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# Gay Mortgages & Loans | Government Housing & Mortgage Help for Gay & Lesbian Couples

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Created 01/20/2011 - 5:03pm

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## Purpose of this Guide

This guide will help to explain the different approaches that same-sex couples can take to getting a mortgage, establishing ownership of a home, and creating legal documents that anticipate any legal or property-ownership issues that might occur if the couple breaks up or one partner dies. After evaluating this document, readers will have a better understanding of:

- Joint tenancy with right of survivorship
- Tenants in common
- Mortgages and joint ownership
- Establishing property rights for a same-sex legal relationship
- Strategies for couples who live in a state that allows same-sex marriage
- Tactics for finding a good real estate attorney
- Rights of same-sex couples

## Guide overview:

- [Part 1: Potential Pitfalls](#)
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- [Part 4: Creating a Legal Relationship](#)
- [Part 5: Legally Married?](#)
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## Introduction

Gay and Lesbian couples are in a unique

situation when it comes to mortgages and home purchases. The problem lies less in getting a mortgage or purchasing a home than in what happens to the property if the relationship breaks up or one of the partners dies.

"Most states do not recognize lesbian and gay relationships," says attorney Joan M. Burda. "The laws in those states were not written with the legal rights of lesbian and gay couples in mind. Many states predicate their property statutes on marriage. In most states, lesbians and gay men have no or limited legal rights. But, a good lawyer can help you protect yourself, your partner, and your property—separate and joint." It's funny to approach starting a new phase in a relationship and buying property by thinking about what might happen if that relationship ends. But that kind of planning is crucial. "If a couple is buying, they need an agreement in writing," says Burda. "If you have one partner who puts down more and they break up ten years later, and the house has to be divided, you have a mess. They need to work this out in the beginning."

Navigating the home buying process and the mortgage maze is intimidating enough. Add to it the societal and legal complications of being a same-sex couple and you are potentially in for a stressful ride. Knowing what to prepare for and thinking ahead can only make that ride a little bit smoother.

### **Talk to a Lawyer**

This guide will give readers a better understanding of the issues involved in purchasing or financing a home. It will also help readers to ask the right questions when speaking to a legal professional. This guide is NOT a substitute for specific, tailored advice from a licensed attorney. Having a real estate lawyer who is knowledgeable about same-sex issues is essential. The laws differ from state to state and things change all the time. Legal advice can be expensive, but as one attorney told us, it's a lot more expensive to clean up a legal mess after the fact.

"I'm often asked," says Joan M. Burda, "Can I do this myself? Or, do I REALLY need a lawyer?" My answer: yes, you can prepare all your legal documents yourself. BUT, if you do it wrong, you may not find out until after you're dead or you break up. Then, it's too late. You cannot change anything."

## Part 1: Potential Pitfalls

Here are a few of the types of situations that can occur if you don't establish your property rights ahead of time:

1. Diane and Karen break up after owning their home for ten years. When they bought the house, Diane supplied the down payment, an inheritance from a wealthy aunt. Through the years, though, both Diane and Karen contributed equally to the mortgage payments. Due to the economy, the house is now worth ten thousand dollars less than when it was purchased. Considering Diane's upfront investment, what is a fair division of assets when the couple sells the house? What if one partner wants to remain in the house?
2. Jason and Ken break up after five years of living together. Jason is looking for a clean break. He wants to sell the house that they jointly own, pay off the mortgage, and divide the assets. Ken wants to stay in the house, but does not have the money to buy Jason out. Should the couple be forced to sell the house?
3. Allison and Kendra buy a house but only Allison is on the mortgage because Kendra's credit score was dismal at the time of purchase. Both have contributed equally to the mortgage payments over the years. When the couple breaks up, Allison claims that the house is legally hers. What recourse does Kendra have?
4. Sophie and Violeta break up. Violeta moves out and decides to stop contributing to the mortgage payments as she no longer lives in the house. Sophie, who was surprised by the breakup and did not plan for this situation, cannot afford to pay the whole mortgage and is

in danger of going into foreclosure. Can she legally force Violeta to contribute?

5. The house and mortgage are in the name of Alan, Roger's recently deceased partner. Alan never updated his will and did not establish who the property would go to. In this case, Alan's estate goes to Alan's parents—even though Alan verbally said that he wanted it to go to Roger in the event of his death. Is there any way for Roger to legally keep the house?
6. Gary passes away. Though he had joint ownership with his partner Jim, Gary's share goes to his parents—and they want to sell the house! After living in the same neighborhood for 20 years, selling the house would force Jim to move to a different neighborhood as he can't afford to buy a new house nearby. Is there any way to legally prevent Gary's parents from selling?

## Part 2: Getting a Mortgage

In terms of getting a mortgage, there's no real advantage for legally married couples over same-sex couples. With a husband and wife, the bank pulls credit on both. If friends want to buy a house together, both people also have their credit pulled. Whatever the situation, everyone on the application has to have their credit pulled individually.

The only time that there is an advantage to being married over single is when you are pursuing a VA mortgage. If you qualify for a VA loan, your spouse can go on the mortgage. However, if you are an unmarried couple, both people need to be veterans.

As always, it makes sense to talk to your lender and figure out how much and what type of loan you can qualify for before you even start looking for a home. This can help you to streamline any issues that might prevent you from jumping on a dream home. Burda always advises her clients, "Make sure that you have your mortgage in hand before you start looking for a house so that you know what you can afford."

## Part 3: Approaches to Jointly Owning Property

Whether or not a same-sex couple should own property jointly is a big decision. "I recommend that a couple talk to a financial planner before they make a big decision about whether to own property jointly," says Burda. "If the partners aren't equal financially, then jointly held property may not be in their best interest." If a couple speaks to their financial planner and does decide that owning property jointly makes sense, they have two basic options to legally establish ownership: 1) create a joint tenancy or 2) have tenants in common. Both of these terms mean that there is more than one person on the title for the house.

### Joint Tenancy with the Right of Survivorship

This is a special type of property ownership where two or more people have equal ownership of a property and also have the equal right to keep or dispose of the property. The Right of Survivorship means that if one of the partners dies, the rights to the property go to the surviving partner. The negative side to this arrangement is that a partner cannot sell his or her share and cannot leave his or her share to anyone except the other person or people in the tenancy. If the relationship breaks up, the couple has to sell jointly or one person has to buy the other one out. And if one partner does want to stay, that person needs to qualify for a new mortgage.

### Tenants in Common

This is another way that a property can be owned by two or more individuals. With Tenants in Common, there is no limit to the number of people who can hold the title to one piece of real estate. The ownership can be held in equal shares or unequal shares. Upon death, the interest of the deceased co-tenant passes to the co-tenant's heirs or whoever is designated in the person's will. To dissolve a Tenants in Common agreement, one or more tenants can always buy out the other tenants.

The property can be dissolved and the proceeds distributed among the owners.

### **Note: Married People**

When married people purchase a home, they are automatically made Joint Owners with the Right of Survivorship. They can be made Tenants in Common, but this needs to be established. In the U.S., same-sex marriages are only legal in New Hampshire, Massachusetts, Connecticut, Iowa, and Vermont.

### **Mortgages and Joint Ownership**

“You can have a joint tenancy agreement for the title of the home, but still have only one person on the mortgage IF the mortgage company agrees,” says Burda. “I think it would be difficult to get the mortgagee to sign off on that.” Mortgage companies give a mortgage loan based on the applicant's financials. The mortgage is secured by the property. If another name is added and that person isn't on the mortgage, the secured interest is diluted. Burda suggests that the couple get it in writing if that's what they want. “Without a written agreement, it would be difficult to prove. And, where real estate is concerned, all agreements must be in writing. That's a requirement under the Statute of Frauds and that statute is universal in the U.S..”

## **Part 4: Establishing Your Legal Relationship**

Before getting started with your home purchase, it's a good idea to work with a lawyer to create something commonly called a Domestic Partnership Agreement. There are many names for this kind of document, but the content is always the same: this written (not verbal) agreement establishes your property rights and is especially important if you do not have joint ownership. A domestic partnership agreement should address these kinds of questions and concerns in the case of a breakup:

- Does the home have to be sold?
- Can one partner buy out the other?
- Does one partner need to buy out the other immediately?
- If the house can't be sold, should both partners still contribute to the mortgage to maintain their credit?
- Is the person who leaves still responsible for helping to pay the mortgage?
- If the house is sold, but one partner contributed more over the course of ownership, how will the proceeds be divided?

Additionally, you may also want to draw up or change your will in the case of one partner passing away suddenly. According to Burda, "In terms of creating an estate plan, you need a will. Otherwise, the surviving partner gets nothing. You also need a transfer on death deed—an affidavit that the house goes to the other person immediately."

## **Part 5: What If You Are Already Legally Married?**

Unfortunately, you aren't in the clear just because you are a married, same-sex couple living in a state that recognizes that union. "You should still draw up a Domestic Partnership Agreement even if you have a marriage," says Burda. "The Defense of Marriage Act is still in effect. Because the feds don't recognize these unions, you have to think about the tax consequences if the union dissolves. Nobody considers this till it happens." This is especially important if you were married in one state but live in a different state or have a vacation property in a different state.

### **States that Recognize Same-Sex Unions**

In the U.S., same-sex marriages are legal in New Hampshire, Massachusetts, Connecticut, Iowa, and Vermont. Same-sex marriages legally performed in other states are recognized in New York, California, Rhode Island, New Mexico, and Washington D.C.. A more complete listing of state by state

information can be found here:

<http://www.lambdalegal.org/publications/articles/nationwide-status-same-...>

## **Part 6: Finding a Real Estate Attorney and a Real Estate Agent**

When you are looking for a lawyer, make sure to find a true real estate lawyer who specializes in Gay and Lesbian issues. It's a specific subset of the law and worth your while to find someone who specializes in it. Don't just pick someone out of the yellow pages. You need someone who really knows everything. Ask someone who has had a good experience and can recommend the person that they went to.

On the other hand, it is not necessary to get a real estate agent who specializes in Gay and Lesbian clients. Though it might make for a more comfortable experience, it's not essential. Look for the best, most highly-recommended real estate person who truly understands your budget and needs.

## **Part 7: Conclusion**

Purchasing or financing a property is one of the biggest financial decisions that you can make. Though the process can be fraught with stress and worry, it makes sense to go that extra step to protect your finances should things not work out.

Again, this guide is a solid overview of how to approach purchasing or financing property if you are a same-sex couple. It should help you to understand the process and will hopefully help you to ask the right questions. It should not be a substitute for sound legal advice from an actual lawyer. If you do not have a lawyer, we've included some links below that will help you to get help or to find an attorney in your area.

## Additional Resources

<http://www.burdalaw.justia.net>

This is the web page for Joan M. Burda, the attorney that we consulted with for much of the information in this guide.

<http://www.gaylawnet.com/attorneys/ussolc.html>

Gaylawnet.com is a clearinghouse for legal information that concerns the LGBT community. This link can help you to find a lawyer in your area who is familiar with LGBT legal issues.

<http://www.lgbtbar.org/affiliates.html>

This is the homepage of the National LGBT Bar Association. It includes links to various LGBT bar associations organized by region. This is another resource that can assist you in finding a knowledgeable attorney in your area.

<http://www.lambdalegal.org/publications/take-the-power/selecting-an-atto...>

Lambda Legal is a national legal organization dedicated to achieving full equality for gay and lesbian people. This short .pdf guide will help you to ask the right questions when you are looking for an attorney.

<http://www.lambdalegal.org/help/>

Have a legal question? Use this page to locate your regional Lambda Legal help desk and call them with your queries.

<http://www.gaymarriagelawyers.com/>

This is another resource to help locate a lawyer in your area that specializes in LGBT legal issues.

### **Financial Advice:**

<https://www.wellsfargo.com/jump/regional/lgbt>

If you are looking for a financial institution with

roots in the LGBT community, Wells Fargo's relationship dates back to the 80's.

[http://www.advocate.com/Advocate\\_Money\\_Minute/Wealth\\_Matters/](http://www.advocate.com/Advocate_Money_Minute/Wealth_Matters/)

Article on LGBT oriented financial services from the Advocate, the U.S.-based national gay and lesbian newsmagazine.

<http://queercents.com/category/mortgages/>

The mortgage section from Queercents.com, a personal finance blog with a focus on the LGBT community.

### **For other legal help:**

<http://www.glad.org/rights/infoline-contact/>

A legal help information request service from Gay & Lesbian Advocates & Defenders, New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status, and gender identity and expression.

<http://familylaw.mwortmanlaw.com/family-law/same-sex-couple-issues/>

The "same sex couple issues" section of a blog written by an attorney from Missouri who practices family law.

### **Other Home Buying Resources for Same-Sex Couples:**

<http://www.davidtester.com/guide/>

A guide to home buying for gay and lesbian couples.

<http://www.gaylawnet.com/info/owning.html>

An article on home buying for unmarried couples. Much of it applies to same-sex couples.

[http://www.mtgprofessor.com/A%20-%20Purchasing%20a%20House/suppose\\_the\\_r...](http://www.mtgprofessor.com/A%20-%20Purchasing%20a%20House/suppose_the_r...)

An article on purchasing a house with a domestic partner.

[http://www.nflfp.com/Firm\\_News/News2.aspx](http://www.nflfp.com/Firm_News/News2.aspx)

Article on property ownership and same-sex couples.

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