

April 23, 2010

Co-Habitation Agreements For LGBT Couples

Julia and Nancy had been in a committed relationship for 15 years. Along the way Julia had given birth to a son through in vitro fertilization. For all of his eight years, Jimmy had two mothers to care for him. By agreement, Nancy had stayed home to care for Jimmy while Julia built a career as a landscape architect. Together they bought and furnished a home, shared a bank account, and planned for their retirement years. But now they had reached the parting of the ways, and discovered that Texas law offered them no guidance or assistance in dividing their property or providing for their child. In fact, under Texas law, Nancy was a “legal stranger” to Jimmy, and her property rights were limited if not non-existent.

Any uncertainty about the outcome of a separation could have been avoided if Julia and Nancy had availed themselves of a form of preplanning that straight couples have used for years. Premarital and postmarital agreements are basically contracts that define each party’s rights regarding property and their obligations regarding any children of their union in the event of a dissolution of the marriage. Texas courts may not offer the protection of the Family Code to LGBT couples, but they understand and routinely enforce contractual cohabitation agreements.

A new process called Collaborative Law, which is designed to avoid court involvement, has been around in Texas since 2000 and is being utilized by many LGBT couples to resolve family differences. Collaborative Law offers privacy and confidentiality and puts the participants in control of the outcome, not the courts. Experts can be brought in to advise the couple about the many tax issues that can arise when dealing with property and support issues, and in drafting of Domestic Partnership Agreements (DPA) that provide thoughtful tax planning as well as clarifying each party’s rights in the event they part. The Collaborative Law process is non-adversarial, and offers the couple an opportunity to learn negotiation skills that will serve them well throughout their relationship.

Although Julia and Nancy didn’t have a co-habitation agreement, they learned about the Collaborative Law process, and used it to negotiate a solution that provided Nancy with a settlement that recognized her contribution to the accumulation of wealth and assets during the marriage and provided for a co-parenting plan that insured that Jimmy would continue to have two loving and involved parents for the rest of his life.

When consulting a Collaborative Law attorney regarding a Domestic Partnership Agreement, LGBT couples should also discuss obtaining Wills, HIPAA releases, Medical Powers of Attorney, and General Powers of Attorney.

Contributor: Norma Levine Trusch is a lawyer in private practice in Houston. She is board certified in family law by the Texas Board of Legal Specialization, and focuses on Collaborative Law and mediation. For more information about Collaborative Law, go to www.normatrusch.com or www.collablwtexas.com.

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