

Gay couples to reap financial benefits

Advisers with gay clients need to pay attention

by **Rick Miller**

Eager to tie the knot with her partner of nearly 25 years, financial planner Sharon Rich says she's already planning a May 18 wedding — six months after a state Supreme Court ruling endorsed gay marriage.

“If there's a group ceremony at City Hall, we will be there,” says the president of Womoney, a fee-only planning firm in Belmont, Mass. “We are just there to be counted as one among many who have been waiting a long time for this.”

From an emotional standpoint, Ms. Rich and her partner, Nancy Reed, are looking forward to the day their children, ages 12 and 15, can say their parents are “married.” Ms. Rich is the biological mother of the children, who were legally adopted by the couple.

On a practical level, the couple are eager for the estate and financial planning benefits they'll likely gain.

No longer would they have to buy an additional single health insurance policy — at a cost of up to \$6,000 a year — in addition to the family plan that covers one adult and the children. And for purposes of Massachusetts' estate taxes, the unlimited marriage deduction would now apply to them, allowing a deferral of estate taxes until the death of the second spouse.

MARRIAGE OR CIVIL UNION?

Asserting that gay and lesbian couples are entitled to “the protections, benefits and obligations of civil marriage,” the Massachusetts Supreme Judicial Court last month declared it unconstitutional to deny same-sex couples that right. The high court stayed its ruling for 180 days “to permit the legislature to take such action as it may deem appropriate in light of this opinion.”

State political leaders are debating whether the court's wording means that gays must be allowed to marry or that they must be offered the rights of marriage, which would be satisfied by offering civil unions.

Financial planners say that what has happened in Massachusetts is a burgeoning trend, and advisers with gay clients need to pay attention.

If gays are given the right to marry — as some constitutional lawyers predict — the legal repercussions will be felt across the country.

“The implications are going to be tested in various states,” says Debra Neiman, a principal at Neiman and Associates Financial Services LLC in Watertown, Mass.

Out-of-state gay couples are expected to wed in Massachusetts and file lawsuits in their home states to have their unions recognized. The federal Defense of Marriage Act of 1996 says states are not required to recognize another state's same-sex marriages. However, since no state has permitted gay marriage, the law has yet to be tested in the courts.

“It's important that other planners and advisers are aware of what is going on,” says Ms. Neiman, who teaches financial planning for non-traditional couples at Bentley College in Waltham, Mass. “They may need to advise their clients if they should go to Massachusetts to get married, or their clients may want to move to Massachusetts if their states don't recognize the marriages.”

Currently, two states offer the rights of marriage. Vermont passed a law in 2000 allowing civil unions for same-sex couples. Before leaving office, California Gov.

Gray Davis signed in September a domestic-partnership law granting gays and lesbians nearly all the rights, benefits and responsibilities of marriage.

Hawaii and Alaska moved in that direction, but amended their state constitutions to bar gay marriages just as courts seemed about to recognize them. Neither the laws in Vermont and California nor any potential rights in Massachusetts afford gays and lesbians federal benefits. Social Security survivor payments, federal family and medical leave benefits, and pension transfers to a surviving partner, won't be allowed, regardless of any state-sanctioned union.

Nevertheless, whether it's a marriage or a civil union, the state benefits are immense, according to advisers who specialize in the field.

"Doing financial planning for gay and lesbian couples now is a matter of coming up with as many possible work-arounds as a planner can find," says Susan Moore, a certified financial planner in Watertown, Mass., and a member of Pride-Planners LLP of West Rutland, Vt., a network of advisers who educate professionals on planning issues for gay and lesbian clients.

"This [law] is going to make a huge difference in the lives of many gay and lesbian couples," she adds.

For example, in an estate, only spouses are entitled to emergency payments while waiting for the estate to be settled.

"If somebody dies, and the surviving partner doesn't have a way to pay the mortgage, they could lose the house by the time the estate has been settled," Ms. Moore says. "But this [pending Massachusetts law] would allow them to take money for the mortgage out of the estate."

Also, joint-property rules would apply on the state level, meaning that the first to die would be allocated 50% of the value of the jointly owned property, says Ellen K. Wade, an estate planning attorney in Brookline, Mass. If the couple is unmarried, 100% of all jointly owned property would be included in the estate, she says.

Other big benefits to gays would be in the area of divorce, says Dana Levitt, a certified financial planner with Back Bay Financial Group Inc. in Boston, which has about \$80 million under management. "Right now, gay couples don't have a real organized way of dividing assets if a partnership ends, so I see that as being one of the primary advantages that this is actually doing," she says.

While there will be increased advantages, gays and lesbians will have to juggle two sets of rules — state and federal. "I think it's going to be very confusing ... for couples who choose to marry," says Ms. Neiman, co-founder of PridePlanners.

The rights gays and lesbians are eventually given in Massachusetts will depend on the law approved by the legislature and Republican Gov. Mitt Romney. Indications are that lawmakers are favoring civil unions as a more tenable middle ground between gay-rights ad-vocates and conservative voters.

That would be a watered-down victory, gay-advocates say. There's a question of whether partners of a civil union would have the standing to challenge the Defense of Marriage Act, says Ms. Wade, the estate lawyer who, with her partner, was one of seven couples who were plaintiffs in the Supreme Court lawsuit.

"It may be possible to make an effective challenge, but it's certainly a stronger [one] if you are married, and you are a spouse," she says.

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