

Financial Planning Checklist for Same-Sex Couples

Making sense of the frustratingly complicated financial situations gay and lesbian couples face

By Susan Johnston

As North Carolina citizens vote on same-sex unions this week and Washington state begins recognizing same-sex marriage next month, gay and lesbian couples throughout the country find themselves in frustratingly complicated financial situations that require much more careful planning.

"Oftentimes they have to seek more planning assistance, more legal assistance, and more tax assistance than many other couples," says Shawn Koch, a Portland, Ore.-based lawyer turned fee-only certified financial planner. "There's frustration because 'sometimes I'm treated as married and sometimes I'm not.'"

Without recognition of marriage at the federal level and in many states, same-sex couples must cobble together their own financial and legal protections. Not doing so can leave assets vulnerable in the event of a break-up or death.

Lee Bucyk learned this the hard way after a property dispute with her ex. When Bucyk and her then-partner moved from Illinois to Arizona, they had a joint property agreement for homes they owned in both states. The agreement had been signed and notarized in Illinois, and they planned to have an attorney create a new agreement for Arizona.

But when the couple split soon after the move, Bucyk sued her ex and wound up getting less than the original agreement because it wasn't updated in Arizona. Had they been legally married, Bucyk believes she would have gotten half since Arizona is a community property state.

"When you're going through a cross-country move, those things get set aside," she says. "In the end, though, [not having an agreement in Arizona] cost me a lot of money."

Here's a look at the financial issues same-sex couples should consider, many of which also apply to other unmarried couples comingling money.

• Property issues:

Bucyk's story illustrates the importance of airtight legal agreements. Property titling is especially tricky for unmarried couples, because while heterosexual married couples have unlimited asset transfers between husband and wife, unmarried couples trigger gift tax for transfers above \$13,000. For instance, if one partner owns property and adds the other person to the deed, it creates a taxable gift of half the house's value, explains Jean A. Dorrell, certified estate planner and founder of the Summerfield, Fla.-based Senior Financial Security, Inc.

However, most property owners in a committed, cohabitating relationship would want the other partner to have property rights if the owner died. Koch, who advises unmarried couples on financial planning issues through Koch Financial Partners, says some couples avoid the gift tax issue by gifting \$13,000 worth of equity in the home each year until they reach 50/50 equity. Thirteen states recognize transfer on death for real estate, according to Dorrell, so some couples name the other partner as a beneficiary or use a real estate trust if transfer on death is not recognized in that state. Titling property as joint tenants is another option, but depending on the

specifics, that can have implications for taxes or force the property into probate court when the owner dies.



• Insurance:

Some employers now offer health insurance to domestic partners, but those benefits create imputed income, which is taxed at the employee's rate (benefits for spouses are not taxed.) The additional tax is especially burdensome to couples with disparate incomes. "If you have two women, where one stays home with children and one works, the one who has zero income would file her own tax return at a zero rate," explains Shelly Goch, a New City City-based CPA and partner in the accounting firm Adeptus Partners, LLC. "But the benefit is taxed at the employee's tax rate." (The income-earning partner in this scenario would also be unable to set up a Roth IRA for her nonworking partner because IRAs fall under federal law.)

However, some employers are starting to "gross up" employees' salaries to offset the imputed income tax. As of March



2012, the Human Rights Campaign Foundation knew of 36 for-profit employers with a policy of grossing up. Last June, Cambridge, Mass., became the first municipality to gross up city employees' benefits.

• Taxes:

Each taxpayer in an unmarried couple can take only half the exemption of a married couple. For some couples, this makes little difference in their tax liability, but for others, the difference can be substantial. For instance, if one person is working while the other raises children or finishes school, that couple will often owe higher taxes than a couple who is married, filing jointly, according to Goch. She adds that same-sex couples also miss out on deductions such as alimony.

To further complicate matters, some states require registered domestic partners to split their income for state tax purposes, while the federal government requires those taxpayers to file separately. Running both sets of numbers requires more time and often more money for a financial professional, says Koch.

• Estate planning:

The property issues mentioned above are only one aspect of estate planning. Making sure a partner is named as the primary beneficiary on life insurance or retirement accounts is especially important for same-sex couples, because without beneficiary forms, assets will pass to a parent or other relative rather than the partner. Beneficiary forms are more powerful than a will or trust, adds Goch.

Unmarried partners also run into issues with inheriting retirement accounts. "In a traditional marriage, your spouse can do a 401(k) rollover and it's not taxable," says Goch. "But when you're in a same-sex partnership, it's going to force a lump-sum distribution that's all taxable if it goes through your trust." Partners who are

named as beneficiary on a retirement account would have to begin taking distributions immediately, whereas a widowed spouse has more flexibility.

"Every couple is unique because some might have families that are very unfriendly towards the relationship so they know they need to protect themselves," says Koch. "Others have very supportive families. Either way, you're best served by getting very savvy on these issues or consulting experts."

