



THE STATE BAR OF CALIFORNIA

Your Rights and Resources

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Committee on Sexual
Orientation and Gender
Identity Discrimination





*The State Bar
of California*

Office of
Legal Services,
Access &
Fairness Programs

Your Rights and Resources

This brochure is designed to serve as a guide to legal rights and resources for lesbian, gay, bisexual, and transgender (LGBT) persons in California. It addresses the following concerns:

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Discrimination in Employment, Housing, Business Settings, at School and in Foster Care



>> **What if I think my employer discriminates against me because of my sexual orientation, gender identity or HIV status?**

Employment discrimination based on actual or perceived sexual orientation, gender identity or medical condition is prohibited by the California Fair Employment and Housing Act (FEHA). California's Department of Fair Employment and Housing (DFEH) investigates complaints of discrimination on these and other grounds, according to rules set out in the state Government Code and regulations. DFEH sometimes brings cases for employees and tenants who have been mistreated in an illegal manner. Those who have been discriminated against also can seek a remedy in civil court by filing a lawsuit against the employer or landlord. The law requires the injured person first to file a timely "administrative" claim with DFEH before filing a civil action.

>> **How Do I File A Claim with DFEH?**

You must contact your local DFEH office within one year of the conduct you think was discriminatory to file your administrative complaint. DFEH staff will investigate your claim and may decide to litigate it for you before the Fair Employment and Housing Commission—all at no cost to you. If DFEH decides not to litigate the matter for you, it still may conduct a useful investigation of your situation. If it decides not to sue on your behalf, it will issue you a "right to sue" letter that authorizes you to file a lawsuit. Some employers are not subject to the FEHA (for example,

those with fewer than five employees). If yours is not, DFEH staff will issue you a “right to sue” letter without investigating your administrative complaint. You can sue in civil court as soon as you have your letter.

>> Can I file a regular lawsuit?

Yes, but only after you have filed a timely administrative complaint with DFEH (if required) and have received a “right to sue” letter from the agency. If your employer is not covered under FEHA or you did not file a DFEH complaint within one year, your attorney might encourage you to proceed directly with a lawsuit in civil court based on other legal claims. For example, your attorney may advise you about claims for violation of other California laws prohibiting employment discrimination (such as provisions of the Labor Code) and the rules governing civil service jobs and companies receiving government funding. A law passed in 2004 ensures that these rules are consistent with FEHA and forbids discrimination based on sexual orientation, gender identity or HIV status. You also may have claims for “wrongful termination in violation of public policy” and “intentional infliction of emotional distress,” as well as other legal basis for a lawsuit. Be aware that there usually are important time limitations for filing administrative complaints and lawsuits.

>> What if my landlord discriminates against me?

Housing discrimination based on actual or perceived sexual orientation, gender identity or medical condition also is prohibited by FEHA. If you feel you have been discriminated against on one or more of these basis, you can file a claim with DFEH under Government Code section 12989.1. The DFEH will investigate your claim for you. You must file the claim within one year of the conduct you believe was discriminatory. Unlike claims for employment

discrimination, you are not required to file a housing discrimination claim with DFEH before initiating a civil action. The time limit for filing in court is two years after the discriminatory conduct. Be sure to ask your attorney about your options.

>> Do local ordinances provide a legal basis for a discrimination lawsuit?

Local ordinances in numerous cities and counties prohibit employment, housing and public accommodations discrimination based on sexual orientation, gender identity or HIV status, but these ordinances often cannot be enforced through lawsuits in court. Even if the ordinance cannot be the basis of a court lawsuit, your locality’s human relations officers may be able to help you mediate the problem with the employer, landlord or business owner that you believe has discriminated against you, which may resolve the situation without litigation.

>> Does federal law protect me?

Currently, the federal civil rights statute outlawing employment discrimination (called “Title VII”) does not include sexual orientation as a prohibited basis of discrimination. However, federal law does recognize and prohibit same-sex sexual harassment provided it is serious or pervasive enough to create a hostile work environment. Also, the federal courts have begun to interpret Title VII’s ban on sex discrimination as forbidding discrimination based on sexual stereotypes (the fact that a person is perceived as not acting or appearing stereotypically “masculine” or “feminine”) or the fact that a person has changed gender presentation (for example, from female to male). This is an evolving area of federal law.

>> **As a transgendered person, am I covered by existing laws?**

Yes. The FEHA was amended in 2003 to prohibit discrimination based on gender, which is defined to include a person's gender identity and gender related appearance and behavior. This means that employees and tenants should not be mistreated because others perceive them as not stereotypically "masculine" or "feminine," misperceive their gender, or disapprove of their gender presentation, or because they are undergoing or have undergone sex reassignment treatment. As of this writing, the Fair Employment and Housing Commission had not yet issued regulations to provide guidance about implementation of the protections for transgender and other gender variant persons.

>> **Can private businesses discriminate against customers or clients?**

No. California law requires businesses to treat all customers and prospective customers equally without arbitrary discrimination based on personal characteristics such as race, national origin, sex, sexual orientation, gender identity, marital status or medical condition. The Unruh Civil Rights Act forbids this type of discrimination by all sorts of business establishments from restaurants to movie theaters to nightclubs, from medical facilities to schools, from motels to health clubs. It covers nonprofit as well as for-profit agencies.

Businesses sometimes post signs saying they "reserve the right to refuse service to anyone." Proprietors may refuse to serve customers on a nondiscriminatory basis, such as refusing to serve those who are not wearing shoes, for example, but they may not impose special rules about clothing or other aspects of personal appearance as a way of screening out customers based on sexual orientation, gender identity, or other prohibited personal characteristics. The Unruh Civil Rights Act is found at section 51 of the Government Code.

>> **What about insurance companies and health plans?**

Similar protections exist in the Insurance Code and the Health and Safety Code and specifically forbid discrimination by insurance companies, health plans and medical facilities. A law passed in 2004 (AB 2208) provides that insurance companies and health plans must not discriminate against those who are in registered domestic partnerships rather than in marriages. This means that insurance policies and health plans that cover spouses must offer coverage for domestic partners on equal terms. Consequently, as of January 1, 2005, insurers that offer automobile or homeowner's insurance, for example, and the policy includes the spouse of the policyholder, the insurer must offer the same rates and coverage for domestic partners. Likewise, if your employer buys health coverage for you and your coworkers, and the company plan includes spouses, the plan must include domestic partners on equal terms. For many group health plans, the domestic partner requirement took effect in January of 2006. The rights and duties of registered domestic partners are discussed further later in this brochure. Similarly, a law passed in 2005 (AB 1586) provides that insurers and health plans must not discriminate based on gender identity against those seeking insurance coverage or health plan coverage.

>> **What can I do if I am harassed or discriminated against at school because of my sexual orientation or gender identity?**

If you are harassed or discriminated against because you are a lesbian, gay, bisexual or transgender youth, or because your classmates and teachers just think you are, you should ask your school officials for help. California schools have a duty to take action to protect you. You also cannot be denied your right to form an LGBT/straight student support group in your

school district. It is important to know that you are not alone, and that help is available.

First, seek support from understanding parents, friends and/or community groups. The California Safe Schools Coalition (www.casafeschools.org) may be able to connect you with resources in your area. You also may receive help from the Gay, Lesbian, Straight Education Network (GLSEN), an alliance of teachers and other education professionals who support safe and inclusive schools for LGBT students, (www.glsen.org); Parents, Families and Friends of Lesbians and Gays (PFLAG, www.pflag.org); or from one of the legal organizations listed at the end of this brochure.

If you are experiencing harassment or discrimination, it is important that you inform a school official. You also should keep written documentation of the harassment and what school officials did, or did not do, as a result of your request for help. The resources mentioned above also may help you find legal assistance to enforce your rights by filing a formal complaint and even by suing the school and its representatives if necessary.

>> Are people involved in the foster care system protected against discrimination?

Yes. Adding to protections that existed before, a comprehensive law was passed in 2003 (AB 458), which prohibits discrimination in the California foster care system based on sexual orientation, gender identity or expression, or HIV status. The new law protects youth in care and also protects adult employees and those serving or wishing to serve as foster parents.



Hate Crimes and Domestic Violence

>> What is a “hate crime”?

To inflict or attempt to inflict harm on you because you are gay, lesbian, bisexual or transgender (or because someone thinks you may be or may associate with those who are) is a crime in California, whether it is verbal abuse, a physical attack, intimidation, stalking or destruction of property. If convicted, hate crime perpetrators are subject to enhanced sentences. In addition, victims may be entitled to civil remedies from the perpetrator, including financial compensation for medical costs, lost wages and emotional distress. In addition, punitive damages, fines up to \$25,000 and attorney’s fees are available. Victims also may obtain a court order protecting them from similar conduct in the future. A new law passed in 2004 prohibits California law enforcement officers from turning hate crime victims and witnesses over to federal immigration authorities for non-criminal immigration law violations.

>> Are transgender people protected from hate crimes?

Yes. Under a 1998 amendment to the Penal Code, California’s hate crime laws cover persons who are targeted because of their gender identity or gender-related appearance or behavior.

>> Doesn't spouse abuse or domestic violence only happen in heterosexual relationships?

Sadly, domestic violence exists in the LGBT community as it does in society as a whole. California law is intended to protect everyone from violence committed by those with whom they live or have an intimate relationship, regardless of gender and sexual orientation. An act of domestic violence is a crime. Perpetrators can be restrained from further contact with their victim, jailed, fined, and/or required to attend a treatment program.

>>Where can I get help if I need protection?

In addition to the legal organizations listed at the end of this brochure, several organizations provide specialized help to LGBT people who have been victimized by violence, including:

- In the Fresno area—The Central California Pride Network: (559) 486-2216
- In San Diego—The San Diego LGBT Community Center: (619) 260-6380
- In the San Francisco Bay Area—Community United Against Violence: (415) 333-4357
- In Southern California—The Anti-Violence Project of the Los Angeles Gay and Lesbian Center: (800) 373-2227

Also, ask for the California State Bar's pamphlets, "What Should I Know About Hate Crimes?" and "What Should I Do If I Am A Hate Crime Victim?" from the Consumer Education Pamphlet Hotline of the State Bar's Office of Communications, at (415) 538-2280. Or download them from the Consumer Pamphlets page of the California State Bar's website: <http://calbar.ca.gov>.

Family Matters



RELATIONSHIP RECOGNITION

>> Can my partner and I be legally married?

Massachusetts, Canada and some European countries permit same-sex couples to marry. For some purposes, New York State respects valid marriages same-sex couples enter into in Massachusetts, Canada or elsewhere, and other states may as well. On the other hand, the U.S. Congress and many other states have passed laws stating that such marriages shall not be honored, and some states have amended their constitutions to this effect. California voters passed such a statute in 2000 ("Proposition 22").

Litigation seeking marriage equality for same-sex couples is underway presently in numerous states, including California. In early 2005, a California trial court judge ruled that it violates the state Constitution to deny same-sex couples the equal right to marry and that Proposition 22 is unconstitutional to the extent that it interferes with this right. The California marriage cases now are on appeal.

>> What is a "civil union"?

Vermont and Connecticut permit same-sex couples to enter into "civil unions," which are a separate status that provides all the state law rights and duties of marriage, to "civil union spouses." Couples joined in civil union continue to be denied all of the 1,138 federal rights and duties of marriage.

Although Proposition 22 prevents California from honoring same-sex couples' marriages from other states and countries, California does treat civil union spouses from Vermont and Connecticut as if they are in a California registered domestic partnership, and respects similar, non-marriage statuses from other states in the same way.

>> **What is a “registered domestic partner”?**

Under the domestic partnership law that took effect in January 2005, domestic partners who register with the State of California have nearly all of the same rights and duties as married spouses under California law. Couples who registered with the state before AB 205 took effect need not re-register to be covered by the new law; but registration with a local government or private employer does not qualify the domestic partners for state law purposes. As with civil unions, state-registered domestic partners do not receive federal benefits and protections. In addition, other states appear to vary greatly in the extent to which they respect these non-marriage family statuses.

>> **Why would we want to register as domestic partners?**

The rights and duties of registered domestic partners have been increasing steadily since the registry was first established in January 2000. On January 1, 2005, the California Domestic Partners Rights and Responsibilities Act (AB 205) went fully into effect. That law extended to registered domestic partners most of the state law rights and duties that come with marriage for different-sex spouses. AB 205 made domestic partnership in California very similar to Vermont's and Connecticut's civil unions, although California's domestic partnership laws still do not cover everything under state law. For example, registered partners are not permitted to file their state income taxes jointly. But for most state law

purposes, registered domestic partners now are treated the same as spouses.

This means, for example, that domestic partners have community property rights and the right to seek support from each other if their relationship dissolves, and must be responsible for each other's debt. Under rules adopted by the State Board of Equalization in 2003 and a law passed in 2005 (SB 565), registered domestic partners are protected against property tax reassessment. In most cases, domestic partners will be required to go to court to obtain an order of dissolution, just like married couples must obtain a court order of divorce. And a child born into the registered partnership is presumed to be the child of both partners.

If you are in a domestic partnership and would like to enter into an agreement to opt out of the usual community property and spousal support rules, you need to comply with the requirements for a pre- or post-nuptial agreement.

>> **Are there reasons not to register as domestic partners?**

Just like the decision whether to marry, the decision whether to register as domestic partners now raises questions about whether the partners wish to be financially responsible for each other, to authorize each to act for the other, and to make a serious legal as well as emotional commitment to each other.

Some couples may have important additional reasons to think twice before registering. Your state registration is considered a public record and the information in your application could be made available to government agencies and to members of the public upon request. Given the U.S. military's “Don't Ask, Don't Tell” policy of discharging service members who acknowledge being gay or in a relationship with someone of the same sex, it could be considered a

“telling” warranting dismissal from the military to register one’s same-sex partnership in California. Similarly, for foreign nationals who do not have permanent legal status in the United States, it may be unwise to attest in a public document to being in a committed partnership with a U.S. citizen or permanent resident. Finally, anyone of limited financial means who depends on a public benefit program (such as MediCal, ADAP for HIV medications, subsidized housing, or certain types of student loans or grants) may become ineligible for that program when one’s partner’s assets are taken into account, just as happens for spouses.

At the same time, the federal government generally does not recognize this legal status. As a result, domestic partners do not receive federal benefits as spouses do (such as Social Security survivor benefits and certain preferential tax treatment). Some couples will decide that the duties and risks of registering outweigh the state law protections, given their particular needs. Because the laws affecting domestic partners continue to evolve and can be confusing, it is sensible to seek advice from an attorney as you make this decision.

>> What are the requirements for registering as domestic partners?

Under Family Code section 297, same-sex couples (and those in which one of the partners is over 62 regardless of sex, sexual orientation or gender identity) can register by submitting a notarized “Declaration of Domestic Partnership” form to the Office of the California Secretary of State. There is a \$10 filing fee (and some notaries may charge their own fee). Forms are available from the Secretary of State’s office by downloading from <http://www.ss.ca.gov/dpregistry/> or by calling (916) 653-4984.

To register, domestic partners must be over 18 years of age, of the same sex (unless one of the partners is over 62), not too closely related by blood, and not married or in a domestic partnership with anyone else. They must share a residence (though it need not be their sole residence). They need not live in California, but both partners must agree that a court action may be brought in California if necessary to dissolve the partnership or to determine the rights and duties of the partners related to their partnership, even if one or both partners do not live in California at the time.

>> How do we terminate our registered domestic partnership?

Most couples will need to obtain a court order to dissolve their partnership, just like married couples must obtain a court judgment of divorce. There is a small subset of couples who may be able to terminate their partnership by filing a “Notice of Termination of Domestic Partnership” with the Secretary of State and sending a copy of the Notice of Termination to the other partner by certified mail. This simplified procedure is only available for couples who meet a restrictive set of requirements, including, among other things that: the couple has been registered for less than five years, neither partner owns any real property, the couple’s shared debt is less than \$4,000, and shared assets are worth less than \$32,000, and the couple has no children. The Secretary of State has published a brochure explaining when partnerships may be ended simply by filing a “Notice of Termination” and when a court proceeding is necessary. Copies are available at http://www.ss.ca.gov/dpregistry/forms/sf-dp_termbrochure.pdf or by calling (916) 653-4984 to request a copy by mail.

>> Where can I get more information about registered domestic partnerships?

The California Secretary of State's webpage provides information about registered domestic partnerships at <http://www.ss.ca.gov/dpregistry/index.htm>. Also, the California State Bar has published a brochure about California Registered Domestic Partnerships, a revised version of which is anticipated in 2006. The National Center for Lesbian Rights and Equality California have published an overview of AB 205, which is available at: http://www.nclrights.org/publications/ab205faq_012005.htm. Finally, for those seeking detailed information about California's domestic partner laws, the legal publisher CEB has published a comprehensive treatise that can be ordered via CEB's web-site: <http://www.ceb.com>.

>> What is a "cohabitation agreement"?

Marriage and domestic partnership registration determine in large part how property is held and how it is divided in the event of divorce or termination. Same-sex couples who decide not to register as domestic partners, like different-sex couples who decide not to marry, can enter into written agreements regarding their property and its division upon dissolution of the relationship. Such "cohabitation agreements" also can address management of finances during the relationship.

A "Marvin Agreement" (based on the case, *Marvin v. Marvin*) can set the rights, duties and expectations each of you has in the relationship. For instance, one of you might agree to be the primary wage earner while the other agrees to stay home and take care of the house and children. Such agreements often provide that the non-wage-earning partner will have ownership interests in property that is acquired during the relationship and be eligible to receive financial support from the other after the end of the relationship. Certain legal considerations must be met

for a Marvin Agreement to be enforceable legally, so it is best for each partner to be advised by an attorney.

>> What happens to my property if my partner and I split up?

If you are not registered as domestic partners and you do not have a "cohabitation agreement," you may rely on California Code of Civil Procedure, sections 872.000 through 872.240, to divide property that is jointly held by both of you. A court may help resolve a dispute as to who has what interest in the property.

CONCERNS ABOUT CHILDREN

>> Can my partner and I both be legal parents to a child we have together using assisted reproduction?

Yes. If you registered with the State as domestic partners before your child was born, both partners will be considered legal parents to any children born into the registered domestic partnership. Despite this development, family law experts strongly encourage all registered domestic partners to obtain court judgments soon after a child is born confirming that both partners are legal parents. Couples who have children without being registered as domestic partners also can, and should, obtain a court judgment declaring their respective parental rights and duties.

Having a court judgment is very important to ensure that the child's legal relationship with each parent will be respected by other states and the federal government. A legal parent-child relationship secures a child's rights to inherit, receive financial support, and access benefits (such as health insurance) through both parents. A legal bond also ensures that both parents will be able to maintain a relationship with the child, and will be responsible to pay child support, should the parents' relationship end, no matter where the parents and child are living at that time.

There are several forms of court judgment that may be obtained, including an adoption and a judgment of parentage. Both of these may be easier to obtain if a couple is registered as domestic partners. But registration is not required for either. The California Supreme Court has confirmed that unregistered same-sex couples who have children together are subject to similar rules about parental rights and duties as unmarried different-sex couples who have or raise children together. This means that, when the proper factual showing has been made, the courts may grant judgments of adoption or of parentage whether or not the intended parents are registered as domestic partners.

The best option for each family will depend on their particular circumstances. Therefore, again, it is critically important for couples who have or are going to have children to consult with an experienced family law attorney to discuss their options, and then to follow through and obtain an appropriate judgment to confirm all parent-child relationships legally.

>> **Can I become a legal parent to the child my partner had in a previous relationship that we are raising together?**

That depends on whether the child already has a second parent who does not wish to surrender his or her parental rights, and also on whether your partner wants to consent to you receiving full parental rights. If your partner is the child's only legal parent and she or he wants you to become a second legal parent, then you can do either a stepparent adoption or a second-parent adoption, depending on whether you and your partner are registered as domestic partners. But if your child already has a second legal parent (whether a biological parent or a prior adoptive parent), or your partner does not consent, then you probably will not be able to become a legal parent to the child.

>> **Can my partner and I become parents together through adoption or the foster care system?**

Yes. California law permits couples to adopt a child together, without regard to sexual orientation and gender identity, or to whether a couple is married, registered or neither. Many same-sex couples become parents by "joint adoption" through private adoption agencies as well as through county social services programs.

Same-sex couples and individual LGBT adults also are an important source of foster homes for children in the care of county child welfare programs. A law passed in 2003 (AB 458) supports such placements by expressly forbidding discrimination against LGBT people and those with HIV who wish to be foster parents. Depending on the rules of the particular foster program and the needs of individual children, foster parents often are encouraged to make those placements permanent through adoption.

Concerns about Health and at Death



>> What if I can no longer make informed decisions about my well-being?

By executing an “Advance Directive” or “Power of Attorney,” you can authorize someone else to make medical and/or financial decisions for you, which otherwise are up to your legal relatives. Under the state domestic partner laws, a registered domestic partner is considered the next-of-kin (just as a spouse would be) for making medical decisions and seeking court approval to be a custodian to make financial or other decisions for a person who is incapacitated for a prolonged period. Because it is likely that other states will continue to discriminate against same-sex couples, registered domestic partners may be denied these rights in other states. For this reason, you may want to complete a medical Advance Directive, and durable powers of attorney for health care and finances. You should carry copies of these documents with you at all times when you travel out-of-state.

If you do not have a domestic partner, or if you do but the two of you do not wish to be covered by the state domestic partner laws, you may wish to use a standard document called an “Advance Health Care Directive,” which allows any person you designate to make decisions about your medical care if you are unable to do so for yourself. It allows you to tell your doctors in advance what kind of care you do and do not want if you become seriously ill. For example, you

can decide whether you want life support continued or withheld in certain circumstances. An Advance Directive ensures that your wishes are known and can be honored; and, it relieves your partner, family and friends of the burden of wondering what you may have wanted.

If you wish to designate someone to act as your agent to take care of financial transactions for you in case you become ill or incapacitated, you should prepare a separate financial “power of attorney” to meet your particular needs. It can be important to state clearly whether the document only takes effect if you become incapacitated, or whether your agent can act for you, and have access to your finances, in other circumstances. It is essential that you understand the legal authority over your property and financial information that usually is granted by this type of document, and to terminate it promptly if your relationship changes.

Power of attorney form documents are available in various legal handbooks for unmarried couples, from Internet sites or from an attorney. Again, use such documents with caution. It is recommended that you consult with an attorney before deciding the best arrangement for you.

>> What happens to my assets when I die?

The best way to ensure that your assets are distributed according to your wishes is to prepare a will or other estate planning documents. Your attorney can assist you in drafting a will or trust to ensure that it is legally enforceable. Registered domestic partners may use the simplified “Statutory Will Form” contained in the Probate Code instead of a specially prepared will. The form is available at: <http://www.calbar.ca.gov/calbar/pdfs/publications/Will-Form.pdf>

If one member of a state-registered domestic partnership dies without a will or other estate plan, the surviving partner will inherit the deceased

partner's property in the same manner as a surviving spouse. Depending on the types of property the deceased partner owned and whether he or she had close relatives, the surviving domestic partner may inherit all or only a share of the property. Even if partners are registered with the State, preparing a will that sets out one's wishes always is a more effective way to ensure that property will go as intended.

Like unmarried heterosexual couples, unregistered same-sex partners do not automatically inherit each other's property when one dies, no matter how long the relationship existed. Legally, in the absence of a will or state-registered domestic partnership, the deceased partner's legal relatives are entitled to the estate, just like when a person dies leaving a long-time, non-marital partner of a different sex. If you have a domestic partner and you own property together, you should discuss what each of you should write in your respective wills to make sure your intentions can be carried out. Also, be sure to change beneficiary designations on life insurance policies, retirement accounts, bank accounts, and any other financial instruments promptly if your planning for the future changes because you bring a child into your family, your relationship with your partner changes, or for any other reason.

>> What about my life insurance benefits?

Whomever you designate as the beneficiary of your life insurance (and other beneficiary-designated investments such as 401(k) retirement accounts) will receive those proceeds. It is not necessary to include this in your will. (Also, as discussed above, remember that if your partner is the designated beneficiary, he

or she will remain as such unless and until you affirmatively change it—even if your relationship ends.) Many HIV/AIDS agencies have a benefits specialist who can review and advise you on what your policies cover and refer you to attorneys for further assistance.

>> What other ways are there to protect my assets?

A trust is a legal arrangement through which a person holds property for the benefit of another person. Title to the property does not change until some designated event such as reaching the age of majority or death occurs. Another option is for two people to hold property in "joint tenancy," which means that both own the property. Upon the death of either person, assets held in joint tenancy automatically become the property of the surviving joint tenant without needing for any action in Probate Court. Joint tenancy often is used for bank accounts, real estate, vehicles and other personal property. Again, your attorney can help you plan best for what will happen to your property when you die.

You will find important basic information in the State Bar's pamphlets on Estates, Wills & Trusts, which are available by calling the Consumer Education Pamphlet Hotline in the State Bar Office of Communications at (415) 538-2280. The pamphlets also are available for download from the Consumer Pamphlets pages of the State Bar website: <http://www.calbar.ca.gov>.



Sex Crimes and Convictions

>> When is sex illegal for LGBT people?

Private, consensual sexual activity between adults of the same sex is legal. However, sex with a partner who is under 18, whether that person is the same or a different sex, is illegal. The crime's seriousness may depend on the relative ages of the partners. Sex in public is illegal irrespective of the sexes of the partners if there is reason to believe anyone may be present who might be offended. The "lewd conduct" laws prohibit touching a partner or soliciting a partner to touch one's genitals for sexual gratification in a place open to public view (such as a public park, a public restroom or an adult movie theater), when it might be offensive to others present. Lewd conduct is a misdemeanor, which is punishable by a fine and/or up to one year in jail. Loitering at a public restroom with intent to engage in lewd conduct also is a misdemeanor. "Indecent exposure" means revealing one's genitals to another person in a public place. It can be a misdemeanor or, more seriously, a felony, depending on the circumstances.

>> What happens if I am arrested?

The consequences of being convicted of this type of crime go beyond fines and imprisonment. You can be denied certain jobs or professional licenses and may have to register as a sex offender. If you are a non-

citizen, you can be deported. Although the police are not permitted to single out members of any particular group in a discriminatory manner for arrest and prosecution, law enforcement often uses undercover vice officers as decoys to entice men to agree to unlawful behavior such as public sex, and then successfully arrest and prosecute these individuals.

If you ever are arrested, do *not* answer any questions from the police until you speak with an attorney. Under the U.S. Constitution, the government is obligated to provide you with an attorney if you cannot afford one. The police must stop all questioning once you ask them to and request an attorney. Remember—everything you say can be used against you.

Legal Assistance for Members of the LGBT Community



It is a good idea to start by reading the California State Bar's pamphlet entitled "How Can I Find and Hire the Right Lawyer?" Call (415) 538-2280 to request a copy by mail or obtain it from the Consumer Pamphlets page of the State Bar website: <http://www.calbar.ca.gov>.

Finding the right lawyer sometimes can be more difficult for LGBT people and those dealing with sexual orientation or gender identity discrimination. A recent study by the Judicial Council of California has confirmed that even members of the legal system sometimes discriminate against the LGBT community. However, there are organizations that can help you find the right attorney.

AIDS Legal Referral Panel (ALRP)

www.alrp.org

(415) 701-1100 (San Francisco)

(510) 451-5353 (Oakland)

HIV & AIDS Legal Services Alliance, Inc. (HALSA)

www.halsaservices.org

(213) 201-1640 (Los Angeles)

Lambda Legal

www.lambdalegal.org

(213) 382-7600 x249 (para Español también)

Los Angeles Gay and Lesbian Center, Legal Services Department

www.laglc.org

(323) 993-7670

National Center for Lesbian Rights

www.nclrights.org

(415) 392-6257

In addition, several California cities have LGBT bar associations that may be able to help you.

- In Los Angeles, contact the Lesbian & Gay Lawyers Association: www.lhr.org
- In San Diego, contact the Tom Homann Law Association: www.thla.org
- In San Francisco, contact Bay Area Lawyers for Individual Freedom: www.balif.org

Your local city or county bar association may provide referrals to attorneys in your area. You also may contact the State Bar of California's Committee on Sexual Orientation and Gender Identity Discrimination through the State Bar's San Francisco office at (415) 538-2328. That office is located at 180 Howard Street, San Francisco, CA 94105. Additional resources may be obtained from the Los Angeles office of the State Bar of California. You may contact that office at (213) 765-1000. That office is located at 1149 South Hills Street, Los Angeles, CA 90015.

Finally, many legal resources are available at the California State Bar's website: <http://www.calsb.org>. You may find particularly helpful the information posted on the website of the California State Bar's Committee on Sexual Orientation and Gender Identity Discrimination: http://calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=12510

Acknowledgements

This brochure was conceived by the State Bar's Committee on Sexual Orientation and Gender Identity Discrimination.

For more information go to the Committee's webpage: www.calbar.ca.gov, Attorney Resources, Committees & Commissions, Access & Fairness Committees.

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The Committee on Sexual Orientation and Gender Identity Discrimination is one of five State Bar of California Access & Fairness Committees dedicated to increasing diversity in the legal profession and in State Bar administration. The other committees focus on Ethnic Minority Relations, Legal Professionals with Disabilities, Senior Lawyers, and Women in the Law.

Opinions expressed herein are those of the authors. They have not been adopted or endorsed by the State Bar Board of Governors and do not necessarily constitute the official position of the State Bar.

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