



Building your Business

Serving same-sex couples

Whether married or living common-law, clients in same-sex relationships face financial planning challenges. Understanding the financial and legal issues, as well as the personal nuances, is key to providing value to these clients

By JoAnne Sommers | February 2013

Don't look now, but the face of the Canadian family is undergoing a dramatic change. Sure, you can still find plenty of families featuring a mom, a dad and two kids. But as the 2011 census reveals, the real growth is among non-traditional families.

In addition to significant growth in the number of heterosexual common-law relationships, the census shows an increase of almost 44% in the number of same-sex couples in Canada since 2006. In 2011, there were slightly fewer than 65,000 same-sex couples in the country, and almost one-third of them - more than 21,000 - were married, compared with 7,465 just five years earlier.

Whether married or living common-law, gay couples face some unique financial planning challenges. These challenges must be understood and addressed by the financial advisors who serve these clients.

Under Canadian law, gay and lesbian couples - both married and common-law - have the same legal rights as their heterosexual counterparts. So, in many ways, working with same-sex couples is no different from working with straight couples. There are, however, some important differences, in both the way you manage your relationships with same-sex couples and the way these clients are treated by the law.

- *Communication is key*

Gays and lesbians don't want to feel judged, so it's important to use appropriate language with them, says Helene Ata, an advisor with ***Investors Group Inc.*** in Pickering, Ont., who has advised members of the gay community for almost a decade.

"It's easy to slip up," Ata says, adding that she occasionally has used the wrong words - for instance, referring to heterosexual couples as "normal."

Make sure your intake forms are gender-neutral, Ata says. They should refer to "partner 1" and "partner 2"; not to "husband" and "wife."

Remember that many gay people have had problems being accepted by others. And if your gay clients are "out," Ata says, that may be a recent development.

"They may be used to keeping personal information to themselves," Ata says, "and find it difficult to open up to a stranger. That's why it's essential to establish trust right from the start."

To do that, you must create a comfortable, supportive environment, says Dana Levit, owner and principal of **Paragon Financial Advisors** in Newton, Mass.

"When meeting with a potential client," Levit says, "demonstrate that you're open to gay and lesbian relationships by using non-gender-specific language. Instead of asking: 'Are you married?' ask if there's someone with whom they make financial decisions. If the client doesn't understand, say: 'For example, a spouse or partner.' This has a very different feel to it than putting [your client] on the spot and it lets them decide whether they want to be 'out'."

You also should assume that the questions you're posing could make your client uncomfortable and that you may be treading on unfamiliar ground, says Fred Hertz, a lawyer in Oakland, Calif., who specializes in same-sex couples' legal issues.

"Many gay and lesbian couples have never discussed houses, money and children before," Hertz says, "so be aware that you may be leading them into new and probably delicate territory."

Jennifer Maier, a financial advisor with Vancouver-based **Perler Financial Group Inc.**, has worked with gay and lesbian clients for about six years. She says some advisors are still uncomfortable working with such clients.

"Clients have told me about advisors who wouldn't return their calls," Maier says, "or showed clear discomfort when discussing the client's life and financial needs. If you're uncomfortable, the client may omit important information, leaving you with an incomplete picture to work with."

Maier recommends that you follow your clients' cues and allow them to self-define: "Pay attention to how they describe themselves and their lifestyle. If they say 'partner' or 'girlfriend/boyfriend,' you should do the same."

Ask open-ended questions about their lives, she adds, such as: "What's your current living situation?"; "Are you in a legal relationship?"; "Do you have any plans for a family?"; "Whose financial future are we planning?"

"These are important questions," Maier says. "So, don't avoid them."

According to Hertz, one of the central issues in financial planning for same-sex couples is: whose money is it?

"There's a much greater tendency," Hertz says, "for gay couples to think of their money as separate rather than combined."

He thinks same-sex couples generally have a more fluid notion of relationships than do heterosexuals.

"For one thing, far fewer [same-sex couples] have kids," says Hertz. "And for many, it's their third or fourth serious relationship. So, they're more interested in maintaining their financial independence."

That might seem strange to most advisors, who typically have very different ideas of how money is treated within a family. But Hertz cautions against making any assumptions based on what you consider to be normal among heterosexual couples.

"For instance," he says, "just because straight couples usually share information about their finances doesn't mean gay couples do the same. Don't jump to conclusions. Get your clients to explain how they think about money in the context of their relationship."

- Tax-planning considerations

Whether married or common-law, same-sex couples in Canada must file a joint tax return. As long as two people have lived together in a conjugal relationship for a certain length of time (usually one year; in some provinces, it is two or three years), they are considered a couple under the federal Income Tax Act.

This means that gay couples enjoy the same tax benefits and are subject to the same obligations as their heterosexual counterparts.

By filing a joint return, couples may forfeit certain credits - such as the HST credit and the Canada Child Tax Benefit - that are based on family income. But failing to do so, says Harvey Hamburg, a lawyer in Toronto, could create difficulties in collecting Canada Pension Plan (CPP) survivor benefits in the event of one partner's death.

"The government might not look favourably on an application for survivor benefits," Hamburg says, "if the deceased had previously received a benefit for which they shouldn't have qualified, based on family income."

The tax advantages of being a spouse include the ability to claim a tax credit for a financially dependent partner, and to transfer credits and amounts (such as the age, disability, tuition and pension income deductions) to a partner. Partners also may combine credits based on certain payments (such as charitable donations or medical expenses) to maximize the tax credit.

Another benefit of being a spouse is the availability of various income-splitting strategies, such as contributing to a spousal RRSP, sharing CPP payments and splitting pension income.

During a taxpayer's lifetime, non-registered assets can be transferred to his or her partner without triggering capital gains. And upon death, RRSP and registered retirement income fund assets can be rolled over on a tax-deferred basis to the surviving partner - if that partner is named as the beneficiary. This effectively provides tax-sheltered growth of those assets until the death of the surviving partner.

Finally, tax-free saving accounts can be transferred to the surviving partner tax-free following the death of the other partner, and can continue to grow on a tax-free basis.

- *Wills and estates*

Because common-law couples are treated the same as married couples under federal tax law, many such clients mistakenly believe they'll be treated as married and will have the ability to make family-law claims if they split or if one partner dies. In fact, there are important differences between married and common-law couples, when it comes to both wills and estates and family law, all of which are provincially regulated matters.

"Everyone should have a current will," says Robert Coates, a lawyer in Toronto who specializes in estates and trusts. "But it's critically important for unmarried couples because, in Ontario, they have very few rights of inheritance otherwise.

"Under Ontario law," he continues, "if a person's common-law partner dies intestate, the surviving partner has to sue the partner's estate for support or argue in a constructive trust that [the survivor] contributed to the property. It's a complex and expensive process."

The laws are somewhat more favourable for common-law couples in British Columbia, says Barbara Findlay, a lawyer in Vancouver: "When someone dies intestate, B.C.'s Estate Administration Act stipulates who gets what. It depends on whether children are involved; but a common-law partner is entitled to inherit something."

One way to avoid inheritance problems is to consider joint registration of assets, including bank accounts, principal residence and cars, "with right of survivorship." This enables the surviving partner to assume immediate ownership in the event of the other partner's death. By excluding these assets from the deceased's estate, probate also may be avoided.

- Powers of attorney

Unmarried partners - gay or straight - might not automatically have the legal authority to manage one another's financial affairs or make health-care decisions. Having enduring powers of attorney (POA), in which each partner is the other's designated POA, ensures that couples have the ability to handle one another's financial affairs or make health-care decisions in the event of incapacity.

In B.C., if someone who becomes incapacitated lacks a POA for property, that person's partner must apply to the province's Supreme Court for permission to manage the incapacitated person's financial affairs. Anyone can apply, and the process can take up to two years to resolve - depending on whether anyone, such as a hostile family member, contests it. In the meantime, the incapacitated person's financial affairs effectively will remain in limbo.

The situation is slightly different with respect to medical care, says Findlay: "In B.C., if there's no representation agreement (for medical care), the law spells out who can make medical decisions for the incapacitated person. First on the list is the person's common-law partner, provided they have been living together at least one year. However, if there's a dispute about how things should be handled, it can get complicated. That's why it's wise to have a representation agreement, especially if someone doesn't get along with his or her partner's extended family."

- Beneficiary designations

Naming a common-law partner as the beneficiary of pension and registered plans helps to ensure a smooth, tax-efficient transition of assets. Funds can be rolled over to the surviving partner on a tax-free basis and may avoid probate.

- Insurance

Encourage your clients to review their life, disability and critical illness insurance needs to help ensure that they have adequate coverage. Also, make sure the appropriate beneficiary is named in each policy.

"Insurance planning is enormously helpful because you can assign a policy to anyone," notes Ata. "In the event that there are problems with the estate, this can be a real saving grace."

- Company pensions

Every company, Hamburg says, has its own rules about the functioning of its pension plan.

"It can get complicated," he says. "For instance, if someone was married while [her or she] worked for an employer and then the couple split, the former partner might have a right to the company pension benefits if the [pension-holder] died."

Hamburg advises his clients to talk with past employers to determine who is entitled to that money.

"They may not be able to change the beneficiary," he says. "But it's wise to know who it is in advance. That way, clients can make appropriate provisions in their wills, such as purchasing life insurance with their partner as the beneficiary."

- Providing value to clients

The financial issues affecting gay and lesbian couples are complex, so don't be afraid to contact other professionals for assistance when it's appropriate.

Says Maier: "It's wise to establish a network of accountants, lawyers, mortgage brokers and other

experts with whom you can consult and to whom you can refer clients when necessary."

In addition to offering professional expertise, these people should have the sensitivity to work effectively with gay clients.

"You should be aware that your clients might encounter discrimination when working with other professionals," Maier says. "That's why I make it clear that I have same-sex clients. I want to determine in advance whether [the other professional will] be uncomfortable if I refer a gay client to them."

Maier's goal, in addition to ensuring that her clients receive the best possible service, is to shield them from poor treatment: "Nothing is more important to me than making sure my clients are well treated."

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