

Non-Traditional Couples Face Estate Planning Challenges

**By Matthew Crider, JD
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The new estate tax laws (with their friendly bent toward the taxpayer) have been cause for celebration for many wealthy and affluent Americans, but there is at least one group which has not had cause to celebrate—gay and unmarried couples. Under current federal law, a married person could transfer an unlimited amount of their estate to their spouse upon death, free of taxes; but this generous marital deduction does not apply to same-sex couples—even if they live in one of the five U.S. states which recognize gay marriage.

A recent article in Reuters explains that “there is no [recognition of same-sex marriage] on a federal level, which means same-sex couples do not get the marital deductions on U.S. taxes. They also cannot make large gifts or pass on assets to each other without paying taxes.”

The new laws may help some same-sex or unmarried couples; for the next two years unmarried individuals may transfer up to \$5 million upon their death tax-free. But this isn't permanent (the law will likely change again at the end of 2012) and anyone with an estate over \$5 million will end up leaving their heirs with a hefty estate tax bill.

Luckily, some of these estate tax challenges can be overcome with some good estate planning and by thinking ahead. “If one partner has more assets, he can transfer some assets to his partner each year... Each year, individuals can make gifts up to \$13,000 to any number of people. That can even up the two partners' estates and hopefully avoid a big estate tax bill when the richer partner dies.” If it's clear that estate taxes simply cannot be avoided, the wealthier partner may want to consider setting up an Irrevocable Life Insurance Trust to cover the cost of estate taxes.

Beyond the issue of estate taxes, the article brings up the good point that “same-sex couples are more likely to face challenges to their wills, usually from family members who do not approve of their lifestyle.” This provides more incentive than ever to have a well-thought-out estate plan, which can be drafted with just such a possibility in mind.

Regardless of state of residence, same-sex or unmarried couples simply do not have the same benefits as traditionally married couples, which means that same-sex or unmarried couples have to plan carefully to achieve their estate planning goals. It may require more forethought and effort, but the good news is that with the right kind of planning it is possible for non-traditional couples to protect and provide for the people they love.

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About Matthew Crider, J.D.

Matthew Crider formed [Crider Law PC](#) in 1999 so he could help individuals and business owners by providing creative solutions and be their trusted advisor and legal counselor. He serves his clients by listening closely to their goals, dreams and concerns and working with them to develop superior and comprehensive estate and asset protection plans. His estate planning practice focuses on preserving and growing wealth by providing comprehensive, highly personalized estate planning counsel to couples, families, individuals and businesses.

