

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 2012, marriage equality exists in six states and the District of Columbia. Marriage equality legislation has been enacted in Maryland and Washington; those laws are being challenged in the November 2012 election. Other states allow same-sex couples to enter into domestic partnership or civil unions. As a result of these inconsistencies, 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 statutorily/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, although 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, which is enforceable throughout the United States. But remember, not all states allow second-parent or co-parent adoption. That's when a joint custody 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, but what would happen if you decided 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. Lesbian and gay couples living in community property states should consult with their tax preparer to determine how the community property laws may affect them.

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5 | **Insurance** comes in many forms: life, health, disability, long-term care, homeowner's, renter's and automobile insurance. Long-term care insurance can help pay for a nursing home. Disability insurance is also important: some employers provide it-but those benefits may be taxable. Are both partners' 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 may 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 children's 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. These "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 in advance 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. Because relationship recognition varies from place to place, just because

you're married does not mean you can get a divorce. "Non-recognition" states do not recognize same-sex marriage, and you may find yourselves "wedlocked".

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 further, plan for retirement, and fund your children's college education.

10 | **Comprehensive estate plan** – At the very least you need:

- A will;
- A Durable General Power of Attorney (for finances or health care) which allows an agent to act on your behalf if you become incapacitated;
- Advance directives (living will, healthcare proxy)- these documents are legally valid throughout the United States, but the laws governing them vary from state to state;
- A HIPAA authorization which permits your health-care provider or insurance company to share your medical information with your partner;
- If you have children, add a parenting agreement;
- Planning to get married? Consider a pre-nuptial 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.

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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