



Estate Planning for the LGBTQ+ Community

Conflicting federal and state laws present financial planning challenges

It has only been since June 17, 2020 that we saw the Supreme Court rule that Title VII's prohibition of employment discrimination based on sex extends to employees discriminated against on the basis of sexual orientation and gender identity.

Unfortunately, while there are certain protections for the LGBTQ+ community at the federal level, there are still many states that have not updated their laws that affect other financial planning challenges for the LGBTQ+ community, including parental rights, health care, housing and financial planning options. Given the conflicting state and federal laws, it's no wonder that financial planning considerations within the LGBTQ+ community are often ignored. Let's explore some of the issues and what can be done.

Married or Not?

This question might sound like a simple one, but it's actually not as simple as it might appear. While it's true that the Supreme Court's 2015 decision in *Obergefell v. Hodges* legalized same-sex marriage, prior to that ruling was a hodgepodge of various state laws that might now mean you're married – and you don't know it.

Did you know that there are some states that automatically converted registered domestic partnerships into legal marriages? What if prior to 2015, you were married in a state that recognized same-sex marriage, but split up without actually

dissolving your marriage? The point is, it's important to confirm.

You probably know that assets usually flow directly to your spouse upon passing. But did you also know about Social Security, health insurance, and retirement benefits of being married?

- If you are married, you are guaranteed Social Security spousal and survivor benefits.
- If you are married, spouses may be covered by their spouse's employer's health plan and qualify for additional health benefits.
- If you are married, then retirement savings accounts (like 401(k)s) require that spouse be the beneficiary unless they have given written consent to designate someone else.
- If you are married, you can make unlimited gifts to one another whereas if you are not, gifts of more than \$15,000 annually to non-spouses will count against the gift giver's gift exclusion.
- If you are married, you can leave an unlimited amount to your spouse without federal estate taxes coming into play.

Organizing Your Estate Planning Documents

Now, while there are certain rules protecting the rights of spouses, you should still ensure that your wishes are carried out. And to do that, make sure you put in place certain documents, such as:

Wills: One of the most important documents you can have is a will, as it outlines exactly how you wish to distribute your assets. Without a will, your state will likely direct the distribution of your assets to a relative, which can be problematic.

Medical Directives: Much like a will, if you are not legally married, in case of a medical emergency, you might be treated as a total stranger whereas a relative might be treated as a decision-maker. You can see how this might also be problematic, especially if family relations are already strained. It's a good idea to have these important documents – health care proxy, medical power of attorney and a living will – in a safe place. And you might consider travelling with these important documents too.

Power of attorney for financial decisions: No different from a will or medical directives – if you don't have, then your significant other will likely have zero say over your financial decisions in case of an emergency.

Those are just a few of the legal documents that everyone should have, but there are other things you should confirm too, such as ensuring your beneficiaries are properly documented on your assets.

While simple estate planning documents are important for everyone, same-sex couples often have unique situations that require special planning. Further, as tempting as it might be, it's generally a good idea to avoid the estate planning services you see online, as most of those forms don't take into account the challenges facing same-sex couples.