Expecting the Unexpected

Advance Planning Documents for LGBT Adults

Presentation By Christopher Phillips (He/Him/His)

Please Note that the Information Contained in this Informational Presentation does not Constitute Legal Advice and does not Establish an Attorney-Client Relationship.
OUR PROGRAM

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Borchard Foundation
Center on Law & Aging
THE CLIENTS WE SERVE

- Adults Ages 50 Years Young and Up
- 200% of the Federal Poverty Level
- Self-Identify as Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Plus (LGBTQ+)
ADVANCE PLANNING DOCUMENTS

- Power of Attorney
- Last Will & Testament
- Healthcare Proxy
MEET MOIRA & ROSE

- Met Through Local Religious Community
- Domestic Partnership for 35 Years
- They are NOT Legally Married
- Rose has 2 Children (Alexis and Stan)
  - Rose is very close with Alexis. Rose has not spoken to Stan for years.
- Rose Co-Owns a Home with Moira
- Rose has Separate Savings Account and Owns Separate Rental Property
- No Advance Planning Documents
THE “UNEXPECTED”
THE “UNEXPECTED” – PAYING FOR BILLS & MANAGING PROPERTY
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WHAT COULD ROSE HAVE DONE?

**Power of Attorney (POA)**

- Principal Appoints Agent(s) to Help Manage Property
- Covers Banking Transactions, Contracts, Real Property, Personal Property
- No Default Decisionmaker
- *Requires Capacity During Execution*
THE “UNEXPECTED” – HEALTH CARE DECISION MAKING
**DEFAULT HEALTH CARE DECISION MAKER**

**Family Health Care Decisions Act**

- Legal Guardian
- Spouse or Domestic Partner
- Adult Child
- Parent
- Brother or Sister
- Close Field
ROSE’S DILEMMA

Rose **Does** Want Daughter Alexis To Making Her Medical Decisions

Rose **Does Not** Want Moira To Make Her Medical Decisions
WHAT COULD ROSE HAVE DONE?

Health Care Proxy (HCP)

- Principal Appoints Health Care Agent to Make Health Care Decisions
- Can Express Specific Wishes
- Opt Out of Default Decisionmaker in Family Healthcare Decisions Act
- *Requires Capacity During Execution
THE “UNEXPECTED” – DISTRIBUTING ROSE’S PROPERTY
Who Inherits Property without a Will?*

- Spouse and Child Split Estate
- Spouse Alone if No Children
- Children Alone if No Spouse
- Parents
- Siblings
- Grandparents/Cousins

*Please Note that this is an over-simplification of the Laws of Intestate Succession. Please contact an attorney to discuss them in more detail.
WHAT COULD ROSE HAVE DONE?

- **Last Will & Testament**
  - Document that Governs Distribution of Property Post-Death
- New York Surrogate’s Court – Probate Process
  - Appointing Personal Representative (Executor/Administrator)
  - Collecting Property
  - Notifying Creditors/Paying Debts
  - Distributing the Estate
- Avoiding Intestate Succession
WHO SHOULD HAVE THESE DOCUMENTS?
QUESTIONS
CONTACT INFORMATION

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