

# 10 issues for lesbian and gay families

By Joan M. Burda, JD

- 1 | **Recognition of relationships** is the top issue. Most states do not recognize lesbian and gay relationships. You need to be aware of the laws of your state. As of the first half of 2010, marriage equality exists in 5 states. Several recognize marriages between same-sex couples. Other states allow same-sex couples to enter into domestic partnership or civil unions. Your legal status can change as you cross state lines. Also, since the Defense of Marriage Act (DOMA) does not permit the federal government to extend statutory/legally mandated benefits to the legal spouses of lesbian and gay individuals entitled to such benefits, things like Social Security survivor benefits or Veteran's benefits are not extended to same sex spouses. It's therefore doubly important for same sex couples to understand their legal rights and to plan their finances accordingly.
- 2 | **Children** – A growing number of lesbian and gay couples are raising children born through Artificial Reproductive Technology or surrogacy. Carefully drafted Donor agreements or surrogacy contracts are essential. Not every state allows or enforces them. Once the child is born, adoption by the non-biological partner/parent is important. An adoption results from a court order. That order is enforceable throughout the United States. But, remember not all states allow second parent or co-parent adoption. That's when a co-parenting agreement, filed with a court, is helpful.
- 3 | **Property** includes everything from the house you live in (real estate) to the clothes you wear and the pots and pans you use. Who owns what and how do you know that. It's easy when you and your partner are getting along. What will happen when you decide to go your separate ways?
- 4 | **Taxes** – Most everyone pays taxes, and it's something we all know at least a little bit about. There are property taxes, income taxes, gift taxes and estate taxes. Lesbian and gay couples who cannot legally marry or partner in their state do not have the same tax benefits as heterosexual couples and even those legally married or partnered, do not have the same federal tax benefits that married heterosexual couples do. We need to know our rights and how to take advantage of the benefits written in the tax code.

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- 5 | **Insurance** comes in many forms: there is life, health, disability, long-term care, homeowners, renters and automobile. Long-term care insurance can help pay for a nursing home. Disability insurance is also important. Some employers provide it – and those benefits may be taxable. Are both names on the deed to the house? If not, the homeowner’s insurance will only cover the owner – your partner is considered a renter and needs renter’s insurance. But, don’t run out and put your partner’s name on the deed – see #4 – you’ll trigger a gift tax situation.
- 6 | **Travel** much? If you do, take your paperwork with you. The rights you have in your home state may not exist where you’re going. Scan the paperwork and use a thumb drive. Don’t forget the childrens’ birth certificates and adoption papers.
- 7 | **Family** – Lesbians and gay men may be estranged from their birth families. If so, family interference in your relationship can be minimized, if not completely avoided. Document your relationship, develop an estate plan, use a Domestic Partnership Agreement to rebut, “But, they were just roommates.”
- 8 | **Terminating a relationship** – Some relationships end. That’s a fact. This means dividing up the assets you accumulated. Those “assets” may include your children. Figure out now what you’ll do if the worst happens. Don’t wait until you’re angry to make decisions. Make these decisions and save yourself – and your children – much anxiety. Figure out the custody, support and visitation matters now. Decide how you’ll resolve things – mediation or arbitration. It can be less expensive than “I’ll see you in court.” And, fights over children rarely turn out well – for anyone.
- 9 | **Financial planning** – Some believe you need to be wealthy to go to a financial planner. Not true. A good financial planner will help you figure out how you can make your money go farther, plan for retirement and your child’s college.
- 10 | **Comprehensive estate plan:** At the very least you need:
- a Will,
  - a Durable General Power of Attorney (for finances or healthcare) which allows an agent to act on your behalf if you become incapacitated.
  - Advance Directives (living will, healthcare proxy) – these are legally valid throughout the United States but the laws governing them vary from state to state.
  - A HIPAA Authorization which would permit your partner to have access to your medical information so that your health care provider or insurance company have no reservations about sharing your protected medical information with them.
  - If you have children, add a Parenting Agreement.
  - Been together for a while? Enter into a Domestic Partnership Agreement.

*These are the 10 main issues lesbian and gay couples need to think about. What are your goals? What do you want to accomplish? Taking action will give you peace of mind and the freedom to spend time doing other things.*

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**This article was prepared by Attorney Joan M. Burda. The opinions expressed in this article are those of the author and may not necessarily reflect those held by Massachusetts Mutual Life Insurance Company.**

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