

# THE HUFFINGTON POST

## In a Same-Sex Marriage? Time to Focus on Financial Equality

*This article was written by Chris Walters of [PolicyGenius](#)*

Justin and Joel had been living together for three years when, in the kitchen of their Pittsburgh home this past May, Justin asked Joel to marry him. Although it had been in the back of his mind for a while and he and Joel had talked about it, the actual proposal was spur-of-the-moment. "I didn't even have a ring ready," Justin says. "I twisted together a bread tie and proposed to him with that."

The homemade ring wasn't the only unconventional thing about their engagement. Only a few days earlier, a Pennsylvania law banning same-sex marriage was struck down by a U.S. federal district judge, which means Justin and Joel are among the first wave of same-sex couples who will enjoy legal recognition in the state.

In the year since the Supreme Court determined that Section 3 of DOMA was unconstitutional in *United States v. Windsor* (2013), judges have struck down laws that oppose same-sex marriage in 14 states. It's an exciting time for LGBT rights, but it also makes the already complicated subject of financial planning even more confusing.

Every married couple has to stitch together a long-term financial strategy piecemeal from retirement accounts, insurance policies, savings, assets, and investments. Same-sex married couples now have access to many of those same tools and strategies for the first time in U.S. history, but the access isn't (yet) consistent from state to state.

For example, in states that still refuse to recognize same-sex marriages performed elsewhere, couples can't receive federal Social Security benefits and likely won't be protected by any of the state's spousal rights estate laws. Those same states might also insist on individual income tax returns, even if the couple jointly filed a federal return.

What does this mean for a same-sex couple getting married today? It means every couple will need to put together a custom financial plan that takes into account both federal benefits and state benefits—or limitations, depending on the state. It also means that if you move to another state, you'll need to revisit your plan to account for that state's current attitude toward same-sex marriage.

Most of all, it means that even if you stay in one state, you may have to adjust your strategy in the months and years to come as the legal definition of marriage continues to evolve.

Here are some expert tips from professional financial planners and advisors on how a same-sex couple can best plan for a long and secure future together.

**1. Put "revisit financial strategy" at the top of your to-do list, no matter how long you've been together.**

"Make a plan for the future" is probably already on the to-do lists of young couples just starting out. But older Americans—especially those who have been married for years—might not realize how much the Windsor ruling and its ongoing influence on state laws could affect their existing strategies.

David Rae, a certified financial planner (CFP) and vice-president at Trilogy Financial Services, says that while the divide between how straight and LGBT married couples approach financial planning is shrinking; some of his older clients don't always recognize the opportunities this brings.

"The main difference I've seen is many 'newly married' couples may have been together for decades, and this new legal recognition means they may need to change the way they have been doing things to maximize the benefits or their retirement plans, and minimize taxes as a married couple, versus two individuals. I talk to lots of same-sex couples who have run a 'retirement calculator' of some kind based on their situation alone, essentially ignoring their spouse's portion of the plan. Ideally, they should make sure they're on track as a couple."

**Mike DiNuzzo, a CFP and Wealth Advisor at DiNuzzo Index Advisors, Inc., agrees. "We often see same sex clients approaching retirement who have been in a relationship for decades and are now making their bond official due to new law changes," he says. "Sometimes it can be difficult to help these clients understand that they need to approach some aspects of their new marriage just as a couple would in their early 20s. It's not uncommon for couples who have spent years together to never have seriously had conversations concerning their finances."**

**DiNuzzo suggests these couples should, at the very least, meet with an accountant or tax advisor to explore their new federal tax filing options. Couples with sizeable assets should meet with a financial advisor to understand where and how to adjust their retirement and estate plans.**

## **2. Understand the new tax opportunities available to you.**

The immediate effect of the Windsor ruling was that the IRS now treats straight and same-sex marriages equally. Our experts described several ways this can help a married couple save money.

To start with, Rae says you should take care of the basics: if you're switching from an individual return to a joint return, review your deductions and withholding to make sure the numbers still work. "No one wants to give the IRS a big loan for free, or worse get blindsided with a big tax bill when filing your taxes."

Lisa Snyder, a Wealth Management Consultant with UBS Financial Services in California, points out that both the mortgage interest deduction and the home sale gain exclusion are possible sources of tax savings when filing jointly, because in both cases the limits are doubled for married couples.

**DiNuzzo says couples who co-own a business can also benefit. "One lesser known tax benefit for married same sex couples who enter into business together is that they can now benefit from creating a 'family partnership.' The married couple can divide business income amongst members of the family, potentially resulting in a sizable tax savings."**

Rita Cheng, a CFP professional and the CEO of Blue Ocean Global Wealth, says that married couples in general enjoy a "greater ability to offset capital gains with capital losses: When a married couple files a joint return, capital losses recognized by one spouse can be used to offset capital gains recognized by the other spouse."

Cheng recommends that you also check with your employers for potential benefits, especially when it comes to health expenses. "Probably the two most common examples are tax-free health coverage and reimbursements from pre-tax Flexible Spending Accounts (FSAs) for health care and dependent care."

Justin, who's covered by Joel's employer-offered health insurance plan, agrees. As long as they remain unmarried, Joel is taxed for the amount his employer pays to cover Justin. That extra tax will disappear once they're legally married.

"We've joked about bumping up the marriage date just to get out from under that extra tax," he says.

### **3. Get your retirement strategy in order.**

"Same-sex spouses should approach retirement planning just as opposite-sex spouses should," Snyder says, and that means executing a three-part strategy.

First, Snyder suggests that you meet with a financial advisor and conduct a thorough analysis of your current financial plan. You'll need to look at your collected assets, liabilities, and expenses, to see whether your current strategy is adequate to meet your retirement needs.

Next, you should conduct a risk analysis to identify any other possible roadblocks between you and your retirement goals. These can include the death of spouse, a disability, or a chronic illness. "Managing these risks is just as important as managing investment risk," Snyder says.

And finally, you should figure out your wealth transfer needs so that you can make sure anything you leave behind is distributed efficiently and to your wishes.

A financial advisor can also help you figure out the most effective use of your retirement accounts. Cheng says it's now possible for a non-working spouse to contribute to a working spouse's IRA, and that a surviving spouse will also be able to roll over a deceased spouse's IRA funds into his or her own IRA.

For many married couples today, Social Security still makes up a significant part of any retirement strategy, and now same-sex married couples can also include these benefits in their financial planning. For example, Rae points out that same sex spouses can now take advantage of the popular "file and suspend" strategy, which lets a non-working spouse claim eligible Social Security benefits while the working spouse postpones his or her benefits to build more value.

There's one big catch to Social Security benefits, though, which is that they remain unavailable to couples living in states that don't recognize same-sex marriage. Snyder recommends that couples in these states take advantage of annuities and life insurance.

But you should apply for benefits no matter where you live, according to Rae. "If you should be entitled to government benefits such as Social Security, apply even if you aren't technically eligible to receive them at this time. Laws and recognition of same-sex marriage are changing quickly, and applying may help preserve your ability to claim benefits that were unrightfully denied."

### **4. Take control of your estate plan.**

While retirement planning is now broadly the same whether you're in a straight marriage or a same-sex one, estate planning remains complicated for many same-sex couples. States wield more power in this domain, so couples face different levels of risk depending on where they live.

Mark Scott, an estate and trust principal with the accounting firm Kaufman Rossin, says Florida is an example of where intestacy laws (which deal with cases where someone dies without leaving behind a will) don't recognize same-sex couples.

"In Florida, spouses are protected from being disinherited through a variety of statutorily mandated provisions," Scott says. For example, the surviving spouse in a straight couple is automatically protected from being disinherited by his or her spouse. "Since Florida does not recognize legally married same-sex couples, the surviving same-sex spouse may not be entitled to the same protections."

As Snyder puts it, "Everyone has an estate plan. The question is, have you created your own, or are you are relying on the estate plan created for you by your state of residence?" If it's the latter, and if your state doesn't recognize same-sex marriage, Snyder says your spouse may be viewed as a "legal stranger" with no claim to any of your assets.

Because of this, Snyder says that if you live in a state that doesn't recognize your marriage, it's important to have proper estate planning documentation drafted and executed. "This includes wills, revocable living trusts, powers of attorney for health care and general financial powers of attorney."

In fact, she recommends the revocable living trust--a legal document that lets you name a trustee to manage your assets--for all same-sex married couples, regardless of where they live. "It not only eliminates the time and expense of probate, but also keeps estate assets and administration private. The public proceedings of probate can sometimes give rise to unwanted disputes and claims from disgruntled family members. The trust can help avoid these issues."

You should also make sure you account for your state's inheritance tax, if it has one, Snyder says. Married couples can sometimes defer this tax until the death of the surviving spouse, but if your marriage is unrecognized then you'll need to anticipate this extra cost. (At the federal level, you can now pass up to \$5.25 million in assets to a surviving same-sex spouse without a tax penalty.)

Justin and Joel haven't set the date yet, but when they marry, it will be in Justin's grandmother's home in the Hudson Valley. "It's an old farmhouse from the 19th century," he says. "It's where my parents got married."

The location of the wedding is a striking example of just how quickly same-sex marriage is becoming an accepted part of our shared culture—how it's fast becoming simply "marriage," without the same-sex qualifier. With federal recognition and the cooperation of a growing number of states, Justin and Joel, and other couples like them, can now make sure their financial future is as secure as other families.

"Now I just have to convince Joel we should talk to a financial advisor," Justin says. "He likes to do it all on his own."