

Special Planning Considerations for Unmarried Gay and Lesbian Couples

What legal issues do you face?

Because legal marriage is currently not available to gay and lesbian couples in most states, you and your partner may not be able to marry in your state of residence, even if you would like to. As an unmarried couple, you lack many of the protections and benefits the law extends to married couples, so you must create your own safeguards and execute certain legal documents to protect your rights.

Tip: Some states currently authorize same-sex marriages between residents. Partners in these relationships gain all the benefits and protections of marriage that these states confer (e.g., inheritance, property ownership rights). Other states provide the equivalent of state-level spousal rights to same-sex couples within the state through civil unions or domestic partnerships. It's extremely important to understand what protections you have in the state in which you live.

Caution: State laws vary widely, and some of the following issues may not apply to your situation. You'll need to discuss your concerns with an advisor or attorney who is experienced with state and federal laws that affect same-sex couples.

Domestic partner agreement supplemented with other legal documents

You and your partner can prepare a domestic partner agreement supplemented by other legal documents. A domestic partner agreement is a legal contract that primarily addresses the sharing of income, expenses, and property. It can also delegate responsibility for nonfinancial matters.

Caution: Because a domestic partner agreement primarily covers the sharing of income, expenses, and property, it doesn't address the many other areas requiring protection, and these agreements are not legally binding in all states. In order to provide more complete legal coverage, you should supplement it with the following documents:

- Durable power of attorney for health care (DPAHC), also called a health-care proxy
- Durable power of attorney for finances
- Will or living trust
- Parental rights documents
- Living will, may also be called a Declaration of Desires

Caution: Seek the help of an attorney in your state when drafting these documents, and make sure you periodically review and update them as your circumstances change.

Domestic partnership registration

A domestic partnership registration (sometimes called a living together agreement or a cohabitation agreement) provides official recognition of your union. A growing number of cities allow domestic partner registrations, and a few states have begun to recognize them. They generally require you and your partner to sign an affidavit declaring your relationship and to pay a small fee. Be sure to examine your rights and responsibilities and consult an attorney or advisor before registering.

General financial planning considerations

Need to plan for greater financial resources

In addition to the usual financial planning challenges all couples encounter, if you lack familial or community support you may face some additional concerns. If you're estranged from your families, lack children, or have no community to turn to in times of need, you may want to plan for a higher level of financial resources to see you through a crisis or an extended period of disability.

In case of disability

A disability insurance policy replaces a portion of your income if you're unable to work due to a serious medical condition. The percentage it replaces varies from policy to policy. In estimating how much income you would need to replace, consider the other sources of support you could rely on if you become disabled. If you're not sure where you'd turn in a crisis, you may want to purchase disability insurance that replaces a higher-than-average proportion of income to pay for the support you may need, although the tradeoff may be a longer waiting period before benefits start.

Health insurance considerations

Domestic partner benefits are taxable

A growing number of employers now offer domestic partner benefits to the unmarried partners of their employees. For many people, the most important benefit is health insurance. Before your partner signs up, there is one big drawback to consider: The value of the benefits your employer offers to your partner, unlike those offered to a spouse, is generally taxable on the federal level (unless your partner qualifies as your dependent for federal income tax purposes), but not always on the state level. It shows up as income on your pay stub and also on your year-end W-2 Form.

Comparing costs of coverage under a domestic partner benefits plan to your own employer's plan

If you have access to health insurance through your own employer and you can obtain coverage through your partner's domestic partner benefits plan, which is the better deal? In this case, compare the annual costs of each plan before selecting coverage. You may find that the additional tax on the domestic partner coverage prompts you to select your own employer's plan.

Estate planning considerations

Don't take anything for granted

Estate planning is an important activity for any couple. As a partner in a same-sex couple, you may have even more reason than a partner in an opposite-sex couple has to be concerned about whether your

wishes will be respected after death. Even good people act strangely and unpredictably when confronted with death. Your family members may experience added ambivalence or even hostility about your sexual orientation and your same-sex relationship. Without the proper protections, your surviving partner could be ordered out of a house you share, your next of kin could dispose of your estate in a way you would not approve, and your family might not honor wishes they had agreed to before your death. Don't take anything for granted. Get your estate plan in order now. You owe it to yourself and your partner to ensure that your estate is transferred according to your wishes.

Planning for illness and incapacity

You should also take the time now to plan for possible illness or incapacity. If you are seriously ill or injured and can't express your wishes or make your own medical decisions, who would you want to represent you? Medical personnel often look to immediate family members for authority to act. Your unmarried partner may be forced to stand on the sidelines while medical decisions are made. If you want your partner to represent you in case of serious illness or incapacity, you should prepare a DPAHC (also called a health-care proxy) and a living will.

Transferring your estate

There are four ways in which you can transfer your estate to your surviving partner:

- Automatically, by holding property in joint tenancy with rights of survivorship (JTWROS). This can apply to any property with a title, such as real estate, vehicles, bank accounts, stocks and bonds, and mutual funds.
- By designating your partner as the beneficiary of your life insurance policy and/or retirement account.
- Through the provisions of a living trust.
- Through a will using the probate laws of your state. For more information, refer to Probate.

Any property that isn't transferred through joint ownership, a beneficiary designation, or a trust passes through probate. The probate court handles estates that have wills, as well as those without wills that pass according to the intestacy laws of your state.

Avoiding probate

Although probate courts today are more apt to honor bequests from one gay person to another, it wasn't that long ago that there was a risk that they would be invalidated on the grounds of "undue influence." If you're concerned about the court system having jurisdiction over the distribution of your assets, you might want to keep as much of your estate as possible out of probate. You can do this by using joint ownerships, beneficiary designations, and trusts to transfer assets. Another reason to avoid probate is that the proceedings are a matter of public record, open to anyone who inquires.

Will challenges

Any assets that cannot be transferred through joint ownership, a beneficiary designation, or a trust should be covered by a will. Otherwise, they will pass to your next of kin according to the intestacy laws of your state. Probate courts generally respect wishes outlined in a properly executed will. A successful will challenge is hard to mount. Someone contesting your will must prove that it was executed incorrectly, that you were unduly influenced or not of sound mind when you made it, or that it was the result of fraud. However, since your estate is already in court when it enters probate, the threat of a will challenge from a hostile or disapproving family member can cause a lot of anxiety for your loved ones.

Reducing the risk of a will challenge

If you are seriously concerned about a will challenge, pass as much of your estate through the probate-avoiding mechanisms discussed above--JTWROS, beneficiary designations, and living trusts. For your remaining assets, you can take the following steps to reduce the risk of a will challenge:

- Mention every member of your family in your will. If you're disinheriting someone, state the reason. However, this must be carefully worded to prevent a challenge or a defamation suit. A will challenge is most likely to come from a disinherited family member.
- Add an "in terrorem" ("no contest") provision to your will. This means that anyone who contests your will gets nothing at all.
- If you have a debilitating illness, prepare your will early to ensure that there's no question that you're "of sound mind and body."
- Make sure that your will is executed properly. If your surviving partner is inheriting the bulk of your estate, he or she should not be present when you execute the will. This prevents a disgruntled family member from later having grounds to claim undue influence.
- Share your plans with your family in advance. Avoid having your death be the occasion on which you "come out" to them. The shock of your death combined with the surprise of learning about your lifestyle can be doubly difficult for unsuspecting family members to handle. Communication now can prevent problems in the future when you're no longer here to explain your wishes for the disposition of your estate. If you can't come out to key family members, try to find at least one member in whom you can confide and who will verify your wishes if your will is contested.

Support your estate plans with a domestic partner agreement

A domestic partner agreement can support your estate planning documents, whether they are joint ownership property titles, beneficiary designations, trusts, or a will. By referencing these documents and restating your intentions for the distribution of your estate, you clarify your wishes in case they're questioned.

Parental rights considerations

In general

As an unmarried parent, you must take extra legal precautions to protect your rights. Parenting rights that are automatically conferred on married couples don't necessarily apply to unmarried parents. For example, depending on your state's laws, you may not be allowed to authorize emergency medical treatment for your child or stepchild if you are a nonlegally recognized parent. You may not be automatically granted custody or visitation rights if your relationship with your partner ends and you are a nonlegally recognized parent. You may not automatically become the legal guardian of your child or stepchild if your partner dies and you are a nonlegally recognized parent, no matter how long you've raised the child.

Child custody concerns

Although children born to, or adopted by, heterosexual couples are generally recognized as the legal children of both partners, the same is not necessarily true of children born to, or adopted by, same-sex couples. Consequently, securing legal ties to your children is often a major concern, and you'll want to seek legal advice from an attorney experienced with family law in your state.

Key legal documents

You can help protect your parenting rights with key legal documents. These include your child's birth certificate, a paternity statement, a co-parenting agreement, a nomination of guardianship clause in a will, and a form authorizing consent to medical treatment. Bolster these legal documents by discussing your arrangements with the teachers, medical-care workers, recreation leaders, and others in your child's day-to-day life.

Tax considerations

In general

In many ways, the federal tax code treats you, as an unmarried couple, differently from a married couple. In addition, some other situations may be of special interest to you.

Claiming your partner as a dependent for the personal exemption

Although it's possible to claim your partner as a dependent for purposes of the personal exemption, this is generally difficult to do because in addition to other requirements, he or she must earn less than the personal exemption amount (\$3,950 for 2014 and \$3,900 for 2013).

Also, this strategy penalizes your partner. By claiming your partner as a dependent, he or she is then ineligible to claim a personal exemption when filing his or her tax return. Further, if your partner claims the standard deduction in 2014, it may not exceed the greater of \$1,000 or his or her actual earnings plus \$350.

Qualifying as head of household

The head of household filing status can be advantageous for those who qualify. However, you may find it difficult to qualify, even if you can claim your partner as a dependent for purposes of the personal exemption. Heads of household must generally be related to their dependents by blood, marriage, or adoption. The qualifications are fairly strict, and because of the beneficial tax treatment, the IRS monitors this closely.

Domestic partner health benefits are taxable

The value of health insurance your employer provides to your partner under a domestic partner benefit plan is taxable to you as income on the federal level (unless your partner qualifies as your dependent for federal income tax purposes), but not always on the state level. In contrast, benefits provided to a spouse are not taxable.

Deducting your partner's medical expenses

You cannot claim deductions for your partner's medical expenses unless he or she qualifies as your dependent.



T. Michael Martin CRPC®
Principal, Financial Adviser

Marius Wealth Management, LLC
200 Park Avenue, Suite 1700
New York, NY 10166
T: 646.423.7817
mmartin@mariuswealth.com
www.mariuswealth.com

A Registered Investment Adviser

IMPORTANT DISCLOSURES

Marius Wealth Management, LLC (MWM) is a Registered Investment Adviser. This material has been prepared by Broadridge Investor Communication Services, Inc. (BICS) Copyright 2014. It is for informational and educational purposes only and is not intended to be a solicitation or offer by BICS or MWM to buy or sell any specific security product, service, or investment strategy. BICS does not provide investment advice. Investments involve risk and unless otherwise stated, are not guaranteed.

The accuracy and completeness of this information is not guaranteed and is subject to change, and is based on current publicly available information from sources believed to be reliable. Since each investor's situation is unique, you need to review your specific investment objectives, risk tolerance and liquidity needs with your qualified financial professional, tax professional, or attorney before implementing any strategy or recommendation discussed herein.

Also, since MWM and BICS do not provide tax or legal advice, investors need to consult with their own tax and legal advisors before taking any action that may have tax or legal consequences. This material is not intended or written to be used, and cannot be used, by a taxpayer for the purpose of avoiding penalties that may be imposed by law.

Marius Wealth Management, LLC is a registered federal trademark, and any misuse of trademarks on this website, logo, or any other content on this website, except as provided herein, is strictly prohibited.