ESTATE PLANNING
FOR LOW-INCOME LGBT CLIENTS

I. BASIC ESTATE DOCUMENTS FOR LGBT COUPLES/FAMILIES

Will
Trust
Designation of Agent with Funeral Instructions
Deeds
Beneficiary Designation
Living Will/Health Care Power of Attorney
HIPAA Authorization
General Durable Power of Attorney

A. Estate planning issues facing low-income LGBT clients

Estate planning for low-income LGBT clients can involve more than the traditional documents. Clients may also require life-planning documents that include unrelated individuals or organizations. Many LGBT clients have families of choice rather than birth families and identifying the people who can serve as executors or administrators can be a challenge. Helping clients identify possible candidates is a challenge.

B. Initial considerations

Many LGBT clients are estranged from their biological families. In some cases, decades may have passed since the client had any contact with their birth families. Those clients may worry that her family will contest the will. For unmarried LGBT couples both parties may have these concerns. Now that marriage equality is recognized, state laws protect married LGBT couples. However, unmarried couples will continue to be seen as legal strangers. Unmarried individuals and couples can only protect their assets, however limited, with a will.

Preparing a trust for low-income clients is generally impractical because there are limited assets. Many states allow a trust to be terminated if the trust principle falls below a specific threshold. In any case, a will is essential.

C. Clauses identifying the relationship

Not all LGBT clients will be married. Some lesbian and gay couples will decide that marriage does not meet their needs or creates more problems than they want to handle. There is also come indication that low-income people do not see marriage as beneficial to them. If a couple is raising children, their lawyer should discuss how marriage can help protect their family and establish parental rights.

Identifying the nature of the couple's relationship is important. Likewise, for individuals that identify as LGBT, clarify the nature of any relationship between the testator and the person being named as executor or administrator. Doing so in the will establishes the testator's intention about naming a non-family member in those positions. This is also important if the will designates a guardian for the children.

D. Naming Beneficiaries

Being low-income does not always mean the client has no assets. There may be retirement accounts, insurance policies and bank accounts. It is important to discuss why it is important to name beneficiaries on all such assets. Assisting the client in getting the required forms will also be important. The client can retain control over the assets and prevent challenges to those decisions. The beneficiary designation controls who receives the assets and cannot be trumped by the individual's will.

Real estate, investments, insurance are some of the assets that can pass by way of a beneficiary designation.

Twenty-four jurisdictions[1] allow "transfer on death" designations for real estate. Rather than risk gift tax consequences on significant assets, like a house, an unmarried client can execute the TOD affidavit and name his partner as the beneficiary.

The house passes to the beneficiary, outside probate, and cannot be challenged by disgruntled heirs. Meanwhile, the grantor retains full control over the property during her lifetime and the beneficiary receives no present interest.

Some 401(k) plans restrict beneficiary designations to "spouse." Recent guidance from the U.S. Department of Labor has clarified that retirement plans recognizing "spouses" must include same-sex spouses. Review the retirement plan's provisions to determine how it works and make sure the client understands them. Knowing the plan specifics now means there will be no surprises later. Under ERISA, the plan administrator pays the proceeds to the named beneficiary. State law does not apply. If the plan participant failed to name a beneficiary, the "spouse" is considered first. Knowing what the plan provides will help determine what steps the client needs to take.

E. Executor

Most lesbians and gay men in a committed relationship (married or not) name each other as executor. An alternate executor should also be named. If there is no named alternate, the probate court will name an administrator and that person may not be one the testator wants.

Some clients may need to name someone who is a legal stranger because they are single or have no family members available to serve in that capacity. Low income and elderly LGBT clients may have difficulty identifying someone to serve as their executor. A social worker or an agency providing services to the client may be able to help find someone. The local probate court may have a list of people that volunteer to serve as executors.

Many LGBT seniors have "families of choice" and those people may be in the same age-group. Identifying someone to serve can be a problem.

F. Guardians

Among many gay and lesbian couples that are raising children, there is only one legally recognized parent. The other partner may also have a strong parent-child relationship but state law does not recognize it.

[1] AK, AZ, AR, CO, DC, HI, IL, IN, KS, MN, MO, MT, NE, MV, NM, ND, OH, OK, OR, SD, VA, WA,

A **guardian clause** in a will is particularly important for lesbian and gay couples raising minor children. Low-income parents may be especially vulnerable if the parent-child relationship has not been formally established. The client may need additional services to protect the children. These include: adoption (second-parent or stepparent) or a written shared custody agreement. Some states may require that agreement to be filed with a court and entered as an order.

The guardian clause can include language for the testator to grant consent to the surviving partner to adopt the children. This rebuts an argument that the deceased parent would oppose such an adoption.

"I name my partner, Elizabeth R. Anderson, as guardian of our children, Robert and Emily. I appoint her guardian of their person and estate.

We have raised these children together from their birth. I consider her their parent. Ohio law does not appear to allow second parent adoption or we would have pursued that avenue. I waived my constitutional rights to the full care, custody and control of our children in favor of Elizabeth during my lifetime. I want her to continue to raise our children. I consent to Elizabeth adopting Robert and Emily. I ask that any probate court recognize this declaration as my consent to the adoption. It is in our children's best interest that they continue to be raised by their other parent, Elizabeth R. Anderson.

We executed a Shared Custody Agreement on December 10, 2003 after Robert was born. We amended the Agreement after Emily's birth. That Agreement was adopted by the _____ Court on August 7, 2009."

An additional clause to consider names a **"bridge guardian."** This person takes the children until the court names a guardian. For lesbian and gay couples, this clause could prevent the children being removed from their home when their "legal" parent dies and placed in foster care or with relatives they do not know..

It is important to maintain continuity for the children. A bridge guardian may be one tool to accomplish that purpose.

G. Living Will and Health Care Power of Attorney

Each state has its own form that is recognized by health care providers. These forms should also be honored outside the client's home state. New federal Medicare regulations require every medical or health care facility that receives federal funds to honor the directives.

Even though these documents are included in an estate plan, the client needs to discuss the choices with her doctor, especially if the client has a terminal illness or other significant medical condition.

The client should include as much information as possible in the Living Will and Health Care Power of Attorney to be sure her wishes are carried out and everyone knows what she wants done. Clients need to know this is not a time for secrecy or confidentiality. It is a time for absolute candor with the family, friends and their healthcare providers. The client should also provide copies to their healthcare providers and any agencies that provide services.

Keeping a copy with the lawyer is also helpful especially if the client has challenges finding or maintaining a regular home address. The client may not have a safe place to store the documents.

Few low-income or homeless clients will have a fire-proof box or bank safe deposit box available.

In 2010, President Obama ordered the Department of Health and Human Services to issue federal regulations requiring hospitals to guarantee the right of patients to determine who visited them.

In November 2010, HHS published the final rules.[2] Lesbian and gay individuals can name their partners as the persons with the right to visit them in hospitals. These rules apply to all medical and health facilities that participate in Medicare or Medicaid programs.

Even with these rules, there is no guarantee that hospital staffs or a patient's biological family, will honor them. A recent situation in Missouri brought that fact home. A family refused to allow the patient's partner access. The hospital supported the family's decision and ignored the Advance Directives.

Clients must be aware that all the legal documents available may not prevent ignorant people from refusing to accept them.

H. Designation of Agent

The Designation of Agent form allows a lesbian or gay client to name someone as the person to make funeral arrangements, pick up personal effects, take control of the remains after death and decide whether to authorize an autopsy. The form may also include language designating the agent as the person who controls hospital visitation.

I. HIPAA Authorization

The Health Insurance Portability and Accessibility Act is a federal law that prohibits medical personnel from discussing a patient's condition with anyone other than those authorized by the patient. Clients should execute this type of authorization as part of their Advance Directives. The client can limit the authorization to a partner, family member or other person.

Medical and hospital personnel continue to exhibit a cavalier attitude toward this law and the consent requirement. This seems especially true when "blood relatives" are present and the patient identifies as gay or lesbian. Doctors will discuss the patient with a "blood relative" while refusing to speak with the authorized representatives, including the patient's partner or spouse.

There is no individual cause of action for HIPAA violations. A complaint may be filed when the law is violated. There are no provisions in the law for damages or costs. However, a creative lawyer can find a way to make life difficult for a hospital or doctor that refuses to follow the law.

J. Power of Attorney

Some financial institutions require you to use their forms to establish a power of attorney. If a client has accounts with a particular institution or company, check to see if they have their own form and whether they will accept any other form of POA.

[2] CFR Parts 482 and 485

Failure to use the proper form may result in a company refusing to acknowledge an agent's authority over the account. If the account holder is disabled and the POA is deemed invalid, the only alternative may be a guardianship or other court action.

The **General Durable Power of Attorney for Finances** is generally recognized as an important part of the estate plan for LGBT clients. Because it is so powerful, clients need to carefully consider whom they name as the agent and successor agents.

If the couple married in a recognition state consider adding authority to transfer assets for Medicaid purposes, alter ownership of non-home assets to income streams, adjust Social Security provisions to claim or suspend survivor benefits and strategies regarding IRA and pension status.

Including a **guardian clause** in the POA allows the client to name the person she wants appointed if necessary. Having this clause gives evidence the client considered the matter. In lieu of merely naming someone, include language that explains why the person is being named.

K. Payable on Death Accounts (POD)

Payable on Death Accounts are a simple way for clients to remove assets from probate. The client/account owner designates those who will take the money after the owner dies. The client can be directed to her bank to create this type of account.

Creating a POD account usually involves checking a box and signing the card. The named beneficiaries have no current ownership interest in the account and cannot access it. This does not make the beneficiaries joint owners of the account.

The beneficiaries provide a certified copy of the death certificate and the bank issues each person named an equal share.

L. Funeral Arrangements

Some state laws allow an individual to name anyone they want to make funeral arrangements. Most states allow only the decedent's immediate family to make funeral arrangements. In the more restrictive states, the family has the right to overrule or ignore the decedent's wishes. They may also exclude the surviving partner from the memorial service and burial.[3]

M. Digital Assets

Everyone lives in a digital maze. Clients need to address the future of their digital identities and provide the information that allows their survivors to access those digital accounts. Taking a password to the grave is not a wise choice. Whether it is Facebook, Google, Instagram or online banking, clients need to write down the access information. Not doing so may mean some assets are forever lost.

II. LIFE PLANNING DOCUMENTS

Domestic Partnership Agreement
Shared Custody/Parenting Agreement

[3] *Bridegroom*, 2013 Tribeca Film Festival Best Picture: https://www.youtube.com/watch?v=RQIIwddt3N4

A. Relationship Agreements

Representing LGBT clients in estate planning means lawyers must also be conversant with family law issues. There is significant crossover between these areas of law and few issues are mutually exclusive.

Clients need an understanding of the family law issues in order to appreciate the complexity of the relationship. State law is not changing as rapidly as needed to keep up with recognition of nontraditional families. Lawyers must be ready to explain things to clients.

LGBT low-income clients have families and will have family issues that affect estate planning. It is important to consider all the issues facing the client and becoming conversant with the various agencies that can assist the client. Being poor does not mean a person cannot be a parent or provide for their children. It does mean they may require additional assistance to do so. And, having a lawyer intercede on their behalf is helpful because agency personnel may be more responsive if they know a lawyer is involved.

B. Domestic Partnership Agreements (DPA); Prenuptial Agreements

Domestic Partnership Agreements can be an important part of the estate plan for married and unmarried same-sex couples. This document reflects the parties' intentions concerning their relationship. It is also a vehicle to provide the mechanism by which the couple may end their relationship. Mediation clauses allow the clients to agree to resolve disputes without resorting to costly litigation or arbitration.

These agreements are often negotiated, drafted and signed after the relationship is in place. Some take the form of "property agreements" and do not reflect details concerning the couple's daily routines.

Prenuptial agreements are a new development within the LGBT community. These documents are similar to DPAs but must predate a marriage. Each party is required to disclose all assets. Failure to do so can nullify the agreement and prevent enforcement. A prenuptial agreement can provide for a distribution of assets in a cost effective and fair manner.

Independent counsel must represent both prospective spouses. One lawyer cannot represent both parties because courts usually will not enforce a prenuptial agreement when the same lawyer represented both parties. There is also less chance the agreement will be declared unenforceable because neither party will have a viable claim for "duress."

It may be more difficult to prepare prenuptial agreements for low-income clients because of the difficulty in finding separate counsel. Also, prenuptial agreements may not make sense for low-income clients that have few assets.

The first step with these types of agreements is for the couple to discuss the agreement between themselves. Giving them a checklist of things to consider or a questionnaire can be helpful.

1. Some issues to address in the agreements.

- Identify the property each party brings to the relationship. This can be done by attachment to the main document. Have each party identify their personal property and any financial accounts.

- Include provisions for ending the relationship.

- Provide for the death of either party during the relationship or during the process of dissolving the relationship;

- Full disclosure is essential.

- Include an agreement about responsibility for individual and household expenses, debts, etc.;

- Custody, visitation and support for any pets;

- If there are children refer to and incorporate the agreement concerning custody, support and visitation;

These are companion agreements for a shared custody or co-parenting agreement. Recent cases show the error of couples that decide to save money and go the DIY route.[4]

C. Joint Representation

Joint representation in estate planning is common. Most couples, straight and gay, ask the attorney to provide services to both. Rarely does a couple want to hire separate counsel to prepare their estate documents. Joint representation is an ongoing matter of concern for lawyers representing lesbian and gay couples.

The issue of joint representation is an ongoing debate within the LGBT legal community. In most cases, the clients will not seek separate counsel. Therefore, we must have the language in our retainer agreement and discuss the matter with clients.

The key is to have an explicit Joint Representation letter drafted. Review it with the clients and make it clear that the lawyer will withdraw from the matter if a conflict arises. Make it clear that no secrets will be kept from the other partner. Have both partners and the lawyer sign the letter and give copies of the letter to each one. Including a provision that specifies both clients are waiving any conflicts that may exist by having one lawyer represent both in the process.

The agreement must spell out the limitations and terms of the representation. Discuss the parameters under which you are operating as the attorney. What is the scope of the work the attorney will perform? What is the fee? Specify the clients' responsibilities regarding cooperation and providing information and documents. And determine under what circumstances the agreement is deemed completed.

Review the agreement with the client at the earliest point. Each one must understand that, if a conflict comes up, you will withdraw and cannot represent either party.

[4] Kansas "Craigslist" case: no lawyer; no doctor = donor is the father & ordered to pay child support; Texas Gestational (but we're really good friends) case: no lawyer, no written contract = gestational surrogate declared the mother & father's same-sex partner is left with no parental rights.

Document all calls, emails or other communications you have with the clients. Communicate with both simultaneously. Do not meet with either individually. Tell them that you cannot keep secrets from the other. Whatever one tells you, the other will know.

Joint representation is not recommended when pre-nuptials are involved. If the couple wants the agreement, they must have separate counsel.

D. Family Issues

Lesbian and gay couples must devote considerable time, effort and resources when starting a family. The proverbial "one-night stand" does not apply when it comes to pregnancy.

1. Shared Custody Agreements

Shared Custody Agreements are particularly important as lawyers representing LGBT clients negotiate the new world of post-marriage equality. These agreements allow the prospective parents to stipulate their acceptance of certain obligations and their rights in relation to the children.

With time, these agreements may become less necessary. However, there may be considerable backlash following the Obergefell decision and lawyers need to take steps to protect clients and their families while the matter is sorted out.

There is no guarantee that all states, even with marriage equality, will apply the "marital presumption" to children born during a marriage involving same-sex parents.

Be careful when using the term "parent" in the agreement because the term may have a specific statutory definition under state law. States may be reluctant to view the existing definition of "parent" as including same-sex parents when only one is genetically related to the child.

Lawyers should be familiar with the state laws that affect children. This will place you in a good position to advise the clients about what they need to consider.

Biological or adoptive parents have a right, under the U.S. Constitution, to the full care, custody and control of their children. However, these parents can waive those rights in favor of another person. Shared custody agreements should include language that addresses the waiver of these rights.

Many states recognize only the biological or adoptive parent in a same-sex relationship. In this situation, should the couple end their relationship, the non-recognized partner may be denied contact with the child. In the alternative, the legally recognized parent may have no recourse to obtain continued support from the non-recognized former partner. The former is more likely to happen than the latter situation.

E. Adoption

Adoption is a statutory creature and is strictly construed. How adoption statutes will be viewed in relation to same-sex couples is not yet known. Some states may continue to refuse to treat same-sex couples the same as opposite sex couples under the adoption statutes.

F. Social Security

The Social Security Administration Act provides myriad benefits. This includes benefits for retirement and surviving spouse and dependents.

The SSA system of benefits can be confusing and the agency's website[5] has information, pamphlets and all necessary forms to help people understand the process.

People can start applying for SSA retirement at age 62. This results in a permanent reduction in benefits paid. Full retirement age (FRA) varies and is based on the applicant's birth year. The maximum benefit is available at 70.

1. Retirement Spousal Benefit

The non-earning or lower-earning spouse can receive this benefit on the other spouse's SSA account. A spouse is eligible only if their retirement benefit is less than half that of their spouse or when they delay applying for retirement on their own account. A spouse can apply for an receive benefits on the other spouse's account and delay filing on her own account up to age 70.

The spousal benefit for single earner couple is 50% while both spouses are alive. When both spouses have earned benefits, the lower-earning spouse can receive her own benefit plus a spousal benefit up to 50% of the higher earner's amount.

The couple must be married for at least 12 months before applying for spousal benefits. The spouse must be at least 62 to be eligible. The exception is when the couple has a child under 16 or who is disabled. Then the spouse can apply at any age.

The spouse's benefit on her own record cannot be greater than 50% of her spouse's. The exception is if she is delaying application on her own record.

2. Surviving Spouse

The SSA also uses the wage earner's state of domicile at the time of death to determine a surviving spouse's eligibility.

In order for a surviving spouse to be eligible for retirement benefits, she must be at least 60 and married 9 months. There are exceptions to this rule, such as if the wage earner's death resulted from an accident.

The surviving spouse must be at least 50 and disabled or any age if she has the worker's child in her care who is under 16 or disabled. And, the couple must have been living together. Exceptions include the deceased spouse being in a hospital or nursing home.

There are some other things to consider. The "surviving spouse" cannot have remarried before age 60 or 50 if disabled unless that subsequent marriage ended when the application is filed. The Social Security Administration issued new guidelines on June 11, 2014 address benefits for aged spouses in same-sex marriages.[6]

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[5] www.ssa.gov

[6] SSA POMS GN 00210.100

3. Disability Spousal Benefit

If the worker qualifies for SSA disability benefits, the spouse may receive a benefit up to 50% of the worker's amount. The eligibility requirements are similar to those for retirement benefits.

4. Lump Sum Benefit

The SSA pays out a one-time lump sum of $255 to the surviving spouse or, if there is none, to a minor child. However, there are conditions that must be met. The lump sum is not paid to other family members. The surviving spouse can apply for this lump sum benefit up to two years after the death.

5. Child's Benefit

A worker's children at eligible for assistance if one or both parents are disabled, retired or deceased. The agency uses state law to determine whether a parent-child relationship is recognized.

This can create a problem for same-sex couples if their state of residence does not recognize a parent-child relationship with the deceased parent. It is another reason why same-sex couples should consider formalizing the parent-child relationship through adoption.

Married same-sex couples that move from a recognition to a non-recognition state may find they lose rights when they cross the border. Even if the child was born during the marriage, absent an adoption, the parental rights of the non-biological parent may not be recognized by the new state of domicile. And, Social Security may deny benefits if the state does not recognize the parent-child relationship. The SSA uses the law of the state of residence to determine recognition of a parent-child relationship and an adoption will qualify.

Children born after a worker's death may not be eligible for surviving dependent benefits unless they qualify as an heir under the state's intestate succession statute. In *Astrue v. Capato*[7], the United States Supreme Court ruled that children conceived and born after a parent's death are not entitled to survivor benefits if state law prohibits it.

This decision applies to children born via ART procedures if the conception and birth occur after the worker-parent's death and the child is not included in the state's intestate succession statute.

7. Divorced Spouses

A divorced spouse can apply for benefits on the former spouse's record if the marriage lasted at least 10 years. The divorced spouse cannot be presently married. He will also need to meet the other requirements specified above. However, the benefits will stop if the divorced spouse remarries after age 60 and the former spouse is alive.

There is no reduction in benefits for either the worker or her current spouse if a former spouse applies for benefits.

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[7] 566 _____ (2012)

If the divorced couple had a civil union and registered domestic partnership, the length of that relationship can be used to meet the 10-year duration requirement. A major caveat is whether the state of residence recognizes those other types of relationships.

8. Preserving Rights

If an application for benefits is denied, the applicant must file an appeal. The first level is a "Request for Reconsideration." There are specific time limits for filing an appeal. If the appeal is not filed within those limits the claim is closed. The applicant can file a new claim but any past due benefits will start from that date and not the earlier one.

Keeping the application open is important if the applicant or the worker lives in a state that refuses to recognize same-sex marriages. File appeal as close to the deadline as possible to prolong the appeal period. If the appeal process has run its course, the applicant may be able to refile the application once the law changes.

Given the current state of Congress it is unlikely there will be a legislative fix. The change will come via an agreement between Justice and the SSA or a court decision.

9. Transgender Spouses

SSA has released guidance affecting transgender and same-sex spouses. The SSA now recognizes that gender transition does not affect the validity of an existing marriage. Marriage related benefits are based on the law in the claimant's state of domicile.

The agency has had a policy of requiring a legal opinion from its Regional Chief Counsel whenever there was an application for benefits from a married couple and at least one of the spouses was transgender. The new policy eliminates the legal opinion requirement. The policy applies to situations when a spouse or surviving spouse if applying for benefits.

When the transition occurred before the marriage, the new policy requires:

- The SSA clerk will where the spouse whose record is the benefit source lived when the application was made or at the time of death.

- A legal opinion will be sought regarding the validity of the marriage if any of the following states are involved: FL, ID, KS, OH, OK, TN and TX. These states have specific laws that impact the validity of a marriage involving transgender spouses.

- If the marriage was celebrated in a state where same-sex couples cannot marry, the marriage will be assumed a different-sex marriage and the application can be processed.

- If celebrated in a marriage equality jurisdiction the clerk will ask if it was a same or different sex marriage.

- If the marriage was different-sex the application will be processed.

- If it was a same-sex marriage, the application can only be processed if the state where the account holder lived at the time or application or marriage recognized the marriage.

A post-marriage transition by a transgender spouse does not affect the validity of the marriage. Nor does it affect eligibility for benefits.

G. Medicare

Medicare started processing some applications for married same-sex couples, requests for Special Enrollment Periods (SEP) and requests for reductions in late-enrollment penalties in April 2014. This is a change in procedure. Medicare was not recognizing same-sex marriages--even after the Windsor decision. This newly announced policy applies to all same-sex couples without regard to state of domicile. The applicants must meet the other eligibility criteria.

Couples in civil unions and Domestic Partnership are not eligible because these relationships are not viewed as marriages. That may change, especially if state law views a civil union or domestic partnership as synonymous with marriage. If state law applies and the end result is the same, then SSA will be hard pressed to find a legal argument to ignore state law.

Medicare is the health insurance program for persons 65 and older. It includes Part A: Hospital; Part B: Medical; Part C: Medicare Advantage Programs (private health care plans); and Part D: Prescription Drug Coverage.

As with Social Security benefits, the agency will consider the law of the state of domicile to determine whether a marriage is valid. Either the state recognizes the marriage or allows the spouses to inherit from the other under the state's intestate succession statute[8]. This means that married same-sex couples, living in non-recognition jurisdictions, will be treated differently than similar couples living in marriage equality jurisdictions.

There should be no interruption of benefits if they started while the applicant lived in a recognition jurisdiction and later moved to a non-recognition jurisdiction.

One of the advantages of marriage is the opportunity to delay enrolling in Medicare Part B without penalty if the spouse is on an employee-spouse's group health care plan.

PRACTICE NOTE: if clients applied for a special enrollment period (SEP) after May 2013 and had their applications placed on hold, it will be granted provided all criteria are met.

If the client's SEP request was denied because Medicare did not recognize the marriage a new SEP request can be submitted, provided:

1. The client filed the original SEP request after October 2013;
2. The SEP ended between June 2013 and April 2014;
3. The second SEP request is received before 2014

The normal General Enrollment Period (GEP) is from January 1 - March 31 and coverage starts on July 1. The GEP for 2014 has been extended to May 31, 2014 because SSA delayed in releasing this guidance[9].

[8] 42 U.S.C.A. §416 (h)(1)(A)(i)

[9] https://secure.ssa.gov/poms.nsf/lnx/0200210700 (last viewed June 2014); GN 00210.700 *Same-Sex Marriage - Eligibility for Medicare Special Enrollment Period (SEP)*

Clients in a same-sex marriage who were charged penalties and previously had coverage through a spouse's employer may seek a rollback[10].

1. Part A

This is the hospital insurance portion of Medicare.

The importance of spousal recognition comes into play if one person does not have enough work credits. Each person must have 40 quarters (roughly 10 years) of work history to qualify for Part A benefits and not be required to pay a premium. The premium can be several hundred dollars.

If a person does not have enough credits on his own record, he may qualify for Part A and either no premium or a reduced premium if it is based on his spouse's record.

Qualifying for Part A, without a premium, on a spouse's record the other spouse must: be at least 65, a U.S. citizen or legal resident for 5 years and have a current spouse who is at least 62 and receives or is eligible to receive Social Security or Railroad Retirement benefits. And, current spouses must have been married at least 1 year; divorce spouses must meet the 10-year rule and widows must meet the 9-month requirement.

While a premium waiver requires 40 quarters of work history, a reduced premium requires 30 quarters. The rest of the requirements are the same.

A situation may present where an individual has been paying Part A premiums because DOMA prevented recognition of her same-sex marriage. She may be entitled to recover those past premiums. It is possible to seek equitable relief when a person has "been prejudiced by the error, misrepresentation, action or inaction of an employee or agent of the government. This relief may include, but is not limited to, providing special enrollment and/or coverage periods and appropriate adjustment of premium liability."[11]

2. Part B

Applications for Part B must take place when the person turns 65. This insurance covers doctors. If enrollment does not occur at 65, there is a 10% lifetime penalty for every year without enrollment. There is a seven-month window around turning age 65 to apply.

The exceptions are: the person is working and remains on the employer's health plan. That can continue for up to 8 months after leaving the employment or if the person is on his spouse's current employment-based health plan. Under these circumstances there are no penalties.

To qualify for the spousal exemption, you must a valid, recognized marriage. This leaves out any married same-sex couples living in a non-recognition jurisdiction. The spouse must be: considered a spouse at the time of applying; must have been spouses at age 65, covered through the spouse's health plan and the spouse must still be working.

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[10] https://secure.ssa.gov/poms.nsf/lnx/0200210701 (last viewed June 2014); GN 00210.701 *Same-Sex Marriage - Premium Surcharge Rollback*

[11] Social Security Administration, *Program Operations Manual Systems*, §HI 00830.001 *Granting Equitable Relief*

Health insurance benefits under an employer's domestic partnership plan do not qualify. The plan must recognize the spouses as such.

Not enrolling in Part B at age 65 may result in delays in enrolling in the future. The spouse may be required to wait for an open enrollment period (usually January 1 to March 30 annually). That may result in a gap in coverage. Consideration needs to be given to when it is best to enroll, even if the other spouse's employer provided health insurance covers the spouse.

3. Part D

As long as the person has creditable prescription drug coverage, there is no requirement to enroll at age 65. There are no penalties assessed for delaying enrollment. To be creditable, the plan must be as good as the basic federal plan. The spouse's employer will notify employees each year if the plan meets those criteria. Once that plan ends, enrollment in Part D must take place within 63 days.

4. Parts B & D Premiums

Premiums for this insurance are based on a married couple's joint income. The threshold is $170,000. The premiums increase at higher income levels. The individual threshold is $85,000.

Parts B & D premiums are based on the couple's Modified Adjusted Gross Income (MAGI) that was reported on their federal tax return for the previous 2 years. The MAGI is adjusted gross income plus tax-exempt interest income.

Same-sex married couples can be at a disadvantage because their earlier tax returns may be viewed under the "individual" threshold if they did not file jointly.

It may be possible for married same-sex couples to get a premium adjustment from the SSA. There is a process but, so far, no guidance from the agency on what it will do in cases involving same-sex couples. And, unless there is an overall fix, married same-sex couples living in a non-recognition jurisdiction will be treated differently from those in the marriage equality jurisdictions.

Low-income individuals and couples can seek assistance of up to $4,000 to pay Medicare costs, including premiums, deductibles and prescription co-pays through the Extra Help Program. Individual resources cannot exceed $13,330; income: $17,235. Couples are limited to $23,265 in income and $26,580 in resources. There is also a Medicare Savings Program but it is run through the state Medicaid program. And, same-sex married couples will not qualify in non-recognition jurisdictions.

Workers who applied for Medicare when they turned 65 must pay the premiums **even if they are not receiving SSA retirement benefits.** Failure to pay the premiums will result in the coverage being terminated.

H. Medicaid

Medicaid is the health care program for low-income individuals and families. It is a cooperative program operated by the states and partially funded by the federal government. There are different rules for each state. The benefits are limited and based on income.

Following the Windsor decision, marriage equality states are including same-sex married couples in their Medicaid programs. Some states are also recognizing civil unions and domestic partnerships.

Married same-sex couples living outside that protected sphere are discriminated against. The federal government does permit states to recognize same-sex partners and spouse for Medicaid purposes.

I. Supplemental Security Income (SSI)

The Supplemental Security Income for Aged, Blind and Disabled is a program administered under the auspices of the Social Security Administration (SSA). The program provides a cash benefit to people who are at least 65 and meet financial guidelines or who are disabled. Program participants have very limited income and resources.

It is very difficult for a married couple to qualify for SSI benefits. The financial restrictions are significant. A married couple must apply together if both are over 65 or meet the SSA disability standard. The limit on allowable income and resources is 50% higher for a couple than an individual.

If only one spouse meets the basic criteria for SSI, she may apply as an individual but the other spouse's income and resources will be counted as available to the applicant. However, if the married couple is living separately, they will be treated as individuals.

Like SSA benefits, the Social Security Act[12] controls the definition of "spouse" and "marriage." State law defines a person's marital status. And, the law in the applicant's state of domicile is controlling.

The law[13] provides that even if there is no recognized marital relationship a couple will be recognized as married for SSI purposes if they hold themselves out as "husband and wife."

This may allow married same-sex couples to qualify for SSI if their federal tax returns are submitted "married filing jointly."

J. Military Spouses

Lawyers need to determine if the client served in the U.S. military. If married, determine when the marriage started because the spouse may be entitled to military benefits. Individuals that retired from the military may be entitled to military retired pay and VA benefits.

The Secretary of Defense issued a Memorandum on Feb. 1, 2013, *Extending Benefits to Same-Sex Domestic Partners of Military Members*[14] addressing benefits for the partners of lesbian, gay and bisexual military personnel. Some benefits, such as health care and housing allowances, remain prohibited because of DOMA. This Memorandum predates the *Windsor* decision but serves as an example of the types of benefits available to military personnel and their spouses.

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[12] 42 U.S.C. §1382c(d)
[13] 42 U.S.C. §1382c(d)(2)
[14] http://www.defense.gov/news/same-sexbenefitsmemo.pdf (last viewed June 2014)

Available benefits include: hospital visitation privileges, group life insurance beneficiary, casualty notification, TSP beneficiary designation, travel and transportation allowance, commissary privileges, exchange privileges, family center programs, child care and legal assistance.

A service member registers for benefits through the Defense Enrollment Eligibility Reporting System (DEERS). To add a spouse the service member must present a valid marriage certificate. The prospective dependent must bring two forms of identification, such as a driver's license, passport or birth certificate. A complete list can be viewed at Defense Manpower Data Center (DMDC) website.[15]

Service members must report changes to their dependent status within 30 days. This now includes same-sex marriages.

Military spouses are eligible for a variety of benefits. These include: spousal identification card, TRICARE medical insurance coverage, dependent housing allowance and access to military installations and facilities. The latter includes commissaries and exchanges as well as Family Center programs.

The Servicemembers Civil Relief Act (SCRA) also protects military spouses. This federal statute, first enacted during World War I, provides protection from civil actions against military personnel called to active duty.

K. Veteran's Spousal Benefits

There are two categories of military veterans: qualified non-retired veterans and retirees.

Retirees are individuals who served at least 20 years in the military and formally retired from service. These veterans receive military retired pay from the Department of Defense (DoD) and may receive benefits from the Department of Veterans Affairs (VA).

The VA is bound by statutory language[16] declaring that a marriage is valid "…according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued." This is similar to the definition in the Social Security Act. It defines "spouse" as a "person of the opposite sex who is a wife or husband." There is similar restrictive language defining a "surviving spouse."

Changes to this language will need to come from either Congress or the courts. It is unlikely that Congress will agree to change this provision even with bills pending in both chambers. It is more likely that a lawsuit will prompt a court decision ordering equal treatment for all spouses.
The VA's Office of General Counsel issued an opinion stating the VA will recognize same-sex marriages based on the state of residence if either spouse at the time of the marriage or when the spouse or veteran became eligible for benefits. This conforms to the requirements of Sec. 103(c).

The irony is some military retirees receive benefits from the DoD and the VA. The DoD will recognize their marriages but the VA cannot.

[15] www.dmdc.osd.mil (last viewed June 2014)
[16] Title 38 §103(c)

The VA will use its discretionary authority[17] to designate individuals eligible for burial in national cemeteries. This will be reviewed on a case-by-case basis. Evidence of a "committed relationships" between a Veteran and the otherwise ineligible person will be considered. This is a more inclusive standard and will allow married same-sex couples to be buried together without §103(c) limitations.

Payment of funeral/burial costs to a Veteran's "eligible surviving spouse" will include payment to "the survivor of a legal union." This results from a rule designed to streamline delivery of benefits.

The VA will recognize the retiree's same-sex marriage and surviving spouses are eligible for benefits provided the couple lives in a marriage equality jurisdiction. These benefits include:

- Passing on GI Bill benefits
- Veterans Health Administration Healthcare (CHAMPVA)
- Dependency and Indemnity Compensation
- Dependent's Educational Assistance Program
- VA Guaranteed Home Loan Program
- Burial Benefits

Married same-sex couples living in a non-recognition jurisdiction will not be eligible for these same benefits.

Someone will file a lawsuit on behalf of a military retiree or a veteran's surviving spouse and they will be successful. It is only a matter of time.

CONCLUSION

Representing low-income clients requires lawyers to become familiar with a variety of subjects that may be different from those involved with middle or upper income clients. Many low-income clients receive services from social service agencies that are private or government sponsored. It is important to consider the client's situation on its own merits and not compare or contrast it with that of other clients.

Poor people need legal services at the same rate as anyone else. Estate planning for low-income individuals may not involve complicated trusts or tax planning to protect trusts but these clients need assistance in providing for their children, their partners or spouses. Resolving their needs often requires creative approaches. Low-income LGBT clients may be at greater risk than other LGBT clients because they don't have significant assets.

Seeking assistance from social service agencies to identify additional assistance for low-income clients is an important part of representing the client. Developing a comprehensive estate plan is not dependent on a client's financial resources or assets. It is dependent on deciding how best to meet the client's needs and goals.

[17] 38 U.S.C. §2402(a)(6)

RESOURCES:

The Lesbian and Gay Law Notes published monthly by Professor Arthur Leonard at New York Law School[18] (current issues only available to bar members)
Professor Patricia Cain of Santa Clara Law School writes the *Same-Sex Tax Blog*[19]
Nancy Polikoff writes the *Beyond Straight and Gay Marriage* blog[20]
National Center for Lesbian Rights[21]
Lambda Legal[22]
Gay and Lesbian Advocates and Defenders (GLAD)[23]

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[18] http://www.nyls.edu/justice-action-center/publications/lesbiangay_law_notes/
[19] http://law.scu.edu/category/same-sex-tax/
[20] http://beyondstraightandgaymarriage.blogspot.com
[21] http://www.nclrights.org
[22] http://www.lambdalegal.org
[23] http://www.glad.org

HIPAA AUTHORIZATION

Name: _____
Date of Birth: _____

This Authorization applies to any health information protected by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the regulations implementing it (45 C.F.R. §§160-164). I intend it to comply with all requirements of those regulations (45 C.F.R. §164.508(c)), and with the relevant privacy provisions of Ohio law. I authorize and direct all "covered entities" under HIPAA, and those entities' "business associates" as follows:

(1) **Information to be disclosed:** All of my protected health information and medical records regarding any past, present or future medical or mental health condition, and including all information relating the diagnosis and treatment of sexually transmitted disease, mental illness and drug or alcohol abuse.

(2) **Persons authorized to request disclosure under HIPAA:** _____
_____

The purpose of disclosure to these persons is to allow them to monitor and evaluate my health, my health care, my financial circumstances and obligations and to take any necessary action to ensure my general well being. This authority is limited to those times when I am unable to care for myself or when I am unable to converse with any health care provider.

Expiration. This Authorization shall continue until my death, unless I revoke it in writing. I may revoke or amend this Authorization in writing at any time.

Information Redisclosure. I understand that information disclosed under this Authorization may be re-disclosed and may no longer be protected by HIPAA or other privacy laws.

No liability for disclosure. No "covered entity", "business associate" or health care profession, acting in good faith under this Authorization, shall be subject to any liability to my family, heirs, successors, assigns or others acting in my name.

_____
_____, Grantor

State of _____
County of _____

_____, the Grantor, appeared before me on _____, 20____, and signed this instrument as a free and voluntary act and deed. I subscribe my name and affix my Notary Seal.

_____
Notary

A COPY OF THIS DOCUMENT IS AS VALID AS THE ORIGINAL

ESTATE PLANNING REPRESENTATION AGREEMENT

This confirms our agreement regarding nature and terms of my representation and my legal fee for those services.

A. FEE AGREEMENT

1. The basic estate-planning package is listed here. My legal fee for preparing the basic estate plan documents is $ _____.

Will
General Durable Power of Attorney
Living Will/Health Care Power of Attorney
HIPAA Authorization
Designation of Agent

- ❑ Deed*
- ❑ Transfer on Death Affidavit*
- ❑ Funeral Arrangements (Ohio Form)

You are responsible for additional costs such as real estate recording fees and filing fees.

*You may record the documents at the county recorder's office. The recording fee is $28.00 for a two-page document. There are additional costs associated with recording documents that are more than 2 pages. I use North Star Title to handle the matter. There may be an additional cost assessed by North Star Title for recording some documents.

3. Additional legal fees will apply to prepare these documents. We will discuss these fees before any services are provided or documents are prepared.

- ❑ Living Trust
- ❑ Other Trust
- ❑ Shared Custody Agreement
- ❑ Domestic Partnership Agreement*

- ❑ Prenuptial Agreement* $_____

4. Additional attorney fees may apply if you request services or legal documents other than what is specified in this Agreement. A separate Representation Agreement will be required.

* One of you will need to hire a separate lawyer to review the document before you sign it. The agreement may be unenforceable without separate counsel.

FEES ARE DUE IN FULL WHEN YOU RECEIVE THE INITIAL DRAFTS OF YOUR ESTATE PLAN DOCUMENTS.

B. CONFIDENTIALITY

As your lawyer, I am obligated to keep all information about your estates confidential. I cannot divulge any information to other persons without your consent. This rule is designed to encourage you to tell me everything I need to know to perform the services you request.

This rule does not prevent you from involving other advisors and family members in planning your estates. Their input can be helpful and may reduce the amount of time I need to prepare your estate plans.

You understand there is no confidentiality between the two of you and me. If one of you tells me something that might affect the other's planning, I am obligated to relay that information to the other. I cannot agree to withhold the information from either of you.

By agreeing to joint representation, you agree to waive any conflict of interest that may arise between you in relation to the preparation of your individual estate plan.

C. JOINT REPRESENTATION

You have asked that I represent both of you in preparing your estate plan. Joint representation raises the possibility that a conflict of interest may arise between you. By agreeing to have me represent you both, you waive any conflict of interest that may arise between you.

You each have the right to consult with an independent lawyer. There are times when joint representation may be inappropriate. One partner may have different objectives or may be more comfortable consulting with a lawyer separately.

I will rely on you to inform me about any conflicts that exist between you. I will exercise my independent professional judgment concerning potential conflicts that may arise while planning your estates. If any conflict cannot be resolved, I will no longer be able to represent either of you. I will withdraw from the case, return your documents to you and you will need to hire individual lawyers.

By signing this Engagement Agreement you waive any existing conflict of interest, consent to my representing both of you and acknowledge your individual right to have separate counsel. You also consent to the disclosure of confidential information to each other during this process.

I will not represent either of you in any dispute between you now or in the future. If one of you contacts me requesting advice, representation or a referral I will notify the other of that request. Any response will be to both of you.

D. ATTORNEY-CLIENT RELATIONSHIP

The attorney-client relationship ends when you sign the estate plan documents. Should you fail or refuse to sign the documents within six months after they are prepared, I will send the original documents to you with signing instructions. At that time, the attorney-client relationship will end, the file will be closed and all remaining fees will be due and payable.

_____ Date: _____

Attorney at Law

I agree to and accept the terms included in this Estate Planning Engagement letter. I acknowledge receipt of this letter. I understand that I am entitled to separate counsel representing me. I consent to Joan M. Burda representing both of us. I waive any conflict of interest arising from that representation. And, I consent to the disclosure of confidential information about myself to my partner.

_____ Date: _____

_____ Date: _____

DESIGNATION OF AGENT

I, _____ designate _____, as my agent empowered with the following authority.

A. VISITATION AUTHORITY: If I am admitted to a medical facility of any type, a nursing home, hospice or similar health care, skilled nursing or custodial facility, my agent, _____ shall be designated as "family" as that term is defined by the Joint Commission on Accreditation of Healthcare Organizations.

A. VISITATION AUTHORITY: If I am admitted to a medical facility of any type, a nursing home, hospice or similar health care, skilled nursing or custodial facility, my agent shall be designated as "family" as that term is defined by the Joint Commission on Accreditation of Healthcare Organizations.

My agent shall have priority in being admitted to visit me in such facility. This authority supersedes any policy existing in any health care, medical, nursing home, hospice or similar facility. My agent is the person to be consulted by medical or health care personnel concerning my care and treatment. This conforms to the Health Care Power of Attorney I executed. My agent shall also have the authority to if anyone else will be permitted to visit me while in the facility and during any recovery at home.

This authorization supersedes any preference given to parties related to me by blood or by law. These instructions shall remain in full force and effect unless I freely give contrary written instructions to competent medical personnel on the premises involved. My subsequent disability or incapacity shall not affect these instructions.

B. RECEIPT OF PERSONAL PROPERTY: My agent shall have the right to receive all items of personal property that may be recovered from me by any health care, medical, nursing home, hospice or similar facility, police agency or any other person or public/private entity at the time of my illness, disability or death. This specifically includes cash or other liquid assets.

C. DISPOSITION OF REMAINS/AUTOPSY and AUTHORIZATION for FUNERAL ARRANGEMENTS: My agent shall have the authority to authorize an autopsy if it is deemed necessary or is required by law.

My agent has the authority to make all decisions necessary for my obituary notice and funeral arrangements. This includes any mortician's role, burial services, interment or cremation, selection of a casket or urn, selection, care and tending of a gravesite and selection of a gravestone including any inscription. My agent also has the authority to select other persons to carry out my wishes.

D. HIPAA AUTHORIZATION: My agent shall have access to all medical records and information pertaining to me and concerning treatments, procedures, treatment plans, etc. This includes the right to disclose this information to other people. I explicitly authorize any medical or health care provider to release information requested by my agent to him/her and consider my agent an authorized person to receive such information under the Health Information Portability and Accessibility Act (HIPAA)

This Authorization applies to any health information protected by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the regulations implementing it (45 C.F.R. §§160-164). It is intended to comply with all specific requirements of those regulations (45 C.F.R. §164.508(c)), and with the relevant privacy provisions of OHIO law.

My agent has the authority to admit or discharge me from any hospital, nursing home, residential care, assisted living or similar facility or service entity. My agent also has the authority to hire and fire medical, social service and other support personnel. My agent is primarily responsible for my medical and health care.

I have executed a Living Will, Health Care Power of Attorney, HIPAA Authorization and General Durable Power of Attorney.

My health care providers are obligated to recognize and accept these documents under federal law: 42 U.S.C. 1395x, 42 U.S.C. 1395cc, 42 CFR 482.13, 42 CFR 489.102(a) and the Presidential Memorandum concerning the rights of hospital patients issued April 15, 2010.

Third parties may rely upon a photocopy of this signed document to the same extent as if the copy were the original.

_____

_____, Principal

State of _____
County of _____

_____ personally appeared before me and acknowledged freely and voluntarily signing this document. In Testimony Whereof, I have set my hand and official seal on _____, 20___

_____

Notary Public

GENERAL DURABLE POWER OF ATTORNEY

This document provides your designated attorney-in-fact with broad powers to act on your behalf. The powers continue if you become disabled or incompetent and end at your death. You may revoke or change this General Durable Power of Attorney at any time during your life. Any revocation or change must be in writing.

This General Durable Power of Attorney is intended to conform to the provisions of state law.

I, _____, of _____, Ohio, am the Principal and create this General Durable Power of Attorney to enable the person named below to act as my Agent and attorney-in-fact. My Agent shall have the power to act in my name on all matters and at all times, either before or after my disability or incompetency.

2. **Designation of Agent.** I designate and appoint _____ as my Agent and attorney-in-fact (Agent) and authorize him to act in my name and on my behalf for all purposes.

If he is unable or unwilling to serve as my attorney-in-fact, I name _____ to serve as my alternate attorney-in-fact.

3. **Effective Date.** This General Durable Power of Attorney and the powers conferred shall be effective on the date I execute this document. This Power of Attorney shall continue in force until I change or revoke it in writing.

4. **Disability or Disappearance of Principal.** This General Durable Power of Attorney and the powers conferred shall not be affected by my disability, incapacity or incompetency. The powers conferred shall also be unaffected by any uncertainty concerning whether I am alive or dead.

All acts performed by my Agent under this General Durable Power of Attorney shall benefit and bind my heirs, devisees, personal representative and me.

5. **Nomination of Guardian of Person and Estate.** If I become disabled, incompetent or incapacitated and am unable to manage my affairs, I nominate _____ as the Guardian of my person and estate. My nominee shall also serve as guardian of my person and estate if there is uncertainty concerning whether I am dead or alive.

If the Probate Court refuses to name my designated nominee, I demand that any person selected by the Probate Court be required to post bond in an amount equal to my gross estate. I make this demand to ensure that my person and property are adequately protected.

6. **Powers of Agent.** My Agent shall have the full power and authority to do and perform every act to the same extent as I could if personally present or present and under no disability. My Agent shall have all the powers, rights, discretions, elections and authority conferred by statute, common law or rule of court or government agency that are reasonably necessary to act on my behalf and in my best interest.

In addition to these general powers, the Agent shall have the following specific powers:

A. **Financial Transactions.** The power to request, ask, demand, sue for, recover, sell, collect, forgive, receive and hold all financial transactions, whether personal or business, and in any form. This includes electronic and ACH transactions. This power shall include transactions involving my personal property or real property, wherever located, whether tangible or intangible.

My Agent shall have the power to handle all financial transactions that I now own or may accumulate in the future. This includes any property, tangible or intangible, in which I now have or may accrue an interest. This includes legal and equitable rights, remedies and procedures. My Agent shall also have the power to initiate any action necessary to collect money or property owed to me by anyone. My Agent shall have the power to make, execute and deliver, for my benefit and on my behalf, all endorsements, acceptances, releases, receipts or other similar documents.

My agent shall have the authority to access and transact business through my online banking account. I authorize my bank to assist my agent in accessing my online account.

B. **Tax Returns.** The power to prepare, sign and file joint or separate income tax returns or other tax documents for any year, past, present or future. This includes tax returns on the federal, state and local levels. My Agent is authorized to consent to any gift and to utilize any gift-splitting provision or tax election. My Agent is authorized to prepare, sign and file any claim for refund of any tax.

My Agent has the power and authority to do anything necessary in connection with executing and filing tax returns and cashing any refund checks. My Agent is my designated attorney-in-fact for dealings with the United States Internal Revenue Service and any state or local government tax authority. This power includes anything involving gift, estate, income, inheritance or other tax and any audit or investigation by a tax authority.

This General Durable Power of Attorney includes the power to do all acts authorized by a properly executed I.R.S. Form 2848, entitled, "Power of Attorney and Declaration of Representative", granting the broadest powers provided to my Agent.

C. **Manage Affairs.** The power to conduct, engage in and transact any lawful matter of any nature on my behalf or in my name. The power to maintain, improve, invest, manage, insure, lease, encumber or deal with my real, personal, tangible or intangible property or any interest in them. This includes any interest I have now or acquire later. My Agent has the authority to determine the terms and conditions. This includes renewing my license plates and license stickers with the Ohio Bureau of Motor Vehicles and any other bureau of motor vehicles or vehicles titled outside Ohio.

D. **Property.** My Agent shall have the power and authority to act in my best interests and on my behalf as I would if able. This includes the right to enter into contracts for the sale of my property, whether real, personal, tangible or intangible. My Agent also has the authority to renounce or disclaim any testamentary or nontestamentary transfer intended for me if, in my Agent's discretion, such a transfer would be detrimental to me. This includes, but is not limited to, preparing or revoking a Transfer on Death deed if it is in my best interest to do so.

E. **Signature Authority.** My Agent shall have the power to make, receive, sign, endorse, acknowledge, deliver and possess insurance policies, title documents, stocks, bonds, negotiable instruments, proxies, warrants, retirement accounts, IRAs, checks, debit cards, ATM cards and

other financial obligations. My Agent shall have the authority to execute instruments in writing of any kind or nature as necessary to exercise the rights and powers granted.

F. **Securities.** The power to sell shares of stocks, bonds and other securities that now belong to me or that I later acquire. This includes any securities issued by any entity, public or private. My Agent shall also have the power to make, execute and deliver any assignment(s) of any such securities.

G. **Business.** My Agent shall have the power to conduct or participate in any business of any nature for and in my name. This includes execution of partnership agreements and any amendments, incorporation documents, reorganization, merger or consolidation documents. My Agent shall have the power to elect or employ officers, directors and Agents for those businesses. My Agent may also sell any business interest or stock in such a business and exercise voting rights concerning stock either in person or by proxy and exercise stock options. My Agent may sell, liquidate or dissolve any business in which I am or may become involved if it is in my best interests.

H. **Safe Deposit Box.** The power to enter, surrender or relinquish any safe deposit box that I rent and remove any or all of the contents. No institution in which my safe-deposit box is located shall incur any liability to my estate or me for permitting my Agent to exercise these powers.

I. **Gifts.** The power to make outright gifts of cash or property to adults or minors in amounts not to exceed that established by the Internal Revenue Service for individual annual gifts in any calendar year. Any gifts to minors shall be in custodial form under the applicable Gifts to Minors Act.

J. **Conveyance Powers.** My Agent shall have the power to convey or assign cash or other property that I possess to the trustee or trustees of any revocable trust that I have created. My Agent shall have the authority to revoke any trust that I have created if the revocation is in my best interests.

K. **Appoint Agents/Attorney in Fact.** My Agent shall have the power, subject to the provisions of Section 1 to appoint a substitute or alternate Agent and attorney-in-fact. This person shall have all the powers and authority of my Agent.

L. **HIPAA Authorization.** I executed a HIPAA Authorization, Living Will and Health Care Power of Attorney expressing my wishes. Those named as my agents in the Living Will and Health Care Power of Attorney shall have the authority under the Health Information Portability and Accessibility Act of 1996 (HIPAA) to access all of my medical records and information concerning treatments, procedures, plans, etc. This includes the right to disclose information to other people and to discuss my care, prognosis and diagnosis with all health care personnel charged with my care.

M. **Pets.** My Agent shall have the power to care for any pets I may have. This includes providing veterinary care, day care, hiring pet sitters and obtaining similar help. My Agent has the authority and sole discretion to use my assets to care for my pets.

N. **Medicaid**. My agent shall have the authority to make decisions that will allow me to qualify for Medicaid if that situation occurs.

O. **Digital Assets**. My attorney-in-fact shall have the following authority over my digital assets:

(i) The power to access, use and control my digital devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar digital device which currently exists or may exist as technology develops or such comparable items as technology develops for the purpose of accessing, modifying, deleting, controlling or transferring my digital assets, and

(ii) The power to access, modify, delete, control and transfer my digital assets, including but not limited to, my emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, domain registrations, DNS service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, other online accounts and similar digital items that currently exist or may exist as technology develops or such comparable items as technology develops.

7. **Limitation of Agent's Powers.** I limit the powers and authority of my Agent and attorney-in-fact as follows: My Agent shall have no rights or powers concerning any act, power, duty, right or obligation relating to any person, matter, transaction or property held or possessed by me as trustee, custodian, personal representative or other fiduciary capacity.

My Agent shall have no authority to make gifts to herself or himself or to members of her or his immediate families. My Will sets out all specific bequests I intend to make.

8. **Ratification.** I ratify, acknowledge and declare valid all acts performed by my Agent and attorney-in-fact on my behalf as of the effective date of this General Durable Power of Attorney.

9. **Revocation and Termination.** I reserve the right to revoke, change or terminate this General Durable Power of Attorney at any time in writing. Such action will not affect any person, entity or institution that relied on the power conveyed in this document. Only a notice in writing executed by me and delivered to such person or entity or institution may revoke this power.

This General Durable Power of Attorney shall not be revoked or otherwise become ineffective by the mere passage of time. It shall remain in full force and effect until I revoke, change or terminate it in writing.

I revoke all General Durable Powers of Attorney that I have executed in the past. The same shall have no further force or effect. I do not intend this General Durable Power of Attorney to affect, modify or terminate any special, restricted or limited power or powers of attorney granted by me in connection with any banking, borrowing or commercial transaction.

10. **Construction.** This General Durable Power of Attorney is executed and delivered in the State of Ohio and shall be governed by Chapter 1337 of the Ohio Revised Code as to its validity and construction of its provisions. This instrument is to be construed and interpreted as a General Durable Power of Attorney. The enumeration of specific powers is not intended to limit or restrict the general powers granted to the Agent in this instrument.

11. **Reliance.** Third parties may rely upon my Agent's representations concerning all matters related to any power granted in this instrument. No person who acts in reliance on my Agent's representations shall incur any liability to my estate or me by permitting the Agent to exercise any power. Third parties may rely on a photocopy of this executed General Durable Power of

Attorney to the same extent as if the copy were the original instrument. This document consists of _____ pages.

IN WITNESS WHEREOF, I execute this General Durable Power of Attorney.

_____
_____, Principal

State of _____
County of _____

_____, the Principal, personally appeared before me and executed this General Durable Power of Attorney on _____, 20_____.

_____
Notary