

Top Legal Protections for LGBTQ People, Whether You Wed or Not

1. Will:

Even if you do not have much money or own any real estate, a will is a simple way to make your intentions clear for what you want to have happen to your stuff in the event of your death. A will also provides the opportunity to specify whom you wish to be the guardian of any minor children, as well as to name the personal representative of your choice to administer your estate through the probate process. For those with a slightly larger nest egg and certain bequest intentions, a trust might be advisable.

2. Properly titled deed:

If you want your interest to pass directly to your partner on your death, and avoid probate, the property might be titled Joint Tenants with Rights of Survivorship. If you're married, you can own property "By the Entireties" for added protection.

3. Durable power of attorney:

This essentially gives your partner the power to do everything related to finances on your behalf. These are effective immediately and are very serious, giving your designate complete authority over your financial affairs upon execution.

4. Designation of health care surrogate:

This is about access and decision-making in the health-care context. Health care providers love this document because they know to whom they can turn for consent if you can't communicate your wishes.

5. Living will:

If you should be in a terminal condition, this advance directive states your intention for how you would want to be treated and in what cases you would want no heroic measures to be utilized to keep you alive artificially.

6. Designation of pre-need guardian:

If a court determines you are unable to handle your medical and financial decisions, a guardian may be appointed for you. Specify who you would want to do this, or the court will likely appoint someone else.

7. Designation of pre-need guardian for minor child:

If you have a minor child, you can designate a guardian to care for the child in the event of your disability. Along with a second parent or stepparent adoption, this is helpful to be sure that the next person in line is given authority to care for your child if you or your other legal co-parent are not able to.

8. Beneficiary designations:

Beneficiary designations usually control in the event of a conflict with your will. Check your designations on any account or policy that allows for one, including your IRA, life insurance, and 401(k) to make sure they reflect your current intentions.

9. Co-habitation agreement:

A legally married couple that breaks up has a body of law to help them sort things out. The best unmarried couples can do is enter into a contract for how we will divide up financial and domestic responsibilities while we are together and what should happen if we break up.

10. Second parent adoption:

If you are raising a child with a same-sex partner, one of you is probably not the legal parent. In many states, it's possible to fix this with a simple adoption process whereby the parent who is currently not the legal parent completes a formal adoption of the child. This can save you from a whole lot of heartache, whether from each other or the outside world, down the line. The child could also receive important benefits such as social security and health insurance as a result of the adoption. There's no substitute for adoption. Anything less, like guardianship, simply doesn't provide the child with the permanent, stable home that she deserves.

This is not a substitute for individual legal advice, but you should start thinking about the protections you need to have in place. This topic can get quite complicated depending on your circumstances, so it's best to consult legal counsel knowledgeable about the law on estate planning where you live. Please do not wait for tragedy to befall before you handle these matters.

Top Ten Legal Considerations for LGBTQ People Who Are Married or About To Be

If you are already married or have decided to get married and you own property, have or want to have children, file taxes, plan to retire, or have other financial issues, here are our Top 10 considerations for you to discuss with your attorney and tax advisor. There are many rights and benefits married folks can take advantage of and there are also obligations that come with marriage. Many of these rights, benefits and obligations are not automatic and do require further steps on your part.

1. Marital and Estate planning

If you have your estate plan in place, you should make sure everything there still makes sense and represents your current intentions. If you die intestate (without a will or trust in place), the law dictates how your estate will be distributed. Some spousal rights on inheritance are automatic and others are not, so you may wish to create or modify your existing estate plan. It's critical for married and unmarried couples to have estate planning in place to be sure their wishes are clear and that alternate fiduciaries, beneficiaries, and designates for health care surrogates and the like are named in case you are traveling and in a state or country that does not recognize your marriage. Also, if you are not a fan of letting your legislators dictate how your income and assets would be divided in the event you should divorce or die, we can change those automatic rights through a nuptial agreement and an estate plan. It doesn't mean you're breaking up, only that you want to spell out different intentions than the law would provide.

2. Income Tax filing

The federal government has recognized your marriage for tax purposes since 2013, so hopefully you've been filing your taxes together since then if you were married already. If you haven't before, you'd better start doing so now. Your tax professional will run the numbers and see if it's advantageous to retroactively amend your returns to reflect the marriage for up to the prior 3 years, depending on your date of marriage. For more information, see the Internal Revenue Service's FAQs on point [here](#).

3. Parenting

Being married doesn't automatically give you parental rights for your spouse's child. If your spouse has children already, and you and your spouse wish to exercise co-parental rights over the children, you need a stepparent adoption to obtain those rights. If you are married and planning to have children, you will benefit from a legal presumption that you are the legal parent of that child born into the marriage. However, the consensus among attorneys and activists doing legal work with LGBT families is that this presumption could be challenged in court in the event the marriage is dissolved. It is prudent to take the legal steps necessary to obtain legal recognition of the joint desire to co-parent the children born during the marriage and do a second parent adoption, which we also refer to as a confirmatory adoption since it is confirming the parental rights which ought to exist.

4. Retirement accounts

Your spouse has automatic rights to your pension and all qualified retirement plans. Be sure s/he is listed as a spouse so that s/he can take advantage of rollover benefits if you should pass away. Many who have worked with the government on any level have retirement benefits that did not allow you to designate your non-legal spouse prior to marriage recognition but if you are in a recognized marriage, you should be able to amend your beneficiary designation form to include your spouse, if you so desire.

5. Retitling property

Before your marriage was recognized, if you wanted to own property jointly it would either be as tenants in common or joint tenants with rights of survivorship. Married couples can own as tenants by the entirety, a special category for married joint owners of property. This special form of ownership provides greater creditor protection and also cannot be severed without the consent of the other spouse. These benefits apply to real property (your home) and also to your investment accounts.

6. Social Security and other government benefits

If you're eligible to collect Social Security survivors' benefits because your spouse passed away, go ahead and file for those benefits. You can now collect! If you are receiving Social Security benefits based on your own age eligibility, your own work history and health, getting married will not affect those payments. For more information on these benefits that are critical for so many of us, see the Social Security Administration's FAQ for same-sex couples [here](#). There are other great benefits you'll enjoy now like Family Medical Leave Act protection should you need to take time off work to care for your spouse, and COBRA guaranteed continuation of medical coverage for your spouse. If you are military, whether active service or a veteran, you'll want to look into the myriad benefits now available to you as well. Lambda Legal has won an incredible case and changed the law on this topic so the Social Security Administration now allows LGBTQ couples to receive survivor's benefits if they can show that they were in a committed relationship and would have married had that been possible.

7. Insurance Coverage Most likely your group employer health insurance plans is available for married employees so go ahead and enroll! You can allege that the recognition of your marriage is a triggering event such that you need not wait for the open enrollment period to make the change. Also, homeowners and auto insurance policies sometimes provide for benefits to married couples so it's worthwhile to call up and advise them of your marital status and see if any discounts or better policies are available.

8. Name Changes

Depending on where you got married, you might have checked off a box indicating you want to change your last name. If you're in a recognized marriage, your state should honor that request so head over to the local DMV office with your marriage certificate and change your name on your driver's license.

9. Financial Aid

If you are applying for student aid and you're married, or you have a child who is applying for aid, your household income is joined so be sure you include both incomes.

10. Divorce

No list about what rights are available to you as a married couple would be complete without touching on one of the most important benefits of marriage: namely, divorce! If you wish to move on to solemnize another relationship, it's critical that you formally terminate the prior one so that you do not risk bigamy charges, which would also make your new marriage void and not eligible for recognition. If you can't agree on the division of your assets and debts, the court will impose its own vision of what constitutes equitable distribution, so it's best to try to work it out between you. To save money and heartache on a prolonged adversarial divorce, consider using a lawyer trained in the collaborative divorce process.

This is only intended to be a basic outline of some of the issues that might arise. This is not a substitute for legal advice.