

# Our Commitment to Same-Sex Marriage

February 13, 2006

NOW's first policy statement declaring lesbian rights a feminist issue was in 1971. In that declaration, NOW members acknowledged a woman's right to independence and self-determination, including the right to define and express her own sexuality. Our official support for equal marriage was in 1995, and launched a series of Valentine's Day actions around the issue.

In 2004, NOW members resolved to launch an intensive equal marriage educational campaign, including both public education and informing elected officials. In 2005, NOW members voted to organize a national Marriage Equality Day of Action in 2006. This resolution declared that NOW chapters and leaders would plan and carry out "a day of coordinated action for full marriage equality in an effort to stem the tide of anti-LGBT attacks."

NOW has taken this issue forward, working to gain equality for all LGBT people of several fronts including: fighting for marriage equality, placing pressure on congressional representatives to pass inclusive hate crimes legislation, ensuring the inclusion of transgender people and LBT women of color in all aspects of our work, and helping to eliminate employment discrimination based on sexual orientation and gender identity. NOW has sought to protect the rights of those treated as second-class in our society against the continuing attacks by the right wing.

The right wing has used equal marriage for same sex-couples as a wedge issue to divide groups and further oppress women based upon gender stereotypes and fear. Blatant discrimination exists against lesbians in employment, education, health care, child custody, and marriage.

## **What rights do LGBT couples lose in the absence of legal marriage recognition?**

The right wing has mounted a huge effort to eliminate LGBT marriage rights, including Congressional passage of the so-called Defense of Marriage Act (DOMA), which bars federal recognition of same-sex marriages. President Bush has also been pressuring Congress to adopt his proposed Defense of Marriage Amendment, which would place an amendment into the U. S. Constitution defining marriage as solely between a man and a woman. States have also passed their own laws thwarting recognition of the relationships of committed same-sex couples by denying them access to marriage. This excludes many from marriage, including partners of the same-sex or those who do not fall under any/traditional gender roles.

Ongoing discrimination in marriage by Federal and State governments denies LGBT couples over a thousand benefits, protections and responsibilities that are afforded to

married couples, including the following: hospital visitation rights, healthcare benefits, inheritance benefit, and federal and state tax benefits.

NOW continues to fight for marriage equality, but sadly this battle is far from over, due to growing right wing pressure. As a result, many LGBT couples should consider seeking legal protection for themselves in the absence of marriage rights.

## **What can you do?**

LGBT couples have a few options for ensuring some measure of legal protection for themselves and their families. These options include a: medical power of attorney, living will, power of attorney, living trust and last will and testament. Since most states do not recognize same-sex couples, it is necessary for LGBT couples to attain the protection and rights necessary to have involvement in their partner's welfare, and to provide for their family in case of their death.

A medical power of attorney, or healthcare proxy, allows one to designate whomever they choose as their representative when it comes to making decisions about medical treatment and care. This is especially important in the event that a partner becomes permanently incapacitated or unable to make decisions about their medical treatment. If you have not documented whom you wish to serve as your decision-maker in a healthcare crisis, many providers will consult with traditionally defined next-of-kin (your biological family) should you become incapacitated — unless a healthcare proxy form specifies your desired representative. As a result, a medical power of attorney is critical for LGBT families because the decision making right and role of a same-sex partner is not legally recognized federally nor in many states, leaving loving and committed partners out of the decision-making process.

A living will, sometimes referred to as a medical directive or advance directive, is a statement of one's wishes as to end-of-life care. A living will is different from a healthcare proxy in that it provides direction to your healthcare provider about what kind of medical treatment you want or do not want—such as CPR or being put on a respirator—in a medical crisis or end of life situation.

The process of obtaining the proper advance directive varies by state, as each state has different rules and recognitions which must be followed. Individuals should obtain forms for their own state of residence, to avoid possible invalidation of your directives. These documents are available in many places, including some law offices. You can review a state-specific copy online at [Caring Connections](#).

Another avenue open to LGBT couples is a durable power of attorney, which allows you to designate your partner as the person to make financial and legal decisions on your behalf should you become incapacitated or otherwise unable to act on your own behalf. For married couples, the spouse has this right automatically.

Lastly, because marriage rights are denied to LGBT couples in most states, and therefore there is no automatic spousal inheritance, it's also a good idea for couples to explore getting a last will and testament or a living trust. Without a will or trust, one's assets are automatically given to whomever the state chooses. This is usually the closest blood relatives of the deceased. Thus, in the absence of federal marriage recognition and without proper preparations, the survivor of an LGBT couple may be left without any inheritance or recognition of his or her contributions to their joint property.

### **Some issues to note**

While these suggestions are all important in attaining protection for LGBT families, there are still significant problems facing couples in the absence of legal marriage recognition. While legal protection is available to a degree, it is both costly and has been challenged in court.

Legal fees vary widely, and each couple should call their lawyer for more precise information. For more general information you can visit Lambda Legal's [General Information Page](#), or call them at their [Help Desk](#). While this supplemental information is important for decision-making, you should also visit a private attorney who will be able to assess your own specific situation and needs.

### **Real Lives, Real Tragedies, Real Need for Marriage Equality**

Challenges still remain in the battle for equality and safety for same-sex couples. Even with the protections provided through a will and power of attorney, LGBT couples can face a courtroom battle over rights and recognition of their relationships. This happened to Bill and Robert, a couple who had drawn up the necessary paperwork to ensure that Bill was recognized as Robert's family and legal agent for health care decisions. Despite this, when Robert became fatally ill, Bill was denied visitation rights, leaving Robert to die alone in his bed without the comfort of his loved one, whom he never saw or spoke with before his death. (Lambda Legal is currently representing Bill in a lawsuit against the hospital.)

Doreen and her 10-year life partner Elsa were faced with similar circumstances despite having previously arranged legal decision-making rights. When Elsa became ill, Doreen had to continually re-establish her legal position to get information as to how she could best care for her partner. Upon the death of her beloved partner, Doreen was again challenged by the funeral home director, who would not recognize her legal authority to carry out Elsa's wishes. Instead, he insisted upon the biological family's authority (who did not want to carry out Elsa's wishes). Doreen was forced to rely on her attorney who was able to convince the funeral home director to give Doreen her authority back.

Despite legal protections, same-sex couples will continually face challenges to their relationships and decisions because society refuses to recognize their unions as legitimate. While Doreen was finally able to follow Elsa's wishes, Bill was denied his right to be with his partner before his death. Only with truly equal marriage rights will

these couples be recognized and spared the torture and fear of losing what little they have left of their loved ones to a biological family member who can strip them of all contact.

We must continue to fight for marriage equality, but in its absence there are some steps that many LGBT couples can take to protect themselves against an oppressive system which does not recognize them as equals.