BUILDING AND SAFEGUARDING A FINANCIAL FUTURE FOR SAME-SEX COUPLES

Preparation and guidance can help you overcome unique challenges, protect your family's wealth and preserve a lasting legacy.

RAYMOND JAMES®

OUR COMMITMENT

Raymond James is dedicated to an inclusive and diverse environment where differences are understood, respected and valued. Our commitment will enable us to successfully embrace the diverse markets we serve and capitalize on the talents of all our associates. This culture is the driving force behind our continued ability to put each client's financial well-being first. Diversity is our pledge to the clients and associates of Raymond James.

When the U.S. Supreme Court ruled the 1996 Defense of Marriage Act (DOMA) was unconstitutional, it not only struck down the federal law that limited marriage to a man and a woman, it also marked a significant financial win for same-sex married couples. And the more than 1,000 rights and obligations once denied under federal law, many of which have a direct impact on your financial well-being, are now applicable to legally married same-sex couples regardless of their state of residence or location of wedding ceremony. This is a tremendous change which leaves many unanswered questions in terms of consequences and recommended guidance. That's why it is so important to work with a financial professional to make sure you are doing everything necessary to protect your assets, for you and your family.

If you and your partner are married or in a committed relationship, regardless of where you live, planning your future and that of those you love is even more important – and very likely more complex – than it is for straight couples. But that doesn't keep you from having many of the same financial concerns as all married couples – fulfilling short-term financial obligations and achieving long-term goals and aspirations.

To help you achieve your financial goals and see that your wishes are carried out, you will need to take an active role in planning your future. Because the issues you and your partner face are often complex, intertwined and – given today's shifting legal environment – increasingly in a state of flux, getting professional advice you can trust may be one of the best investments you can make.

Raymond James financial advisors have the experience and resources to answer your questions and provide you the guidance you need in this era of quickly changing financial, economic and legal developments. In addition, we have full access to the comprehensive resources and expertise of one of the nation's leading and most stable diversified financial services firms.

GETTING STARTED

If you haven't already developed a comprehensive plan to address the issues that can or could affect your financial well-being, now is the time to start. One of the biggest dangers all investors face is simply not knowing the impact that current laws can have on your estate. Something as simple as how you title an asset could affect your investment planning and tax planning. Many of these inadvertent errors can have a significant impact on your and your family's financial future.

Here are some of the issues you should consider:

- Household expenses
- Property ownership
- Caring for children
- Healthcare
- Gift taxes and estate taxes
- Investment and retirement planning
- Estate planning
- Legacy planning
- Risk management – life insurance, disability, long-term care & property/casualty
- Domestic partnership agreements (DPA)

More generally, you will need to determine which aspects of your finances you will manage together, and which you will keep separate. Thorough conversations about this sometimes touchy subject upfront can help you avoid conflicts later.

HOUSEHOLD EXPENSES

One of the first decisions, and perhaps most significant since it will also help determine certain tax liabilities, is how you and your partner will handle household expenses. Whether you decide to commingle your assets in a joint account or keep them separate, you may want to consider drawing up a domestic partnership agreement (DPA), a legal document similar to a prenuptial agreement that allows you to name what's yours and your partner's and could potentially reduce your tax liability when assets are transferred if you or your partner passes away.

KEEP IN MIND

Keeping your accounts in individual title gives you sole control of your assets and protects them from the creditors of others. However, if you become incapacitated, those assets could effectively become frozen as no one other than you can access them.

A joint account allows either person to deposit and withdraw funds. However, it also means you are each responsible for any charges or withdrawals, and if the relationship ends, there is nothing stopping either person from depleting the account.

Many issues affect how couples choose to structure their accounts or assets. Before you do anything, however, talk with your advisor on the financial implications that account titling or marriage could have on your assets and the implications they can have on your relationship.

OWNING PROPERTY

If you and your partner decide to buy a house together, you should first determine the form of ownership that best meets your financial goals in terms of access to liquidity and asset protection. For instance, if you and your partner live in a home that is in only one of your names, should a fire occur or some natural disaster destroy your home, your insurance will likely only cover the possessions of the partner whose name is on the title. Look closely at your homeowners policy to determine if your family is covered, or if they are viewed as "legal strangers" or "renters" by your insurance company.

If you are not married, you probably will be choosing between joint ownership with rights of survivorship or tenants in common. As joint tenants, when one partner dies, the surviving partner automatically becomes sole owner of the property. A right of survivorship also passes co-owned property to the surviving owner and takes precedence over other claims upon the property. As a tenant in common, your property interest transfers via a will, but only after going through the costly, time-consuming process of probate.

In states where same-sex marriages are legal, there is an additional type of title that allows creditor protection against the negligent acts of a partner/co-owner. Your real estate professional or attorney can help you choose the title that works best for you and your partner.

Depending on the availability of marriage in your state, special considerations need to be given when adding a non-spouse to property title. Inadvertent gift taxes could come into play if the amount of transfer is greater than $14,000 (rates as of 2013).

KEEP IN MIND

Should you die without a will, your interest will likely be transferred through the probate courts – along with the rest of your personal assets – to your nearest blood relative, regardless of your wishes.

In some states, a presumption against joint tenancy exists. This means that deeds and similar documents must explicitly state that ownership is in the form of joint ownership – otherwise the owners are assumed to be tenants in common.

You also may want to hire an attorney to draw up an agreement that addresses, among other issues, what will happen to your assets if your relationship ends. Even though you have contributed to paying the mortgage or making improvements on a home owned by your partner, you may have no legal claim to the property if you split up or if your partner were to die.

Furthermore, if one partner depends on the other for financial support, he or she could be in serious trouble if the relationship were to end. This could also have a significant impact on any provisions for children, too.

Some states allow homeowners to write off mortgage interest paid against state taxes. However, if only one partner is making all the payments, the other partner cannot claim the deduction. Consider establishing a joint checking account into which both partners deposit funds and from which mortgage payments are made. Doing so gives you the flexibility to choose which partner can claim the write-off.

Work with your financial advisor and tax professional to determine the most beneficial titling and account structures to maximize tax efficiency on real estate properties.

CARING FOR CHILDREN

If you have children, take whatever steps are feasible to ensure that you and your partner are both recognized as the legal parents.

Since the Supreme Court struck down DOMA, federal tax benefits are now available for same-sex parents whose union is legally recognized. If a child is a qualifying child under IRS rules of both parents who are same-sex partners, either parent, but not both, may claim a dependency deduction for the qualifying child. If you and your partner adopt a child together, both of you may qualify to claim the adoption credit on the amount of the qualified adoption expenses paid or incurred for the adoption. Talk to your tax professionals to learn more.

If legal adoption is not possible, you may want to ask your attorney about a written parenting agreement that clearly states your commitment to joint parenting, should you and your partner ultimately go your separate ways. Here again, a domestic partnership agreement can help you decide which one of you will be considered legal guardian and/or can take the tax deduction associated with the child.

Should you part ways without resolving custody, visitation, child support and related issues, you may find that you need to resolve these questions through mediation or court. If you are not a legal parent – for example, if you partnered with someone who has a child from a prior relationship and have not legally adopted the child – you may not have any legal rights to even visit the child after the breakup.

HEALTHCARE

In today's environment of soaring healthcare costs, it's important to make sure you both have adequate medical coverage. Before the Supreme Court decision, some companies would extend health coverage to employees' unmarried partners, but many would not. And, unfortunately, even those that do provide coverage may have restrictions that make the coverage offered mediocre, at best. Furthermore, flexible

Obtain a state-mandated power of attorney in addition to your durable power of attorney for healthcare in case you or your partner is rejected care in an institution.

spending accounts (FSAs) offered by most insurance companies did not cover same-sex married partners since they were not recognized spouses according to federal law. If coverage through your respective workplaces is not adequate, other insurance options do exist – but may require time and expertise to identify and assess.

If you want your partner to make critical decisions should you become ill, you'll need a healthcare directive as well as a durable power of attorney for finances. You may each need to sign Health Insurance Portability and Accountability Act (HIPAA) releases to ensure that you each can access the other's medical information.

If you become incapacitated and have not specified your wishes in a healthcare directive, doctors will turn to a family member to make medical decisions for you – leaving your partner with no say regarding your care.

You also should have a durable power of attorney for healthcare (DPAHC). Without a DPAHC, your partner cannot act on your behalf, meaning your wishes might not be carried out. With it, your partner can:

- Direct your healthcare under any circumstances that you don't specifically address in your declaration
- Hire and fire medical personnel responsible for your care
- Visit you in the hospital or other facility
- Access your medical records and other personal information
- Obtain court authorization to enforce your healthcare wishes if a hospital or doctor refuses to honor them for any reason

In some states, your declaration and durable power of attorney for healthcare can be combined into a single document, often called an advance healthcare directive.

TAXES

Head of household status provides unmarried partners the same credits as married couples, such as the earned income credit for the working poor, as well as child and dependent care credits.

If you and your partner file separate tax returns, only one of you can claim your child as a dependent. In general, the parent whose income is in a higher tax bracket will benefit more from the deduction, so you may want to agree – in advance and in writing – on who should take the deduction and, if a tax refund is involved, how it should be applied. Working with your tax professional, you can maximize your tax return by taking deductions in the most advantageous way.

Wages, salaries and other income from personal services are taxed to the person earning them. However, responsibility for tax liability resulting from property and investments can be more difficult to determine.

You may want to consult a tax attorney to discuss forming a limited liability company (LLC) and combining it with revocable living trusts established by you and your partner. An LLC can reduce potential liability, while revocable living trusts can help to avoid probate and minimize estate tax.

The LLC would hold active investment assets such as rental real estate or business interests, while the trusts would hold title to all nonactive investment interests, such as bank accounts, stocks and bonds. Individual tax filers do not have access to this kind of arrangement, so talk to your tax professional about the benefits and requirements of establishing an LLC.

If you are a married same-sex couple living in a state that recognizes the union, you are required to file taxes as married-filing jointly or married-filing separately.

KEEP IN MIND

Pooling funds to share household expenses is usually regarded as a non-taxable sharing of resources.

As an unmarried couple, you and your partner may itemize deductions on your tax return. Explore combining your itemized deductions on one return and taking the standard deductions on the other return to maximize their effectiveness. Just know that if you deduct property taxes and mortgage interest payments, both names must be on the property and loan and you must pay the bill.

Because unmarried couples may not deduct medical expenses for themselves and their dependents, money that the employer pays for health insurance for an unmarried partner and any children is considered taxable income.

Investment expenses, including losses, can be used to reduce the higher-earning partner's taxes or lessen the potential impact of the alternative minimum tax (AMT).

By allocating investment gains and/or holdings to the partner who earns less, you may be able to obtain some tax benefits, but the investment accounts in question must be in both names.

PLANNING FOR YOUR FUTURE

Ensuring your financial security and that of your partner is a bit more complex than deciding who pays the grocery bills.

TAXES

Since the U.S. Supreme Court struck down the 1996 Defense of Marriage Act as unconstitutional, all legally married same-sex couples must now file federal taxes jointly. For many couples, especially those where one partner earns significantly more than the other, merging incomes may result in being placed in a lower tax bracket, meaning big savings in their tax bill. There are many other tax implications related to the Supreme Court's decision, so it is important to work with your tax professional as legislative changes are made.

For same-sex married couples who either individually or jointly make a certain amount of money each year, the alternative minimum tax, or AMT, could be an issue. The AMT is a parallel tax calculation that the IRS performs based on your income, and you are responsible for paying the higher of your regular tax liability or the AMT. To reduce AMT liability, it sometimes makes sense for one person to own particular investments over the other in order to manage income and stay below the AMT exemption threshold.

Also, same-sex couples filing jointly can apply one partner's investment gains to the losses of the other partner to net out any potential capital gains taxes.

Work with your tax professional to use your most recent tax return in structuring the underlying investments in your portfolios.

RETIREMENT

Unfortunately, same-sex couples – not recognized by state law – face more challenges than their straight peers when planning their retirement. Nevertheless, the same principles and processes apply. Perhaps the most important of these is that the sooner you can put a retirement strategy in place, the better your prospects for success.

Finding a qualified financial professional committed to understanding your needs, helping you succeed and working with you, your partner, your attorney and your accountant is a good first step.

Your current life insurance policies, trusts, retirement accounts, individual investment portfolios and other vehicles may be enough to generate the income and liquidity you seek. But, very likely, you may find that you need to update or add to your retirement arsenal to keep up with rising inflation, increasing healthcare costs and longer life spans.

Same-sex couples also face unique challenges when bequeathing their assets. Since federal law now recognizes same-sex marriage, it is extremely important that every allowable asset has a named beneficiary. If a specific person, like your partner, is not named as the beneficiary of your 401(k), an IRA or other investment account, your assets will be administered through probate. Once the eventual beneficiary is named, he or she will then be required to take a lump sum distribution, or all of the assets will have to be distributed within five years. Establishing a named beneficiary, with a stretch provision allowing your beneficiary to stretch distributions over the remainder of his or her life, can help avoid this time-consuming, asset-draining scenario.

YOUR ESTATE

If you do not have an estate plan in place, you cannot rely on the legal system to carry out your wishes. If you are not legally married, same-sex partners are considered "legal strangers," so estate planning is crucial. You need to explicitly – and in writing – set forth your plans and do so in a way that will stand up to possible legal challenges.

If you have a well-crafted estate plan in place, you can leave your property to anyone you choose, in whatever proportions you choose, including leaving everything to your partner. If you have minor children, you can name a guardian for them in the will.

If you and your partner have wills, make sure they are up to date. If you don't have wills, have an attorney draw one up for each of you. The expense of having a will professionally drawn up as opposed to doing it yourself could more than pay for itself if a third-party decides to challenge your choices. Wills can also help mitigate taxes, provide a defense against estate challenges, and protect your wishes against family disputes.

Wills associated with same-sex relationships are frequently challenged, and often successfully. Consider also drawing up a domestic partnership agreement that specifically details your wishes for your estate. It won't replace your will, but it can reinforce it.

PROTECT YOUR RETIREMENT WITH A QDRO

Should your federally recognized same-sex marriage dissolve into a divorce, you can protect your retirement savings using a qualified domestic relations order, or QDRO. It is a legal document that allows a partner to split and change the ownership of a retirement plan or pension as required by divorce or a legal separation. In effect, a QDRO makes your ex-spouse a co-beneficiary of your pension or retirement account and equally liable for tax on withdrawals. Setting up a QDRO can help you protect your interests and ensure assets are divided equitably.

PENSION QUALIFICATION

Within states where same-sex marriage is allowed, state and federal government workers are eligible for pensions and the beneficiary rights granted by law. However, corporations in states that do not allow same-sex marriage are left to decide whether their employees' partners are eligible for survivorship benefits of their pension plans.

KEEP IN MIND

The enforceability of domestic partnership agreements may vary from state to state, so check with an attorney to determine how binding such a contract may be.

Other ways to help you protect your wishes and loved ones include:

- Ensuring your assets are titled appropriately, particularly if a domestic partnership agreement is not enforceable in your state
- Setting up revocable living trusts to help avoid probate and provide better protection than wills against challenges by family members or creditors
- Designating your partner as the primary beneficiary of your retirement plans and ensuring you have identified contingent beneficiaries
- Increasing your savings or life insurance now to replace the spousal benefits your partner may not receive from Social Security and from your defined benefit pension plan
- Using life insurance to help protect your partner's retirement in the event of an untimely death. Your partner, of course, could help protect your retirement in the same manner.
- Determining whether registering your securities with a transfer on death (TOD) provision is both an option in your state and a step you wish to take. The TOD designation allows you to pass your securities directly to another person or entity (your "TOD beneficiary") upon your death, bypassing probate.

KEEP IN MIND

The American Taxpayer Relief Act of 2012 set the estate tax exemption at $5,000,000 and for it to be indexed for inflation each year. (For 2013, the exemption is $5,250,000.)

To minimize the impact of gift and estate taxes, you may wish to establish an irrevocable life insurance trust or ILIT – typically used with whole or universal life policies – naming your partner as the beneficiary. This strategy eliminates the death benefit from the estate, in turn reducing the taxes owed at your death.

Through a durable power of attorney (DPOA), you can appoint your partner to act as your agent, with authority to make certain decisions for you. It can be designed to take effect immediately or be triggered only if you become incapacitated. This durable power of attorney can be as limiting or open access as you choose. For instance, if you are concerned your agent will not manage your assets properly, you can limit the powers they have with respect to how they will act on your behalf.

As with documents directing medical care, you should seriously consider a durable power of attorney for finances if you want your partner to manage your money should you become incapacitated. If you do not have a DPA, someone will have to petition in court to be appointed as your agent. This can be an expensive, time-consuming and distressing process, especially if any conflicts exist between your partner and a family member.

The powers you may delegate in a durable power of attorney may include:

- Using your assets to pay your bills and routine expenses
- Buying, selling, maintaining, paying taxes on and mortgaging real estate and other property
- Collecting benefits from Social Security, Medicare, or other government programs or civil or military service
- Managing your investment and retirement accounts
- Handling transactions with banks and other financial institutions
- Buying and selling insurance policies and annuities for you
- Filing and paying your taxes
- Operating your small business
- Claiming property to which you are entitled
- Hiring legal counsel

LIFE INSURANCE

If you and your partner are not legally married, the federal government classifies you just as it does any unmarried couple under the rather unfortunate term of "legal strangers." And this can impact where your insurance policy payout goes when you die. Unless you have clearly named your beneficiaries on all the necessary life insurance documents, the benefits of your policy will go to your estate. Not only does this cause a hardship for your partner, but it also may result in significant estate taxes that can substantially impact the amount you ultimately leave to your surviving spouse.

EXAMPLE

A man with a $4.25 million estate ($1 million under the estate tax exemption of $5.25 million) purchases a $2 million life insurance policy for his portfolio. When he dies, the life insurance policy must pay the $2 million to the deceased's estate, which is now $6.25 million. His husband, the named beneficiary of the estate, inherits the $6 million but now owes estate tax on the surplus $1 million.

Had the man's partner owned the life insurance policy, the $2 million would have gone directly to him and not be subject to the man's estate or resulting estate tax. This is called cross-owning life insurance, where each partner owns a policy on the other. In certain strategies, it can help limit your total tax liability on the benefits of a life insurance policy. Your financial advisor can help you determine appropriate life insurance strategies for your specific situation.

GET STARTED

For many people – whether single or in a committed relationship – finding the time and emotional energy to focus on retirement planning, drawing up a will, planning care for you if you become incapacitated or protecting your loved ones should you die can be extremely difficult. And that's all the more reason to start planning today. For more information, or for help in getting started on this critical aspect of your financial life, contact your Raymond James financial advisor today.

WHY RAYMOND JAMES

Our tradition of excellence and caring goes beyond providing you investment expertise. Your Raymond James financial advisor will work closely with you, listening to your needs and giving you information specific to your financial goals – before you even invest.

Founded in 1962 and a public company since 1983, Raymond James (NYSE: RJF) is a diversified financial services holding company with more than 6,300 financial advisors serving 2.5 million accounts from 2,500 locations throughout the United States and internationally. Total client assets are approximately $418 billion.*

Please note that changes in tax and estate planning laws may occur at any time and could have a substantial impact upon each person's situation. While we are familiar with the tax and estate planning provisions of the issues presented herein, as Raymond James financial advisors, we are not qualified to render advice on tax or legal matters. You should discuss any tax or legal matters with an appropriate professional.

*As of 8/21/2013

LIFE WELL PLANNED.

RAYMOND JAMES®

INTERNATIONAL HEADQUARTERS: THE RAYMOND JAMES FINANCIAL CENTER

880 CARILLON PARKWAY // ST. PETERSBURG, FL 33716 // 800.248.8863

LIFEWELLPLANNED.COM