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MARKET MATTERS: Financial considerations around LGBTQ divorces

By Joseph Matthews
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It’s been 15 years since same-sex marriage was first legalized in the U.S. With the ability to marry also comes the ability to divorce, and a recent survey in the U.S. shows that 36.3 percent of all couples eventually divorce.

Newly married couples should always prepare for the unthinkable even while celebrating a marriage. Every aspect of marriage — and its potential dissolution — should be carefully considered before the “I dos” are declared.

Experts recommend that all couples, including same-sex couples, sign prenuptial and post-nuptial agreements. Whether a couple is married, in a civil union or domestic partnership, establishing such a contract would make it clear to the courts how the couple intends to divide their assets, and how they intend to support one another. Addressing what do to in the case of a divorce can be less costly and less adversarial than having it addressed upon a divorce.

Once the couple has decided to end their marriage, both parties should acquaint themselves with divorce laws in their home states and consider legal representation. For same-sex couples in particular, individual state laws may vary — with potential economic consequences. In addition, both parties need to pay close attention to their finances.

Create a budget. Individuals should work with a financial advisor, especially if there is a joint investment account that will need to be divided. Each spouse should put together a financial plan that will reflect their new financial situation moving forward. Take into account the expenses one may now owe on a single income budget — such as potential spousal support and costs for caring for children and taking care of a home.

Potential spousal support —or alimony — isn’t always clear cut. It’s difficult to know what courts will do in cases where a couple had been in a relationship prior to being able to marry. Some judges may not consider additional time outside marriage while others will add on the time before the couple legally wed. Predicting any award of child support to a custodial parent can be difficult if the child was born to one spouse prior to marriage and not adopted by the other.

Look at retirement plans, such as an IRA or a 401(k) through work. Couples who are splitting up should consider a Qualified Domestic Relations Order (QDRO), which outlines the way the retirement plan will be divided. Having a QDRO can help a couple avoid any penalties they would normally incur from taking early distributions from the plans. IRA transfers can be done without incurring federal tax.

Review financial documents. Couples should review all estate planning documents to determine if any beneficiaries need to be changed. Pay close attention to retirement accounts, bank and brokerage accounts, and life insurance, for example.

When a couple is going through a divorce, or planning ahead for a “worst case scenario,” whatever that might be, the issues can be complex. Having a financial plan can ease the emotional as well as financial burden in such situations.

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