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Finance Basics for Partners

Couples who can't wed (or choose not to) need to customize their tax and estate planning.

By Jane Bennett Clark

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Julie Kurland and Marcia Diehl live in a Victorian home in Takoma Park, a leafy Maryland suburb of Washington, D.C. The couple take turns walking their dog, Cody, past the 1920s bungalows and gabled Victorians that line the streets of their neighborhood. On Sundays they wander over to the farmer's market and spend the rest of the day gardening or reading on their wide front porch.

It's a routine that befits any contented couple. But Julie, 46, and Marcia, 56, are not married, nor would they be allowed to marry in all but five states (see what the ring brings below). That means they lack the legal structure that protects married couples' rights on everything from property division to end-of-life decisions. Instead, they must create their own framework. "It's much more important for gay couples to have their documents lined up," says Julie. "We have to be sure we have our *t*'s crossed and our *i*'s dotted."

The issue isn't unique to gay couples. Heterosexual partners who commit to each other without tying the knot are also caught in legal limbo. Whether you're in a heterosexual or same-sex union, these seven steps will help protect you and your partner.

Sign powers of attorney

Marcia's parents, who are now deceased, never acknowledged her relationship with Julie. They considered the two to be roommates, nothing more. Had Marcia suffered a health crisis that rendered her unable to make her own decisions, "they would have thought it was their privilege, not Julie's, to make the decisions for me," says Marcia. In most states, spouses and blood relatives take priority over nonrelatives in the absence of a document that specifies otherwise.

Marcia and Julie assigned each other a *health-care power of attorney*, a state-specific document



(available free at doctors' offices, hospitals and on the Internet) that lets each make medical decisions on the other's behalf. They also gave each other a *durable power of attorney*, which conveys the right for each to make financial and legal decisions for each other. A durable power of attorney goes into effect as soon as you sign it or upon a triggering event. Consult a lawyer about the choices.

Put it in writing

You may fully intend to share your life and possessions with each other, but as singles "you only have rights to something in the other's name if there is a written agreement," says Frederick Hertz, coauthor of *A Legal Guide for Lesbian & Gay Couples* (Nolo, \$35). A cohabitation contract lets you formalize financial and living arrangements while you are together and spell out who gets what if you break up.

Although such contracts, like prenuptial agreements, can include everything from who buys the groceries to how often you water the geraniums, they typically involve the division of property after a split-up. "Otherwise it's just a big free-for-all," says Kathleen Womack, an estate-planning attorney in Atlanta. As with prenups, drawing up a contract can run a few thousand dollars for a simple agreement to \$25,000 for a complex one. Each of you should consult your own lawyer for assistance.

Make a will

If you neglect to express your wishes in a legally executed will, your estate will be divvied up according to state intestacy law, which generally favors spouses, children and other relatives -- not significant others. To avoid leaving your partner in the lurch, spend the \$300 or so necessary to have a lawyer draw up a will, or do it yourself for \$60 at www.nolo.com or \$70 at www.legalzoom.com.

Parents of minor children must have a will in order to name a guardian. If you are the legal parent and want your partner to raise your child after you die, be sure that you nominate him or her as the personal guardian. As with any guardianship, the court has to sign off on the nomination, but it generally respects the legal parent's wishes, with one exception: The other legal parent -- say, a former spouse -- is willing and suited for the job.

Establish joint ownership

In some states, married couples or those with marital rights can title jointly owned property as *tenancy by the entirety*. Each spouse owns the entire property, and neither can sell without the other's okay. When one spouse dies, the survivor inherits the property, avoiding probate.

Unmarried couples are limited to *tenancy with the right of survivorship* and *tenancy in common*. With the first, you own the property 50/50. When one of you dies, ownership passes to the survivor automatically. You can sell or give away your half, but you can't bequeath it to someone else. Some unmarried couples choose this setup to avoid the public process of probate or as backup to a will.

Tenancy in common is more flexible: It lets you own unequal shares of the property, and if you sell, you walk away with whatever percentage you contributed. You can leave your stake to your partner or to anyone else, but if you don't leave a will, your portion of the asset is distributed according to state law. Don't let that happen because of carelessness, says Womack. Put it in writing.

Keep track of gifts

Couples who are married in the eyes of Uncle Sam can give each other unlimited assets without tax

consequences. But unmarried heterosexual couples and all same-sex couples are considered "legal strangers" for federal tax purposes, says Dana Levit, a financial planner in Boston who is also president of PridePlanners, a nonprofit financial-education group. That awkward status requires you to report gifts to each other of more than \$13,000 a year (as of 2010). The excess counts against each individual's \$1-million lifetime exemption, after which the federal gift tax kicks in.

Even if you're not in the habit of writing each other fat checks, you could exceed the \$13,000 limit by, say, putting your live-in partner on the title to a house you already own. Although most people never reach the \$1-million limit, you lessen your risk (and your paperwork) by transferring assets incrementally, says Hertz. "Give early, often and in small amounts."

Also be careful to document your contributions to any joint property owned as tenancy with the right of survivorship. Lacking evidence to the contrary, the IRS assumes that the entire property belonged to the first person to die and calculates the estate-tax obligation accordingly. Keeping separate bank accounts helps clarify who paid for what, says Carrie Aburto, a financial adviser at Aspen Wealth Management, in Denver. "It's easier to show what you're contributing."

Minimize your taxes

As single filers (same-sex married couples generally have to file as marrieds on their state taxes and as singles on their federal taxes), you can allocate your deductions to maximize the tax benefit. For instance, the partner who earns more income can pay the mortgage and deduct the interest, while the other partner takes the standard deduction. "Taxes are one area in which it's often good to be gay," says Levit.

Likewise, if you have a child, one of you can claim the child as a dependent on your federal tax return. Assuming that the same parent provides more than 50% of the child's support, he or she also can file as head of household, which usually results in a lower tax bill. Couples with two kids may be able to split the difference, each claiming one child as a dependent and filing as head of household.

As singles, you have a good chance that at least one of you will fall below the income limits for tax benefits or tax-preferred accounts. Say one of you has an income that exceeds the limit for contributing to a Roth IRA (which in 2010 is \$120,000 for singles but \$177,000 for married couples filing jointly) and the other has earned income that falls below the limit. The one who earns less can still establish a Roth IRA.

Provide for your survivor

You don't have access to spousal Social Security benefits, but each of you can still name the other as beneficiary of your retirement accounts. Nonspousal beneficiaries of IRAs and 401(k) plans can take distributions from an inherited retirement account over their lifetime.

As for life insurance, you'll do each other a favor by leaving enough so that each of you will be able to live comfortably if the other dies first. These days, term-life policies come cheap. A 50-year-old woman in good health can pick up a 20-year term policy with \$500,000 of coverage for about \$700 to \$850 a year. A healthy 50-year-old man can buy the same coverage for about \$950 to \$1,200. (See [How Much Life Insurance Do You Need?](#))

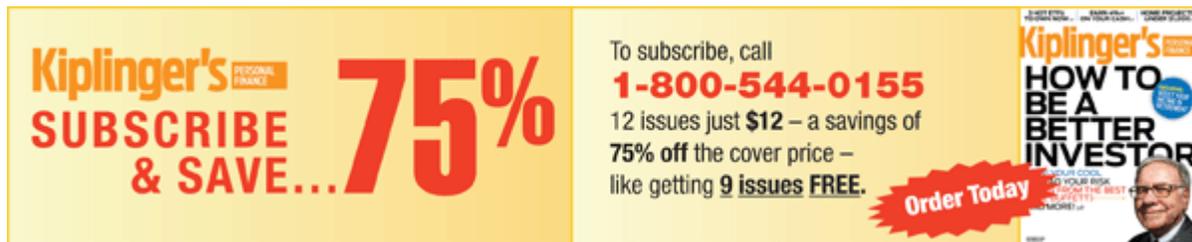
What the ring brings

Five states -- Connecticut, Iowa, Massachusetts, New Hampshire and Vermont -- and the District of Columbia allow same-sex marriages, conferring the same state protections to same-sex couples as they do to other married couples.

California, Nevada, New Jersey, Oregon and Washington state offer civil unions or domestic partnerships with rights equivalent to marriage. California, Maryland and New York recognize same-sex marriages and registered unions performed in other states; California also recognizes same-sex marriages performed when such unions were legal in the state.

What does getting hitched get you? On the state level, the right to inherit property if your spouse or partner dies without a will; the right to a share of community property if you split up; and the right to make medical decisions for your spouse or partner if he or she becomes incapacitated and no health-care directive exists. On the federal level? Zip. Married partners miss out on federal tax advantages as well as federal spousal benefits, such as the survivor's right to a spouse's Social Security benefits.

Same-sex couples who marry can divorce only in states where such marriages are acknowledged. You can move back to the state where you married in order to get divorced, but you may have to establish residency to split up legally.



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