

# Gay couples face myriad hurdles

■ For same-sex couples, not having the right to marry translates into hundreds of financial and legal disadvantages. Only some of them can be overcome.

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As dozens of attorneys gather in Miami Beach this week to brainstorm and share ideas, this fact remains: For thousands of gay couples in Florida and across the country, not being able to marry carries financial and legal burdens numbering in the hundreds.

Only some of those issues can be fixed, and doing so

requires careful planning that many couples never take the time to address.

"The bottom line is you can't not plan," Miami attorney Jerry Chasen said. "I don't kid myself. People have almost as much enthusiasm about coming to a lawyer to get this done as they do about going to the dentist."

Chasen and other attorneys are meeting in Miami Beach to

discuss these issues at the national Lesbian Gay Bisexual Transgender Bar Association's annual conference. They are closely monitoring the battle for gay marriage in California, although individual state marriage laws don't solve all financial and legal issues.

The largest barrier is the 1996 Defense of Marriage Act. That federal law recognizes marriage as solely between a man and a woman.

In 1997, the Government Accountability Office found that 1,049 federal rights, bene-

fits and privileges are based on marital status. It found about 100 more after a 2003 update.

The challenges can begin with the very act of starting a household.

When Cindy Kramer bought a home with her partner, she thought she was being smart.

Because Kramer, 49, and her

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partner couldn't marry, they made sure the ownership of their home was designated so that if either of them died, it would automatically be passed to the survivor with the homestead exemption intact. They split household expenses, with Kramer paying for new furniture, clothing and landscaping and her partner paying mortgage and utility bills.

But their bill-paying arrangement wasn't documented and didn't spare Kramer two years of wrangling over assets when the couple separated. Kramer, who lives in South Broward, ended up losing the home and must pay her partner \$100,000.

"Had I considered a lawyer, we would have had, I guess, kind of like a prenuptial thing," Kramer said. Same-sex couples can get what is in essence a pre-nup, said Cathy Pareto, a certified financial planner in Coral Gables. "If you're going to live with somebody and you're in a long-term relationship, because there are no rules you may want to consider having a cohabitation agreement. It's a written agreement that says, 'This is mine. This is yours.'"

### HEALTH

In a high-profile situation that started in 2007, Janice Langbehn's partner ended up at Ryder Trauma Center in Miami as the couple and their children were headed for a cruise.

Although Langbehn, of Washington state, had a power of attorney for her partner, allowing her to make financial decisions, she only saw Lisa Marie Pond briefly, with the escort of a priest adminis-

### Where to find documents

- To read the UCLA study on retirement disadvantages for same-sex couples, go to [www.escholarship.org/uc/item/0pn9clh4](http://www.escholarship.org/uc/item/0pn9clh4).
- Samples of documents that might be useful, including a durable power of attorney and healthcare directive, are available on the Human Rights Campaign website, [www.hrc.org/issues/ag-ing/2699.htm](http://www.hrc.org/issues/ag-ing/2699.htm).
- For a list of one attorney's list of the Top 10 legal protections for gays and lesbians, go to [sobelaw.com/top10.html](http://sobelaw.com/top10.html).
- The Government Accountability Office report on the Defense of Marriage Act is at [www.gao.gov/products/GAO-04-353R](http://www.gao.gov/products/GAO-04-353R).

tering last rites.

"The law in the state of Florida ... assumes that our next of kin is going to be our legally wedded spouse, then our children, then our parents and so on," Miami Beach attorney Elizabeth Schwartz said.

Federal rules created by President Barack Obama this year say any hospital that receives Medicare or Medicaid money — which covers most — must allow visitation for same-sex partners.

Schwartz said in case of serious health situations, unmarried couples can create a healthcare power of attorney to designate a healthcare surrogate, so someone of their choosing can make medical decisions on their behalf.

A waiver of federal health privacy laws can be included, allowing the surrogate to get information about the patient's condition, Schwartz said. These are needed in addition to a living will.

### DEATH

For married couples, Social Security benefits can be passed from one spouse to the other in the event of a death.

"A same-sex or unmarried couple that had been together for 30 years — the partner does not have the ability to claim benefits like that," Pareto said.

In Florida, spouses of public employees who

earn benefits from the Florida Retirement System can get their benefits for the rest of their lives. Unmarried partners don't get that complete benefit. They can get payments only if their partner dies within 10 years of retiring — and then, only until the 10-year anniversary of that retirement.

Other aspects of retirement can also be challenging, according to a study last year by the nonpartisan Williams Institute at the University of California, Los Angeles.

Female same-sex couples are at a particular disadvantage because inequalities in pay are magnified. Only half of lesbian couples have at least one member eligible for an employer-sponsored retirement plan, the study found.

In 2006, the Pension Protection Act lifted some, but not all, restrictions on unmarried partners' rights to inherit pensions and 401(k)s. A surviving spouse can move the money into a traditional IRA and wait to take from the fund until they are 70½.

Other heirs can put the money into an inherited IRA and spread distributions over a lifetime, Pareto said. Until the change, an heir that wasn't a spouse had to cash in the account over five years, meaning greater tax liabilities. "It's not perfect,"

Pareto said. "But it's light years ahead of where it used to be."

Attorneys and financial advisors say same-sex and unmarried couples can protect themselves and their loved ones in other ways on their own — but too often, don't.

### AFTER DEATH

Former Monroe County 16th Circuit Judge Jefferson Overby's first partner died in a plane crash, without a will or other estate planning documents. A will alone wouldn't have prevented an expensive trip to probate court, but it would have been a guide.

"It inspired me to not have anybody go through that," said Overby, 57, of Key West. Attorney Bill Andersen, whose firm has offices in Fort Lauderdale and Key West, worked with Overby on setting up a revocable living trust and putting his assets into it. They go to whomever Overby designates when he dies. "In the event that I was married and my wife passed away, I would automatically get some percentage of the estate. That's not true for same-sex couples," Andersen said. "If there's nothing in place, [assets] are probably going to go to a parent or a sibling."

There is no federal estate tax this year, but when someone's spouse dies, they can claim \$4.3 million worth of assets at their current value — not the value they may have accrued over time — for capital gains tax purposes. Unmarried partners can claim only \$1.3 million, meaning their tax liability is much higher.

"This would be the year where you would think everything is equal," said Michael Steinberger, who worked on the UCLA study. "It's still not."