

# Move Over, *Leave It to Beaver*: Planning for Nontraditional Couples and Families

by Nancy Opiela

A generation fed with images of the ideal American family on television shows like *Leave It to Beaver* and *Ozzie and Harriet* has turned the ideal image of a married mother and father raising their biological children into somewhat of a cliché. Today, television represents a much more diverse slice of life, from unmarried and gay or lesbian couples, to single or divorced parents. As it becomes more acceptable to choose a road other than the one followed by Ward and June and the boys, it's important that planners tune into the unique challenges of planning for non-traditional couples and families.

## Creating Protection for Nontraditional Couples

Planners begin by noting that planning for "nontraditional couples" must begin with the realization that heterosexual married couples are protected by more than one thousand rights that unmarried heterosexual, gay or lesbian couples are not. "These rights range from big-picture estate planning issues to something so simple as the right to visit your partner in the hospital and to be consulted about their care," explains Sandra Reynolds, CFP®, of Financial Planning Alternatives in Westport, Massachusetts. "We can't reproduce all the rights afforded by a marriage, so we need to look at the most important issues in joining a couple's life financially."

While the issues these nontraditional partners face are similar, it's important, planners say, to recognize that the heterosexual couple is choosing not to marry and the gay and lesbian couple is prohibited from marrying (although the state of Vermont has legalized civil unions).

Reynolds notes that, in her experience, unmarried heterosexual couples tend more to assume the traditional married model and lesbian couples come to the planning process with no assumptions. "They want to know how they can build a structure that will join their lives financially," she says.

Obviously, working with these clients to build an acceptable financial structure takes considerable time. For example, Reynolds worked recently with a lesbian couple where one partner was having difficulty feeling like a part of the family because she was living with her partner and partner's child in a home she didn't own.

Explains Reynolds, "I had them each draft a vision statement for themselves: where they are now, where they want to be in five years, and what was the best thing for them in the last five years. Then we worked to join those visions so they had common goals."

Debra Morrison, CFP®, of Regent Atlantic Capital LLC in Chatham, New Jersey, notes that conversations with non-married partners have to range from living arrangements to income tax issues to estate tax issues. "An advisor might have chosen the right investments for clients, but if he or she hasn't been attentive to how stock is registered, or property titled, the advisor is, in my opinion, involved in malpractice," she says.

## Software Assumptions Don't Hold

With the use of time-saving financial planning software programs ruled out because they make assumptions that don't hold true for unmarried couples, job one for planners and most nontraditional clients is executing the appropriate legal documents: a will and durable power of attorney. Says John Wade, CFP®, of First Tennessee Bank in Nashville, Tennessee, "No other document is more important than a will. Without a will in place, state law determines the distribution of your assets and that rarely benefits the surviving partner. In most states, without a legal spouse or heirs, the state distributes assets to the closest relative. I tell clients their partner receives nothing

unless the will specifies the distribution of assets.”

Wade adds that there are occasions when an alternative to a probated will is necessary, especially if privacy is a concern. In those situations, he asks clients to consider a living trust for simple estate issues. “A trust allows the client to maintain privacy related to estate distribution, is harder to challenge than wills, and allows greater control and flexibility to change terms at any time,” he notes.

Legal security also requires two additional legal documents, an advanced health care directives (AHCD) and durable powers of attorney. Explains Wade, “Advanced health care directives replace legal documents commonly known as durable health care powers of attorney and living wills. Generally, without an AHCD, a non-relative cannot oversee your medical treatment and a hospital may even deny your partner visitation rights. By designating your partner as your agent, you are authorizing him or her to make decisions on your behalf if you are unable to do so. In most states, the law allows you to designate another person, called a surrogate, to make those decisions, including life-ending decisions.”

Continues Wade, “If designed properly, durable powers of attorney become effective only if and when you become incapacitated, and allow you to name your partner as your financial administrator. This could include operation of a business; gifting of assets to dependents; transfer of assets to a living trust; buying, selling or leasing assets; or even the ability to sue on the other partner’s behalf. Without these powers, the partner may be unable to conduct many financial transactions necessary to maintain your home or business.”

Retirement planning is another big concern. Explains Wade, “Like any other couple, one spouse may earn more money and be building the nest egg while the couple lives off the second income. The danger in an unmarried relationship is, of course, that if the relationship ends, the spouse who paid all the living expenses does not have the legal benefit of claiming half of the retirement account.”

Accordingly, Wade recommends that couples plan separately for retirement. “Some clients don’t like that and accuse me of being like everyone else, thinking the relationship is going to end, but it’s safer to save alone for retirement.” Wade also notes that nontraditional couples need to consider the fact that they will not benefit from either their spouse’s Social Security or, perhaps, their pension.

When it comes to estate planning, Debra Neiman, CFP®, of Neiman-Maloy Financial Group in Wakefield, Massachusetts, has simple advice: “Documents, documents and more documents.” Continues Neiman, “It takes the romance out of things, but you really need to spell it out explicitly in writing. When you get married, the words ‘I do’ mean a contract and implied obligations. When you can’t say ‘I do,’ you have no rules and no structure. You need to create that for yourself and that requires working together with an attorney and a network of people who are qualified and really want to help.”

## **Titling Property Properly**

Where to start? Most planners begin with titles of property. “Banks and title companies often make faulty, potentially damaging assumptions about how property should be titled,” explains Christina Olson, CFP®, of Arcadia, Wisconsin. “They assume that unmarried people want property titled jointly. So both partners own half and one dies, the survivor still owns half. A better solution may be to own property jointly with rights of survivorship, not simply as tenants in common. As joint tenants with rights of survivorship, if one partner dies, the other assumes 100 percent ownership. However, that passage could be construed as a taxable gift and result in a huge tax liability. So a trust might be appropriate for a larger piece of real estate.”

Adds Morrison, “Owning a home as joint tenants with rights of survivorship avoids probate. The property passes by title. I don’t care who the clients are. A planner needs to ask questions about what they want to have happen

at death. Particularly if there is any doubt about the families of nontraditional people responding negatively to the surviving partner, then this is a wise route. A family can contest the will all they want, but you can protect your partner with these kinds of arrangements that have things pass outside of probate. Otherwise, battles with families could drag out for years and survivors can be relatively penniless until the estate is settled.”

Adds Holly Hunter, CFP®, of Edward Jones in Portsmouth, New Hampshire, “It’s important that the property’s title reflects what you want to have happen. Your housemate could end up being your partner’s mother if you don’t set it up right.”

Individual retirement accounts and qualified plans also pass to designated beneficiaries. In addition, says Catherine Latto, CFP®, of Latto & Associates in Charleston, South Carolina, it’s worth it to set up investment accounts with a “payable on death” option so they can be transferred to the surviving partner if one dies. “It’s like naming a beneficiary. Most mutual funds will do that, but you have to ask. However, this could mess up estate planning if you don’t coordinate it with the will,” she says.

Latto also raises another interesting property issue. “Perhaps you own a property that’s been in your family forever and you want to keep it in your family. In our area, we see this a lot with family farms. You may not want it to end up with a member of your partner’s family, particularly if that family doesn’t approve of the relationship. One client wanted to make sure her family could retain her grandmother’s house. Although she and her partner lived there, she didn’t want the home to pass to her partner or her family. You need to bring issues out and put them on the table and then you can deal with them.”

To that end, planners counsel their clients to protect their relationship through clear, ongoing communication and a financial agreement. Says Reynolds, “I view the agreement as one more proof of how the clients want to structure things, not a blueprint of what they’ll do in the event of a breakup.”

Although discussing and drafting a domestic partner agreement can be difficult, planners are unanimous in their endorsement of a paper trail. Morrison notes that in addition to drafting the documents, it’s also wise for the couple to confide in a close family member or friend how they would like assets to pass at death.

## **Overcoming Resistance to Agreements**

Interestingly, planners pushing agreements are often met with resistance from clients. Says Wade, “I find that most couples, gay or straight, do not discuss finances. Often people make decisions based on emotion, or in this case, the fear of emotions that may spring forth by the whole process of creating an agreement. Instead, partners unconsciously opt for the more excruciating emotions of settling matters should the relationship end. Even for couples who have been together for years, it is never too late to establish an agreement. The reality for gay couples is that these agreements provide clarity to the relationship and provide financial ground rules that do not exist elsewhere.”

The agreement should cover all expenses of the partnership and property owned, including property each partner brought to the relationship, assets inherited during the relationship and property acquired together. Explains Wade, “Some couples commingle income and assets to pay for all purchases and expenses for each other with one account. Others are stricter on “this is mine, that is yours, and these are ours.” My experience is that no right, wrong or even preferred way exists. What is important is that some guidelines are written into the agreement and a method of dividing assets is established, in advance, in the event of a breakup.”

Adds Hunter, “I tell clients to make the decisions while they are madly in love about who stays in the house and who goes. There are many questions to consider: What partner put more money down? What if one pays more on the mortgage and the other does all the yard work? I have a couple buying a lot of acreage and building a

retreat center. He makes more than she does and although she couldn't qualify for the mortgage, she'll be the one working there. This is the time to have conversations about the what-ifs."

These agreements are even more important when children are involved. Continues Hunter, "You don't want your adult children suing your partner to get their share of the estate. I tell clients to make preparations and have conversations in advance, to do the wills and trusts and use disability and life and long-term care insurance to protect their partner's interests. Then everyone can really relax and be present for what is going on."

On a lighter note, Latto remembers an agreement where the couple decided that if they couldn't agree after a breakup who would move out and who would stay, they would flip a coin. The winner could then buy the other partner out.

While clients tend to pay attention to legal documents, insurance issues are often overlooked, from life and disability insurance to homeowners and automobile policies, excess liability and long-term care coverage. Morrison describes the real benefits of life insurance as buying time for survivors to work not only through their grief, but any potential family and legal wrangling. She suggests that in some cases the life insurance policy be placed in an irrevocable life insurance trust, which gets ownership of the policy out of the estate. "Everyone should have an ILIT, but married people have the unlimited marital transfer at death and single people do not have any escape hatch," she notes.

Hunter adds that life insurance and disability coverage have a role to play when two unmarried people invest together in real estate. "If one person dies or becomes disabled, the other person is not left holding the mortgage, wondering if he or she can pay for the house."

Life insurance also can be used in situations where one partner has children and wants to make sure that at his or her death, the other partner can stay in the house. Explains Holly Hunter, "You can put life insurance in place so your partner can pay the children the value of the property and can live there free and clear. You could also make the kids beneficiaries of the life insurance and make it clear that they are getting the insurance benefits rather than the house." \

Debra Morrison adds that when it comes to property and casualty insurance, nontraditional couples need to be sure both partners are listed on the policy. "If your car gets robbed and your partner's stuff is in the car, but your partner is not on the policy, it's not a covered loss. If only your name is on the homeowner's policy and you're robbed, your partner could be deemed a renter and not covered in the loss," she explains.

On the issue of long-term care, John Wade notes that generally there are three options—pay out of pocket, spend down to qualify for Medicaid or rely on long-term care insurance. "While a spouse can retain the primary residence in that scenario, there's a question whether Medicaid will allow domestic partners to do the same thing," he says.

One final issue nontraditional couples must address is gifting. Explains Morrison, "If there's disparity of income, and one partner pays for the other to go on an expensive vacation he or she couldn't afford to pay for, it's important that the moneyed partner write the check directly to the travel agent. Otherwise, that amount could come out of the unified credit exemption upon death. It's also wise for these clients to record their intentions, noting that they wouldn't have taken the trip alone."

Gifting units or percentages of a home is another tricky issue. Explains Morrison, "Person A owns the home and when Person B enters the relationship, Person A wants to put B on the title. That alone would be treatable as a gift to the incoming partner. An alternative is to draft a legal document that says B owes half of the value of the house payable on schedule with a reasonable rate of interest. Then every January 1, Person A writes another

document, to be filed in the same safe place as the first document, that forgives Person B the equivalent of whatever that year's gift exclusion is. It takes some time to forgive the entire amount, but eventually B owns half of the house."

## Single by Choice and Divorced Parents

Judith Lutz, CFP®, of Cadaret Grant & Co. in West Orange, New Jersey, works with a number of single-parent families. "It's important to help clients deal with issues of financial responsibility and parental rights when it comes to raising the child," she says. "I worked with one woman, a business owner, who became pregnant by a man who had his own children and lived in another country. Documents were necessary to both absolve him from financial responsibility and prevent him from coming around later and claiming he wanted to help raise the child."

With just one parent, the naming of a guardian for children is even more important. Says Lutz, "I talk with my clients about who might be an appropriate guardian. They might have one loving sibling who might be the best person in the world to take care of the children, but the brother or sister might be horrible at managing money. It's also important to consider whether you need to worry about their spouse getting their hands on the money. I'll often recommend a trust for minor children, often with a corporate fiduciary."

Lutz also works with a number of divorced clients with children. She says a frequent mistake couples make in the settlement is not considering all the implications of what they agree to in mediation. "Some people will think, 'Great, I've got a large share of the retirement plan,' but they need to remember that it is money that has yet to be taxed. The biggest mistake women make is having an emotional attachment to the house and taking the home rather than other assets."

Another issue divorced people need to be mindful of is the need for new wills and new estate plans. "If you're going through a divorce, you need to realize that something could happen to you while you are in the middle of negotiations. So I counsel clients on the need for what I call a down-and-dirty will, something we draw up quickly to protect their interests."

College funding is another topic worth a careful look. Says Lutz, "Divorcing parents can make some agreement, but there needs to be some enforcement that they are funding the accounts. They need to spell out specifically how they will fund the account in the future and which parent will be the custodial parent and decide how to invest. I had one client whose husband drained the college fund and left the country."

Finally, Lutz encourages parents to think about future expenses, braces, summer camp, a child's wedding and to insure any alimony payment with life insurance. "It's important to protect the income stream with life insurance and disability insurance, and the spouse being protected needs proof that coverage is in place. That could be as simple as having the company send a notice on an annual basis." Catherine Latto works with a number of clients without children. "When clients don't have children as heirs, we need to have a conversation about whether they want their money to go to family or friends. In many cases, that's where we bring up charities. Clients will leave smaller amounts to friends, but it's rare someone will leave \$1 million to a friend when they could leave a legacy instead.

"One client recently inherited \$1 million and he already had plenty. His only goal was to buy an antique tractor. So we went ahead and did that, but I also talked to him about how he could help a charity he's volunteered for. Helping the charity is a way for him to enjoy his money and get some satisfaction."

## Closing Words and Advice

Planners with experience in dealing with nontraditional couples and families stress that it's important not to make assumptions about the client sitting across the desk. Says Debra Neiman, "As planners, we have to be sensitive and find out who's coming in to see us. You can't make any assumptions in your approach. It's important to work with the couple to get a sense if they have emotional and economic interests in each other.

"It's important to take the time to ascertain how their financial household is set up and what they want to accomplish," Neiman continues. "For whatever reason, nontraditional partners' plans might not include protecting each other. In situations where both partners are self-sufficient, perhaps they prefer that their assets go to family members. We need to take the time to understand their game plan and develop a strategy."

Reynolds adds that planners shouldn't assume that a new client is single or heterosexual. She explains, "Someone coming in alone may appear to be single, but you can't be sure. I start with, 'How can I help you?' Later, in a series of questions, I ask, 'Is there someone else we need to plan for?'"

Finally, planners agree that if it's the first plan they've done for a nontraditional couple or family, most planners could benefit from a quick consultation with a colleague who has some expertise in the area. And although the details may seem overwhelming, there's simple advice: "When in doubt, write it down."

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