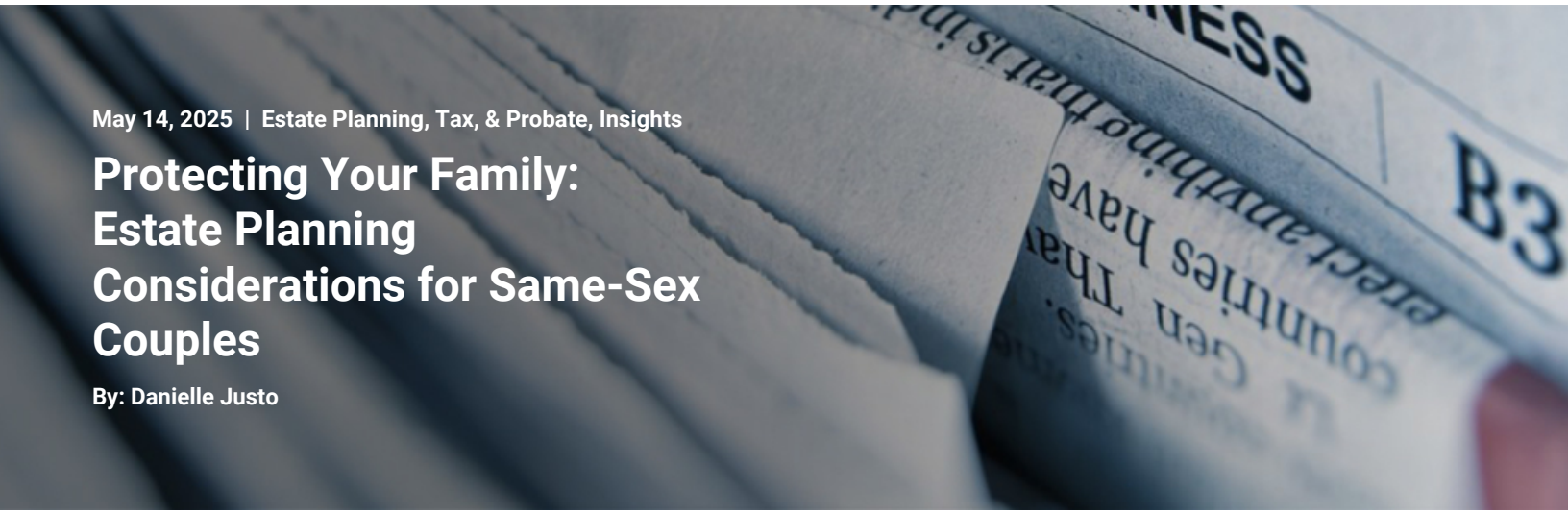


May 14, 2025 | Estate Planning, Tax, & Probate, Insights

Protecting Your Family: Estate Planning Considerations for Same-Sex Couples

By: Danielle Justo

As a result of *Goodridge v. Department of Public Health*, 440 Mass. 309 (2003), Massachusetts has recognized same sex marriage for over 20 years. The U.S. Supreme Court further made clear in *Obergefell v. Hodges*, 576 U.S. 644 (2015), that same-sex couples have a constitutionally protected right to marry and to have their marriage recognized in every state. However, due to the current composition of the Supreme Court, many believe that these protections may be at risk. Same-sex couples have been working with our firm to make sure their assets are protected for the future of their families. There are three main issues that we have been discussing with our clients:

1. **Marital Rights**: In the event of future non-recognition of same-sex marriage, estate planning can benefit same-sex couples in two very significant ways: first, control of the disposition of assets to the surviving spouse (rather than next of kin by statute) and second, tax benefits including the unlimited spousal exemption from the estate tax. In the event that *Obergefell v. Hodges* is overturned, a same-sex couple would only benefit from rights and protections at the federal level (assuming such protections continue), not the state level. Unfortunately, in the event of non-recognition some other family members may benefit instead of the surviving spouse. In drafting wills for our clients, we can provide protections so that those contesting family members' claims are invalidated under the will. We can also include certain provisions to help the surviving spouse avoid paying federal estate tax on the death of the first spouse at the state level.
2. **Children**: Another concern has arisen around adoption. Historically, only one member of a same sex couple may have adopted a child due to prohibitions in the law preventing both spouses of the same-sex couple to adopt. Careful use of definitions can help to protect parental rights. For



Related Services

Estate Planning, Tax & Probate

Related Attorneys

Danielle Justo

©2026 Rich May, P.C. All Rights Reserved

example, when drafting wills for our clients, we typically define "children" to include a spouse's children including children born or adopted by a spouse after execution of the will, and go so far as to name the children. Adoption may still be advisable, and even if there are stepchildren, consideration can be made for inheritance in a similar fashion.

3. **Marital Home**: A third protection that can be employed is ensuring that real estate is owned jointly. A properly crafted deed can ensure that when property is owned by a married couple, then even if they are later deemed not to be married, ownership will default to both spouses jointly. This way, the property will automatically pass to the surviving spouse upon death.

These are three estate planning methods that can be utilized to protect the most important assets of a marriage. If you wish for us to review your estate plan to increase your comfort level that your wishes will be carried out, please contact us.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Danielle Justo.

© 2025 by Rich May, P.C. and Danielle Justo. All rights reserved.