SPOTLIGHT

A WEALTH MANAGEMENT PUBLICATION OF FERGUSON WELLMAN, OCTAVIA GROUP AND WEST BEARING

LGBTQ+ FINANCIAL PLANNING CONSIDERATIONS?

Financial planning involves a range of complexities, especially for the LGBTQ+ community and unmarried couples who may face specific legal and financial issues. This document provides an overview of these considerations, including non-marital legal relationships (NMLRs), Social Security benefits, and estate planning. It also addresses general financial strategies that are important for LGBTQ+ individuals and families, ensuring thoughtful financial planning to safeguard their rights in various situations.

Non-Marital Legal Relationships and Cohabitation Agreements

Federal law has undergone considerable changes for LGBTQ+ individuals and families since the Supreme Court's decision in Obergefell v. Hodges (2015), which affirmed the validity of same-sex marriages nationwide. This landmark ruling facilitated greater legal equity for same-sex couples; however, complexities and uncertainties regarding the tax treatment of unmarried LGBTQ+ taxpayers warrant attention, particularly for those residing in states that do not recognize their non-marital domestic partnerships or civil unions.

- Partners who opt not to marry will not have the same legal protections for their assets in the event their relationship ends. When an unmarried couple moves in together, signing a cohabitation agreement is essential. This legal document defines each partner's rights and obligations, helping prevent conflicts and outlining the division of assets in the event of separation. It should be tailored to fit your needs and cover details like individual assets, shared household expenses, and asset division.

- Social Security benefits are available to those in NMLRs, such as domestic partnerships or civil unions, if the relationship grants inheritance rights under the laws of the state where your union or partnership is registered. However, the federal government does not acknowledge NMLRs, so benefits such as eligibility for spouse's employer-provided healthcare, housing protections, and property distribution guidelines at relationship dissolution depend on the state in which you are located.

- The SECURE Act changed how inherited IRA distributions are handled for non-spouse beneficiaries. Previously, non-spousal beneficiaries could stretch distributions over their life expectancy as they would with their own IRA. Per the new rules, only married couples and individual beneficiaries who are not more than 10 years younger than the decedent retain the "stretch distribution" option. This exception is important for LGBTQ+ couples who are unmarried but close in age, as it can provide more flexibility in tax and estate planning for the younger partner. If your unmarried partner does not fit this exception, they will need to withdraw the entire IRA balance within 10 years of your death, which may result in higher taxes and less control over the timing of distributions.

- If you or your partner no longer live in the state where you formalized your NMLR, or you are not sure how your relationship affects your Social Security benefits, you should consult with an attorney or contact the agency at (800) 772-1213.

- Estate planning is critical for ensuring your assets and affairs are proactively managed. Instruments such as wills, trusts, powers of attorney, and advance directives are especially important for unmarried individuals to ensure their wishes are upheld and the interests of loved ones are protected. If you have any of the above documentation in place but have since changed your marital status, state of residence, or added new family members, we recommend reviewing your documents with an estate attorney for potential updates.

Other Considerations

There are other important considerations for LGBTQ+ individuals and families, such as the unique challenges and opportunities that arise when fulfilling their family dreams or traveling abroad. Some of the other strategies that LGBTQ+ individuals and families need to consider include:

- LGBTQ+ individuals may face discrimination, stigma or barriers in accessing adoption, surrogacy or assisted reproduction services, or may have to pay higher costs or travel to other jurisdictions for care. Families may need to research both domestic and international family formation providers and agencies and seek financial assistance or support from various sources. As an example, according to the Children's Bureau and U.S. Department of Health and Human Services, adoption through a private agency is estimated to cost between $30,000 to $60,000. Surrogacy can be even more costly, up to triple that of adoption through a private agency. These family formation options require careful financial planning and can take years to complete.
- International travel as an LBGTQ+ individual may require additional steps to ensure your family is protected in the event of an emergency. Legal recognition and protection of your relationships and parental rights may vary depending on the state or country where you live or travel. LGBTQ+ individuals and families may need to travel with copies of powers of attorney, advanced directives or other legal documents to secure your family's rights and plan for emergencies, such as hospitalization, death or arrest.

While planning for life events such as death or health emergencies may be uncomfortable, it is important for LGBTQ+ individuals and families to be aware of their legal rights and seek professional advice. Clients can find legal and tax professionals with expertise in the unique planning issues LGBTQ+ couples face by researching and contacting LGBTQ+ advocacy organizations, seeking referrals from friends and family, or consulting with professional associations that have directories of LGBTQ+-competent professionals.