

Planning Benefits for Domestic Partners

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The legal wrangling over gay marriage in California in recent weeks has gotten a lot of attention for potentially expanding or limiting the rights of gay couples.

But aside from the cultural benefits that are at stake and the precedent that will be set by the ultimate decision, relatively few stand to receive any financial benefits. Of the more than six million unmarried-partner households, just under 780,000 are gay, according to the Census Bureau. Of those, only 3% are in Massachusetts - the sole state where gay marriage is legal - and 14% are in California, where there's a good potential it will be legal soon.

"We kinda hear this stuff on the news and think these people are getting the same rights as married people, but that's so not the case," says Harlan Levinson, a Los Angeles-based accountant who warns that gay married couples can face a higher tax bill today than if they had remained single. "These people still need to have a living will, power of attorney and to sit down with an attorney or financial planner."

By and large, gay couples - and domestic partners in general - need to protect themselves proactively when it comes to their fiscal health. At the very least, a will, power of attorney and medical power of attorney should be in place, says Loreine Smith, a financial planner with Dallas-based firm Life Plan Strategies.

She also suggests couples make sure assets are titled properly and that arrangements are made for medical issues, retirement, child custody and estate planning. "It becomes very important in case one pre-deceases the other or in case they split up," says Smith. "If it's after the fact, there isn't a whole lot they can do."

Some tips on protecting yourself, regardless of how things play out in court and the legislative halls:

Health Care

More employers have begun extending benefits to domestic partners, but certainly not all. A 2007 Hewitt Associates survey found that 54% of firms offer coverage for domestic partners but only 32% offered benefits to both same- and opposite-sex couples.

If that is not an option, domestic partners should craft legal documents that designate a non-spouse beneficiary.

Partners should also seek out long-term care insurance and government benefits, says Ian Weinberg, a financial planner with Long Island-based Family Wealth & Pension Management. If one person does not have additional coverage, he or she can potentially tap into Medicare or Medicaid and supplement that plan with personal income.

Weinberg also warns against owning a home as joint tenants, because it allows the government to lay claims to the asset if either party is ill and needs government benefits.

"You have to segment out the emotional aspect of it versus the practical aspect," he says. "You want to say, 'We own this home in the Hamptons together; we own this home in the city together,' but technically it's not a good idea to have it set up this way."

Taxes

Even when gay marriage is a state-offered option, it packs a punch with taxes as long as the commitment is not recognized at the federal level.

"They're going to get hammered," says Joan Zawaski, tax director at San Francisco-based accounting firm A. L. Nella & Co., which filed about 60 returns for gay married couples last season.

Costs can be nominal or extreme, depending on the couple's financial position, but it's an important factor to consider. Those with large estates of \$2 million or more have to consider hefty estate taxes that come with passing along assets to a non-spouse. Sharing more than \$12,000 per year with a non-spouse will also face gift taxes.

For income tax, A.L. Nella found that gay married couples who both earned decent salaries posted higher costs than those with one primary earner. It's also more expensive to have the complicated returns prepared.

Estate Planning

Avoiding a will can be even more dangerous for domestic couples, since the partners don't have the same implicit rights as married couples.

"A lot of people don't like to think about wills," says Zawaski. "They don't like to think about the fact that they're going to die, but it's not fair to your partner or your children, if you have any."

Setting up a living trust with your partner as the beneficiary can ensure that assets will get distributed as intended in case of death. Creating a life-insurance policy in the partner's name can also keep some cash out of the taxable estate, Zawaski adds.

It's important to make sure documents are updated as situations and assets change over time. Having accurate legal documents limits the possibility that unsupportive family members will intrude on your last wishes. Levinson says brutal encounters can occur in court and otherwise if last wishes aren't made official.

"If there's intestacy, there could be a real hassle to disentangle this," he says. "When close relatives are not supportive off the relationship, it can be pretty ugly."

Tracking Down Experts

Partners should find tax, legal and estate-planning experts who have experience with their situation to make sure all aspects are given the proper consideration.

"All of these things have to be balanced very delicately because they all affect each other," says Weinberg.

Getting a referral from a trusted network of people can better ensure that the lawyer or planner is sympathetic and experienced with the situation.

It can be a long and frustrating process to hunt down professionals, pay the extra costs, pore through the paperwork, update information and make tough financial and personal decisions. However, its importance can't be overstated, especially for those with large assets or complicated situations that will require a roadmap in case of emergency or death.

"It's a pain in the neck," says Zawaski. "There are lawyers' fees to draw it up; you have to retitle all your assets. But once it's done, it's done."

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