

# Life and taxes

by Russell Nichols

For 30 years, Lorraine Heidecker taught college students about the evolution of human behavior. But beyond the classroom, she was the one learning to adapt.

As an anthropology professor at Sacramento State, Heidecker met Kay Buie, a student in her department. The two of them hit it off, fell in love and lived a quiet life under one roof in Carmichael with a cluster of cats.

For a long time, they were not registered as domestic partners with the state, and Heidecker put Kay down to receive half of her pension should she die first. But years later, when she decided to change the plan so that Kay would receive the full pension, Heidecker was told she needed to get registered. So they did, and it didn't help.

"We did it, and we applied," Heidecker says. "They came back and said that doesn't count." She was told that living together did not qualify.

In the eyes of federal law, same-sex couples are basically complete strangers. Although some states — such as California, Oregon, Connecticut, New Jersey, Maine and Vermont — recognize domestic partnerships or civil unions, most states and the federal government do not. Consequently, many same-sex couples miss out on numerous tax benefits afforded to married couples; some are excluded from wills or beneficiary packages; others are not allowed to see their partners in the hospital.

With proper financial and estate planning, same-sex couples can get around some stipulations on paper. But without professional guidance, they can get tangled in the legalese, and tax forms can take hours to sift through.

"It's complicated for a lot of people," says Rich Waterman, a certified public accountant for Waterman and Associates. "There are a lot of decisions to be made."



Kay Buie and Lorraine Heidecker

Twice a year, Waterman holds workshops at the Billy De-Frank LGBT Community Center in San Jose, where he goes over community property issues and addresses differences between state and federal tax laws.

"California, to some extent, makes some of it easier," says Waterman, who also has clients in states such as Virginia and Oregon. "But you still have a lot of complexities with or without California law."

For instance, a marital deduction allows for a married person to give any amount to a U.S. citizen spouse without gift tax. Same-sex couples do not qualify for a marital deduction, so, under the annual exclusion from gift tax, they are only allowed to give a gift of up to \$13,000 a year without gift tax consequences, says Trudy Nearn, an estate planning attorney and founder of Generations law firm in Sacramento.

Similarly, the marital deduction allows a married person to leave an unlimited amount to a U.S. citizen spouse with no estate tax. Otherwise, a person who is not married can only leave \$3.5 million, called the applicable exclusion from estate tax, and everything above that amount will be subject to estate tax at a rate of 45 percent.

The estate and gift tax is the largest percentage tax problem, Nearn says, but there are others. For example, transfer of real property to a spouse or registered domestic partner will

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not cause a property tax increase; however, transfer of property to a nonregistered partner is a cause for reassessment.

“For me, the first thing is to figure out in what way they want to provide for each other,” Nearn says, “then figure out what we can do to make it tax efficient.”

But beyond financial and estate planning, domestic partners must also be aware of other stipulations such as hospital visitation rights and the authority to make health care decisions. Nearn says most of these issues could be helped, at least on a state level, by filling out a few simple documents. But some same-sex couples still choose not to register or handle the paperwork.

“I think people don’t know where to go where someone will understand the issues for them,” Nearn says. “Some people just don’t realize that there are so many potential problems.”

For Jim McCann and his partner, Don Callison, not registering was never an option. McCann worked for the state department of social services for 30 years. In California, as an employee of the state, McCann was able to put Don on all of his health benefits, obtain hospital visitation clearance and take advantage of joint tax returns. Everything else, he says, has been fairly easy.

“We were able to set up an estate and make it very clear that if anything happens to either one of us, the other person would gain all of the assets,” says McCann, who is now retired and lives with Don in the Pocket area. “It was very beneficial for us to register.”

If same-sex couples choose not to register, Nearn encourages them to at least have an estate plan that determines where the money will go if a partner passes away.

“People tend not to think about these things,” Heidecker says. “You need someone to say, ‘Gee, by the way, maybe you should talk to an estate planner to talk about legal arrangements.’”

When Heidecker went with her partner for guidance, an attorney advised her to set up a trust. She heeded the advice and says she put all of the assets in a trust with Kay as the beneficiary.

“She would then have the resources to live fairly comfortably even with only half my pension,” Heidecker says. “For us, it required a rather high degree of research. If you are in a domestic partnership, you really cannot assume that anything is going to pass from one partner to the other. We’re not married — not in the eyes of the state, not in the eyes of the federal government. So you have to jump through a series of legal hoops to nail that down.”

Although she wasn’t able to change her original pension agreement, Heidecker did learn that by registering last November she will have a new break on her income tax, though she’s not yet sure how much. That same month, they met with Nearn to review the trust document before they went on a cruise to Mexico.

“I wanted to make certain that should we both die together,” she says, “our pets are taken care of.” ©