**See this online at** <https://ncestateplanning.com/blog/estate-planning-opportunities-for-same-sex-couples/>

**Same-Sex Couples Need Estate Planning, Too**

Since same-sex marriage became legal throughout the United States in 2015 with the Supreme Court’s decision in *Obergefell v. Hodge*, many same-sex couples have realized that they, too, can benefit from estate planning. Making and solidifying decisions about the disposition of your accumulated wealth, providing power of attorney for critical decisions, and stating end-of-life health care wishes is a sign of a couple’s care and devotion to one another.

Same-sex couples have access to all of the legal tools traditional couples have used for years to protect their property and themselves in their later years. Creative work-arounds are no longer necessary. This makes it a mistake to put off questions that could require an immediate answer without notice. Accidents happen and illnesses strike without warning.

The attorneys of [Brady | Cobin Law Group, PLLC](https://ncestateplanning.com/) would be happy to talk to you about the importance of thoughtful and thorough estate planning for married gay couples, as well as for [same-sex couples living together](https://ncestateplanning.com/blog/unmarried-couples-and-estate-planning/). For more than 35 years, our dedicated Cary, N.C., estate planning lawyers have helped same-sex and straight couples throughout North Carolina plan for their futures and for ensuring the continued comfort of those they love.

**The Importance of LBGTQA Estate Planning in North Carolina**

Everyone needs to plan for the future. Estate planning is a means of making sure everything you own — your car, home, other real estate, checking and savings accounts, investments, life insurance, personal possessions, etc. — goes to the people or organizations you want to have it when you die. Further, a proper estate plan states how you want to be cared for if you cannot say so yourself and who may make legal decisions for you. Estate planning ensures that your wishes are carried out.

Unfortunately, the rights of LBGTQA Americans remain a political football. [The Equality Act](https://www.nytimes.com/2019/05/17/us/politics/equality-act.html), which would prohibit discrimination on the basis of sexual orientation and gender identity, has passed the U.S. House but is stalled in the Republican-dominated Senate as of this writing. Since taking office, President Trump and his administration have [repeatedly rolled back existing protections](http://time.com/5595474/donald-trump-roll-back-transgender-protections/) for LBGTQA individuals, especially for transgender Americans. The Supreme Court has sided with a baker who refused to bake a [wedding cake for a gay couple](https://www.cbsnews.com/news/supreme-court-rules-in-favor-of-baker-who-denied-same-sex-couple-a-wedding-cake/) in Colorado and will hear [three LGBTQ discrimination cases](https://www.npr.org/2019/04/22/716010002/supreme-court-will-hear-cases-on-lgbtq-discrimination-protections-for-employees) in the fall of 2019. North Carolina continues to allow several forms of [discrimination against LGBTQ residents](https://www.equaldex.com/region/united-states/north-carolina).

We believe that, for married gay couples, completing your estate planning documents is the best way to protect yourselves from the potential of discriminatory laws, policy or court rulings at the federal level or here in North Carolina. It is also important to recognize that estate planning must be revisited periodically, especially if there are significant changes in your life, such as the addition of children to your family.

**Marital Status and Gay Couples**

The history of gay marriage in the United States may have contributed to an unexpected obstacle for same-sex couples drafting wills, powers of attorney and other estate planning documents. Some gay Americans may be married to a prior partner and not realize it.

Massachusetts was the first state to legalize gay marriage in 2003. When the June 26, 2015 Supreme Court ruling was handed down, [same-sex marriage was legal in 37 states](https://gaymarriage.procon.org/view.resource.php), including in North Carolina via a 2014 court decision. Prior to 2015, state laws could change abruptly, such as in California, where same-sex marriage was made legal on May 15, 2008 and banned on November 4 of the same year.

Over the years, some gay couples married in one state found themselves relocated to a state that did not recognize their marriage. If they split up in a state that did not recognize them as married and figured there was therefore no need to legally dissolve their marriage, they would still be married, Joan M. Burda, author of “[Estate Planning for Same-Sex Couples](https://www.amazon.com/Estate-Planning-Same-Sex-Couples-Burda/dp/1634253019),” suggested in [a 2017 interview](https://www.usatoday.com/story/money/personalfinance/retirement/2017/06/17/estate-planning-more-complicated-same-sex-couples/102862578/). In addition, some states converted registered domestic partnerships or civil unions into legal marriages.

If you have questions about your marital status, we can assist and advise you about the necessary work to affirm or confirm your current status in preparation for estate planning.

**3 Estate Planning Must-Haves for Same-Sex Couples in NC**

The [estate planning needs](https://ncestateplanning.com/estate-planning/) of same-sex couples are no different from other married couples’ needs. Here are three estate planning documents you both should have and that we can help you legally prepare:

* [**Wills**](https://ncestateplanning.com/estate-planning/wills/)**.** A will states how your assets should be divided upon your death and who receives what. A will allows your estate to avoid many of the [costs of probate court](https://ncestateplanning.com/blog/what-happens-dont-have-will-north-carolina/). If each of you have wills, you can name who you would want to be guardians for your children.
* [**Advance Directives**](https://ncestateplanning.com/estate-planning/advanced-medical-directive/). A health care directive (or advance directive, or living will) explains what you want to happen to you if you become incapacitated by illness or injury. You can state whether you are or are not to be kept alive on a feeding tube, placed on a mechanical ventilator, or undergo other life-prolonging, extraordinary measures to extend your life.
* [**Power of Attorney**](https://ncestateplanning.com/blog/powers-of-attorney/). Power of attorney grants someone else the authority to make decisions on your behalf. It is very flexible; you can specify what powers a person has and when he or she can exercise that power. A financial power of attorney grants authority over investments and spending. A medical power of attorney designates someone to make health care decisions on your behalf.

For estate planning purposes, a durable power of attorney ensures that your designee continues to have power of attorney even when you’re not able to communicate, such as because of incapacitating illness or injury. In other cases, a power of attorney might grant certain authority during an extended absence, such as a military deployment.

Another approach to managing assets that are to be passed on to a beneficiary is to establish a living trust. A trust can be tailored to meet your needs and the needs of the beneficiary(s) you name while providing tax and probate benefits to you and your beneficiary(s).

There may be additional issues that we can help you make plans for, such as the disposition of a small business that one or both of you owns, or tax considerations attached to retirement account assets.

But the immediate objective of estate planning for same-sex couples in North Carolina – and in a precarious political environment – is to legally document your wishes and protect your family’s assets. The same-sex estate planning lawyers of the Brady | Cobin Law Group are here in Cary, N.C., to help you plan for the security of your family’s future. [Contact us today to discuss your estate plan](https://ncestateplanning.com/contact-us/).