

# Financial Planning: Empowering LGBTQ Individuals and Families



Financial planning is a key step toward empowerment for members of the LGBTQ community. Financial planning can help secure your future and the future of your loved ones. Yet the always-changing legal landscape can make the planning process even more complex for LGBTQ families. We asked BMO Wealth Management experts Carl Hibben, Senior Wealth Planning Consultant and John McGowan, Managing Director to explain some of the most important financial issues currently facing the LGBTQ community.

**Q: We know the United States has made great strides regarding civil rights and legal protections for LGBTQ individuals and families. What are some of the recent changes?**

**A:** Overall, it's a very positive time to be a member of the LGBTQ community. Some of the most significant civil rights advancements for LGBTQ individuals and families are changing the way we plan for our financial needs and future. Most notably, they include:

- **The freedom to marry!** Years of litigation in our courts brought the freedom to marry to all 50 states and U.S. territories in 2015, after the U.S. Supreme Court ruled that the fundamental right to marry is guaranteed to same-sex couples under our Constitution. This victory is one of the biggest changes in the legal landscape in decades.
- **Federal protections.** Recent landmark court rulings are advancing a legal precedent that protects LGBTQ people from discrimination, under federal law in some workplace settings and schools. This understanding and application of the law is far from covering all LGBTQ people and states, yet the trend is important in how we think about our employment, mobility, and safety of our children in schools.

- **Advancements in family law.** Even after we've won the freedom to marry, parenting and family law for same-sex couples and LGBTQ individuals requires special considerations (second-parent adoption, for example). More states are appropriately recognizing parental rights, spousal relationships, and the way we create our families.

At the same time, the movement to realize full equality for LGBTQ people continues, with these key trends at the forefront:

- **Rights of transgender individuals.** In the past 3 years, hundreds of anti-LGBTQ bills have been introduced in state legislatures across the country, many targeting transgender individuals. Some measures target children for discrimination, attempting to bar access to appropriate school facilities like restrooms; and discriminatory bills in states like North Carolina and Texas have brought national attention to the issues. However, on a federal level, transgender individuals may now change their passport, military records and other identification to match their gender identity; many health insurance companies no longer exclude transition-related care from their list of covered services.
- **Anti-discrimination laws:** As of the end of 2016, 20 states and D.C. have passed laws making it illegal to discriminate against people on the basis

of their sexual orientation or gender identity. This applies to areas such as housing, healthcare or workplace related issues. A bill called The Equality Act has been twice introduced in Congress, without success, seeking comprehensive legal protections around sexual orientation and gender identity, yet there is still no federal law explicitly protecting LGBTQ people from discrimination in employment or housing or public accommodations.

**Q: What is the connection between changes in LGBTQ legal rights and the need for LGBTQ-specific financial planning?**

- A:** "Legal rights come with financial benefits. The broader public assumed that national recognition of same-sex marriage was the final step toward bringing legal and financial equality to LGBTQ people...job done," says John McGowan, Managing Director for BMO Wealth Management. "Although recognition of same-sex marriage truly is a groundbreaking advancement, it's not the answer to every LGBT person's financial planning issues." Why?
- **Marriage isn't for everyone.** This choice may be financial or based on other reasons. Since they don't have the legal protections that go along with marriage, domestic partners still need specific legal documents and financial plans to help ensure they can care for each other.

- **Broader anti-discrimination protections for LGBT individuals are non-existent in some states and under fire in others.** It's unlikely that the freedom to marry will be undone anytime soon. However, many newly proposed laws and court challenges – particularly those under the banner of “religious freedom” – could challenge LGBTQ individuals’ rights in unexpected ways.

**To fulfill your financial goals, it's important to know your legal rights and what it may cost to protect you and your family.**

What if your employer can legally fire you after seeing you kiss your same-sex partner as she drops you off at the office? That sudden loss of salary could upend your plans to retire or purchase a long-desired vacation home.

Or what if laws in your state make it difficult to expand your family? State laws and procedures can vary regarding parental rights and recognition. Your legal costs to adopt or use a surrogate in another state could be steep and will need to be part of your financial plan. Even deciding who you want to inherit your retirement savings and home when you pass away can add challenges.

“LGBTQ individuals and couples should be extremely clear about their wishes in these and similar financial situations,” says Carl Hibben, Senior Wealth Planning Consultant for BMO Wealth Management. Why? There could be a higher-than-average chance of someone (for instance, your parents, siblings or an ex-spouse or partner) challenging your financial decisions. Eventually that may change. But for now, you need to be a proactive planner.

**Q: Some recent political and legislative trends have renewed financial planning concerns for LGBTQ individuals and couples. What high-level trends and issues should we follow?**

**A:** Some people are concerned that the appointment of conservative Supreme Court Justices could lead to a repeal of same-sex marriage laws. However, that probably won't happen anytime soon. Why? The Supreme Court has historically been a stable institution that is not quick to make changes to its major decisions.

A bigger concern may be the many state-level bills seeking to codify religiously-motivated discrimination – under the banner of “religious freedom”. “Supporters of these bills claim they

are championing the right to exercise religious beliefs,” says McGowan. “However, many of these would-be laws have proved to be thinly veiled anti-LGBTQ bills.”

For instance, some states are passing laws allowing faith-based adoption agencies to refuse to place children with same-sex parents. What if you and your spouse have planned to adopt a child in 2 years only to find your employer is transferring you to Alabama where most adoption agencies will not consider you? The state in which you live has more of an impact on your personal and financial plans than you may realize.

**Q: Why is financial planning so important and how do you get started?**

**A:** If you belong to the LGBTQ community, you face some unique legal risks and financial costs. Those risks and costs can change every few years as laws evolve. For all these reasons, it's smart to be well prepared and strategic when it comes to planning your finances.

Here are the primary steps to create your financial plan:

- 1. Create clear goals of what you'd like your money to do for you.** If you're single, your top goal may be to have the resources to retire early and travel. If you're coupled, perhaps protecting your partner financially if you die or become incapacitated is your top goal; you

want them to enjoy their same lifestyle even if your income stops. Or perhaps supporting your favorite charities is your passion. Listing your goals is the first important step.

For example, many millennial LGBTQ couples express the wish to be parents. However, that can be a very expensive undertaking, particularly when it involves using a surrogate mother. “That service isn't covered by most health insurance and could cost more than \$100,000 out of pocket, particularly when you add the attorney and consultant costs,” notes McGowan. “You'll need to plan carefully to afford that undertaking.”

- 2. Organize your current financial position.** This step includes identifying all of your financial accounts. It is often surprising to see just how many active savings and retirement accounts we create over the years. But it's also checking how your accounts and other major assets, such as a home and car, are legally titled. Titling can have major inheritance and tax implications for both you and your beneficiaries.

Examples: If you have a 401(k) account and life insurance through your long-time employer, be sure to check who you've named as the beneficiaries; you may still have your parents' names listed instead of your current partner or spouse. If it's important to you that your partner inherits your home when you die, then you may

**Key Planning Documents**

Your attorney, accountant and financial planner will help you determine exactly which financial and legal documents you should have in place. Here's a list of common forms they may recommend:

- Will
- Up-to-date beneficiary designations for retirement plans, life insurance and annuities
- Up-to-date titles for property
- Durable power of attorney for financial management
- Advanced health care directive (also called a living will)
- Health care power of attorney designation
- HIPAA authorization

**Other Important Documents**

The following documents are only necessary in certain situations. Your attorney and financial planner can help you decide if you need them:

- Revocable living trust
- Life insurance trust
- Special needs trust
- Domestic partnership agreement
- Custody agreement
- Pre- or postnuptial agreement
- Funeral directive

want to consider adding his name to the title now. Planning gives you the opportunity to take inventory of all your assets and see what needs to be updated.

### 3. Analyze your financial risks and your progress toward your financial goals.

Discover any financial risks unique to the LGBTQ community that you may not be aware of. An example: Do you or your partner work for a small, socially-conservative company that could theoretically find a way to end your employment or limit your chances of promotion? If so, that's a unique risk to your situation. "As a result, you might need to save up a larger-than-usual emergency fund," suggests Hibben. "You might need this money if you were to suddenly lose your job."

You should analyze and project your future cash flow to provide a clear understanding of how much cash is available to save toward your financial goals. These projections will help to determine if you can meet those goals or if adjustments are necessary.

**4. Implement financial recommendations.** This is your "action phase." Once you understand your list of financial to-dos, you'll need to start taking care of them. This phase could include tasks such as retitling accounts, writing a will, setting up trusts or putting more money into retirement accounts. It's easy to push these tasks off when your life is running smoothly, but that's the time to take care of these tasks, not while in a crisis situation.

**5. Regularly monitor and adjust your financial plan.** A good financial plan should be a living, breathing entity. It's not a document you create and then "set and forget." Your goals may change over time. As a member of the LGBTQ community, it's particularly important that you review your financial plan regularly. You may need to tweak your plan as new LGBTQ legal changes crop up that could affect your finances and goals.

### Q: Are there any key mistakes to avoid when creating a financial plan?

**A:** If you're married or living with a domestic partner, it can be a mistake to assume that you'll never break up or divorce. It's not a pleasant topic to consider. However, it's easier to make plans for a potential break up early in your relationship, while it's still just a theoretical concern, rather than later, when emotions are high.

**If you're getting married or are married,** consider a pre- or post-nuptial agreement. This legal document allows you to decide in advance, and put into writing, how you and your spouse would handle financial and other assets if you divorce.

**If you're an unmarried couple:** You and your unmarried partner may want to consider a cohabitation or domestic partnership agreement. This document details how you would split your finances and belongings if you were to break up. "In some states, these documents aren't fully recognized as being legally binding," notes Hibben. "However, having some sort of partnership agreement in writing may help clarify your situation if you ever end up challenging your partner in court."

It could also be a mistake to retitle assets, such as a home, as "joint tenants with right of survivorship." Doing so could trigger gift taxes and impact one partner's lifetime gift and estate tax exemptions. It could also complicate your finances if you ever split up. "It may be better for unmarried partners to title assets as 'tenants in common,' to keep each partner's financial interests separate. There are ways to give your surviving partner the ability to continue living in 'your part' of the home by giving him 'life estate,'" says McGowan.

### Q: Do financial planning issues differ depending on my age?

**A:** In many cases, yes. This is something that financial planners who work regularly with LGBTQ clients understand quite well.

Millennial individuals and couples are more likely to assume they'll marry. Marriage conveys a number of automatic legal and financial rights to each spouse, which is considered when creating a financial plan. Younger LGBTQ couples, just like their straight counterparts, are also more likely to have legal issues and financial goals related to fertility, children, college costs and related expenses.

LGBTQ individuals and couples who are Baby Boomers or members of Generation X may have a different set of concerns. "Even partners who have been together for 30+ years may decide marriage is not the best course," explains McGowan. "They've planned most of their lives assuming marriage wasn't an option, so it could be difficult to change course now." For example, marriage could trigger additional expenses, such as the marriage tax penalty for dual higher-income earners.

It's especially important for older single LGBTQ people with no children to have prepared documents that identify those people who they want to handle their health care and financial decisions when they are no longer able.

"Older LGBTQ individuals may also want to explore LGBTQ-friendly assisted living centers and have trusted friends or family members legally named to help oversee their care if they need it," says Hibben.

### Q: What essential financial planning and legal documents do most LGBTQ people need?

**A:** Most people need the same key documents, regardless of their sexual orientation or gender. It's extra important for single people to have these documents. Otherwise, if you become disabled or die, a court would have to decide who should be legally responsible to make decisions for you, and who would inherit your estate.

Refer to "Key Planning Documents You Need" for a list of these and other key financial planning documents.

### Q: What should LGBTQ individuals and couples look for in a professional financial planner?

**A:** Consider someone who has a strong track record of working with LGBTQ clients. "Financial planners who work with this community know the key questions to ask you, understand the pitfalls of various financial strategies for LGBTQ people and stay up to date on legal challenges," says McGowan. Consider getting referrals from people you trust - friends, your attorney or your accountant. Local LGBTQ organizations may also keep lists of professionals who are particularly LGBTQ-friendly and knowledgeable.

And no, it's not necessary for your financial planner to identify as LGBTQ. Solid financial planning and communication skills are the main qualifications to seek in a good planner. "It goes without saying that you should expect your financial professional to treat you with the same high level of respect they have with all of their clients," says Hibben. "You should never expect to feel that your financial planner is uncomfortable with your sexual orientation or personal relationships."

Expect your planner to diplomatically ask a few probing questions. He or she isn't trying to be nosy, says McGowan. "Your advisor needs to

understand enough about your personal life to help you achieve your most important financial goals," he says.

Examples of questions that indicate you may be working with a thorough LGBTQ financial planner:

- "Have you considered the financial pros and cons of marriage from a financial perspective?"
- "Do you have children from prior marriages or relationships?"
- "Are there other loved ones for whom you wish to care that haven't come up yet in our conversation?"

**Q: Can I do any financial planning on my own? Is it really necessary to work with a financial planning professional?**

**A:** You can absolutely handle many ongoing financial tasks on your own. Much depends upon your knowledge, experience, and willingness to commit the time required.

You've seen how quickly the LGBTQ legal landscape has changed in just the past few years. State and federal LGBTQ laws often don't match up. It's likely that legal shifts will continue to occur for the foreseeable

future. Many people find it beneficial to get professional help with various aspects of their financial lives especially as their circumstances become more complex.

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