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The Challenges of Advising Same-Sex Couples

It wasn't so much that Frederick Hertz, founder of samesexlaw.com and an attorney providing legal counsel to same-sex partners in Oakland, Calif., was a keynote speaker at the Financial Planning Association's (FPA) annual gathering in September, or that the topic of his speech was financial planning for the lesbian, gay, bisexual and transgender (LGBT) community. It wasn't even that his address drew a huge crowd. It was more that the crowd was overwhelmingly made up of "straight financial planners with LGBT clients," all of whom, Hertz believes, were "eager for information and education on financial planning for the LGBT community."

"Historically, there was always a sense that gay clients wouldn't feel comfortable with straight financial planners," says Hertz, who recently authored the book *Making It Legal: A Guide to Same-Sex Marriage, Domestic Partnerships & Civil Unions*.

"But while there may still be some degree of discomfort with straight financial advisors and gay clients, I really think those days have past, and today there's an increasing sense of responsibility among the financial planning community at large to want to understand the particular financial planning needs of the LGBT community in order to serve it in the best way possible."

It's true, says Sharon Rich, co-founder of PridePlanners, an organization established in 1999 to stay abreast of all issues related to financial planning for the LGBT community, and that has been at the forefront of the movement to bring about awareness of these efforts. The sea change in both mentality and approach from the financial advisory community toward financial planning for the gay and lesbian community has been huge, she says, and in the 12 years that PridePlanners has been actively holding conferences on the topic of LGBT financial planning, the momentum has been tremendous. "This has become an area that every planner needs to be sensitive to," says Rich, "and not only because they may have gay and lesbian clients, but also because of the way that society is changing, they might have clients whose children are LGBT, or even their clients' parents might be gay or lesbian."

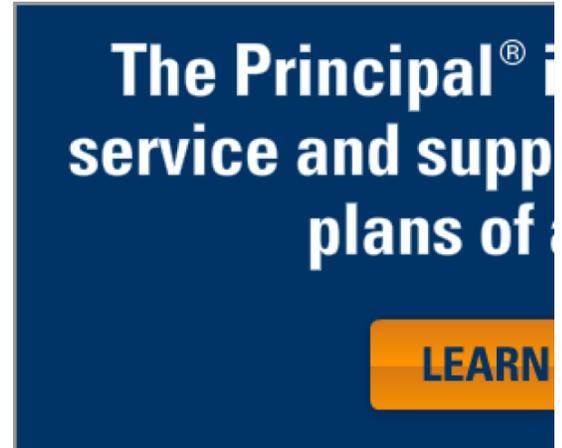
And now, New York State's landmark passage of the gay marriage law this past summer means that things have reached a point where financial advisors-gay or straight-have no choice but to get up to speed in terms of serving the LGBT community.

New York is the seventh state in the country to okay same-sex marriage, and "because it is such a large state, the passage of the law affects scores of financial advisors," says John LeBlanc, a certified financial planner with Back Bay Financial Group in Boston. "The effects of the law will be so widespread that advisors just have to stay on top of it and make sure that they know how it works and how it's going to affect their clients' financial planning."

Changing Mentalities

LeBlanc believes that there's been a huge change in mentalities, and more and more financial advisors across the nation are now looking beyond the borders of traditional society, willing to recognize the fact that there are many different kinds of people with different sorts of financial planning needs that they need to help address even if their motivation is driven more by the desire to tap into the new business opportunities that the LGBT community offers.

"Society is changing so much from your typical family of husband, wife and 2.5 kids, and I do think more advisors are looking to think outside the box with respect to the profession," he says. "Even something like divorce can change the profile of your client completely and totally alter a financial plan. Advisors have to learn to work with new social



structures."

But while society continues to evolve, and the traditional definitions of what constitutes marriage, family, parenting and partnerships continue to change, the legalities involved remain extremely complex. Serving the financial planning, tax and estate planning needs of the LGBT community in particular is no easy task, LeBlanc says, and advisors who want to be in this space have their work cut out for them.

Call it legal bias, as Hertz does, or call it what you will, the complexities of the laws are such that many financial advisors feel intimidated by the task at hand, he says. "I know how to weave the bias factor into my discussion so that people know it's not me, but the law, that's the harbinger of complication," he says. "But many advisors don't know how to do this, and so they just see how difficult things are and they give up because they feel it's a hopeless and chaotic space."

To those advisors, Hertz says "don't give up."

"I have a sense of responsibility to my community," he says, "and I'm willing to share my expertise and knowledge in this domain with other advisors who also feel a sense of responsibility and who are keen on getting the necessary education to help their LGBT clients."

Documents and More Documents

The overriding problem with respect to LGBT financial planning is the absence of federal legislation on same-sex marriage. So long as there is no law at the federal level, and state-by-state laws on marriage differ, the process of tax, estate and financial planning will remain extremely complex for the foreseeable future.

Currently, seven states have legalized same-sex marriage, while nine others allow for marriage-equivalent registration. Four states allow limited registration options to same-sex couples and four "marriage-equality" states recognize foreign and out-of-state marriages.

But if marriage, marriage equivalency and domestic partnership laws are different all over the U.S., so too are the laws governing gift-giving, estate planning, asset sharing, divorce, parenting rights and a host of other issues, says Rich. The difference in the laws-particularly with respect to marriage-have implications across the board, including in areas like Social Security, immigration and federal employee benefits, among others.

With different same-sex couples facing different kinds of challenges (those who are married or in a civil union, for example, may or may not live in a state that recognizes their status, while couples who aren't in a legally sanctioned relationship have no special rights at all), it is up to advisors to work their way through the myriad differences and figure out the laws with respect to estate planning, taxation, accounting, insurance, children and even divorce for a clientele that is only likely to increase going forward.

The greatest task at hand for an advisor is to make sure that their gay and lesbian clients are fully documented-and at all times. These clients need to have documentation for every facet of their lives, Rich says, including proxies for health care, insurance and prenuptial agreements, among others.

"As an advisor, one needs to know the client's background, where they are coming from and where they are going," she says. "If they're moving somewhere, you have to know the implications of that. You have to be aware of shifting situations, personal, professional, financial and other issues."

Powers of attorney and proxy statements are crucial for gay and lesbian couples, agrees Carrie Aburto, a financial advisor with LPL Financial in Boulder, Colo.

"It can be something so simple as your client having to travel to a different state for their job, having to go to the hospital there and not having the necessary documentation that designates their partner as their beneficiary that could cause an issue," she says. "Without the right documents and powers of attorney in place, things can easily become impossible."

Collaboration, Trust are Key

All financial advisors agree that professional collaboration is primordial to making it work for LGBT clients. Gay and

lesbian clients want to work with financial advisors who know their stuff, says Bill Moran, head of the national LGBT financial services team at Merrill Lynch, but those advisors also need to be working in conjunction with the clients' other advisors, particularly tax and legal experts, to make sure they're up to the mark.

"Financial advisors need to be able to identify and understand all the issues at play, but we want to make sure that all the horses are pulling the cart in the same way, so we want to be able to work with experts on the tax and legal sides in a collaborative fashion," Moran says.

A gay or lesbian client's accounting, legal and financial issues are all part of the same package and need to be planned together for an optimal outcome, agrees Hertz.

As such, a financial advisor's first point of call is to make sure their gay and lesbian clients know their respective legal situation, and to urge clients to seek legal counsel before they can advise them on financial planning matters.

While planning for the LGBT community in all areas is still a growing business, the communication networks between different disciplines-financial, legal and accounting-is growing, and this enables professionals from different parts of the country to get in touch with one another and help one another out, Hertz says. At a higher level, organizations like PridePlanners and the FPA are making a concerted effort to provide information and education, and they are making it easier for professionals to network with one another.

"It can often be hard for professionals to find people in their local area to discuss and network with and because laws are so state-specific, people often think they don't have anyone to bounce things off," Hertz says. "But there's a growing network across the country that makes it easier for people even in places like Cincinnati and Anchorage to reach out to others and get the help they need."

To provide the best advice, planners and advisors need to be able to know what's happening at each state level, or be in a position to obtain that information from other knowledgeable sources. But at the end of the day, truly successful and complete financial planning for the LGBT community relies most upon one single factor: A solid and mutual trust between advisor and client.

Of course, advisors must ensure that they foster and nurture that deep level of trust with their clients regardless of who those clients are, but in the LGBT community, this is even more important, Rich says, not least because many people are still not comfortable enough to come out about their life situation. There are many areas in the country where coming out is extremely difficult, she says, so advisors have to put in even more of an effort to know their clients well and make sure their clients trust them.

According to Merrill Lynch's Moran, one of the best ways in which financial advisors can get their LGBT clients to trust them is by showing that they are specialists in the issues that concern the community. As much as advisors are looking to reach out to the community, LGBT clients are even more keen to reach out to advisors who can serve them properly, Moran says. "There's a lot of interest from both sides-advisors recognizing that the needs of the community are unique, and community members wanting help from people who can chart the right course for them," he says.

Organizations like Merrill Lynch provide extensive education opportunities for their advisors to enable them to become specialists, and that education level is what separates the specialists from the generalists, and makes an advisor more credible to the LGBT community, says LPL Financial's Aburto.

"In an ideal world, advisors should be seeing all their clients as equal, and many do-an effort that I appreciate and understand," she says. "But when it comes to the LGBT community, the needs are very specialized and very different. An advisor just cannot ignore the laws, and so to serve best, you have to be a specialist."