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Gay couples caught in financial limbo

Tangled web of laws leave some without estate protection

Nicole C. Brambila
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Charles Townsend thought he'd covered his financial bases with a joint trust he created with his longtime partner 10 years ago.

Then he heard about a neighbor who had to write a six-figure check to the IRS for estate taxes when his partner died.

The neighbor had a joint trust, too.

"I didn't believe it," said Townsend, 69, of Rancho Mirage. "We thought we were covered."

When a spouse dies, the surviving spouse does not pay estate taxes — but same-sex couples do.

That rule alone cost gay couples about \$3.3 million last year, according to The Williams Institute, a UCLA think tank focused on sexual orientation law and policy.

"If you're straight and married, there are all of these laws that get conferred upon you to protect you no matter where you are. It's just handed to you on a silver platter," said Christopher Heritage, a Palm Springs attorney who does estate planning for lesbian, gay, bisexual and transgender couples.

"The difference is, if a gay couple doesn't do estate planning, the system is stacked against them."

Same-sex couples in the Coachella Valley can spend anywhere from \$2,000 to \$5,000 creating legal documents — powers of attorney, health care directives, wills and living trusts — to approximate the rights afforded opposite-sex couples.

These legal documents often are a necessity when couples travel outside California to states or countries that do not recognize domestic partners.

"It's not cheap, but it really is a protection that you really should have," said Jean-Guy Lachance, who with his husband, John Williams, got their legal work in order two years ago.

Even when legally married, the bulk of marital rights are out of reach for gays and lesbians because of the Defense of Marriage Act, or DOMA, signed into law in 1996 by then-President Bill Clinton.

This year, President Barack Obama, who promised to advance gay rights on the campaign trail, extended visitation and dependent-care rights to same-sex partners of gay federal employees and is requiring hospitals that receive federal reimbursements to respect a patient's health care directive. The latter is in response to same-sex couples who have been denied access to their partners in hospitals.

The Internal Revenue Service also this month established a new policy change recognizing California's community property laws for registered domestic partners.

Despite these small gains, that's still a long way away from recognizing same-sex couples, advocates

say.

“What’s being created is this patchwork of silliness to carve out rights for same-sex couples that you would have if you were married,” Heritage said.

Legal maze

A hodgepodge of state laws, combined with DOMA and varying corporate policies, makes a range of financial matters more complex for gay and lesbian couples than their straight counterparts.

Take taxes.

In states like California that recognize same-sex unions, couples must file a joint state return, claiming the benefits offered married couples.

But they also must file individual federal returns because DOMA prevents the IRS from accepting joint returns from gay couples.

Research by The Williams Institute shows the costs borne by gay couples extend well beyond the price of preparing another tax return.

Health insurance benefits for domestic partners, for example, are a taxable income, but not for married couples. This one item, on average, adds more than \$1,000 a year to a couple’s tax bill, researchers found.

And the inheritance tax can be a doozy, especially for wealthier gay couples.

Federal law allows married people to transfer unlimited sums to their spouse. But when gay couples transfer money to their partner, it’s a gift — and taxable.

And it’s not just government law and policy.

Extra costs can extend into every corner of financial life from having to purchase separate car insurance policies to not getting the “family rate” with a gym membership.

Making plans

Same-sex couples can and do take steps to approximate the financial rights of married couples, but too often it requires a major event like a job change or the birth of a child to prompt couples to act.

Roughly 65 percent of Americans do not have a will, according to a recent survey by Harris Interactive.

“For the gay couple, it only adds to the problems, not doing a plan in advance,” said Joseph Hahn, an estate-planning attorney with Best, Best & Krieger in Indian Wells.

“They put their entire financial lives at risk. The fact is most gay couples are blissfully unaware of all this.

“If they knew what I knew, they would get to a lawyer.”

And no matter how good the lawyer or financial adviser, some things can’t be copied or approximated — like Social Security benefits.

When a spouse in a heterosexual couple dies, the surviving spouse can receive benefits based on the deceased’s earnings record. Divorced spouses can also get these benefits if they were married 10 years or more.

Not so for same-sex couples, even couples like Townsend and Moller, who have been together for 38

years.

And then, family can further complicate the landscape for same-sex couples when it comes to health care decisions in an emergency or the rights of one partner to inherit property without interference.

Take Richard Conrad.

His longtime partner, Richard Malvin, died last year without a will. Although registered domestic partners, Malvin's brother is challenging the estate.

"Everything's in my name, but I'm still being challenged," the Palm Springs resident said. "What does the court have to do with this? There was nothing going to him."

Hoping for clarity

Gay rights advocates hope a federal suit challenging California's ban will lighten the financial mire.

A federal judge last week heard final arguments in a lawsuit challenging Proposition 8, the voter initiative that created a constitutional ban on same-sex marriage in California in 2008 after the state Supreme Court ruled a similar ban unconstitutional.

A ruling is expected in the next couple of weeks.

Court watchers expect the case eventually to reach the U.S. Supreme Court.

Gays and lesbians in the Coachella Valley are watching the case closely.

"We built a life together," Williams said. "Everything we own is 50-50. Why should I be taxed more at his death than a straight couple? It's not fair."

"We sort of feel like second-class citizens," Lachance said.

The Associated Press contributed to this report.

Additional Facts

LGBT estate planning

For more on LGBT estate planning, contact Christopher Heritage in Palm Springs at (760) 325-2020 or Joseph Hahn, with Best Best & Krieger in Indian Wells, at (760) 200-3054.
