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MARRIAGE EQUALITY: A Comprehensive Guide to the Law and Practical Issues, Including State and Federal Benefits, and What You Must Do Now©

By Linda M. Scaparotti, Esq.¹

Who knew that the most conservative institution in the world, marriage, would become the vehicle for the civil rights movement of our time, but many believe that marriage will be the route for total acceptance and gaining of overall rights LGBT people. Now you will not only have your mother pressuring you to marry, but your friends, society, most of the gay community, and perhaps even your attorney! (The author's motto, "Be married by the time you die; you decide when...")

Some Legal History

It All Moved So Quickly

The recent trajectory for marriage was meteoric. January 26, 2013, was the first time a president uttered the word gay, and talked about marriage equality as a goal of the republic. President Obama in his inaugural speech:

"We, the people, declare today that the most evident of truths -- that all of us are created equal -- is the star that guides us still; just as it guided our forebears through Seneca Falls, and Selma, and Stonewall..." "It is now our generation's task to carry on what those pioneers began. For our journey is not complete until our gay brothers and sisters are treated like anyone else under the law -- for if we are truly created equal, then surely the love we commit to one another must be equal as well."

Then on June 26, 2013, the Supreme Court announced two decisions, one was in the California Proposition 8/Marriage case (*Hollingsworth v. Perry*). The Court ruled on the narrowest grounds possible, the standing issue. The Court found that the proponents of Prop 8 did not have standing to bring the case in front of the Court. The result was that Proposition 8 was unconstitutional, and same sex Californians could now be legally married in California, and their past marriages, if valid elsewhere at the time entered into, would be recognized in California.

¹©June 27, 2015, Updated January 1, 2016, October 1, 2016, January 10, 2017 . Linda M. Scaparotti, in practice throughout the San Francisco Bay Area for 36 years, specializes in estate planning and transactional family law issues, primarily for the LGBT community. She writes and lectures extensively on these issues, as well as having served on the Boards or volunteering for non-profit organizations such as the Human Rights Campaign, National Center for Lesbian Rights, Horizons Foundation, Bay Area Lawyers for Individual Freedom, Equality California. Attorney Scaparotti has worked with over 3000 couples and individuals, and was at the forefront of the marriage equality movement.

On the same day, the U.S. Supreme Court issued its decision in *Windsor v. United States*², declaring Section 3 of DOMA unconstitutional, as it deprived Windsor of the constitutional guarantee of equal protection. While at the time, the ruling was a tremendous victory, it was still limited. The holding in the *Windsor* case required the federal government to provide all of the same federal benefits that were available to married heterosexual people, but only to those couples who were considered legally married; that is, if their state of residence did not recognize their marriage because they had a ban on marriage for same sex couples, then most of the federal agencies did not have to recognize the marriage either. This ended up making for a complex analysis state by state, and federal agency by federal agency.³ This is because the *Windsor* decision only involved Section 3 of the Defense of Marriage Act (DOMA).

California was a state that recognized same sex couples' marriages entered into in California, as well as any other state or country where marriage was legal at the time entered into. This meant that older marriages entered into many years ago that were legal at the time, but which were rendered illegal by Proposition 8, were now recognized retroactively. Many couples had been married in Canada and Massachusetts in particular, many years earlier, as those were the first places where marriage was legal for same sex couples. The marriages entered into in California in 2008 during a small window of time when it was legal to marry, were also recognized, with a date of marriage going back to the original date in 2008.

Then a flurry of litigation ensued where legal challenges were brought in state after state against bans on marriage for same sex couples. The bans began toppling state by state. Finally, on June 26, 2015, the U.S. Supreme Court ruled again. This time, in the *Obergefell v. Hodges*⁴ case, the Court struck down all state bans on same sex marriage, stating that it is a fundamental right for everyone, including same sex couples, to marry. After *Obergefell*, all marriages of same sex couples, no matter where they were married and no matter when they were married, as long as legal at that time in the state or country where the couple was married, had to be recognized by every state and the federal government, and all rights, benefits and responsibilities of marriage pertained equally to all.

Statistics-How Many Same Sex Couples are Married in the U.S.?

The U.S. Census Bureau estimated in 2013 that there were approximately 160,000 married same sex couples in the US, but this is only an estimate as there is no question on the census survey that asks the question directly. In April 2015 a Gallop poll estimated that there were approximately 390,000 married same sex couples in the U.S. prior to *Obergefell*, and 1.2 million same sex couples who were living in domestic partnership. Therefore, it was estimated that 4 in 10 same sex couples were married, or 40% of all same sex couples, prior to *Obergefell*. (In contrast, 91 percent of the 61.3 million total opposite-sex couples reported being married.) The best guesstimate is that in 2016, there are 500,000 married same sex couples. This is based on such things as the fact that in California, after the *Windsor* and Prop 8 decisions, marriages went up by 35% in the month of July 2013. (July was the first full month that marriage was

² 83-year-old Edie Windsor, sued to challenge a \$363,000 federal estate tax bill after her partner/spouse of 44 years died in 2009. Her partner, Thea, left everything to her, and had the couple been a heterosexual married couple, there is no dispute that Edie's tax bill would have been \$0.

³ Each Federal Agency had a different approach as to whether they recognized marriages based on "place of recognition" (a couple resided in a state that recognized their marriage) vs "place of celebration." (a couple was married in a state where it was legal to do so). For instance, the IRS recognized all marriages that were entered into legally even though the couple's state of residence did not recognize their marriage; whereas the Social Security Administration only recognized those marriages that were recognized by the couple's state of residence.

⁴ *Obergefell* wanted the Ohio Registrar to identify him as the surviving spouse on his spouse's death certificate, from ALS, based on their marriage in Maryland, but the Registrar would not due to the state's ban on same sex marriage, and recognition thereof.

conclusively legal for same sex couples in California, and recognized by the Federal Government.) These are estimates because marriage licenses are not kept by governmental authorities by gender. Because the Federal Government does not recognize domestic partnership, the belief is that most registered domestic partners will become married spouses slowly but surely.

Can "Same-Sex Marriage" Be Undone Under The Tr--- Administration?

I receive calls and emails every day from same sex couples worried that their marriages may be challenged or invalidated under a Trump administration, or from couples wondering if they will still be able to get married. Attorneys, civil rights organizations, community organizers, all believe that marriage for same sex couples are safe. First, the law in general is clear that if any marriage is valid when entered, it cannot be invalidated by any subsequent change in the law. For couples who are not currently married but who may wish to marry in the future, the consensus is that it is highly unlikely that the fundamental right of same sex couples to marry will be reversed, or even revisited, by the Supreme Court. The doctrine of *stare decisis*; whereby courts respect and follow their own prior rulings is a basic legal principle in the U.S., and the Supreme Court rarely overturns an important constitutional ruling so soon after issuing it. The fear is that not just one but two Supreme Court Justices may be appointed by Tr---, and that they will be anti-marriage equality. We know that there is no worry if only one is appointed re the number of votes required; there is some concern if two such anti-equality justices are appointed. Again, the consensus is that the Supreme Court, even with new appointments, is not going to overturn their own ruling on this issue, especially so close in time to when it was issued, and although this is not supposed to have an effect on the court, the fact that the great majority of Americans support the freedom of same-sex couples to marry, should help to keep marriage equality intact.

Benefits Obtained Through Marriage

Some of the Top Federal Benefits Obtained if Married

- Bi-National couples can sponsor partner/spouse for US residency;
- Same sex widows and widowers will receive social security benefits;
- Federal employees' spouses will receive health insurance and retirement benefits;
- Service members' spouses will receive equal benefits;
- You can file your taxes jointly (beneficial for some; not for others);
- Upon death, you can rollover your spouse's retirement into your own, and it's not a taxable event;
- Married couples can combine their spousal estate tax exemptions and wait until the death of the last surviving spouse to pay taxes, providing the surviving spouse with more income to live on for the rest of his/her life, and allowing for more assets to pass onto the couples' children/beneficiaries;
- Health benefits provided to the same sex spouse of an employee will not be taxable to the employee.

Rights (and Some Responsibilities) for Married Californians and Registered Domestic Partners

The following is a partial list of basic rights and responsibilities afforded to either registered domestic partners or married couples in California; however, please note, while these rights and responsibilities apply to registered domestic partners (RDPs) in California, no federal benefits apply to RDPs that apply to spouses:

- Assets acquired during the marriage/domestic partnership will be treated as community property, and upon dissolution will be divided 50/50, unless another arrangement was made in writing;
- To dissolve a relationship, except for a few exceptions, partners must file for dissolution and go through Family Court;
- Upon separation or dissolution, alimony may have to be paid by one partner to the other;
- There is a presumption of parenthood of both parents of a child born during marriage/partnership, regardless of biology/genetics;
- Decision-making authority for health care and finances for spouse/partner;
- Decision-making authority for funeral arrangements and disposition of remains;
- Ability to authorize medical treatment for partner's children;
- Identification of partner on death certificate;
- Ability to serve as executor of partner's/spouses estate;
- Ability to avoid probate of jointly owned property (does not apply to separate property, without a will or trust);
- Protection under rent-control laws;
- Ability to request and obtain absentee ballot for partner;
- State government hiring preference for surviving partners of veterans and partners of disabled veterans;
- Access to married student housing;
- Inheritance of death benefits and pension for surviving partners of employees of state and municipal governments, including firefighters and police;
- Mutual responsibility for community debts (community assets first, then possibly separate assets);
- Consideration of partner's income in determining student aid;
- Joint assessment of income for determining eligibility for state government assistance programs;
- Exemption from transfer tax and reassessment of property tax upon transfer of interest in real estate to the other, during life or upon death.

Basics re California Family Law Best to Know Before Marriage

Community Property

Community property ("what's mine is yours"), is a relatively new concept for same sex couples. Basically, whatever is earned from the date of registration or marriage, whichever is earlier, is community income, and whatever assets are acquired, or saved, from the date of registration/ marriage with community income are community property. For instance, a home purchased after marriage with the earnings from "A's" employment ("B" does not work but sits home, eats bonbons and watches *Ellen* all day) would be community property and owned equally by A and B, even if only A's name is on the deed. How the asset is titled is not controlling. Thus, if the couple divorced, B would be entitled to fifty percent (50%) of the equity in the home. (All assets owned by either party prior to the date of registration would also be dealt with in a dissolution, but under contract and property law principals instead of family law.)

Separate Property

Anything either of you acquired prior to your first date of registration or marriage is that person's separate property, and remains so upon dissolution. Anything acquired through inheritance or gift, no matter when, pre or post marriage/registration, is always separate property as well. Where things get more complicated is when you have an asset that is separate property, like the house you owned prior to marriage/registration, and in which you both live now, and your income from your employment now goes

to pay the mortgage. Even if only you are paying the mortgage from earnings, the community is acquiring an interest in the house. It's a small interest, only the amount of the principal that is paid; however, the community, that is each of you, 50/50, is owed a right of reimbursement upon dissolution.

Community Contributions to Separate Property

Oftentimes, one spouse will come into the marriage with a separate property asset such as a home, and both spouses will pay the mortgage etc. during the marriage, or the mortgage will be paid with income earned during the marriage (even if only by one party and by Party 1, they are still community contributions). Unless otherwise agreed to by the spouses, California applies what's called a *Moore/Marsden* analysis to the equity in the home. The formula is calculated upon dissolution. The information required to do the calculation is as follows: 1. What was the initial purchase price of the home? 2. What was the total amount of reduction in principal only prior to marriage by party 1? 3. What was the total amount of reduction of principal on the mortgage during marriage through community funds? 4. What was the market value of the home at the date of marriage? 5. What is the value of the home at the time of dissolution?

Example: Party 1 purchased the home for \$500,000, putting \$100,000 down, and paid off \$15,000 of principal on the mortgage prior to marriage. The fair market value of the home upon marriage was \$900,000, and the Parties paid off \$100,000 of principal during the marriage prior to dissolution. The value of the home upon dissolution was \$1.5mil. \$100,000 is percent (20%) of the original purchase price of \$500,000. After marriage and before dissolution there was a community appreciation of \$600,000 (\$1.5-\$900,000). 20% of \$600,000 is \$120,000 and add to that the actual dollar amount of the community reduction of mortgage, \$100,000, you get \$220,000, which is the total amount the community is entitled to. Party 2 would be entitled to ½ of that amount, or \$110,000, upon dissolution, and Party 1 would be entitled to all of the rest of the equity.

There has been much debate as to whether this is fair or not, why only principal is counted since the majority of what is paid is interest on mortgages, etc. etc., but this is the ruling by the California Supreme Court as to how the calculation should be done.

Did You Say -gulp- Alimony?

Alimony or spousal support is a dreaded word/concept, but very necessary in some circumstances. This is where one of you owes the other spouse a certain amount of monthly support upon separation/dissolution of your marriage. The amount is determined by formula based on the amount you each earn minus each of your expenses, the years of the marriage, the supported spouse's skills/ability to get back into the job market. The court has final say. If you were a stay at home parent, dropping out of the job market for a period of time, and perhaps helping to advance the career of your spouse, you will be happy we have spousal support in California.

The Key Legal Difference Between Same Sex and Opposite Sex Marriage

Most people believe that there are no differences now between same sex and opposite sex couples regarding marriage, in both family law and estate planning. There is a key difference, however, due to the fact that a majority of same sex couples' relationships existed before full marriage recognition, and for some, a very long time before (for some as many as 50 years). This means that most couples have acquired all or most of their assets prior to marriage, which is separate property legally, even though they lived as a committed couple for all of those years. This is not true for most opposite sex couples who get married then acquire their assets as a married couple. (Of course there are heterosexual couples who live together before getting married, but I'm addressing a broad-based difference.)

Additionally, many couples were registered as domestic partners, some shortly after the domestic partnership law went into effect in California, and had no idea that after registration, the income, retirement, stock options, etc., they earned, and the assets they acquired from those earnings, was (is)

community property. Some of this lack of knowledge stemmed from the fact that the federal government didn't even recognize the registration at all (and still doesn't except in a convoluted way re taxes), whereas the State of California treated registration almost identically to marriage.

Much of the time the author/attorney spends with couples is untangling all of these issues, either for estate planning purposes or for the purpose of drafting a pre or post-nuptial agreement so that couples can structure their assets as they always intended.

The Importance of Pre and Post-Nuptial Agreements

One way to still reap the benefits of being married without some of the burdens, is to enter into a Prenuptial Agreement prior to marriage, in which you clearly outline terms for the ownership of property, assets, and income during the relationship, and division of assets and support upon dissolution. These agreements do not need to be all or nothing; many couples have a combination of keeping certain assets as separate property, and then creating some community property together. For those who are already married (or registered as domestic partners), it's not too late to draft a Post-Registration or Post Marital Agreement. You can transmute some or all of your already assets that became community property by law into separate property, and vice versa. Please note that this is a very consequential move, as it affects not just tax issues, but family law issues, especially upon dissolution. All of these agreements require each party to be represented by a separate attorney. There are many cases in this area of law, and while the courts uphold these agreements, they do not like complete waivers of spousal support, especially where one party has all of the income and assets and the other has little.

Practical Considerations re Getting Married

(Please note the following practical considerations are meant to be a guide only, and in many cases it is best to consult with a knowledgeable attorney and/or tax preparer.)

Consider Being Married: (Please note- many of these apply in California to either registered domestic partners or spouses.)

- If you are already registered domestic partners;
- If one of you is a federal employee, and thus you would be entitled to benefits such as health care and pension (these rights are only available if you are married and they can be huge);
- If one of you is a state or municipal employee, and thus you would be entitled to benefits such as health care and pension;
- If one of you is expecting or adopting a child;
- If you are a stay at home parent and your partner has the sole income;
- If you gave up your career to support the career of your partner;
- You will probably save money on income taxes if one of you stays home and takes care of the children, and the other makes all of the income;
- Your taxes will cost less to prepare now and won't be so complicated;
- If you want to avoid reassessment and an increase in property taxes on half of your California real estate upon death;
- If you want to put your partner on title to any real estate;
- Your partner is not a U.S. citizen;
- Your combined estate is over \$8 million;
- You or your partner is in the military;

Consider Not Being Married or Delay Getting Married:

- If one of you has serious debt, or might, or is prone to debt, as both partners' assets could be subject to attachment;
- If one of you will try to qualify for financial aid, scholarships, or public aid of any kind, as both incomes will be considered;

- Your income taxes will go up significantly if you both work and make high incomes;
- If you have a complex financial situation, or you are worried about the tax issues, or you don't want to deal with filing taxes jointly;
- You own your own business or other significant assets and expect to grow the business or assets significantly through your labor (everything would have to be divided 50/50 upon dissolution);
- You might have to pay spousal support if you were to divorce.

But remember:

*For almost all of the above (not taxes), you can draft a Prenuptial Agreement to address and structure around the issues;

*Be married by the time you die, you decide when! (How much risk can you tolerate.)

How Marriage Recognition Affects Inheritance and Estate Planning

The following is a brief summary of the benefits gained in relationship to estate planning and inheritance through federal recognition of marriage for same sex couples.

IRA Beneficiary Designations (Spousal Roll Over)

One of the greatest benefits for the majority of same sex married couples. A surviving spouse as long as named as beneficiary on the beneficiary form, may roll over the benefits of a deceased spouses IRA into his or her own IRA, and it is not a taxable event at that time. The income tax is deferred until the surviving spouse begins taking the minimum required distributions.

Estate Tax Marital Deduction

The marital deduction under Internal Revenue Code section 2056 is applicable for gifts, outright or in trusts, from one same sex spouse to another at death. Estate tax may be deferred until the second death. Surviving spouse has more assets to live on, and often more wealth passes ultimately to heirs.

Gift Tax

All gifts made between spouses are free from gift tax (IRC section 2523), including during dissolution. Also, spouses may split gifts to third parties (IRC section 2513), thus allowing one spouse to use the other's annual exclusion and lifetime exemption.

Portability

A surviving spouse may use a deceased spouse's unused estate tax exclusion (currently \$5.25 mil) to shelter the survivor's estate from estate and gift tax [IRC section 2010(c)(4)]. (Must timely file an estate tax return, Form 706, after death of first spouse, whether otherwise need to or not.)

Joint Tenancy Property

If spouses hold any property as joint tenants, each will be treated as owning 50% of the property, unlike non-spouses who may have the entire value of the property included in the estate for estate tax purposes.[IRC 2040(b)]

Grantor Trusts

Grantor trust rules, that is whether or not a trust is treated as a donor trust based on the rights and powers of a spouse as beneficiary or trustee, will now be triggered by a same sex spouse's benefits in or control over a trust. The grantor of a grantor trust is treated as its owner for income tax purposes, and the grantor rather than the beneficiary or the trust is responsible for the tax on the income and gains of the trust.

Intra-Family Transactions

There are no gains or losses on sales/transfers of assets between spouses, including upon dissolution. (But there can be some down sides here based on "related parties" tax rules.)

Disclaimers

Recognized spouses may disclaim certain interest in property but retain other rights in the disclaimed property.

Generation-Skipping Transfer Tax

For those with May-December marriages, the couple no longer needs to worry about there being an age difference of 37.5 years or more between the spouses in terms of triggering generation-skipping transfer tax on gifts/inheritance. All spouses now are automatically treated as being of the same generation as his or her spouse. [IRC2651(c)] Also, spouses can split gifts to grandchildren for GST purposes [IRC 2652(a)(3)].

Double Step Up in Basis

Spouses who hold property as "community property" will be able to get a step-up in income tax basis on both halves of the community property at the date of death of the first spouse to die [IRC section 1014(b)(6)]. This dramatically affects capital gains tax upon sale of appreciated assets. This is most obviously true for real property, but also for other kinds of assets such as investments. To obtain a double step up in basis in real property and other assets, you must be married, hold property as community property, and for the most part reside in a community property state (although there are exceptions). Most couples will have to have new deeds drafted/re-titled for real estate, or retitle accounts where capital gains will be due upon sale. A summary of capital gains follows.

More Than You Ever Wanted to Know About Capital Gains & Basis:

We care about basis in property because of Capital Gains Taxes. Basis in property is what was originally paid for the property plus the total actual cost of improvements made to the property (that you can prove with documentary evidence). When the property is sold, capital gains taxes are calculated by subtracting the basis from the sales price. Upon death, if the property is sold, capital gains tax is calculated by subtracting the fair market value at the time of death to determine the amount upon which the capital gains will be calculated.

Some Examples/Scenarios

If a domestic partner, for instance, who has not had any ownership interest in a property, inherits it from the person who did have total ownership, the inheriting partner will get a 100% step up in basis, meaning the basis will be the fair market value of the property at the time of death of the partner who had 100% ownership. If the surviving partner had to sell the property right away, she will pay no capital gains [basis (which is fair market value at time of first partner's death, minus sales price (which should be the fair market value at time of death) equals zero. But please note, the only spouse who gets the stepped up basis and zero capital gains is the partner who never owned the property and who inherited it. If the partner who owned the property dies second, she will not get a stepped up basis, and if she sells the property she will have to pay capital gains tax based on her original basis in the property (sales price minus her purchase price plus improvements).

If two partners, or a married couple, own a property as joint tenants, and one dies and the other inherits, the survivor will only get a step up as to ½ of the property, so if she turns around and sells the property, she will pay capital gains on the difference between ½ fair market value and ½ of the basis. Here in California this can be a considerable amount of money. (One of the most common mistakes couples make is to hold property as Joint Tenants. This example is one of the important reasons for why not to hold your property in joint tenancy if you are married!)

If the partners were married, however, and they held their property as community property, then the surviving spouse would get a double step-up in basis, and she would pay zero capital gains if she has to

sell the property right away, or pay very little capital gains tax if she sells later on. If they have children, their children will also inherit the double step-up

Since California same sex couples' marriages have been recognized by the Federal government (June 26, 2013), my office has been redoing most couples' estate plans, drafting a marital trust and drafting new deeds: First we transfer into "spouses as community property," then we transfer into the marital trust. This achieves the double step up for the surviving spouse, and the property goes sheltered to the couple's children, or other beneficiaries, through the trust, avoiding probate and capital gains, or dramatically reducing capital gains.

Social Security Elections and Spousal Benefits

Married same sex couples are now able to take advantage of all of the social security benefit elections, including spousal benefits, the same as other married couples. There are three instances for claiming benefits: during marriage while both spouses are alive and one is retired; upon death of one of the spouses, and after dissolution.

Social Security Benefits During Marriage

As a spouse, you can claim a Social Security benefit based on your own earnings record, or you can collect a spousal benefit that will provide you 50% of the amount of your spouse's Social Security benefit as calculated at their full retirement age (FRA). (You are not eligible to receive a spousal benefit until your spouse files for their own benefit first.) If you file before you reach your own FRA, your spousal benefit will first be calculated as 50% of what your spouse would get at their FRA, but then it will be further reduced because you are filing early. You are automatically entitled to receive the benefit that provides you the higher monthly amount; either a benefit based on your own earnings, or the spousal benefit, and prior to reaching FRA, Social Security makes this determination for you.

File and Suspend: Born Pre January 1, 1954

If you were born on or before January 1, 1954, after you reach FRA, you can choose to receive only the spousal benefit, and delay receiving your retirement benefits until a later date, allowing you to receive a higher benefit later based on the effect of delayed retirement credits. If you have already filed and suspended, those benefits are locked in. Only those people who are 62 or older by December 31, 2015 (you were born on January 1, 1954 or earlier), retain the right to claim spousal benefits (during lifetime) when they turn 66, and delay taking their own social security benefits until age 70 (allowing their benefits to accrue at 8% per year). If you fall into this age category, you **MUST consult with your financial advisor, tax advisor or attorney immediately!**

File and Suspend: Born Post January 1, 1954

If you were born on or after January 2, 1954, you will no longer be able to restrict your application and only receive spousal benefits. You will not be able to utilize the "file and suspend" strategy. (Unfortunately, at the point of when same sex couples could finally take advantage of some amazing strategies in relationship to social security benefits that have been available to opposite sex couples for year, those benefits were taken away from everyone. As of November 2, 2015, Congress took away the file and suspend option for married couples, which had previously resulted in many married couples receiving over a hundred thousand dollars additional social security benefits during lifetime.)

Spousal Benefits After Death of Spouse

The rules regarding surviving spouses remains the same- surviving spouses who are entitled to both their own benefits and those as a surviving spouse, can choose to claim the survivor benefits first, and switch to their own benefits later, or vice versa. If the surviving spouse has no social security benefits of his or

her own, then the surviving spouse can collect benefits as a surviving spouse based on the benefits their spouse was entitled to, which is one-half of what their spouse was receiving in benefits. If you are a widow or widower, you can collect a survivor's benefit as early as age 60. Once you and your spouse are receiving Social Security benefits, upon the death of your spouse, you will continue to receive the larger of your benefit, or your spouse's, but not both. This means if you have a longer life expectancy, and you are collecting a benefit based on your spouse's earnings, if your spouse starts taking Social Security early, it will result in a significant reduction in your benefit too, and the reduction will last throughout your life expectancy.

Ex-Spouses

Currently, there are not many of us who can qualify for Social Security benefits based on a previous marriage. To be eligible, you have to have been married for over ten years, and did not remarry prior to age 60. Ex-spouses who are 62 or older on December 31, 2015, retain the right to claim spousal benefits at age 66, allowing their own individual retirement benefits to grow until age 70. Those who are younger than 62 on December 31, 2015, will not be allowed to suspend their own benefits at 66 and take spousal benefits until 70 when they switch to their own benefits, but must take one or the other permanently, whichever is greater.

Next Steps For Those Already Married or Once You are Married

- **Notify the proper HR or other department at your place of employment that you are married, and provide your spouse's information.** This is particularly important where your spouse is receiving health care benefits through your employment, as you will not have withholding on those benefits anymore. There are a myriad of benefits that pass only to a spouse (or dependent), so it is very important to capture all of those benefits that are available to your spouse.
- **Refill out beneficiary forms on every asset/account, but most importantly on any kind of retirement account, checking the "spouse" box or writing in "spouse" where it asks for "relationship" (You MUST do this even if you have already named each other as primary beneficiary. Use this as the opportunity to name a contingent beneficiary or beneficiaries as well.)** You want to make sure that your spouse is able to do a spousal rollover on all inherited retirement, which results in great income tax savings as well as potentially greater increase in value of those accounts.
- **Notify your financial planner/advisor.** You will want to identify which accounts contain community property, decide how accounts should be titled, and if you both will be clients now. (Remember, you have a fiduciary duty toward your spouse regarding any assets that contain community property.)
- **Notify your tax preparer.** (You will now be filing federal taxes married filing jointly or married filing separately, and you will file jointly with the State of California).
- **Notify your Attorney and redesign your estate plan so that you are identified as spouses if you aren't already, including on your Advance Health Care Directives and Financial Powers of Attorney, and for most of you, have a joint marital trust drafted instead of your individual trusts.** If you already have a joint trust, it may need amending to remove the Bypass Trust. Some of you may end up with individual trusts and a community/marital trust. For some couples the marital deduction will be very important to plan for in the marital trust, and for most, the capital gains issues will be more important. (Due to the fact that federal estate tax exclusion is over 5.45 million per individual, currently.)

- **Have your attorney retitle any real property which you own equally to community property, and then transfer into your marital trust.**
- **Notify insurance companies and the like, and bundle for a reduction in fees.**

Because people ask me this all the time, I'm including here:

Curiosity About Divorce Statistics

The statistic that is on everyone's mind seems to be what will the dissolution rate among married same sex couples be in comparison to those of their high divorcing heterosexual counterparts, over 50% in California. (And by the way, Orange County heterosexuals, who wanted to keep marriage to themselves, have the highest rate of divorce in the country!) In Massachusetts, which has had marriage for same sex couples for the longest period of time, the rate of divorce has been half that of heterosexuals. Many believe the divorce rate for same sex couples will be different than that for heterosexual couples, and that has a lot to do with age. A majority of same sex couples who have married or will marry have already been together for 15-50 years, have weathered many storms, and all without true relationship recognition until recently. The guess is that there will be 1/3 to 1/2 less dissolutions for older same sex couples (40+), but the younger the couple, the closer to the national (heterosexual) norm dissolutions will be.

How Marriage Recognition Affects Parentage

Please See the Author's Article: "Paths to Parenthood."

