



## Financial Planning for Same-Sex Couples

When the U.S. Supreme Court made same-sex marriage a constitutional right in 2015, it helped to dramatically level a financial planning playing field that previously had been tilted heavily in favor of married couples compared to civil unions. Suddenly a wealth of planning opportunities opened up to the LGBTQ+ community—from joint income tax filing benefits to a host of spousal benefits available through Social Security and employer pensions. These new financial opportunities even extend into healthcare planning and estate planning strategies.

Same-sex couples finally have an opportunity to enjoy fair and equal treatment under the law—at least from a financial planning perspective.

### Unmarried and happy

The simple truth is that financial benefits should never be a driving force behind deciding whether or not to get married. Plenty of committed, loving couples—both traditional and same-sex—choose to remain ‘happily unmarried’ for decades. But specifically from an estate planning perspective, there are some critically important steps that unmarried couples need to take to avoid unexpected obstacles and potential pitfalls.

Keep in mind, however, that the following considerations are general in nature. Some states recognize unmarried couples who live together for a certain period of time and combine their assets as common law partners and afford these couples with similar rights to married couples. Other states, however, do not. So, it’s important to consult with both your attorney as well as your BLBB advisor to determine your particular circumstances and plan accordingly.

Four especially important estate planning challenges that every unmarried couple needs to understand and thoughtfully address are:

- 1. Lack of a spousal estate tax exemption.** Thanks to the ‘marital exemption,’ surviving spouses don’t have to pay estate taxes when assets transfer to them upon their spouse’s death. But unmarried couples don’t receive this benefit. Estate taxes will be due as soon as either partner dies, so more thoughtful planning may be needed. While the lifetime estate tax exemption (\$11.7 million for 2021) may not currently impact many individuals, that exemption amount may be reduced by 50% or more starting in 2025.<sup>1</sup>

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- 2. Non-married spouses are subject to gift taxes.** Married couples have the flexibility to transfer unlimited assets back and forth to each other to help equalize their individual estates for planning purposes. Unmarried couples don't enjoy this flexibility. They either have to keep their transfers below the annual gift exclusion limit (\$15,000 in 2021) or use part of their lifetime gift and estate tax exemption.<sup>2</sup>
- 3. Greater potential to be disinherited.** Unless a married spouse has waived their rights to assets through a pre- or post-nuptial agreement, they are entitled to a *right of election*—meaning they are entitled to a certain share of their spouses assets. This isn't the case with unmarried couples, where partners have no legal right to your assets if someone else is designated as the beneficiary.<sup>3</sup>
- 4. Estate planning documents are especially important.** Without a properly executed will or a trust in place when you die, the courts will generally favor your next of kin as beneficiary of your assets—not your partner. Keep in mind that unmarried couples (especially members of the LGBTQ+ community) face a greater potential for estate-related litigation. Parents or siblings may be estranged, and they may have resentment or enmity towards your partner.

### Who will manage your affairs and act in your interest if you're incapacitated?

As your legal next of kin, your spouse is automatically granted power to make healthcare decisions on your behalf if you're incapacitated. They also have the ability to access your accounts to manage your financial affairs. Without proper documentation, however, your partner isn't afforded those same rights. In fact, your parent (or siblings if your parents are deceased) will likely be granted power to make these decisions, and your partner may have no say in the matter.

Along with your will and any trust you may have established, there are two specific legal documents that every partner in an unmarried couple should make sure to complete:

An **advanced healthcare directive** (or health care proxy) appoints an individual to make all healthcare decisions on your behalf if you become incapacitated. The document can explicitly describe your wishes and what powers you choose to confer on your representative.

Similarly, a **durable power of attorney** grants a someone the authority to access your accounts and handle your financial affairs (e.g., paying bills, filing taxes, etc.) if you're incapacitated. You and your partner will both need powers of attorney if you maintain separate accounts.

### Eldercare and long-term care

For unmarried LGBTQ+ seniors, the increased risk of family estrangement means there's a greater chance of ending up on your own later in life. Not only does this possibility warrant exploring additional strategies for bolstering your retirement savings, it should also motivate you to plan more thoughtfully for care needs—from possible long-term care insurance options to senior services and resources that can offer support later in life.

The LGBT Elder Initiative website (<https://lgbtellderinitiative.org/>) can be a great place to learn more about everything from housing to home health care, social services to advocacy groups. Contact your BLBB advisor today at 215-643-9100 to help you put financial structures in place to prepare you and your partner for the costs of future care.

<sup>1</sup> "Gift and estate tax planning in 2021," Baker Tilly, January 2021

<sup>2</sup> "Estate and Gift Taxes 2020-2021: Here's What You Need to Know," Wall Street Journal, April 2021

<sup>3</sup> Uniform Probate Code (Amended and Revised in 2019), March 2021