WEALTH MANAGEMENT

Navigating Wealth and Estate Planning for LGBTQ+ Couples

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WEALTH PLANNING

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Alan Wolberg | Managing Director, Financial Planner

Nearly a decade after Obergefell v. Hodges made same-sex marriage legal across the United States[1], LGBTQ+ couples continue to face unique twists in addition to the standard legal and economic challenges associated with wealth, estate, and family planning. This is particularly true for those who choose to remain unmarried, and for those raising or looking to raise children. Understanding the complexities of each choice as a couple is critical to a financially secure future.

Impact of Marriage - Benefits and Drawbacks

A little over 50% of the approximately 1.2 million LGBTQ+ couples living together in the United States are married[2]. Regardless of the gender or sexual orientation of those involved, marriage offers several financial, tax, and legal benefits to all couples.

- **Social Security Survivor Benefits.** A deceased spouse's social security benefits may be paid to the surviving spouse.
- **Retirement Accounts.** Married individuals can utilize spousal IRA contribution rules, which positively impact IRA contributions and provide beneficial rollover rules for the surviving spouse.
- **Gain from the Sale of a Home.** Up to $250,000 of gain from the sale of a primary residence is excluded from taxable income for individuals, doubling to $500,000 for married couples.
- **Gift and Estate Taxes.** Transfers between spouses can qualify for a 100% gift or estate tax marital deduction. Married couples can also combine their annual exclusion gifts and lifetime exemption amounts and inherit the unused gift and estate tax exemption amount of a deceased spouse.
- **Titling of Assets.** For married couples, joint accounts are considered equally owned regardless of contribution.

However, marriage can also present couples with drawbacks:

- **Income Tax Marriage Penalty.** In 2024, single individuals reach the highest marginal federal income tax rate on income over $609,351, while married couples hit the highest rate on combined income over $731,201, less than $150k more than the single income of an individual taxpayer.
- **Debts.** State laws vary, but marriage often leads to debt consolidation, legally subjecting one spouse to the debt impact of the other.
- **Tax Status of Trusts.** Marrying after establishing a trust for your partner can create unwanted consequences. This is particularly important for those LGBTQ+ couples who set up trusts for their partners prior to Obergefell[3].

Estate Planning for Unmarried Couples

While approximately 10% of cohabitating heterosexual couples remain unmarried, nearly 50% of LGBTQ+ couples remain so[4]. Unmarried life partners, or those in civil unions or domestic partnerships, are not recognized as married under federal law. For those LGBTQ+ couples who choose to remain unmarried, understanding the financial and legal implications is crucial.

- **House Purchases.** If one partner purchases a home and titles it in both names, it may be considered a taxable gift, requiring a federal gift tax return and potential use of part of the lifetime gifting exemption.

1. Obergefell v. Hodges, 576 U.S. 644 (2015)
2. Williams Institute, "The Economic Impact of Marriage Equality five years after Obergefell v. Hodges".
3. Obergefell v. Hodges, 576 U.S. 644 (2015)
4. Zachary Scherer, "Key Demographic and Economic Characteristics of Same-Sex and Opposite-Sex Couples Differed," United States Census Bureau, November 22, 2022

- **Titling of Assets.** For unmarried couples, the contributing partner of a joint account is the sole owner of 100% of their contribution.
- **Inheritance.** Most state laws provide for default inheritance to a surviving spouse, but an unmarried partner has no such rights. An estate plan, even just a Will, is essential.
- **Incapacity.** Unmarried couples need proper legal documents to allow a non-incapacitated partner to visit and manage financial affairs if one partner becomes incapacitated.

Family Planning

Approximately 20% of LGBTQ+ couples are raising children[1], often through adoption or assisted reproductive technology (ART). For those who have, or plan to have children, the legal and economic impact of wealth planning become even more nuanced.

- **Adoption.** Married LGBTQ+ couples can adopt jointly and be legally recognized as parents. Unmarried couples in some states may not have this right, forcing adoption by a single "parent" and limiting the non-legal parent's ability to make decisions for the child.
- **Establishing Parentage.** Unmarried couples using ART may face hurdles in establishing parentage. Many states presume the woman who gives birth and her husband as legal parents, a presumption not always applicable to LGBTQ+ couples. While some states have updated birth certificates to list "parent 1/parent 2" for more inclusive documentation, many have not. The lack of precedent and documentation can lead to custody battles in the event of a separation.
- **Naming Beneficiaries.** Estate planning documents should clearly define "children" or "descendants" to include adopted children or those conceived through ART. Care must also be taken when naming beneficiaries and using gendered pronouns.

Planning Advice is Key

Comprehensive knowledge of the legal, financial, and estate planning considerations is critical for all couples, but remains especially so for LGBTQ+ couples. Please connect with your Jefferies Wealth Advisor and/or your legal and tax advisors to discuss your personal situation and craft a plan that meets the needs, goals, and objectives of you, your partner, and your family.

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1. Williams Institute, "How Many Same-Sex Couples in the U.S. are Raising Children?", July 2018