



Should We Get Married?

Part 1: A Comprehensive Guide to Estate Planning for LGBTQ+ Couples

By Ben Galloway, CFP®, Senior Financial Advisor Private Wealth Group

Twenty years ago, America's first state-sanctioned same-sex marriage took place in Massachusetts. [New research](#) from the Rand organization suggests that the legalization of same-sex marriage has been broadly positive for gay and straight Americans alike. In fact, in states that legalized same-sex marriage, LGBTQ+ people showed higher levels of health insurance coverage, higher earnings, and greater rates of home ownership ([WSJ](#)).

Of the 1.2 million same-sex couple households in the United States measured by [Census Bureau data](#) in 2021, about 710,000 were married and about 500,000 were unmarried. Not long ago, same-sex couples, transgender folks, and other queer-identifying individuals and couples were not seen as entirely equal under the law, especially with respect to marriage, civil unions, and domestic partnerships. Thus, LGBTQ+ folks required more intricate and nuanced planning.

The historic Supreme Court decision in *Obergefell v. Hodges* to legalize same-sex marriage in all 50 states (and recognize out-of-state marriages) meant that planning for married same-sex and LGBTQ+ couples now looks largely similar to that of any other married couple. Significant progress has been made to level the playing field.

However, issues persist.

There are still many situations, like adoption, second-parent adoption, and recognition of non-married partners, that require careful consideration and urgent attention. So, whether LGBTQ+ or not, married or not, it is imperative you prioritize your tax and estate planning so your wishes are met and executed.

1. Update Outdated Beneficiary Designations

An easy first step in your estate planning is checking your beneficiary designations. Most likely, you set them at your bank accounts, retirement accounts (401(k), 403(b), IRA, Roth IRA), HSA accounts, brokerage accounts, deferred compensation packages, annuities, and life insurance policies.

LGBTQ+ folks are uniquely “disadvantaged” here. The legal proceedings of a divorce often provide a natural point for people to remove ex-partners as beneficiaries and reevaluate their designations. However, prior to the Supreme Court ruling in 2015, breakups for LGBTQ+ couples did not include the built-in reminder to unwind assets and beneficiaries through divorce. Take an inventory of all your accounts and check that designations are set to your wishes.

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2. Create a Will

One of the primary challenges in estate planning for LGBTQ+ individuals is ensuring that your assets are distributed according to your wishes. A will or revocable living trust is the heart of any estate plan. With a will, you can:

- Determine who will inherit your assets.
- Nominate a guardian for your children.
- Arrange for an adult to manage any assets children inherit.
- Name an executor.

Without a will, your state's laws of intestate succession will determine who inherits from you. If you are in a long-term committed relationship or domestic partnership but not legally married, your partner may not automatically inherit your assets without a will in place. Domestic partners are rarely included in the state statutes and will likely be disinherited, regardless of your intentions.

3. Avoid Probate

Privacy cannot be understated or undervalued. Probate is the lengthy and expensive court process of closing your estate after you die. It is all public record, and rarely does it benefit your heirs. For unmarried couples, avoiding probate can be more challenging since they can't take advantage of laws that allow property and investments to pass to spouses outside of probate. Ways to avoid probate:

- Revocable Living Trust
- Transfer-on-Death Accounts
- Beneficiary Designation on Retirement Accounts
- Joint Ownership or Joint Tenancy

4. Name Your Decision-Makers

End-of-life care is a critical component of your estate plan. Preparing these steps in advance will help minimize the acute stress you may be feeling. Health care directives are named individuals who can help execute your wishes if you can't speak for yourself. A financial power of attorney gives another person legal control over your finances. Individuals named as your health care directives and financial power of attorney can – but do not have to – be the same person.

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4. Name Your Decision-Makers (Cont'd)

Health Care Directives: Named individuals who can help execute your wishes if you cannot speak for yourself.

Living Will or Declaration: You state what kind of end-of-life care you want or don't want. This is public record.

Health Care Power of Attorney (POA): You name a person to make health care decisions for you, if necessary. This person can remain out of public record.

HIPAA Privacy Authorization: You name someone with whom doctors and healthcare providers can discuss and disclose your health condition and records, pre- or post-death, to execute your wishes.

Financial Power of Attorney (POA): You name someone to make financial decisions for you, if necessary. This person can remain out of public record.

By designating your partner in your health care directives and as your financial POA, you give them the legal authority to make medical & financial decisions on your behalf. This is especially important if your family is unaware of, or has not fully accepted, your relationship. For same-sex/queer-identifying couples, clarity of your wishes is paramount.

5. Hold Property Titles Appropriately

Real estate is often a significant portfolio position for LGBTQ+ and same-sex couples. How couples hold title to their real estate is particularly important to review:

Joint Tenancy with Right of Survivorship (JTWROS): Avoids probate; immediately passes to the surviving owner/spouse when one owner dies.

Tenancy by the Entirety (TIE): Avoids probate; same rights of ownership as joint tenancy, but can be used only by married couples (or, in some states, by same-sex partners who have registered with the state).

Community Property with Rights of Survivorship: In community property states (AK, AZ, CA, NV, WI), property title held in one spouse's name is immediately transferred to the surviving spouse upon the owner's death.

Tenancy in Common (TIC): Does not avoid probate; property interest is owned individually, often unequally.



Should We Get Married?

Part 2: A Comprehensive Guide to Tax Planning for LGBTQ+ Couples

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The journey to marriage equality has been long and winding, but for LGBTQ+ couples, it has unlocked a new realm of tax considerations. While filing jointly can bring significant financial advantages, it's a path that demands careful navigation. This post pulls back the curtain on the key tax benefits, potential pitfalls, and strategies LGBTQ+ couples should understand. From maximizing credits to mitigating marriage penalties, informed decision-making is the key to optimizing your financial future as a couple considering marriage.

1. File Joint Tax Returns to Benefit from Tax Credits

For most Americans, the tax system looks the same. With the recognition of same-sex marriages, LGBTQ+ couples now have access to many of the same federal tax benefits as opposite-sex married couples. Couples who file a joint tax return often benefit from a larger tax refund or lower tax liability (although not always the case). Joint filers usually receive higher income thresholds for certain tax breaks, allowing them to deduct a substantial amount of income when calculating taxable income.

However, there are still some distinctions to consider. For example, if you or your partner has children from a previous relationship, the tax treatment of those children may differ from biological or adopted children within your current marriage. Additionally, transgender individuals who have undergone a legal name change use that name on all tax documentation; those who have not must use their given name at birth.

One 2010 landmark legal decision – *O'Donnabhain v. Commissioner of Internal Revenue* – has been particularly beneficial for the trans community. The court ruled that hormone treatments and other gender-affirming care qualify for the same medical expense deduction as other medical treatments do. The ruling deemed gender-affirming care as a medical necessity, reversing a previous stance that claimed the care was purely cosmetic. The health care tax deduction allows you to deduct medical care expenses that exceed 7.5% of your adjusted gross income. LGBTQ+ couples who file together qualify for multiple tax credits, including:

Adoption Credit: Those who adopt children can qualify for a tax credit that reduces their taxable income the year they complete the adoption.

Child and Dependent Care Credit: This credit provides relief to individuals and spouses who pay for the care of a qualifying child or disabled dependent while working or looking for work.

Earned Income Tax Credit: This credit provides a tax break for low- and moderate-income individuals and families. While not LGBTQ+ specific, this can prove beneficial since the community faces higher levels of poverty.

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2. Reduce Federal or State Estate Taxes

If you die in 2024 and your estate is worth more than \$13.61 million, you will owe federal estate taxes (doubled if you're married). Starting in 2026, that amount reverts to its pre-TCJA level of \$5.6 million per individual, unless Congress acts to extend or make it permanent. While most people can avoid the current estate tax problem, many will find themselves navigating the adjusted provisions in about 18 months.

However, same-sex couples who are married can now benefit from the unlimited marital deduction for federal estate and gift taxes. This allows one spouse to transfer/gift an unrestricted amount of assets to their spouse at any time, including – but not limited to – at the time of the transferor's death, free of tax.

Same-sex spouses also may now enjoy tax-free rollovers from their deceased spouse's retirement accounts without penalty, and they can take required minimum distributions (RMDs) starting at their own required beginning date (if RMDs had not already begun for the deceased).

State estate taxes currently (and will likely continue to) affect more people. Not all states impose a state estate tax, but you should consider it if yours does. [Check here](#) to see if your state has an estate or inheritance tax. Unfortunately for our local residents, Maryland is the only state that imposes both an estate tax and an inheritance tax.

3. Beware of the “Marriage Tax Penalty”

While filing jointly provides many benefits otherwise not available in domestic partnerships, there are some risks:

Joint and Several Liability: If you marry someone who does not report his or her income and the IRS discovers it, even if you knew nothing about it, you are responsible for covering the tax bill. Innocent spouse relief can serve as protection, but under very specific circumstances.

SALT Deduction: The state and local tax deduction is now limited to \$10,000. A high-income household for joint filers can deduct the same \$10,000 that two unmarried people could each deduct if filing single.

Tax Brackets: If you are a single individual paying taxes, you don't reach the top bracket until you hit \$609,351 (2024). If you are a married couple filing jointly, you reach that bracket at \$731,201. So, two single taxpayers making \$609,000 each never reach the top bracket, but a married couple with each spouse earning \$609,000 pays higher taxes on that last \$486,799.

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3. Beware of the “Marriage Tax Penalty” (Cont’d)

Capital Losses: Whether filing as a single individual or married jointly, you can deduct up to \$3,000 of capital losses against ordinary income in a given year. This amount does not increase if married.

Taxes may not be the most romantic topic, but for LGBTQ+ couples, understanding the nuances can pay dividends. From the impact to estate planning to navigating credits and deductions, the tax landscape is ripe with both opportunities and challenges. It is pivotal to consult a tax professional well-versed in LGBTQ+ taxation. Your tax and financial professional team can help you take advantage of appropriate tax benefits while remaining vigilant of tax blindsides.

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Should We Get Married?

Part 3: A Comprehensive Guide to Legacy Planning for LGBTQ+ Couples

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Who doesn't love a good surprise? A party with all your loved ones. A book with a twist ending. A big tax refund!

But not all surprises are good. Some – cancer, disease, estrangement – can be shocking, painful, or potentially life changing. LGBTQ+ people may face unexpected and emotional roadblocks in the middle of settling estates that can be mitigated through preparedness. By understanding the nuances of proactive planning, you can safeguard your assets, ensure your wishes are respected, and ensure your future aligns with your values and relationships.

1. Plan for Family Discord

Unfortunately, not everyone is accepting of their LGBTQ+ family members and their partners/spouses. New data out of the U.K. shows that nearly half of LGBTQ+ adults are estranged from family. For those in same-sex or queer relationships who feel enduring tension within their family, consider adding a no-contest clause to your will or revocable living trust. This clause states that a beneficiary will lose anything they were to inherit upon a person's death should they try to contest or invalidate the will.

2. “KEVIN!”

Don't forget the kids!!! Children of same-sex parents add a layer of complexity to estate planning. Even if you are married, one spouse might not be the legal parent of one or more of your children. Here are some initial steps when planning for children:

Designate Guardianship: In your will, you can name the legal guardian(s) for your minor children. Without it, the court decides guardianship on your behalf.

Consider Second-Parent Adoption: This is important, particularly if a breakup occurs. Laws in some states do not recognize the second parent of unmarried, same-sex couples as a legal parent. This is especially challenging for those who have children from previous relationships. Thus, the non-biological parent has few, if any, legal rights with respect to the child without this second-parent, co-parent, or stepparent adoption.

Make a Parenting (Custody) Agreement: This is a written document that outlines how you and your spouse handle the care of your children after a potential divorce or breakup. It can include financial matters, visitation, education, and social schedules. This is a helpful document if you have committed to joint parenting but cannot - or choose not to - adopt.

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2. “KEVIN!” (Cont’d)

If you are unmarried, the journey to building a family may be even more complicated if you live in a state that does not allow second-parent adoption. If you live in a state that prohibits second-parent adoption, you should speak with an LGBTQ+ family law or estate planning attorney. For a state-by-state overview of second-parent adoption laws and cases, visit the Lambda Legal Defense and Education Fund's website at www.lambdalegal.org.

3. Make Final Arrangements

This non-binding document allows you and your partner or spouse to provide as much additional detail as possible. Some items might include:

- o Burial or cremation
- o Caskets and urns
- o Ceremonies
- o Digital estate plan (photos, passwords, social media)
- o Funeral Costs
- o Headstones or memorials

These details can provide relief and peace for those handling your end-of-life plans. This is especially valuable for your partner or spouse if you anticipate other people may cause friction or provide varying opinions about how you are laid to rest.

4. Build a Supportive Network

Throughout this journey, it is essential to surround yourself with a supportive network of professionals who understand the unique challenges faced by the LGBTQ+ community, especially as we age. This may include attorneys, financial advisors, accountants, and other experts who specialize in LGBTQ+ tax, financial, and estate planning. Other helpful resources for our community include:

- o Human Rights Campaign
- o Services and Advocacy for Gay, Lesbian, Bisexual, & Transgender Elders (SAGE)
- o Parents, Families and Friends of Lesbians and Gays (PFLAG)
- o Gay and Lesbian Advocates and Defenders (GLAAD)

Tax and estate planning for the LGBTQ+ community can be complex, regardless of whether you decide marriage is right for you. But with the right knowledge and guidance, you can navigate these challenges successfully. By staying informed, working with experienced professionals, and proactively planning for your future, you can protect your assets, safeguard your loved ones, and ensure your wishes are respected.

To help best plan for your and your family’s future, schedule a meeting with our advisors today.

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