Estate Planning for LGBTQ

Avoid the common pitfalls and take these 5 smart steps toward a secure financial future

by Joseph Kapp, Nicholas Burkholder,

Couples should go over their finances together and individually.

In the movie A Single Man, a gay man faces sudden emotional devastation after his partner is killed in an automobile accident. The film is a stark reminder for any couple that one of you likely die first, leaving the other alone.

Yet many are not prepared to deal with that probability — and for gay and lesbian partners, can be especially precarious.

With a little planning and preparation, however, the emotional toll of a death or terminal illness doesn't have to be compounded by financial burdens. Avoid these potential pitfalls and take steps so you'll have peace of mind knowing that whoever lives on will be secure.

1. **Potential Pitfall**: If one of you died or had a terminal illness, would there be enough asset the survivor to maintain her or his standard of living?

   Smart Step: Review your finances together and separately. Develop a list of expenses that incur as a couple. If one of you died, which expenses would go away? What income might al disappear?

If you are a beneficiary of your partner's estate, consider how taxes on individual retirement accounts (IRAs) might lessen the bequest. If one of you dies, what debts would remain for the survivor to pay off? Would there be enough money? If there are not enough assets, talk about buying life insurance to cover a shortfall. Doing such an analysis, just the two of you together, can feel overwhelming — so for practical guidance, consider consulting a financial adviser who has experience working with same-sex couples. Ask friends for referrals or get names of advisers from your local chamber of commerce or from the National Gay and Lesbian Chamber of Commerce (http://www.nglcc.org).

2. **Potential Pitfall:** Do you have a will? When was the last time you updated it? Will your assets flow to your partner upon your death, and vice versa, exactly as you intend?

Smart Step: Review and update your estate documents. You may not think you have an estate, but you do — whether you have $1,000 or $1 million. An estate is simply the collection of all your assets minus all of your liabilities. What's left over is considered your estate, and if you want it to go to your loved one upon your death, you have to make specific decisions and plans. Items in your estate that don't have beneficiary designations or are titled as "joint tenants with rights of survivorship" will flow through your will. If there are children from a previous marriage and there is no will, your assets may not go to your spouse or partner the way you want. You should meet with an attorney to update or complete your estate documents properly.

3. **Potential Pitfall:** If you died today, are you certain that your partner or spouse would receive your 401(k), IRA or life insurance proceeds? Or is a named beneficiary outdated — perhaps some former partner?

Assets that have beneficiary designations, such as retirement plans and life insurance, do not follow the directions of your will. Instead, when you die, whoever is the beneficiary of record receives the proceeds, regardless of what is written in your will.

Smart Step: Review your beneficiary designations for all your assets. Specifically review your elections for IRAs, 401(k) accounts and life insurance policies. In addition, change financial accounts that do not typically have beneficiary elections — such as certificates of deposit, savings, investment and checking accounts — to "payable on death" accounts, also known as Totten Trusts. Doing so bypasses the dictates of your will, and the assets will be quickly paid directly to the beneficiary upon receipt of a death certificate. For the surviving partner, access to ready cash for living expenses can be critical. Assets without a beneficiary designation must go through the delays and expenses of probate (the legal process by which a deceased person's final affairs are settled). Adding a beneficiary also reduces the possibility that someone could override your wishes, since it generally cannot be contested.

4. Potential Pitfall: According to MetLife's "Still Out, Still Aging" study relationship — and they should accordingly.

Smart Step: Evaluate your need for long-term care insurance. While Medicaid rules vary state, they usually require someone 65 or older to spend down their assets for care until he can qualify. Because heterosexual married couples may file a claim as a couple, they are abl avoid the healthy spouse's becoming impoverished due to the other spouse's need for long- care. Depending on whether your state recognizes same-sex marriages, someone in a same union may be forced to apply as an individual, regardless of marital status. As a result, a prol illness requiring Medicaid could necessitate the spending down of joint financial accounts o selling of a jointly owned home. To avoid that hardship, speak to a long-term care insurance in your state to learn about your options. Policies come in different types, from covering just basics to high-end policies that cover everything, including home health care. Most long-term care insurance companies now even offer discounts for same-sex partners.

5. Potential Pitfall: What if one of you becomes seriously ill? Do you have the legal authority care for your partner? What medical and end-of-life decisions do you wish to have made on behalf?

Smart Step: Get your end-of-life documents in order. Because the laws are different in ev state, speak with an attorney in your state who has experience working with same-sex couples. Caring Connections, (http://www.caringinfo.org/i4a/pages/index.cfm?pageid=1) a program of the National Hospice and Palliative Care Organization (http://www.nhpco.org/), provides free resources and information to help people make decisions about end-of-life ca services before a crisis occurs. AARP also provides free advance directive forms (https://www.aarp.org/relationships/caregiving/info-01-2011/caregiver_map.html) and instructions for each state.

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