



Your Money

Sandra Block

Couples take note: Where there's a will, there's protection

Nobody ever said marriage was easy. But the minute a couple is legally wed — whether it's in St. Patrick's Cathedral or the Hitching Post Wedding Chapel — they're automatically covered by a large safety net that encompasses everything from Social Security benefits to estate taxes.

That's one reason hundreds of gay couples lined up Monday to get married in Massachusetts, the first state to legalize same-sex marriage. But while those couples will be eligible for many state marriage benefits, they're still ineligible for most federal marriage safeguards. Federal law doesn't recognize same-sex unions.

(Related story: [Gay Couples enter golden years with more risk](#)**)**

That means same-sex couples still need to take extra steps to protect their financial security. Unmarried heterosexual couples are also vulnerable, financial planners and attorneys say.

Some potential pitfalls for
unmarried couples:

•**Inheritance laws.** While everyone should have a will, it's critical for unmarried couples. If you die without a will, a probate court will determine how your estate will be divided, according to the inheritance laws of your state. Most states don't recognize unmarried partners, so if you don't have a will, the court will distribute your assets to family members.

"Even distant relatives are considered beneficiaries of the estate over a partner," says Paul Adam Haber, editor-in-chief of Gfn.com, a financial-planning Web site for gays and lesbians. "Without the legal protection of a will, there's nothing."

Unlike some other legal hurdles, this is one problem unmarried partners can easily avoid, says Frederick Hertz, an Oakland attorney and co-author of *A Legal Guide for Lesbian and Gay Couples*. There's no law against leaving your property to your partner — or anyone, for that matter. "This is one area where couples do have control if they take control," he says.

You don't need a lawyer to prepare a will. There are several do-it-yourself Internet sites that will help you prepare a will for less than \$200. If your estate is large, or you fear your relatives will raise a ruckus, you should consult an estate-planning lawyer.

•**Taxes.** Federal estate taxes can eat up a big chunk of your estate, but most married couples can avoid them. The estate tax exempts surviving spouses, which means they can inherit an unlimited amount of assets without triggering taxes.

The so-called marital deduction doesn't cover unmarried couples. Surviving partners face federal taxes of up to 48% on estates that exceed \$1.5 million. The amount of the federal estate-tax exemption is scheduled to gradually increase through 2010 (see box). Some survivors may owe state taxes.

Estate taxes present a huge problem for unmarried couples whose homes have increased significantly in value, Hertz says. There are strategies to reduce the tax bite, ranging from charitable trusts to lifetime gifts, Hertz says. Consult with an estate-planning lawyer for details.

•**Retirement rollovers.** When surviving spouses inherit a 401(k) plan or individual retirement account, they can roll the money into their own IRAs and avoid paying income tax on the money. Unmarried beneficiaries can't do that.

Surviving partners who inherit IRAs can reduce the tax bite by spreading out their withdrawals, says Marilyn Steinmetz, a financial planner in West Hartford, Conn. The IRS will allow you to calculate your annual withdrawals based on your life expectancy, and you have to pay taxes only on the amount you withdraw.

Inheriting a 401(k) is more complicated. Most companies don't want to fool around with lifetime distributions and will require an unmarried beneficiary to take the money all at once. That means you'll have to pay income taxes on the entire amount, which could push you into a higher tax bracket.

•**Social Security survivor benefits.** If one member of a married couple dies, the surviving spouse has a choice: retain his or her own benefits, or accept the spouse's, whichever is greater. The benefits protect survivors who stayed home or earned much less than their spouses.

Unmarried couples are ineligible for survivor's benefits. That means they need to plan for the possibility that the partner with

the higher benefits will die first, financial planners say. Some couples buy life insurance policies, naming their partners as beneficiaries, to fill the gap, Steinmetz says.

Finally, unmarried couples should make sure they have living wills, health care directives and powers of attorney, planners say. Married couples should have these documents, too, but they're particularly important for unmarried partners because many institutions don't recognize those relationships, planners say.

"If you're married, you have certain rights," Steinmetz says. "You have to spell everything out if you're not married."

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