

# WEALTH MANAGEMENT CHALLENGES UNIQUE TO LGBT INDIVIDUALS AND SAME-SEX COUPLES

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**In recent years we have seen great progress in the quest for marriage equality for same-sex couples. But for wealth management purposes, all same-sex couples are still treated as two single people without the same rights and benefits of a heterosexual married couple.**

At the federal level, the antigay federal law titled the Defense of Marriage Act (“DOMA”) limits marriage for federal purposes to the legal union of a heterosexual couple, denying same-sex couples any federal marital rights and responsibilities, including federal income, estate, or gift tax benefits. While the Department of Justice recently (February 2011) announced that it had determined DOMA to be unconstitutional, the law remains in force for now. Expert advice by informed advisors is essential in the estate and financial planning process for same-sex partners and LGBT families.

## **Marriage, Civil Unions and Registered Domestic Partnerships**

There can be tangible benefits for same-sex couples to entering into a formalized relationship, such as state inheritance rights, state estate benefits, parentage presumptions, or health insurance benefits. Equally, if not more, important to many is the emotional significance of marriage or civil union as a public declaration of their family unit.

There are, however, other considerations that might make marriage, civil union, or domestic partnership not right for some couples. Some may not want to formalize their relationship for personal reasons, such as a desire to remain financially separate, or due to particular legal or privacy issues.

For example:

- These forms of recognition usually have property ownership and state tax consequences that may not be optimal for your situation.
- If one of you is an immigrant to the US without permanent legal status, that may be a factor.
- Medicaid eligibility or debts and liabilities held by one partner may be a consideration.

## **Domestic Partnership Agreements**

Regardless of which state you live in, a domestic partnership agreement allows you to put in writing details about your relationship, which can be helpful in negotiating your relationship jointly while you are together or should you split up. For many of us, our intentions regarding our property and our finances don't always fit inside the box...and a domestic partnership agreement can clarify what you both intend so your wishes can be honored.

Working with a qualified wealth manager or financial advisor allows for coordination of your financial affairs as life partners with account registrations coupled with attention to income and gift taxes and each partner's estate plan.

## **Planning for the Security of Your Partner and Children**

Be sure to understand what your 401(k) and pension distribution options will be at the time of your death—they may be more limited than you expect. Due to DOMA, your non-spouse beneficiaries do not fall under the same rules as a spouse. There are different provisions for a non-spousal beneficiary that must be followed in order to avoid substantial taxes and penalties.



Co-parent adoptions and agreements form the basis for ensuring financial arrangements and security for your children.

Social Security only provides retirement benefits to family members and opposite-sex spouses; same-sex partners, even if married, are not recognized for retirement benefits by Social Security.

Life insurance is often a key tool for creating financial security for a loved one, but you should consider other coverage as well. Disability insurance may be important for income replacement in the event of a long-term disability. Long-term care insurance may be highly advisable for the financial protection of the family. Special attention must be paid to medical insurance for same-sex couples and their families. Even if one partner is able to carry the other on his/her medical insurance through work, the costs of the premiums are taxable income. Furthermore, COBRA, the federal health coverage program for departing employees, does not extend to unmarried partners (which, due to DOMA, encompass all same-sex marriages).

### Steps to Building a Solid Estate Plan

LGBT individuals, couples, and their families have a particular incentive to plan their estate matters deliberately to ensure their wealth is transferred according to their wishes and not according to the default rules that often don't recognize our relationships and families. Strategies to avoid having one's will contested can be particularly important for LGBT individuals.

Heterosexual married couples have a considerable federal estate tax advantage when it comes to gifts and bequests to each other, which currently does not apply to same-sex couples due to DOMA. This disadvantage, coupled with the LGBT community's tradition of charitable giving makes estate planning with a gay knowledgeable professional particularly important.

Basic estate planning documents for anyone include the following:

- A *will* controls the distribution of your property at death—but it can be challenged in court.
- A *power of attorney* allows someone else to handle your financial affairs, which helps avoid a court-ordered conservatorship.
- A *health care power of attorney* designates someone to make medical decisions on your behalf should you become unable to do so yourself.
- *Transfer on Death* (TOD) and *Paid on Death* (POD) registrations for brokerage and bank accounts allow named beneficiaries to inherit the account outside of your will.
- A *living will* states your wishes about artificial life support, among other things
- A *living trust* allows you to transfer assets privately, outside of probate.