

# Empowering the LGBTQ2+ community with financial planning



Financial Planning, Risk Management, and Estate Planning are all key steps towards empowerment for members of the lesbian, gay, bisexual, transgender, queer, and two-spirited (LGBTQ2+) community, and this can help secure your future and the future of your loved ones.

Yet the always-changing legal landscape can make the wealth planning process even more complex for LGBTQ2+ families. We asked BMO Wealth Management expert and LGBTQ2+ ally Jonathan Batt, Senior Director, Digital Strategy, and Carl Hibben, Director, Private Wealth Advisor to explain some of the most important financial issues currently facing the LGBTQ2+ community.

**Q. We know over the last few years the United States had made great strides regarding civil rights and legal protections for LGBTQ2+ individuals and families. What are some of the more recent changes?**

**A.** Compared to prior decades, overall it is still a positive time to be a member of the LGBTQ2+ community. Some of the most significant civil rights advancements for LGBTQ2+ individuals and families are changing the way we plan for our financial needs and future. Most notably, they include:

- **The freedom to marry!** Years of litigation in our courts brought the freedom to marry in all 50 states and U.S. territories in 2015, after the U.S. Supreme Court ruled in the *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) case that the fundamental right to marry is guaranteed to same-sex couples under our Constitution under both the Equal Protection Clause and the Due Process Clause. This victory is one of the biggest changes in the legal landscape in decades.

However, a recent concurring opinion in the *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228 (2022) case (overturning *Roe v. Wade*, 93 S.Ct. 705 (1973)) indicates that some of the grounds used to overturn the *Roe* case should also apply to the *Obergefell* case. This has raised some concern that same-sex marriage could suffer the same fate as *Roe v. Wade*. However, the majority opinion stated that *Dobbs* "should not be understood to cast doubt on precedents that do not concern abortion." This provides some comfort that the *Obergefell* case guaranteeing same-sex couples the right to marry should stand.

- **Federal protections.** Recent landmark court rulings are advancing a legal precedent that protects LGBTQ2+ people from discrimination under federal law in some workplace settings and schools. This understanding and application of the law is far from covering all LGBTQ2+ people in all states, yet the trend is important in how we think about our employment, mobility, and safety of our children in schools.
- **Advancements in family law.** Even after we've won the freedom to marry, parenting and family law for same-sex couples and LGBTQ2+ individuals requires special considerations (second-parent adoption, for example). More states are appropriately recognizing parental rights, spousal relationships, and the way we create our families.

## Q. What is the connection between changes in LGBTQ2+ legal rights and the need for LGBTQ2+-specific financial planning?

**A.** “Legal rights come with financial benefits. The broader public assumed that national recognition of same-sex marriage was the final step toward bringing legal and financial equality to LGBTQ2+ people... job done,” says Jonathan Batt, Senior Director, Digital Strategy for BMO Wealth Management. “Although recognition of same-sex marriage truly is a ground-breaking advancement, it’s not the answer to every LGBTQ2+ person’s financial planning issue.” Why?

- **Marriage isn’t for everyone.** This choice may be financial or based on other reasons. Since they don’t have the legal protections that go along with marriage, domestic partners still need specific legal documents and financial plans to help ensure they can care for each other.
- **Broader anti-discrimination protections for LGBTQ2+ individuals are non-existent in some states and under fire in others.** In addition to the possibility that the freedom to marry could be undone, many newly proposed laws and court challenges—particularly those under the banner of “religious freedom”—could challenge LGBTQ2+ individuals’ rights in unexpected ways. Furthermore, the reversal of *Roe v. Wade* may further embolden special interest groups to pursue rollbacks of LGBTQ2+ rights via the U.S. Supreme Court.

To help fulfill your financial goals, it’s important to know your legal rights and what it may cost to protect you and your family.

What if your employer can legally fire you after seeing you kiss your same-sex partner as she drops you off at the office? That sudden loss of salary could upend your plans to retire or purchase a long-desired vacation home.

Or what if laws in your state make it difficult to expand your family? State laws and procedures can vary regarding parental rights and recognition. Your legal costs to adopt or use a surrogate in another state could be steep and will need to be part of your financial plan. Even deciding who you want to inherit your retirement savings and home when you pass away can add challenges.

“LGBTQ2+ individuals and couples should be extremely clear about their wishes in these and similar financial situations,” says Hibben. Why? There could be a higher than-average chance of someone (for instance, your parents, siblings or an ex-spouse or partner) challenging your financial decisions. Eventually that may change. But for now, you need to be a proactive planner.

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## Q. Why is wealth planning so important and how do you get started?

**A.** If you belong to the LGBTQ2+ community, you face some unique legal risks and financial costs. Those risks and costs can change every few years as laws evolve. For all these reasons, it’s smart to be well prepared and strategic when it comes to planning your finances.

Here are the primary steps to create your financial plan:

**1. First start with the big fundamental questions** of what is important to you (and your partner)...things like:

- Who should make medical and/or financial decisions in case of incapacity?
- Which individual(s) and organization(s) should inherit your assets?
- Do you want to minimize the ability of unsupportive family members to insert themselves into your choices?

**2. Next, create clear goals of what you’d like your money to do for you.** If you’re single, your top goal may be to have the resources to retire early and travel. If you’re coupled, perhaps protecting your partner financially if you die or become incapacitated is your top goal; you want your partner to enjoy the same lifestyle even if your income stops. Or perhaps supporting your favorite charities is your passion. Listing your goals is the first important step.

For example, many millennial LGBTQ2+ couples express the wish to be parents. However, that can be a very expensive undertaking, particularly when it involves using a surrogate mother. “That service isn’t covered by most health insurance and could cost more than \$100,000 out of pocket, particularly when you add the attorney and consultant costs,” notes Batt. “You’ll need to plan carefully to afford that undertaking.”

**3. Organize your current financial position.** This step includes identifying all of your financial accounts. It is often surprising to see just how many active savings and retirement accounts we create over the years. But it’s also checking how your accounts and other major assets, such as a home and car, are legally titled. Titling can have major inheritance and tax implications for both you and your beneficiaries.

**Examples:** Starting with your 401(k) account and life insurance through your long-time employer, be sure to check who you’ve named as the beneficiaries; you may still have your parents’ and/or siblings names listed instead of your current partner or spouse. After you confirm your retirement/life insurance accounts — take an inventory of your other financial accounts and repeat this process, confirming your desired beneficiary is reflected. If it’s important to you that your partner inherits your home when you die, then you may want to consider adding your partner’s name to the title now. Planning gives you the opportunity to take inventory of all your assets and see what needs to be updated.

**4. Analyze your financial risks and your progress toward your financial goals.** Discover any financial risks unique to the LGBTQ2+ community that you may not be aware of. An example: do you or your partner work for a small, socially conservative company that could theoretically find a way to end your employment or limit your chances of promotion? If so, that's a unique risk to your situation. "As a result, you might need to save up a larger-than-usual emergency fund," suggests Hibben. "You might need this money if you were to suddenly lose your job."

You should analyze and project your future cash flow to provide a clear understanding of how much cash is available to save toward your financial goals. These projections will help to determine if you can meet those goals or if adjustments are necessary.

**5. Implement financial recommendations.** This is your "action phase." Once you understand your list of financial to-dos, you'll need to start taking care of them. This phase could include tasks such as retitling accounts, writing a will, setting up trusts or putting more money into retirement accounts. It's easy to push these tasks off when your life is running smoothly, but that's the time to take care of these tasks, not while you are in a crisis situation.

**6. Regularly monitor and adjust your financial plan.** A good financial plan should be a living, breathing entity. It's not a document you create and then "set and forget." Your goals may change over time. As a member of the LGBTQ2+ community, it's particularly important that you review your financial plan regularly. You may need to tweak your plan as new LGBTQ2+ legal changes crop up that could affect your finances and goals.

#### Q. Are there any key mistakes to avoid when creating a financial plan?

**A.** If you're married or living with a domestic partner, it can be a mistake to assume that you'll never break up or divorce. It's not a pleasant topic to consider. However, it's easier to make plans for a potential break up early in your relationship, while it's still just a theoretical concern, rather than later, when emotions are high.

If you're getting married or are married, consider a pre- or post-nuptial agreement. This legal document allows you to decide in advance, and put into writing, how you and your spouse would handle financial and other assets if you divorce. It can also cover who is responsible for expenses during the marriage, such as health care costs.

If you're an unmarried couple: You and your unmarried partner may want to consider a cohabitation or domestic partnership agreement. This document details how you would split your finances and belongings if you were to break up. "In some states, these documents aren't fully recognized as being legally binding," notes Hibben. "However, having some sort of partnership agreement in writing may help clarify your situation if you ever end up challenging your partner in court."

It could also be a mistake to re-title assets, such as a home, as "joint tenants with right of survivorship." Doing so could trigger gift taxes and impact one partner's lifetime gift and estate tax exemptions. It could also complicate your finances if you ever split up. "It may be better for unmarried partners to title assets as 'tenants in common,' to keep each partner's financial interests separate. Individuals may hold assets as tenants in common. A trust is not required. There are ways to give your surviving partner the ability to continue living in 'your part' of the home by giving your partner a 'life estate,'" says Batt.

#### Q. Do financial planning issues differ depending on my age?

**A.** In many cases, yes. This is something that financial planners who work regularly with LGBTQ2+ clients understand quite well.

Millennial individuals and couples are more likely to assume they'll marry than other generations. Marriage conveys a number of automatic legal and financial rights to each spouse, which is considered when creating a financial plan. Younger LGBTQ2+ couples, just like their straight counterparts, are also more likely than older generations to have legal issues and financial goals related to fertility, children, college costs and related expenses.

LGBTQ2+ individuals and couples who are Baby Boomers or members of Generation X may have a different set of concerns. "Even partners who have been together for 30+ years may decide marriage is not the best course," explains Batt. "They've planned most of their lives assuming marriage wasn't an option, so it could be difficult to change course now." For example, marriage could trigger additional expenses, such as the marriage tax penalty for dual higher-income earners.

It's especially important for older single LGBTQ2+ people with no children to have prepared documents that identify those people who they want to handle their health care and financial decisions when they are no longer able.

"Older LGBTQ2+ individuals may also want to explore LGBTQ2+-friendly assisted living centers and have trusted friends or family members legally named to help oversee their care if they need it," says Hibben.



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## Key planning documents you need

Your attorney, accountant and financial planner will help you determine exactly which financial and legal documents you should have in place. Here's a list of common forms they may recommend:

- Will
- Up-to-date beneficiary designations for retirement plans, life insurance and annuities
- Up-to-date titles for property
- Durable power of attorney for financial management
- Advanced health care directive (also called a living will)
- Health care power of attorney designation
- HIPAA authorization

### Other important documents

The following documents are only necessary in certain situations. Your attorney and financial planner can help you decide if you need them:

- Revocable living trust
- Life insurance trust
- Special needs trust
- Domestic partnership agreement
- Custody agreement
- Pre- or post-nuptial agreement
- Funeral directive

### Q. What essential financial planning and legal documents do most LGBTQ2+ people need?

**A.** Most people need the same key documents, regardless of their sexual orientation or gender. It's extra important for single people to have these documents. Otherwise, if you become disabled or die, a court would have to decide who should be legally responsible to make decisions for you, and who would inherit your estate.

Refer to "Key planning documents you need" for a list of these and other key financial planning documents.

### Q. What should LGBTQ2+ individuals and couples look for in a professional financial planner?

**A.** Consider someone who has a strong track record of working with LGBTQ2+ clients. "Financial planners who work with this community know the key questions to ask you, understand the pitfalls of various financial strategies for LGBTQ2+ people and stay up to date on legal challenges," says Batt. Consider getting referrals from people you trust — friends, your attorney or your accountant. Local LGBTQ2+ organizations may also keep lists of professionals who are particularly LGBTQ2+-friendly and knowledgeable.

And no, it's not necessary for your financial planner to identify as LGBTQ2+. Solid financial planning and communication skills are the main qualifications to seek in a good planner. "It goes without saying that you should expect your financial professional to treat you with the same high level of respect they have with all of their clients," says Hibben. "You should never expect to feel that your financial planner is uncomfortable with your sexual orientation or personal relationships."

Expect your planner to diplomatically ask a few probing questions. He or she isn't trying to be nosy, says Batt. "Your advisor needs to understand enough about your personal life to help you pursue your most important financial goals," he says.

Examples of questions that indicate you may be working with a thorough LGBTQ2+ financial planner:

- "Have you considered the financial pros and cons of marriage from a financial perspective?"
- "Do you have children from prior marriages or relationships?"
- "Are there other loved ones for whom you wish to care for that haven't come up yet in our conversation?"
- "Is there anyone in your immediate family (parents, siblings, etc.) who is not part of your estate plan but who might create problems for your partner if you became incapacitated and/or deceased first?"

### Q. Can I do any financial planning on my own? Is it really necessary to work with a financial planning professional?

**A.** While you can handle many ongoing financial tasks on your own, much depends upon your knowledge, experience, and willingness to commit the time required. At a minimum, you will need an estate planning attorney to professionally prepare many of the documents referenced above and you may also benefit from talking with a Private Wealth Advisor.

You've seen how quickly the LGBTQ2+ legal landscape has changed in just the past few years. State and federal LGBTQ2+ laws often don't match up. It's likely that legal shifts will continue to occur for the foreseeable future. Many people find it beneficial to get professional help with various aspects of their financial lives especially as their circumstances become more complex.





As Senior Director–Digital Strategy for U.S. Wealth Management, **Jonathan Batt** is accountable for building the digital client experience for the mass affluent, high net worth and ultra high net worth segments. He ensures success of agile product teams by communicating the vision of the product, defining goals & KPIs. Jonathan maximizes customer value by creating, prioritizing, and refining user stories in the product backlog and ensures the customer voice is heard through research, ongoing testing, and story mapping.



**Carl Hibben**, CFP®, is a Wealth Planning Consultant for BMO Wealth Management. Carl provides customized financial planning solutions to high net worth individuals and families as part of an overall personal wealth management strategy. He joined the organization in 2010, and has over 13 years of experience in the financial industry. Carl is a CERTIFIED FINANCIAL PLANNER™ practitioner and a member of the Financial Planning Association

**Q. How does BMO Wealth Management stand out on issues of LGBTQ+ equality, corporate culture, and in its customer services?**

**A.** We're proud to be a leader in advancing equality in the workplace and for our customers. We have a long history of funding key non-profit organizations that support the well-being of all LGBTQ+ people. Our Enterprise Resource Group, BMO Pride, enjoys a passionate and engaged LGBTQ+ and Ally employee membership across our global network of offices.

As a member of the LGBTQ+ community, you continue to face legal equality challenges. But thoughtful financial planning can empower you to effectively manage, and even overcome, many of these challenges.

BMO Wealth Management is committed to customizing our wealth planning services to the needs of LGBTQ+ individuals and families. It's our goal to help you take the best possible financial care of yourself, your spouse/partner, your children and other loved ones and charities. For more information about LGBTQ+ wealth planning, contact your current advisor or visit us at BMO Wealth Management.

[www.bmowealthmanagement.com](http://www.bmowealthmanagement.com)



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