoption, Estate Planning, End of Life Planning, or simply want to know more about your legal rights, this Handbook should be a valuable resource.

As always, you should consult an attorney before making any legal decision, but this Handbook provides an excellent place to start.

We hope you find this to be a useful tool in navigating the challenges that gay couples face. Thank you for supporting Our Circle as we work toward the day when this handbook is no longer necessary.



About Our Circle

Whether it is working on relationships, exploring parenthood, considering coming out, or connecting with others who share the experiences, Our Circle is here to give support and help people reach their potential as a partner, parent or member of the LGBT community. Since 2014, Our Circle has worked to create changes to improve the climate within and surrounding the LGBT community. Our Circle uses the following approach:

- Maintain an organization whose leadership reflects the LGBT community and works in an efficient manner which is transparent and accountable;
- Support the development of an accessible and safe community centre that the LGBT community and families of LGBT persons can use;
- Work towards supporting the provision of services for LGBT individuals and families of LGBT persons; and
- Support the LGBT community and families of LGBT persons to have a voice in influencing and bringing about changes in LGBT issues.

Vision

By 2020, Our Circle is an LGBT-centred organization creating positive change through the efforts of its community and its allies.

Mission

Our Circle aims to reflect equality within the diversity of the LGBT community by encouraging active participation from the community in achieving a reliable, safe support system for the LGBT community and families in Belize.



OUR CIRCLE
Making a Difference Together!

Discrimination Laws

The LGBT community faces enormous challenges, and in some cases, rampant discrimination. Some laws of Belize prevent or exclude LGBT people from getting married, while others make it difficult for LGBT people to actualize their dream of having children. Despite all of this, there is hope. Members of the LGBT community are more vocal, more open, more united, and more organized than ever before. With a little knowledge and some careful planning, LGBT people can protect themselves and their relationships from the discrimination and inequality that has prevailed in the past.

This section will help to empower ‘The LGBT Community’ by detailing some of the legal rights that do exist for LGBT people and some strategies that can be employed to protect those rights. Discrimination laws are something of a misnomer. They are probably better described as “anti-discrimination laws,” and there are several that all LGBT people should be aware of at all levels.

In Belize, there are laws which provide legal protections against discrimination in areas such as employment, education based on certain specified categories, including race, national origin, sex, age, disability, and others. The anti-discrimination laws in Belize provide very little legal protection to LGBT citizens subjected to discrimination. None of Belize’s anti-discrimination laws include “sexual orientation” or “gender identity” in the list of classifications protected from discrimination.



Significance of Defining LGBT Relationships

The Belize Marriage Act, Chapter 174 (Revised Edition 2011) Substantive Laws of Belize, makes no provision for same-sex marriages or civil partnerships. To date, there is nothing in the laws of Belize that expresses how same-sex couples can define their property and support rights during their relationship, at the end of their relationship, or upon death. Without this protection, same-sex couples cannot execute an enforceable, binding contract, procedures for handling their support, expenses, and finances while they are together and support if they separate.

While same-sex couples invest an average of six years together, no locally enforced agreement allows same-sex partners to set forth their rights, obligations, emotional commitment, financial interdependence, and if applicable, co-parenting responsibilities.

Nonetheless, various legal documents are available to ensure that a partner's wishes are followed in these matters. Additionally, later sections of the Handbook provide greater details on various mechanisms and related considerations. However, the courts of Belize are not obligated to recognize and uphold many of those agreements as valid and enforceable if the contract can be undermined by existing law, act or policy.



Marriage and Civil Unions

Countries that allow same-sex marriages also allow non-residents to take advantage of those rights; however, Belize's marriage Act does not offer the same protection for same sex unions like the issuing country. For you and your family, marriage could bring a feeling of commitment that you feel has been denied to you, and therefore that sense of recognized commitment may be even more important than any legal rights that might accompany the marriage.



Some countries allow “civil unions” – legal contracts between partners that are recognized by the state as conferring some or all the rights conferred by marriage, but without the implicit historical and religious meaning associated with the word “marriage.” As is the case with a marriage between same-sex partners that is performed outside Belize, those rights are not recognized once you return to Belize. It is important to keep in mind when considering civil unions in other countries that this is a union of fewer rights than marriage, so whatever your circumstances are, be sure to do your research and discuss all your options with your partner before taking any steps toward either marriage or a union in another country. It is important to understand the specific laws in that country regarding same-sex marriage and civil union.

Domestic Partnership Registries

An increasing number of countries have passed laws to allow for domestic partnership registries. This concept is somewhat different from marriage and civil unions because these registries guarantee unmarried partners (gay or straight) some of the same rights and protection as married couples, but not all. Those rights typically include rights to hospital visitation and may include life-and-death decision-making and even access to shared children. But those protections only apply within the geographic boundaries of the local government in which the registration was made, and the specific protections provided will depend on the provisions of the local enabling ordinance. So, going to a country that offers the registry will not grant you more rights if you are not a resident there, and you should not assume that the protections provided by all local registries will be the same.



Common Law Unions

The Laws of Belize afford common law unions. This concept guarantees unmarried "spouse" some of the same protections as married people, but not all. Those rights typically include rights to hospital visitation and may include life-and-death decision-making and even access to shared children.

Part XI of the Supreme Court of Judicature Act, Chapter 91 (Revised Edition 2011) Substantive Laws of Belize, was amended in earlier years to deal with persons in opposite-sex common law relationships of five or more years. There is no provision, however, for long-term same-sex partners who are separating and have property disputes to be resolved. The Act does not define spouse, nor does it reference any interpretation to surrogacy as part of the union in the birth of children or the existence of a same-sex relationship that has existed for five years or more.



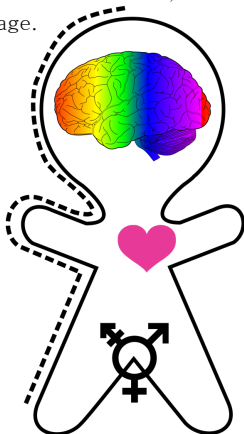
Same Sex Partners Sharing A Surname

In Belize, the Vital Statistics Unit (VSU) of the General Registry is charged with the responsibility of registering Deed Polls. A Deed Poll is a legal document that allows an individual to assume a new name and provides documentary evidence of the name change.

A Deed Poll can be used to:

- change one's first name or surname,
- add names,
- change the entire name,
- rearrange the current name, or
- simply change the spelling of one's name

Same sex partners may want to share their surname. While having both partners operating on the same surname is the most convenient option when making financial, legal and social commitments, a Deed Poll alone does not assure all the rights of a marriage.



Transgender Persons and Name Change

In Belize, transgendered individuals may encounter difficulties when their records and documents do not reflect their current name and gender. Transgendered individuals have had their privacy violated and transgender identity revealed without their permission due to inconsistency in appearance and documentations.



Transgendered individuals, in Belize, have a growing need to ensure that their documents and records are uniform and mirror their current name and gender. With the use of Deed Polls, transgendered persons have been able and continue to maintain privacy and change their Social Security records, Drivers License and Passport to reflect their accurate name; however, gender designation is still a legal issue to address for the transgender community in Belize. Simply put, a transgendered person can legally get his or her name changed to reflect his or her physical appearance; however, all gender indications will remain as per his or her sex as birth.

Having Children

Many LGBT individuals have children. Adoption, artificial insemination, and surrogacy allow LGBT singles and couples to grow their families in ways that were not possible in the past. As more strides are made in this area, the ability of LGBT people to have life-fulfilling relationships with children of their own is ever-increasing. The information below is designed to get you started on the path to parenthood, or at least help point you in the right direction.

Adoption

Gay men and women can adopt in Belize. However, second parent adoptions may raise different legal questions. Couples interested in pursuing a second-parent adoption should seek advice from a lawyer who is knowledgeable about this issue.

Artificial Insemination

For many lesbians, artificial insemination is the answer to the question of how to have a biological child. In an artificial insemination scenario, the intended mother purchases or otherwise obtains donor sperm and inserts that sperm into her own body for having her biological child. Many reproduction professionals suggest using an anonymous sperm donor to avoid custody or other visitation and relationship complications down the road. Typically, contracts are signed by sperm donors and by end users and, accordingly, individuals interested in this procedure should seek appropriate legal and professional advice.

There are no legislations or policies in place, within Belize, to protect persons who engage in artificial insemination.

Surrogacy

For many Belizeans, including gay men, surrogacy is the answer to the question of how to have a biological child. With a surrogacy relationship, a surrogate agrees to go through a pregnancy for an intended parent or parents, typically using the intended parent(s) sperm and a donated egg. The surrogate further agrees that the intended parent(s) will ultimately be the legal parent(s) of the child and will get custody of the child immediately after birth.

One of the biggest fears with surrogacy is that the surrogate parent will deliver the child and then decide that she wants to keep the child. Because Belize has no surrogacy statute, therefore surrogacy agreements between an LGBT couple (who cannot legally marry in Belize) and a surrogate may not be binding in a Belizean court. While surrogacy is a means by which LGBT partners can grow their families, there are of course legal implications to taking this route. Because entering a surrogacy agreement involves creating a legal contract and constitutionally protected rights of parenthood and reproduction, it is essential to speak with an attorney to fully understand your rights and privileges.



Estate Planning

Planning for the future, from both a financial and life issues perspective can prove rather complicated for LGBT individuals. Traditionally, laws have favoured the heterosexual married couple regarding planning for your future. Also, the concept of “heirs” has evolved to include only those relationships that are legally considered “family.”

Because of this deep historical inequality, LGBT parents must take extra steps to ensure their loved ones are taken care of during and after their lifetimes. The Administration of Estates Act C 197 (Revised Edition 2011), Substantive Laws of Belize, makes no



provision regarding those who die intestate as respects to their same-sex partner. Common law heterosexual partners, who have cohabited for five or more years, benefit from the estate of their partner as if they were legal spouses. Same-sex partners cannot become legal spouses and are not able to qualify as common law spouses either.

The following sections are intended to provide some insight into these complex issues and provide a starting point for those individuals and families needing help with that planning. This section contains dense material that might seem overwhelming at first. The best recommendation is to take one step at a time and consult an attorney for those issues that require expertise.

Organizing Your Personal Records

Getting your financial and personal records in order will help you understand your current financial situation, plan for your future, and arrange for the transfer of your estate after your death. Proper organization will help you maximize your financial strength, and ultimately will save you time and energy in your daily affairs. Basic personal information is necessary for almost any application for benefits and legal transactions. Financial records can be useful for budgeting, maximizing returns on your investments, and retirement and estate planning.

People are at a considerable risk of failing to meet their legal obligations and responsibilities when their documents are not adequately maintained. Organizing your records can also spare your loved ones from bureaucratic burdens should something happen to you.

During an emergency, your partner, a friend, or relative caring for your health or legal affairs, will spend less time searching for papers if he or she knows the location of the necessary documents. A straightforward way to organize your records is to write down an inventory of important papers, describe the material and include its location, whether it is in a safe deposit box at the bank or a file box in your closet.

The location is of importance when referring to your Will (remember you do not have to reveal the contents of Wills or Trusts), birth certificates, and certificates of marriage and citizenship. Depending on your situation, there will be additional items you should include in your document inventory.

Personal Records File

The following is a list of necessary items that your personal file should contain:

- Full legal name
- Social Security number
- Legal residence
- Date and place of birth
- Names and addresses of spouse and children (or location of death certificates if any are deceased)
- Names of parents
- Location of Will and Trust (if any)
- Place of birth certificate and certificates of marriage, divorce, and citizenship, including passports and visas
- Combinations for safes or lockboxes or location of keys
- Names and addresses of other relatives, close friends, doctors, and lawyers or financial advisors
- List of employers and dates of employment
- Education and military records
- Religious affiliation, name of church or synagogue, and name of clergy (if desired)
- Living Will, anatomical gifts
- Preferences or prearrangement for funeral and burial



Financial Records File

The following is a list of necessary items that your financial file should contain:

- Social Security information
- Investment income (stocks, property)
- Sources of income and assets (pension funds, interest income, etc.)
- Insurance information (life, health, and property), with policy numbers
- Bank accounts (checking, savings, and credit union), including information about any automatic payments
- Utilities and manner of payment (particularly if payments are made automatically)
- Credit cards
- Location of safe deposit boxes and keys
- Copy of most recent income tax return
- Power of Attorney
- Liabilities – what is owed to whom and when payments are due
- Mortgages and other debts – how and when paid
- Property taxes
- Location of personal items such as jewellery or family treasures



Wills

Once you have gotten a good understanding of your financial situation, you should then consider whether it makes sense for you to execute a Will. The Laws of Belize do not allow same-sex partners to marry and do not recognize any legal rights of life partners. Therefore, it is of particular importance to do all that you can to protect yourself, during your lifetime, through written and binding documents, so that your partner and other loved ones have access to you and your property upon your death or incapacity.

“Estate planning” is the process of planning for and documenting wishes for the disposition of assets and the care of a partner and children upon your death in a manner that will be honoured under applicable law. In the following sections of the Handbook, we look at each of the major areas of estate planning and explain the issues facing same-sex partners under current Laws of Belize. We then provide some options, tools, forms, and considerations for ensuring your wishes are met.

From a legal standpoint, there are several classes of property:

- **real property** – for example, land and interests in land such as easements and buildings
- **tangible personal property** – for example, cars or other personal belongings
- **intangible personal property** – for example, cash, bank accounts, leases, and other contract rights.

Even in the absence of a right to same-sex marriage, there are a variety of available legal documents available that can facilitate the orderly transfer of the various types of property upon death, in the event of incapacity, or to otherwise avoid a “default” disposition of those assets upon death under the current law. The amount of thought, consideration, and planning involved in putting these documents together is extremely beneficial to any couple. Going through this process, though cumbersome, tedious and perhaps uncomfortable, can make things go more smoothly when unexpected events occur.

Why do I need a will?

It is often said, if you die without a Will, “the State will get it all.” That is not necessarily true, but if you die owning anything in just your name alone and for which you have named no beneficiary, and if you have no Will, then Belizean law designates who inherits from you -- and under Belize law, that list does not include a same-sex life partner.

Thus, having a legally executed and binding Will in place is significant. In your Will, you can provide for bequests to your spouse, as well as family members, and anyone else (persons or charities) you wish; and only a legally recognized spouse or minor children have rights that can trump your bequests.

If you have small children, you can and should designate in your Will the person (or persons) to serve as guardian for your minor children (whether born naturally or adoptive). Also, you should designate the Personal Representative (the term Belize gives to the person responsible for administering the Will upon your death – sometimes called an “executor”). **You can name your partner as your Personal Representative even if your partner is a named beneficiary of your Will.**

If you are concerned about the distribution of your estate, you should seek legal advice. If you cannot afford legal assistance, you should contact the nearest legal services, legal aid, or bar association low fee or pro bono referral panel.



Legal Requirements

To be valid, a Will must meet certain conditions. The requirements in Belize include:

- the maker (called the testator for a man, or testatrix for a woman) must be at least 18 years or an emancipated minor;
- the testator must be of sound mind at the time the Will is prepared;
- the Will must be in writing (either typed or handwritten). It cannot be oral;
- the Will must be signed by the testator at the end of the Will, and in the presence of two witnesses;
- the witnesses must attest or subscribe the will in the presence of the testator; beneficiaries are not advised to subscribe as witnesses since their gift will fail in that event; and
- it is also advisable to have your Will notarized in Belize.

Use of Form Wills

While there are various form books available in print and online for Wills, you will benefit from the counsel of a lawyer who is experienced in estate planning which can help you decide what documents are appropriate given your circumstances. The idea that there is one "simple Will" form is often misguided. Probate matters can be very complicated, and it is always best to consult an attorney when drafting a Will. The Wills Act of Belize, Chapter 203, Substantive Laws of Belize and the Administration of Estate Act, Chapter 197, Substantive Laws of Belize.

Everyone's personal and real property assets, tax considerations, circumstances, and testamentary wishes are unique. Therefore, it is appropriate to consult an attorney to draft a Will and other estate planning documents that are customized to your needs and desires.

How Long Does a Will Remain Valid?

A validly executed Will remains valid until you change or revoke it. If you are of sound mind, you have the right to revoke or change your Will at any time before your death, but you must follow specific legal procedures. If you change or revoke your Will using another Will or written instrument, the new Will must be executed with the same formalities required for the original Will. It is important to regularly re-examine your Will and update it if necessary to account for any changes in the tax laws, the death or change in the status of a beneficiary, changes in your property holdings, or the value of those holdings, or other important matters.

You may revoke your **entire** Will by **burning, tearing, cancelling, defacing, obliterating, or otherwise destroying** it if, at the time of your act, you have a **present intent** to revoke it. However, it is best not to revoke your Will by these methods. Burning, tearing, or scratching through a Will may leave your intentions unclear. The best way to cancel a Will and the only logical way to change your Will is the execution of another Will or separate written document, signed and witnessed. The same formalities required for the implementation of a Will are needed for a document which revokes or changes a Will. You should consult an attorney to obtain details about the most effective ways to revoke or change your Will.



Other Estate Planning Devices

There are other ways to arrange for your assets to transfer to people or organizations of your choice that don't involve anything as involved as a Will or a Trust.

Some of those simple devices will be discussed here.

1. Joint Ownership

Property held in joint ownership with rights of survivorship remains with the surviving joint owner and does not pass through probate. Therefore, it is possible to use joint ownership of various forms of property, instead of a Will, to distribute assets to a partner upon death, and thus spare the partner probate court proceedings or other issues posed by death without a Will (but not necessarily estate taxes). Assets which are titled in your name along with your partner, so long as it is clearly specified that you hold the asset as joint tenants with right of survivorship (and not as tenants in common), will at the death of one of the owners pass by "operation of law" to the surviving owner and not be subject to probate.

Depending on your circumstances, joint ownership may or may not be advisable. If you are considering joint ownership to bypass probate, be aware that it gives your partner equal control during your lifetime over the joint property. For example, a joint owner of a bank account can withdraw all the money from the account while you are living, without permission, even if you only intended that person to have the money in the account after your death, or if you had an "understanding" about limitations or access to the account.

While joint ownership can be beneficial, be very careful. Other owners may "infect" your property with their creditor problems. Also, if you have a difference of opinion as to the disposition of the asset (for example, you wish to sell it, and your partner does not), you could be hindered and may need to seek a court order to govern the outcome. Further, unless disposition of proceeds upon sale is otherwise regulated by a binding contract between the parties; the joint owner will be legally entitled to an

equal share of the profits. Remember, using joint ownership as a means of helping your partner to avoid probate proceedings after your death may cause considerable problems during your lifetime and is difficult to 'unwind' if necessary.

Additional issues related to real estate are discussed below. However, if used wisely in conjunction with a will, joint ownership can be a useful legal device in helping distribute your estate after you die. Consulting an attorney is wise.

2. Beneficiary Designation

It has been standard practice for life insurance policies to have beneficiaries listed, and it is important that you keep the beneficiary designations on your life insurance policies up to date. Upon the death of the insured, the proceeds will pass to the named beneficiaries in the shares and as specified in the beneficiary designation.

You may name your partner, or anyone else, as a beneficiary. If you name no beneficiary, or if the beneficiaries you named have die before you, then by default the beneficiary is your estate -- your probate estate --, and the proceeds of the policy will pass through the law of intestate succession described above -- perhaps defeating your intentions.

In addition to life insurance policies, other investments, allow beneficiary designations.

Take advantage of these simple, inexpensive means of estate planning, but just be sure they are consistent with your overall estate plan and that you periodically review your designations to ensure consistency with your plan. For example, if you wish to make provision for your partner and other family members through your estate plan, you may make such arrangements through your Will and various beneficiary designations in life insurance, bank accounts, and retirement plans. These provisions should pertain to the relative value of those assets at the time the estate plan was established. As we have seen in recent years -- there can be significant fluctuations in real estate markets. Thus, it is recommended that you create a regular

3. Life Insurance

A life insurance policy is a contract between the insured and the insurance company to pay the amount specified in the policy upon the death of the insured. As the insured, you must tell the insurance company who should receive the money (the insurance proceeds) when you die, i.e., who you want to be the "beneficiary." There is no legal restriction limiting who can be designated as beneficiary (or beneficiaries). The insurer requires the insured to complete a form or write a letter naming the specified persons, and the nature of the interest to be granted to each (for example, what percentage each person is to receive). You can also name *alternate or contingent* beneficiaries, in case your first named beneficiary dies before you do. If a named beneficiary dies before you, and you have not named an alternative or contingent beneficiary, then the interest intended to pass to that person will pass to your probate estate. Of course, you must remember to change the named beneficiaries on the policy in the event you change your mind or in the case of the death of any designated beneficiary.

4. Social Security Payments – the Representative Payee

You can designate a person to receive your Social Security checks if you are not able to manage your affairs. This individual is known as a "Representative Payee." The representative payee must use the Social Security money only for your basic or personal needs including food, shelter, and uncovered medical needs. Note, however, that same-sex partners cannot get survivor benefits in the event of the death of their spouse.

The Representative Payee is usually a spouse or parent (in the case of children receiving benefits) but may be a life partner, friend, or legal guardian. An institutional administrator can also be designated as the representative payee. This process begins when a friend or relative notifies the Social Security office that an individual is incapable of handling his or her affairs. A doctor's statement to that effect also must be filed. The Social Security Administration then determines whether the individual can receive their checks. **Note: a power of attorney is not effective for Social Security**

purposes. Any appointment can be challenged. For more details, call or visit your nearest Social Security office.



Health Care

End-of-life decision-making is one of the most important conversations you ever have with your loved ones that will be left to deal with a loss. End-of-life decision-making is one of the most important conversations you will have with those who will mourn your loss. Quite unsettling is the reality that laws historically do not favour the LGBT community in areas of end-of-life finances and in health care decisions. For that reason, it is of the utmost importance to discuss these issues with loved ones, regardless of how uncomfortable it might be.

The following sections outline such critical issues as:

- Advanced Directives,
- Living Wills,
- Healthcare Surrogates,
- Do Not Resuscitate Orders,
- Power of Attorney,
- Pre-Need Guardian



Advanced Directives

Under current Belizean law, absent an Advanced Directive, a same-sex partner has no right to participate in decision-making in health, life, and death decisions and is not entitled to obtain or provide medical information in the event of an emergency or life-threatening condition. In the absence of written Advanced Directives to the contrary, only your biological family is entitled to make life and death decisions for you if you are unable to do so.

An advance directive is a witnessed written document or oral statement by a person expressing their instructions about health care, through documents including, but not limited to, the: " designation of the health care surrogate"; " living will"; or " a do-not-resuscitate order." A competent adult has the fundamental right of self-determination regarding decisions about his health, including the right to choose or refuse medical treatment. This right is subject to certain interests of society, such as the protection of human life and the preservation of ethical standards in the medical profession. If one is unable to provide or withhold consent to a medical procedure, one can delegate these decisions to another person (a "surrogate") to direct the course of his or her medical treatment, or by making a Living Will.

Should you decide to write an advance directive, be sure to advise your family, friends, and physician that such an instruction has been made. To be certain you are complying with Belizean law, you may want to seek the advice of an attorney. An Advance Directive may be revoked by a competent person at any time by a signed, dated writing; physical cancellation or destruction of the document; an oral expression of intent to revoke; or by a materially different, subsequently-executed declaration.

The Living Will

A "Living Will" or "Advance Directive" is a written document that provides guidance as to your wishes at the end of your life, when the addition or enhancement or withdrawal of treatment would merely prolong your dying rather than your living. A "life-prolonging procedure" means any medical procedure, treatment, or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous bodily function (including the provision of nutrition and hydration). The Living Will instructs the person's physician to provide, withhold, or withdraw life-prolonging procedures, or to designate another to make the treatment decision for him or her if such person should be found to be incompetent and diagnosed as suffering from a terminal condition.

By directing that life-prolonging procedures be withdrawn or withheld, the writer of a Living Will is **not** instructing medical procedures that provide comfort or alleviate pain be withheld.

An original signed copy of your Living Will should be given to your physician and health care facility (if you are currently in the care of such a facility). You may also wish to provide several original, signed copies of your Living Will to your partner, or whomever you choose to name as your surrogate so that in the event you are incapacitated. The Living Will can be provided to your physician and health care facility.



Health Care Surrogate

Under current Belizean law, a same-sex partner has no inherent right to participate in decision-making in health, life, and death decisions of his or her partner, and has no right to obtain or provide medical information in the event of an emergency or life-threatening condition, or in the case of temporary or permanent incapacity.

A Health Care Surrogate can be designated to act for you if you are unable to act for yourself in matters relating to your health. Sometimes this is confused with a Living Will, but a Living Will is designed to be used only at the end of life. A Health Care Surrogate may need to make health-care decisions for you having nothing to do with impending death.

You can name anyone, including your partner, as your Health Care Surrogate. Also, you can name *alternate* surrogates, in case your first choice is unable or unwilling to perform his or her duties.

Responsibilities of the Surrogate

A Health Care Surrogate, unless your document expressly limits his or her authority, will have the authority:

- to make all health-care decisions for you while you are incapacitated, including consulting with health-care providers to provide informed consent for treatment or the withholding of treatment, the authority to give consent to a physician's order not to resuscitate;
- to be granted access to your medical records;
- to apply on your behalf for public benefits including Social Security
- to have access to information regarding your income and assets and your financial and banking records sufficient to make such application and may authorize the release of information and medical records to ensure the continuity of your health care; and
- to authorize your admission, transfer or discharge from health-care facilities.

It is the duty of the Health Care Surrogate to make the health-care decisions the surrogate believes the principal would make under the circumstances if he or she can make the decision.

What Events Trigger the Authority of the Surrogate?

The authority of the Health care surrogate must be triggered to become effective. An attending physician can enter an evaluation in your medical records that it is believed that you do not have the capacity to provide informed consent regarding health-care questions. If an attending physician has a question, as to whether you lack capacity, another doctor will evaluate you. If the second physician agrees that you do not have the capacity to make health-care decisions or provide informed consent, the health-care facility enters both physicians' evaluations into your medical records. Furthermore, the health-care facility is required then to notify your Health Care Surrogate, if one has been designated and that is made known to the facility that his or her authority has commenced. A surrogate can legally make decisions **only** after the principal is incapacitated and unable to make healthcare decisions. Once the principal regains capacity, the Surrogate's decision-making authority ceases.

You may also wish to include an explicit statement in your designation of Health Care Surrogate that your Surrogate (and anyone else your surrogate names) shall have the right to visitation while you are confined in any health care facility – hospital, rehabilitation facility, assisted living facility and nursing home.

At least one original executed copy of your designation of Health Care Surrogate should be provided to each named surrogate. If you designate someone other than your partner as your Health Care Surrogate, you may also wish to provide your designation of Health Care Surrogate to your partner or other trusted person. In the event you are incapacitated, this designation will permit your partner to contact the surrogate and provide a copy to your physician and/or healthcare facility.

Do Not Resuscitate Order

In addition to designating a Surrogate and executing a Living Will, a person may choose to issue a "do not resuscitate order." Unless it is revoked, it is legally valid and does not need to be periodically renewed. Every person is presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest unless there is consent to the issuance of a do not resuscitate order as provided.

Durable Power of Attorney

A "durable" power of attorney is in force (if not revoked by the person who gave it) unless and until a court of competent jurisdiction declares the person to be legally incapacitated. Belizean law has recognized durable powers of attorney. Any "natural" person who is 18 years of age or older can serve as an attorney-in-fact under a durable power of attorney, as can any financial institution that has trust powers has a place of business in Belize and is authorized to conduct trust business in Belize.

Legal Requirements

Durable powers of attorney must be signed by the principal and by two subscribing witnesses and be acknowledged before a notary public or other person authorized to take oaths. You should seek assistance from a lawyer licensed to practice law in Belize to prepare a durable power of attorney for you. Discuss with the lawyer the powers that you wish to give your attorney-in-fact. It is usually wise to give extensive powers so that your attorney-in-fact can act under whatever circumstances may occur. As noted, several powers are presumed, but the better practice is to spell out the powers you wish your attorney-in-fact to have. It is permissible to include the specific powers given to your attorney-in-fact in a durable power of attorney the power to make all health care decisions on your behalf, but the better practice is to execute a separate designation of Health Care Surrogate, which is discussed above. Unless you expressly authorize your attorney-in-fact to create, amend, modify, or revoke any document or other disposition that would be effective at your death and to have the right to transfer assets to a Trust you created, the durable power of attorney will

not include those rights.

Regarding planning, it is helpful to execute a power of attorney so that if you are not able to conduct your business on your own, whether through travel or illness, someone else whom you designate would be able to do so for you. Durable powers of attorney are compelling documents. Accordingly, you should not name an attorney-in-fact in whom you do not have great confidence! Because of the broad financial power granted to an attorney-in-fact, and because an attorney-in-fact can act on your behalf from the grant of authority specified in the document, extreme caution should be used before you give someone else a power of attorney. You only should give a power of attorney if you fully trust that your attorney-in-fact will not misuse the power over your property, now or ever.

Revocation

You may revoke any durable power of attorney you make only by expressing the revocation in a subsequently executed power of attorney or other writing you sign. It is recommended that notice of the revocation be delivered to the previous attorney-in-fact and any third persons relying upon the previous durable power of attorney.

Especially if you have previously recorded your power of attorney, be certain that you also file the revocation (in which case it should be witnessed and notarized as was a power of attorney). Even though you execute a Durable Power of Attorney under Belizean law, still you may find that some banks, brokerage houses, real estate title insurance companies, or other entities will not honour it.

Thus, it is highly recommended that in addition to executing a Durable Power of Attorney, you should take a copy of it to your banks, show it to them, and ask if they will honour it and obtain their written response.

Planning For Your Children

Above we discussed a variety of ways in which LGBT couples have children more often. As LGBT families now frequently include children, it is important to consider planning devices to make sure that your children are well cared for if anything should happen to you to prevent you from caring for them. This part outlines some of those concerns and available planning tools.

Declaration of a Pre-Need Guardian for Minor

Just as you can make a declaration of who you wish to appoint as your Guardian in the event of your incapacity, you can also declare who your minor child's guardian should be upon your death or incapacity. This declaration must provide the minor's name, date of birth, and social security number, and the Ministry of Human Development, Social Transformation and Poverty Alleviation must be informed. A guardian can be designated for the minor's person, the minor's property, or both.

Medical Power of Attorney for Minor

A medical power of attorney allows a parent to designate other persons who are authorized to consent to medical care or treatment of his or her minor child. This document is used only if the treatment provider, after a reasonable attempt, is unable to reach the parent with the legal power to consent to medical care. A medical power of attorney gives the designer power to consent to medically necessary surgical and general anaesthesia services for the minor child, unless such services are specifically excluded by the individual executing a power of attorney.

Children and Financial Resources

Even if you declare a guardian of your minor child before your death, there remains a concern as to how to ensure that your financial resources go to your minor child's care. If you have a minor child and have financial resources or insurance that you want to be sure benefit your child in the event of your death, you should consider establishing a trust for your child's benefit. You may also want to designate the trust as the beneficiary of any life insurance that you may have. Because instruments of this sort are complex legal documents, it is strongly advised that you consult an attorney to carry out your wishes.

Non-biological Children

While the Laws of Belize permit adoption by gay men and women, there are no possible pathways of adopting a partner's biological children. Apparently, however, a same-sex couple's family unit may include the individual partner's biological children who have not been adopted. Currently, in Belize, granting the non-biological partner authority over and access to the children the biological parent's parental rights will have to be terminated.

However, a partner's concerns regarding children likely encompass the practicalities of day-to-day life. The biological parent may want to contact the children's schools, day-cares, health care providers, religious centres, after-school lesson providers, activity directors, and even friends' parents and car-poolers, and give permission to release the child and the child's records to the biological parent's partner. Many of these entities will have their forms that they will ask to be completed, by either or both children's biological parents. Ask for the forms, and be sure to keep copies of the completed forms for your records.

Other Practical Considerations

Because same-sex unions are not recognized in Belize, gay parents should consider obtaining life insurance, or increase the limits of existing coverage, if they can afford it.

Keep in mind that in the event of the death of a partner with children, the surviving partner will not get survivor benefits from Social Security – which could be quite substantial – particularly when taken over an extended period. There is also the consideration that a surviving partner, non-biological, and non-adopted children are not "survivors" under Belize's Laws. So if a parent is killed, for example in an accident of some kind where another party is at fault, the surviving partner and children will not be able to sue and recover for their own damages (the estate of the deceased partner could -- but damages would be much less than providing for partner and minor children).



Planning For Your Children

Every citizen in Belize should seek representation by an attorney in a civil lawsuit, whether the citizen is bringing or defending an action. Civil lawsuits are cases other than those in which a citizen is charged with a criminal breach by the state or local government. If you have a civil legal problem, but cannot afford to hire a private attorney to represent you, you may be able to obtain an attorney through your local legal aid, which provides inexpensive or free legal services. In criminal cases, the court will appoint a lawyer if you qualify.

Remember, legal breaches have time limits (limitation period), after the expiration of which your rights may be lost. Therefore, immediately contact a lawyer if assistance is needed.

Legal Services and Legal Aid

Legal Aid and Legal Services offices can advise you in most areas of civil law, for example, consumer cases; employment cases; landlord/tenant cases; health cases; social security; public welfare benefits; and family law matters.

Legal Aid and Legal Services are meant for persons of low income who cannot afford an attorney. Legal Aid and Legal Services offices base their eligibility criteria on both the income of the applicant and the size of the family of the person seeking assistance, and sometimes on other additional criteria. It is necessary for you to contact the local Legal Aid or Legal Services office soonest, to determine whether you qualify for those services.

LGBT Friendly Legal Assistance

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Additional Reading

Adoption

- * Part 11 of the Families and Children Act, Chapter 173 (Revised Edition 2011) Substantive Laws of Belize

Common Law Status

- * Part 11 of the Supreme Court of Judicature Act, Chapter 91 (Revised Edition 2011) Substantive Laws of Belize

Domestic Violence

- * Domestic Violence Act, Chapter 178 (Revised Edition 2011) Substantive Laws of Belize

Estate Planning

- * Administration of Estates Act C 197 (Revised Edition 2011), Substantive Laws of Belize

Guardianship and Custody

- * Family Courts Act Chapter 93 (Revised Edition 2011), Substantive Laws of Belize
- * Part 3 of the Families and Children Act, Chapter 173 (Revised Edition 2011) Substantive Laws of Belize

Insurance

- * Insurance Act, Chapter 251 (Revised Edition 2011) Substantive Laws of Belize

Marriages

- * Belize Marriage Act, Chapter 174 (Revised Edition 2011) Substantive Laws of Belize
- * Married Person's (Protection) Act, Chapter 175 (Revised Edition 2011) Substantive Laws of Belize
- * Married Women's Property Act, Chapter 176 (Revised Edition 2011) Substantive Laws of Belize

Social Security Benefits

- * Social Security Act Chapter 44 (Revised Edition 2011), Substantive Laws of Belize

Wills & Power of Attorneys

- * Wills Act Chapter 203 (Revised Edition 2011), Substantive Laws of Belize
- General Registries Act Chapter 327 (Revised Edition 2011), Substantive Laws of Belize

This Handbook is designed to empower lesbians, gays, bisexuals and transgender (LGBT) people and their allies with an awareness of those local laws. This Handbook will also suggest certain planning steps where the law by itself may not be sufficient to protect the interests of LGBT individuals. There is power in knowledge, and this Handbook is intended to impart that power to its readers. The Handbook is organized in a way that is intended to let you hone in on those issues that are affecting you, your loved ones, or your clients today.

Whether you need information about Discrimination, Name Change, Adoption, Estate Planning, End of Life Planning, or simply want to know more about your legal rights, this Handbook should be a valuable resource.

As always, you should consult an attorney before making any legal decision, but this Handbook provides a great place to start.

Our Circle is a nonprofit organization that relies on the support of our members through legacy gifts.

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