5 Estate Considerations for the LGBTQ+ Community

GLOBE WEALTH MANAGEMENT

If you're a member of the LGBTQ+ community, your financial and estate needs may present different challenges from other married and partnered couples. We celebrated when the 2015 Obergefell v. Hodges Supreme Court decision made LGBTQ+ marriage legal and paved the way for many LGBTQ+ couples and families to have their unions protected at a federal level. However, these couples may face particularly complicated issues when it comes to establishing a workable estate strategy. Let's take a look at some considerations you should keep in mind.

Choosing to Say "I do" or "I don't"

Getting married is one of the biggest commitments that you can make during your lifetime. While many married people end up living happily ever after, over half of marriages end in divorce. Marriage isn't the right choice for everyone, or for every partnership. The Pew Research Center confirms that 45% of Americans say that the make-up of a partnership or a family doesn't matter, which means there's less societal pressure to cement a partnership with marriage.[1]

However, there are benefits to getting married that extend beyond celebrating your commitment. The unlimited marital deduction allows married couples to make unlimited interspousal transfers of property without incurring a tax, either during their lifetimes or after one of their deaths. It's important to note as well that the unlimited marital deduction only applies to a spouse who is also a U.S. citizen.[2,3]

Keep in mind that this article is for informational purposes only and is not a replacement for real-life advice. So make sure to consult your tax, legal, and accounting professionals before modifying your estate or tax strategy.

Tying up Loose Ends

Do you have any open issues from previous partnerships that need to be resolved? For example, couples who married in states where LGBTQ+ marriage was legal and then moved to states that didn't recognize their unions may be shocked to learn that those marriages are still valid.

Further complications arise when couples discover that the states they resided in converted their marriages to either a civil union or domestic partnership. If you and a previous spouse/partner have separated, but haven't officially dissolved your union, this may cause additional challenges with your current spouse and family. Unresolved issues may inadvertently cause problems when you are

developing an estate strategy.[3] Tying up these loose ends may also include simpler tasks, like checking the beneficiaries of your estate and insurance policies.[3]

Asset Transition

A will is a basic building block for creating an estate strategy, and the same is true for LGBTQ+ couples. Although a will does have limitations, it is the bare minimum needed to facilitate a smooth transition of assets. This becomes even more vital if you are in a domestic partnership, civil union, or otherwise want to leave assets to a non-marital partner.[3]

To ensure your wishes are respected in the event that your will is questioned, you may want to consider adding a no-contest clause. A no-contest clause is a clear statement that explains the wishes of the deceased and their reasons for setting up their estate in the manner that they did. For example, "Jane Doe chooses to leave the bulk of her estate to [person and relationship] because [reason]." While this won't completely prevent someone contesting your will, it does provide evidence to support your claims. It's also important to keep records of any previous estate documentation, as it may also help bolster a probate case.[3]

A legal professional may be able to provide more insight if you have questions about what estate documents are appropriate for your situation.

Family Matters

One challenge is the care and custody of minor children. Your surviving partner may have to deal with unexpected conflicts, such as family members contesting a will or filing for legal custody of your children.[3]

At minimum, a basic will is needed to establish guardianship for your children. Without a will, guardianship of minor children will be left up to the courts to decide, and even if there is a surviving spouse, the court may determine that it's in a child's best interests to be placed with another family member. If one of you is the biological parent, then it's important to consider having the non-biological parent file for legal adoption. Establishing the surviving spouse as a legal parent may also help smooth any asset transitions from parent to child.[3]

Handling End-of-Life Care

For LGBTQ+ couples, handling your end-of-life issues may be very important, especially if you aren't married. Making decisions for a spouse or partner in a time of need can be difficult and complicated, even more so for unmarried couples, where the spouse or partner may not automatically be the legally recognized decision-maker. Documenting your preferences for care may make a huge difference. A will is a great starting point but is by no means the only documentation that may help ensure that your end-of-life wishes are respected.[3]

Because estate strategy is a tricky topic, working with professionals may be the best way to ensure that your legacy is handled the way you want it to be. Your financial professional may be a great resource as you start to explore your options for your partner and your family.

There are several types of documents that may help with your estate strategy:

- **Durable Financial Power of Attorney:** A durable financial power of attorney designates someone (your spouse or partner) to make financial decisions on your behalf should you be unable to do so.

- **Health Care Power of Attorney (or Health Care Proxy):** Whether you are in a domestic partnership, married, or unmarried, a health care power of attorney is used to designate your partner or spouse as being able to make medical decisions on your behalf.

- **HIPAA Privacy Authorization Form:** This form allows doctors and other medical staff to communicate with your partner about your medical condition. Your power of attorney and/or trustee will also need this information as proof of your medical condition.

- **Health Care Directive:** This outlines what types of health care measures you would like if you are unable to speak for yourself.[3]

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Footnotes, Sources, and Disclosures:

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Sources:

1. PewResearch.org, April 10, 2020
2. IRS.gov, March 3, 2020
3. WealthEnhancement.com, June 2, 2020

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