Estate Planning for LGBTQ+ Married Couples

On June 26, 2015, in the *Obergefell v. Hodges* decision, the U.S. Supreme Court ruled that states must allow same-sex couples to marry and must recognize same-sex marriages from other states. As a result, estate planning for LGBTQ+ married couples became equal, under the law, to planning for other married couples. As with any historic legal case, however, unique challenges have emerged in the wake of the *Obergefell* decision. This is especially true regarding estate planning.

Consequently, a comprehensive estate plan review is a must for LGBTQ+ couples who were married, were in a domestic partnership, or created an estate plan *before* June 26, 2015. Your current estate plan might no longer make sense for several reasons, including those discussed below. Together, we can discuss your situation and create or update your estate plan appropriately.

Beneficiary Designations

To move forward with a fresh slate, you may want to purge anything related to a previous relationship from your estate plan. That includes removing former partners as the beneficiary of retirement accounts, investment accounts, life insurance, or annuities. If you co-owned real estate with a former partner, this situation may also need to be addressed.

Dissolved Partnerships

If you were in a domestic partnership but broke up without formally dissolving it, you may still be legally married. How can this be? Some states automatically converted domestic partnerships to marriages after the *Obergefell* ruling. Or, perhaps a same-sex couple was married in a different state than their state of residence (such as a couple living in Texas who got married in Vermont). The couple may have broken up thinking the marriage “didn’t count” because their state of residence didn’t recognize it as a legal union. In reality, the couple in question could still be legally married. Given the complexity of this topic, we should discuss potential pitfalls such as these.

Marriage Benefits

Marriage comes with several potential income and estate tax benefits that now apply to all married couples. While there are several reasons to remain unmarried, you may want to consider the marriage benefits now available to LGBTQ+ couples, including:

Income tax filing. Married filing jointly status often benefits couples with disparate salaries, and it could also bring a couple’s total tax bill down in certain other situations. For instance, if one spouse makes about $215,000 per year, and as a couple you still make about that much, married filing jointly status would bring the single marginal tax bracket down from 32 percent to a married filing jointly bracket of 24 percent. Married filing jointly can also provide additional deductions and other related tax benefits compared with those available to single filers.

Unlimited marital deduction. This is a provision in the U.S. tax law that allows a married person to transfer an unlimited amount of assets to their spouse at any time, including after death, free from tax. So, if you created a trust or other transfer plan to protect assets after the death of a partner, a better option may now be available. A revised estate plan could provide greater flexibility to a surviving spouse.

Joint tenants by the entireties. Many states offer married persons a “joint tenants by the entireties” ownership option for real estate and other accounts. This type of ownership offers extra creditor protection to the marital unit. In the event of death, it automatically ensures that a surviving spouse receives the full title of a property.

Parenting Planning

If you and your spouse are planning on having children, you should be aware of how the following legalities affect LGBQT+ couples. The rules differ for parents who are married versus those who are unmarried.

Married couples. Married couples where one partner gives birth to the child should receive treatment very similar to different-sex couples. The U.S. Supreme Court ruling in *Pavan v. Smith* held that Arkansas could not apply a different parentage assumption to the wife of a birth mother than the state applies to husbands of birth mothers.

If you’re planning on conceiving through assisted reproduction, such as surrogacy, however, you and your spouse will likely have to rely on your state’s adoption procedures. This process is often called a “second-parent adoption” because a co-parent is adopting their partner’s child without terminating the partner’s parental rights. In some states, the “second-parent adoption” procedure is easier for married couples because *Obergefell* requires that all married couples have access to a state’s stepparent adoption procedures.

Unmarried couples. Unfortunately, the rules are much tougher for unmarried couples. Some states are still passing laws that deny adoption rights to unmarried persons with no genetic connection to a child—seemingly targeting the LGBTQ+ community directly. As a result, many lawyers encourage same-sex couples to “adopt their own children,” as strange as that sounds. This way, if you and your partner break up and move, states are required to follow the court orders of other states, preserving the rights of both parents.

Other considerations. You should also understand that state parentage laws and federal and international laws don't always move in sync. In certain cases, if the genetic parent of a couple's child is not a U.S. citizen, that child may not be granted automatic U.S. citizenship. This is so even if the nongenetic partner is a U.S. citizen and acts as the child's parent. This scenario is most concerning when the child is born abroad, but with appropriate planning, it's possible to ensure that a child can remain with either parent in the future.

A step forward. In 2017, the Uniform Law Commission drafted an update to the Uniform Parentage Act that promotes the use of "voluntary acknowledgment of parentage forms." At its core, this proposed law seeks to assign parental rights at the birth of the child to the two people who sought to create a family, whether through assisted reproductive technology or natural birth. As of this writing, however, only five states (California, Connecticut, Rhode Island, Vermont, and Washington) have enacted a law substantially similar to the updated Uniform Parentage Act.

Other Estate Planning

A power of attorney provides very important protection for your health care and other estate planning decisions. To prevent these decisions from being challenged, it's wise to have executed a clear statement of your wishes regarding health care treatment options, end-of-life care, and burial decisions. A legal provision known as an *in terrorem* clause can be helpful in preventing challenges to your will or any trusts you've created. As with all estate planning documents, working with a qualified attorney to craft a personalized plan is essential to ensuring your wishes are honored.

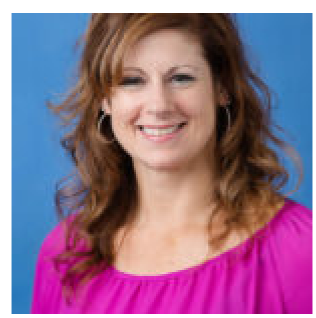
Planning to Protect Your Future

Whether or not you face the unique estate planning challenges discussed above, it's wise to review your estate plan when laws or your personal situation have changed. If you would like to schedule a review or have any questions about the information presented here, please reach out to us.

This material has been provided for general informational purposes only and does not constitute either tax or legal advice. Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult a tax preparer, professional tax advisor, or lawyer.

Why You Need Employment Practices Liability Insurance

From [Karen Reed:]



Employment practices liability insurance (EPLI) provides coverage to employers against claims made by employees alleging discrimination, wrongful termination, harassment, or other employment-related issues such as failure to promote.

All businesses, regardless of size are vulnerable to employment claims regardless of the number of employees and statistics tell us the average cost for legal defense and compensation for this type of claim can quickly add up to $70,000.

Protect your business by calling us today to obtain a quote for this very important coverage.

Meet Nate Van Lonkhuyzen, our 2021 Summer Intern

Abraham Dugal and Nate Van Lonkhuyzen

Nate Van Lonkhuyzen of Rockport is Allen Insurance and Financial's 2021 summer intern.

Van Lonkhuyzen is an economics major at Colby College in Waterville class of 2023.

Allen Insurance and Financial's summer internship program creates the opportunity to learn about each of the company's insurance and financial planning departments. Van Lonkhuyzen's desk is based in the Allen Financial division and he is working under the guidance of Abe Dugal, financial advisor.

"From my very first day, I have been able to see how what I am being taught in classes is applied in the real world with actual problems," said Van Lonkhuyzen. "Abe Dugal and (company President) Mike Pierce have introduced me to the high quality, team-focused model Allen Financial maintains. My goal this summer is to learn as much as I can so I can further develop the analytical, interpersonal and problem-solving skills I need for a career in finance. "

Health Care Reform: Dependent Coverage Up to Age 26

The Affordable Care Act continues to have an impact on health plans offered by employers. Our monthly overviews of topics addressed by the ACA endeavors to assist you with understanding your role and requirements as an employer. The Allen benefits division is happy to assist you with questions.

Under the ACA, group health plans and health insurance issuers that provide dependent coverage must make coverage available for adult children up to age 26. This ACA Overview summarizes this adult child coverage mandate.

HealthCare.gov

Start With the Exclusions

Chris Richmond

By Chris Richmond
Originally Submitted to WorkBoat Magazine

When a boatyard or builder makes an investment in purchasing a building most likely they will want to have the structure insured. But just because you purchase property coverage does not mean that your building is insured for all potential hazards. Two big exclusions on property insurance forms are flood and earth movement, both of which can pose a significant threat to your building.

First things first. (This is a long sentence, but an important one.) The insurance definition of a flood is a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or two or more properties from overflow of inland or tidal waters, rapid accumulation or runoff of surface waters from any source, mudflow, collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents or water exceeding anticipate cyclical levels that result in a flood as defined as above.

If you have a bank loan on your property, most likely the bank will require you to have this flood coverage for at least the amount that is on the loan. Coverage can be provided through The National Flood Insurance Program. Your premium will vary depending on what flood zone the property is in.

While people talk about earthquake coverage, in the insurance world it actually is referred to as “Earth Movement,” with earthquake being just one of many categories. Besides earthquakes being excluded the Earth Movement list includes landslides, man-made mines, earth sinking and volcanic eruption. Depending on your location, coverage for this can be either bought back from your carrier or as a stand-alone coverage through a specialty broker.

Sage advice when looking at your insurance policies: Start with the exclusions. While it is important to know what you are covered for, it is equally important to know what your policy does not cover. Don’t think that just because you have an insurance policy that everything is covered. Have a conversation with your agent about your coverages to make sure you have what you need.

Beware of Spoofed Calls and Scam Email

Scam emails and spoofed phone numbers are plentiful these days – we should all be ready to deal with them on a daily basis. It's important to take care to verify the source of any request for your attention or your money – even if the request seems to be from a co-worker, friend or family member.

The criminals behind these efforts use the names and spoofed phone numbers of trusted entities to try to part you and your money and nobody is immune. We've even had recent reports of spoofers pretending to be calling from Allen Insurance and Financial in an attempt to scam the unaware.

These calls and emails are from people who want your money or your personal information or to hold your computer for ransom. We all want to help a loved one, friend or colleague – but the key is to slow down and check a few things before replying or taking further action.

Spoofing is when someone disguises a communication as coming from a known, trusted source. Spoofing can apply to emails, phone calls, and websites, or can be more technical, such as one computer spoofing another computer or a website.

Also known as phishing, scam emails pretend to be from someone you know – but the return email address is not quite right (by a letter or two) or completely wrong and may ask you for gift cards to for “help with an important task.” The return email address could also be exactly right and from someone you know – but the request is for money or assistance.

To avoid spoofing:

- Don’t answer calls from unknown numbers. If you answer such a call, hang up immediately.
- If you get an inquiry from someone who says they represent a company or a government agency, hang up and call the phone number on your account statement, in the phone book, or on the company’s or government agency’s website to verify the authenticity of the request.

The Federal Trade Commission offers lots of good advice on how to avoid spoofed phone calls. ftc.gov/spoofing.

To avoid emails scams:

- Always think twice before clicking – whether it’s opening an email or an attachment.
- Double check return email addresses. If something doesn’t seem right, or too good to be true, or of an urgent nature, pick up the phone and call the sender of the email to verify. This one extra step can make a real difference.
- Don’t open attachments to emails from people you don’t know.
- Read the email carefully. Does it sound right or is the text out of character?
- Never send your birth date or social security number by email.

More from the Federal Trade Commission: https://www.consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams

Allen Insurance and Financial and L.S. Robinson Co. will never call or email to ask you to sign up for a credit card, purchase a medical alert system or to send us gift cards. Clients and members of the public should feel free to call us at 236-4311 to see if a correspondence or phone call actually came from our office.

Donation to Pacific Engine Company

Allen Insurance and Financial recently delivered a donation to the Rockport, Camden and Rockland fire departments for their home inspection and smoke detector program.

“We’re in the business of helping people in our community protect their homes and their families – and so support for a program such as this, with its emphasis on health and safety, is very important to all of us at Allen,” said Dan Bookham, vice president at Allen Insurance and Financial. “This three-department cooperative effort is a project with an immediate impact and can continue to make a real difference.”

The donation is the result of a partnership between Allen Insurance and Financial and the community outreach program at MMG Insurance, the Presque Isle-based insurance carrier.

Chief Jason Peasley of the Rockport Fire Department says the program is ongoing, and donations will be accepted by any of the three departments at any time. He said that since the spring, 22 homes in the area have been inspected and fitted with smoke detectors – but that the need for this work continues.

Charitable Giving in 2020…and 2021?

Sarah Ruef-Lindquist, JD, CTFA

By Sarah Ruef-Lindquist, JD, CTFA

We love June, don't you? Temperatures are warmer, flowers are blooming, and this year especially, many people are getting out and enjoying each other's company and all that Maine has to offer with understandable pent-up enthusiasm.

Every year in June, the news includes the annual report about charitable giving in the US. The GivingUSA Foundation publishes GivingUSA with data about charitable giving activity in the prior year, based on income tax return data. The news has been positive year-on-year for a long time now.

Will it be for 2020?

As a preview Marketwatch reported interesting giving behavior during the early pandemic months of 2020: They reported that 2020 got off to a great start, but then as the pandemic hit, giving plummeted.

Then, it rebounded. A lot. At a time when millions of Americans were losing their jobs and could not make rent or mortgage payments.

It would seem there was a swift recognition of the challenges being faced, and generous response to help meet the need. “Some people even donated their stimulus checks. Protests over racial injustice last summer spurred another outpouring of donations.”

Using data provided by Blackbaud from a large and representative sample of non-profits “Not only did overall giving increase, but so did the average size of people’s donations, increasing to $737 from $617 in 2019.”[i]

According to prior GivingUSA reports, US charitable giving totaled for 2019 was $450 billion. 2018 was $428 billion. 2017 was $410 billion. 2016 $390 billion. See a trend here?

Neither Blackbaud nor Marketwatch try to predict what the total giving will be for 2020, but instead await the June 15, 2021 release of that data by GivingUSA. We will, too.

We are almost half-way through 2021. What could help boost giving in 2021? The stock market is nearing record highs and those are always opportunities to consider charitable gifts of appreciated securities, to reduce capital gains exposure, or to create charitable remainder trusts to provide income and immediate tax deductions while deferring and reducing gains exposure.

As congress considers further changes to income tax laws, there are several pending provisions of interest including a possible charitable remainder trust option for up to $100,000 of qualified charitable distributions from IRA’s (these had previously been limited to only outright gifts to charity). Stay tuned about those.

There are many reasons to be optimistic about charitable giving in the US. As you renew in-person meetings with your supporters, we hope they are as rewarding and productive as ever.

[i] Blackbaud's analysis was based on its 8,833 nonprofit clients, which took in a total of $40.7 billion in donations in 2020. That's only one slice of the giving pie in the U.S, where there are roughly 1.5 million nonprofits, but the Blackbaud data set is the largest sample size of giving and is representative of the nonprofit sector as a whole, a spokeswoman said.

Tool Coverage 101

By Patrick Chamberlin

Contractors rely on their tools and equipment to get the job done. To protect these tools from theft or vandalism, there's Tools and Equipment Coverage.

Tools and equipment insurance can cover both large equipment and small hand tools.

Most commercial property policies cover buildings and personal property at your premises or within a short distance. Tools and Equipment coverage is designed to cover movable property wherever it may be located.

Smaller items, generally with a value of less than $1,000 can be covered on a blanket basis. You'll want to list higher-value items (generators, heavy equipment such as excavators) individually. It’s also important to keep an inventory (with photos, if possible) and proof of purchase.

As always, there are some exceptions and limits to this type of coverage. Your insurance agent can explain more.

Age Discrimination in Employment Act (ADEA)

What do you know about the Age Discrimination in Employment Act (ADEA), which prohibits employers with 20 or more employees from discriminating against individuals who are age 40 and older based on age?

Here are some of the basics:

- The ADEA prohibits age discrimination against employees and applicants age 40 and older.
- Age limits and preferences for workers under 40 are prohibited unless an exception applies.
- An age-neutral employment practice may violate the ADEA if it negatively affects individuals age 40 and older.
- Older individuals may be favored over younger ones, even if the younger ones are 40 or over.
- Employees may voluntarily waive their rights under the ADEA.

You can read more now on this PDF.