

Estate planning for gays is still tricky

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NEW YORK — Despite the strides gay couples have made to have their relationships recognized by the courts, estate planning remains more complicated for them. The topic, however, is at the top of the list for the PridePlanners Association's Fourth Bi-Annual Meeting, which will take place Sept. 27-29 in Washington.

The three D's — dissolution of a relationship, death and disability — are the first steps in planning for the gay, lesbian, bisexual and transgender community, according to Dana Levit, a certified financial planner and principal of Paragon Financial Advisors in Newton, Mass.

"These are the scenarios where these couples will be different," said Ms. Levit, who is also president of Belmont, Mass.-based PridePlanners, a non-profit national network of advisers who educate professionals on planning issues for gay and lesbian clients, as well as for singles and unmarried opposite-sex couples. "The conference will focus on what advisers need to do to fill in the gaps."

With regard to dissolution, financial advisers should consider whether their gay clients' relationships are recognized by the state in which they reside.

For example, gay marriage is legal in Massachusetts, but if such a couple moved to a different state, the relationship may not be recognized, and complications may arise in the event of a death or a breakup, Ms. Levit said.

"The conference will focus on partnership agreements and using contract law to formalize the relationship and the financials," she added. The toughest topics on the table include wills and burial instructions, which clients may overlook when they do estate planning.

"I get nervous when clients don't have the proper education on the various ways they can title assets," said Joshua T. Hatfield Smith, a CFP at SPC Financial Inc. in Rockville, Md. "While not appropriate for everyone, something as simple as having an account in an individual name can lead to challenges of their partner gaining access to the funds in case of incapacity or death."

At the conference, Mr. Hatfield Smith will cover a variety of planning topics, including tax returns and company pensions.

“Without the proper planning, if one person dies or becomes incapacitated, the assets could end up in probate and become frozen,” he said.

Probate is especially intimidating in the world of unmarried couples, as the surviving partner may not have access to related assets.

Moreover, creditors and estranged family members may claim a portion of the assets once they hear of the death, Mr. Hatfield Smith noted.

However, if partners title their assets properly, they can avoid a lot of legal and financial trouble. Through joint right of survivorship, transfer on death or a beneficiary designation, gays and lesbians can help ensure that only those whom they choose get the assets, Mr. Hatfield Smith said.

Another hot-button issue the conference will address is hospital visitation.

“Too often, a member of a couple becomes incapacitated, and the partner isn’t recognized at all as having any relationship to the injured,” Mr. Hatfield Smith said. Unless couples obtain a health care power of attorney, family members alone will have access to information and be able to make decisions on the incapacitated person’s behalf.

The conference will also cover pension plans, as the Pension Protection Act of 2006 now allows unmarried people to choose the beneficiary of their 401(k) account, permitting partners to inherit the assets without losing money to taxes, said Timothy Mahoney, director of estate planning at the Human Rights Campaign, a Washington-based education and lobbying organization.

But advisers should be ready to deal with such complications as the possibility that one partner may lose their pension, Mr. Hatfield Smith said. A life insurance product is just one way to get around the loss of income, he added.

Advisers will also have a chance to exercise their planning strategies through case studies at the conference and look at hypothetical situations such as what to do when one partner has a much higher income than the other, Ms. Levit said.

Participants will also get a checklist of what to look for when working with gay couples: Are assets titled appropriately? Who are the beneficiaries? What should be done if a partner's ex or estranged parents show up to contest the plan?

"I always tell clients to sit down with those who know how to deal with our community," said Mr. Hatfield Smith, who is gay. "Because if there's one flaw, you have no protection."