

Legal gay marriage doesn't end money headaches

By Adam Shell, USA TODAY

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NEW YORK — Same-sex couples who tie the knot in [New York](#) starting Sunday should visit a financial adviser for advice on money matters when they get back from their honeymoon.



By Mark Lennihan, AP

Paola Perez, left, and her partner, Linda Collazo, participate in the annual gay pride parade on June 26 in New York.

And that advice holds true for any gay couple married under state law.

The reason: While gay couples who say "I do" in state-sanctioned marriage ceremonies are afforded the same rights as traditional husbands and wives in the state where they get hitched, it doesn't mean these newlyweds are recognized as a "single economic unit" by [Uncle Sam](#), says Jennifer Hatch, president of Christopher Street Financial, a New York City-based financial advisory firm that caters to the gay community.

"The underlying premise of Gay Money 101 is that married heterosexual couples are perceived by the federal government as a single economic unit, but same-sex couples are basically treated as legal strangers or roommates at best," says Hatch, who is gay. "That inequality presents a money problem for gays."

That two-tiered legal status stems from the Defense of Marriage Act of 1996, known as [DOMA](#). The act defines marriage as a "legal union between one man and one woman." It does not recognize same-sex marriages.

As a result, many of the automatic finance-related protections that straight married couples take for granted are not available to same-sex couples legally married in states such as New York. On Sunday, New York will become the sixth state to allow same-sex marriages. Connecticut, Iowa, Massachusetts, [New Hampshire](#) and Vermont are the others. The [District of Columbia](#) also recognizes such unions.

Because of DOMA, same-sex partners are not afforded about 1,049 federal rights that heterosexual couples receive, says openly gay adviser Ryan Svatora, a senior wealth strategy associate at the Zinn-Ray-Svatora Wealth Management Group, a [UBS](#) team with expertise in managing money for the gay and lesbian community. "As more states pass marriage laws, hopefully there will be adequate pressure to repeal DOMA and provide domestic partners with federal rights and protections afforded to currently recognized spouses," says Svatora.

In short, the transference of assets from one partner to the other because of death, divorce or even during one's life is not as simple, seamless or certain as it is for traditional husbands and wives. DOMA adds an extra layer of complexity. Unlike heterosexual married couples, gay married couples still can't file joint federal tax returns. They also can't pass along assets upon death to the surviving spouse without a potential estate tax bill — even if they have a valid will. Nor does the surviving spouse have a right to the deceased spouse's [Social Security](#) benefits.



"Don't assume that being married in a state will simplify or resolve (gay) financial issues," says Sharon Rich, who is part of a same-sex married couple and co-founder of PridePlanners, a financial planning firm that is part of a national organization that specializes in gay money issues.

Henry Baker and Jerry Arko, both 55, plan to marry in New York in November to celebrate their 25th anniversary. They are well aware of the pitfalls

involving taxes, estate planning and real estate ownership faced by same-sex couples. Over the years, they have hired lawyers and financial advisers to make sure the basics are covered and key financial documents are in order. Wills were updated and worded properly.

Each partner is properly designated as the beneficiary on investments and insurance policies so assets will pass to the other if one of them dies.

It makes perfect sense "to work with a planner who understands the tax issues facing gay couples," says Arko.

Some common money-related obstacles for same-sex couples:

- Taxing taxforms.** Same-sex couples must file separate tax returns with the federal government. But in order to file a joint state tax return, they must do a mock joint federal return as well to come up with the proper numbers for the state return. That is both complicated and more costly. "The tax issue is one of the biggest problems," says [Robert Wood](#), a tax attorney at Wood LLP in San Francisco.

- Inheritance roadblocks.** Unlike opposite-sex couples, same-sex couples may not be able to leave all their assets to their partner tax-free, even if there is a will and assets are owned jointly. For 2011 and 2012 the federal estate exemption amount is \$5 million. So the survivor will have to pay 35% in tax on estates above \$5 million.

If you don't have a will or have failed to name your partner as beneficiary, the estate legally goes to blood relatives instead, says Michael Nutt, partner at Lazarescu Mannato and Nutt Group at [Morgan Stanley](#). "I had attorney friends, and one of them passed away and had no will, and the partner lost everything to the deceased's family."

Nutt says it's important to plan properly. The basics are key.

"Establish a will," he says. "List beneficiaries if you own property. Draw up a co-habitation agreement. Establish a durable power of attorney, as well as health care power of attorney" so a partner can make decisions if the other partner is incapable of doing so.

The good news is there are some sophisticated planning techniques — such as trusts — that enable same-sex couples to transfer assets from one partner to another to avoid bigger estate tax bills down the line as well as enable the transference of real estate in more tax-friendly ways