

**“My Bologna Has a First Name”  
Hot Topics for the Sandwich Generation:  
Non-Tax Issues to Consider When Planning for  
Non-Traditional Families**

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*By:*

*Elizabeth Lindsay-Ochoa, JD, LL.M.*

Assistant Vice President

Advanced Markets, AXA Equitable, New York, NY

*--and--*

*Thanda Fields Brassard, Esq.*

Vice President and Trust Counsel

Fiduciary Trust Company, Boston, MA

**I. What is the Modern Family?**

a. Marriage

- i. Traditional Heterosexual Couple
- ii. Two-parent, nuclear family has become less prevalent
  1. Alternative family forms have become more common
  2. Rates of marriage have declined to about 3.5 per 1000 in 2008 from about 7.6 per 1000 in 1970<sup>1</sup>
- iii. Choosing to have fewer children<sup>2</sup>
  1. Children under 18
    - a. 23.5% of all households in 2000
    - b. 25.6% in 1990
    - c. 45% in 1960

b. Single

c. Cohabitation

- i. Becoming more prevalent
  1. Cohabitation is now the typical pathway into marriage, such that about two-thirds of women first married in the last decade cohabited prior to marriage.
- ii. General statistics<sup>3</sup>
  1. The number of opposite-sex unmarried-partner households (OSUPH) increased 15.7% from 2000 to 2008. The number of married couple households increased only modestly during the same time period (2.2%).

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<sup>1</sup> Marriage Rates in the US, 2008. <http://ncfmr.bgsu.edu>

<sup>2</sup> “For First Time, Nuclear Families Drop Below 25% of Households”, NY Times on the Web. <http://www.uscsumter.edu/~tpowers/hist112/nucfams.htm> May 15, 2001.

<sup>3</sup> Cohabitation in the U.S., 2006-2008. <http://ncfmr.bgsu.edu>

- d. Same Sex<sup>4</sup>
  - i. Marriage is now an option for same-sex couples in some states, but there are still impediments.
    - 1. States that allow same sex marriage (as of February 24, 2011)
      - a. Five states (CT, IA, MA, NH and VT) and the District of Columbia allow same-sex couples to marry.
      - b. Some states (including at least MD and NY, and probably NM and, for some purposes, RI) respect marriages that same-sex couples entered into in other states.
    - 2. What are some of the benefits of marriage that same-sex couples can enjoy?
      - a. Income tax benefits (state only)
      - b. If marriage is dissolved, can be done in a more predictable, orderly fashion with established procedures and division of assets can be more equitable. Otherwise must bring claims based on contract, which are more expensive to prove and the law is not as clear as to remedies.
      - c. If a spouse dies or a couples divorces, both parents of a child born during the marriage have parental rights. Unmarried parents have different rights regarding a non-biological child, so the effect of divorce can be devastating. Court proceedings to prove the non-biological parent took care of a child can be expensive and emotionally painful for everyone.
      - d. Protection against disinheritance: spousal election against will, other presumptions in probate which favor the spouse.
    - 3. A major impediment to these benefits: Defense of Marriage Act (DOMA):
      - a. The Federal Defense of Marriage Act ("DOMA") prevents same sex married couples from benefiting from various federal rights and privileges otherwise available to married heterosexual couples by defining "marriage" as being a legal union between a man and a woman, and the word "spouse" as only a person of the opposite sex who is a husband or a wife. *1 U.S.C. § 7 and 28, U.S.C. § 1738C.*
      - b. State DOMAs (also called "mini-DOMAs") have the same effect, but at the state level. Mini-DOMAs also provide that a state need not recognize

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<sup>4</sup> Please see <http://www.lambdalegal.org/states-regions/>

an out-of-state marriage if it is not between a man and a woman. The existence of DOMAs and mini-DOMAs makes planning for same-sex couples both important and complicated.

- c. The Department of Justice announced February 23, 2011 that the Obama Administration believes that the Defense of Marriage Act unconstitutional and will stop defending it in court,
  - d. This includes the *Windsor v. United States* case challenging the constitutionality of limiting the estate tax marital deduction to heterosexual couples.
  - e. Two recent court cases, *Gill v. Office of Personnel Management*, and *Commonwealth of Massachusetts v. Department of Health and Human Services*, resulted in successful challenges against DOMA at the US District Court level. These suits, filed in Massachusetts, argued that it is unconstitutional to deny same-sex couples of federal benefits such as Veterans and social security benefits that are otherwise provided to heterosexual couples.
  - f. DOMA laws make it difficult for same-sex married couples to enjoy the full benefits (either federal or those in a state DOMA jurisdiction), make relocation for work or otherwise more complicated, and can make visiting another jurisdiction more complicated as well (spousal right to make health care decisions in a foreign jurisdiction may not be recognized without a health care proxy).
- ii. Domestic Partnerships (as of February 24, 2011)
    1. Six states (CA, IL, NV, NJ, OR and WA) offer broad state-law protection through civil union or registered domestic partnership;
    2. Hawai'i will make it seven January 1, 2012.
    3. Five more states (Hawai'i plus CO, MD, ME and WI) offer more limited protections through a non-marriage status
  - iii. General statistics<sup>5</sup>
    1. In 2009, there were a total of 581,300 same-sex couple households in the U.S.
    2. The number of female same-sex households outnumbered male same-sex households by 20,480 households
    3. Nearly one-fifth (17%) of same-sex households include a biological, step, or adopted child.

## **II. What issues face the modern family?**

- a. Generational gaps
- b. Cultural gaps

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<sup>5</sup> Same-Sex Couple Households in the U.S., 2009. <http://ncfmr.bgsu.edu>

- c. Planning in a changing environment
  - i. Definition of marriage is evolving
    - 1. Multiple Marriages/Divorces
  - ii. Definition of reproduction changing<sup>6</sup>
    - 1. Children born to same sex couples
    - 2. Posthumous Children
      - a. The Uniform Status of Children of Assisted Conception Act
        - i. Denies legal status of father to deceased male.
      - b. Ex: *Stephen v. Barnhart*, 386 F. Supp. 2d 1257 (2005). Widow extracted sperm from his dead body and cryopreserved it. Four years later, she gave birth to a child conceived with her eggs and her dead husband's sperm. She then filed for Social Security benefits for her child as the surviving dependent of a deceased wage earner. Her application was denied. The courts noted that under Florida law, a child conceived to a man who is already dead is not eligible for a claim against the man's estate unless the child was named in the dead man's will.
      - c. Ex: *Gillett-Netting v. Barnhart*, 371 F.3d 593 (9th Cir. 2004). The plaintiff was impregnated with the sperm of her deceased husband and gave birth to twin daughters. Her husband had banked the sperm before undergoing treatment for leukemia, which eventually killed him. The Social Security Administration denied the benefits and the widow sued in federal court. The U.S. District Court awarded her children benefits, saying if there is indeed a genetic relationship between the child and the decedent, and the decedent clearly consented to posthumous conception and to supporting that child, then the children are eligible for his inheritance.
      - d. State law varies
        - i. Ex: "A child conceived from the eggs or sperm of a person or persons who died before the transfer of their eggs, sperm, or preembryos to a woman's body shall not be eligible for a claim against the decedent's estate unless the child has been provided for by the decedent's will." FLA. STAT. ANN. § 742.17(4). The provision declares that

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<sup>6</sup> Please see RPTE's 2010 Spring Symposia on the topic. See also "Dying to be a father: Legal Paternity in Cases of Posthumous Conception". Ruth Zafran 8 HOUS. J. HEALTH L. & POL'Y 47-102 (2007).

“[a]bsent a written agreement, in the case of the death of one member of the commissioning couple, any eggs, sperm, or preembryos shall remain under the control of the surviving member of the commissioning couple.” FLA. STAT. ANN. § 742.17 (3).

- d. End of Life Decision Making
  - i. Differences between marriage vs. Domestic Partners vs. living together
  - ii. State law
  - iii. Federal regulations regarding hospital visitation rights went into effect. The new rules will affect same-sex couples and their families across the country.
    - 1. Require hospitals participating in Medicaid and Medicare to have written policies and procedures regarding patients’ visitation rights.
      - a. Hospitals must inform patients, or an attending friend or family member, of the patient’s rights to visitors of his or her choosing.
      - b. The policy also prohibits discrimination against visitors based on race, ethnicity, religion, sex, gender identity, sexual orientation or disability.

### **III. Planning for the Unique Challenges - Each situation is different and requires a different solution**

- a. Marriage
  - i. Unlimited Marital Deduction
    - 1. Exception for non-resident alien
- b. Second (or third, or fourth) Marriages
  - i. How money is divided when both spouses die and have children from prior relationships?
    - 1. Pass property to his or her biological children.
    - 2. Divided among all of the children equally.
    - 3. Divide assets based upon merit or need, but this can quickly become an emotional mess.
  - ii. What happens to the surviving spouse?
    - 1. Leave assets outright to surviving spouse.
    - 2. Leave assets in trust to surviving spouse.
    - 3. Surviving spouse inherits half of the decedent’s property while the rest goes to his biological children.
    - 4. Watch out for statutory rights of surviving spouse
  - iii. Contractual agreements to consider
    - 1. Shareholder and partnership agreements
    - 2. Pre- and post-nuptial agreements
    - 3. Separation agreements

- 4. Buy-Sell agreements
- c. Unmarried partners (heterosexual or same sex)
  - i. No unlimited marital deduction
    - 1. Must watch/explain the annual exclusion limits and lifetime exclusion limits.
      - a. For same sex marriage, how are you defining spouse, lineal descendants, etc.?
    - 2. Includes GST tax
      - a. Based on relative ages, not familial relationships
      - b. A “generation” is defined as 37 ½ years or more of an age difference.
  - ii. Need to specifically provide for partner, otherwise partner will receive nothing
- d. Single Person
  - i. Younger or older?
  - ii. Children or other heirs?
  - iii. Assets
    - 1. How will survive financially?
  - iv. Planning
    - 1. Future special needs
    - 2. Planning for heirs
    - 3. Power of Attorney
    - 4. Health Power of Attorney
- e. Caring for multiple generations
  - i. Financial caring for multiple generations
    - 1. There are 43 million Americans who care for elderly loved ones, according to a recent study from the National Alliance for Caregiving, AARP, and MetLife<sup>7</sup>
  - ii. Planning opportunities
    - 1. GRAT for parents and grandparents?<sup>8</sup>
      - a. Can create tension between siblings
    - 2. Senior Trusts
      - a. Undue influence protection?
      - b. Special needs addressed
      - c. Medicare trusts
    - 3. Long Term Care
      - a. Cost is a big issue
- f. End of Life Decision Making

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<sup>7</sup> Andy Cohen, *Engage: Boomers: The Largest Target Market You've Never Thought About: How Brands Can Connect With Caregivers*, MediaPost.com, January 27, 2011.

<sup>8</sup> Elizabeth Ody, *GRATs Let Children Pass Millions to Mom or Granny Free of U.S. Gift Taxes*, Bloomberg, Mar. 8, 2011

#### **IV. Estate Planning—Careful estate planning is critical for nontraditional families**

- a. Wills are an important part of the estate plan
  - i. A will controls the disposition of your property at death.
    - 1. Otherwise state intestacy statutes control
    - 2. Same-sex spouses can be left out under state law, unintended beneficiaries may result.
    - 3. Can determine how and when beneficiaries receive property (can pour over assets to a revocable trust, which allows for privacy as well).
  - ii. Can control the disposition of remains (also through prepaid burial contract or separate writing if recognized in the home state, as in Massachusetts).
  - iii. Can nominate a guardian for minor children.
  - iv. Give executor maximum flexibility to make elections and allocations.
  - v. Wills could be subject to challenge from family members:
    - 1. Ensure will is properly executed.
    - 2. Include specific statements designed to refute lack of capacity.
    - 3. When appropriate, advise partners to retain separate attorneys or provide memo re joint representation (see Exhibit A).
    - 4. In terrorem clause
- b. Power of Attorney
  - i. Can give an unmarried partner or same sex spouse control over a person's financial affairs.
  - ii. Should be updated from time to time and if the couple moves to a different jurisdiction or has property in another jurisdiction.
- c. Health Care Proxy
  - i. Gives an unmarried partner or same sex spouse control over a person's health care decisions.
  - ii. Can prevent disputes between family and significant other.
- d. Revocable trusts
  - i. Can control how surviving partner or spouse will receive assets (income only, income and principal, right to withdraw, etc.).
  - ii. Allows for maximum privacy, especially if funded before death
- e. Gifting strategies
  - i. Annual exclusion gifts
  - ii. Unlimited gifts of tuition and medical expenses
- f. More sophisticated planning strategies
  - i. GRATs, GRITs, GRUTs
  - ii. QPRTs
  - iii. Low interest loans

- iv. Charitable giving
  - 1. outright gifts
  - 2. gifts in trust
- g. Use assets that pass via contract or by operation of law
  - i. Life insurance--ILITs
  - ii. Jointly held property
    - 1. Must specify right of survivorship (POD/TOD accounts)
    - 2. Be careful of making lifetime gifts
    - 3. Domestic partnership agreements
    - 4. Community Property rights
      - i. Domestic partner
        - 1. See PLR 201021048, CCAs 201021049 and 201021050
    - 5. Property that passes by beneficiary designation
      - a. Bank accounts
      - b. Retirement Plans
        - i. Non-spousal rollovers

## V. The Psychology of the Profession

- a. Generations<sup>9</sup> may see things quite differently
  - i. Silent Generation – born prior to 1945
  - ii. Baby Boomers – 1945-1965
  - iii. Generation X – 1965-1980
  - iv. Generation Y – 1980 and later
- b. Communication Styles Vary
  - i. Understanding that Generation Yers prefer to multitask (and some Gen Xers)
- c. Fiscal Philosophy
  - i. Typical Boomer will have a tendency to spend
  - ii. Generation Xer will be more financially conservative
  - iii. Use of Advisors
    - 1. Younger generations less likely to use an advisor
      - a. If they do, they tend to let the advisor make most of the decisions.
      - b. Generations X and Y are more likely to consult online sources for financial information.
        - i. Gen X and Y will have a combined net worth of \$28 trillion by 2018.<sup>10</sup>

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<sup>9</sup> Depending on who defines the generations, these dates may vary. Also, these are generalizations and would, of course, not apply to everyone.

<sup>10</sup> Gina Lauer, *Generations X and Y: The New Learners and Earners*, Insurance & Securities Marketing, Summer 2010.

- c. But, consult with advisors to get information on charitable giving strategies.
  - 2. Older generations are more likely to consult with advisors and seek their advice on creating a financial plan.
- d. Lifestyle Preferences
  - i. Xers and Yers preference for freedom and flexibility
    - 1. An Xer may be increasingly willing to assume responsibilities if he or she is able to have a flexible work schedule or telecommute.
    - 2. Generation X wants to "do it themselves" as much as possible.
    - 3. Generation Y, on the other hand, wants someone to mentor them "and show them the way."
      - a. They want someone with experience because they don't have it.
  - ii. Boomers' devotion to "Things"
    - 1. Staying in workforce longer
    - 2. As consumers age, things that were once considered luxuries are more likely to be considered basic needs-- thereby reaffirming that Boomers essentially want it all.<sup>11</sup>
      - a. In fact, almost half of consumers (47 percent) say they would downsize their home in retirement in order to afford these luxuries.
      - b. The majority of Baby Boomers believe that healthcare coverage, internet connections, shopping for birthdays and special occasions, and pet care are basic needs.
      - c. And about half of those surveyed consider annual family vacation or weekend getaways, having eldercare/home aid, professional hair cut/color and funding children/grandchildren's education to be basic needs as well.
      - d. However, Boomers 39 times more likely to tell Gen Y to save than to spend<sup>12</sup>.
  - iii. Senior community

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<sup>11</sup> *New Main Stay Investments Survey Finds that 76 Percent of Pre- Retirees are Willing to Work Longer and Save More Today to Live More Comfortably Tomorrow*, PR NewsWire.Com, August 6, 2010.

<sup>12</sup> *Financial Realities: Generational Advice*, Harris Interactive, July 2010.

1. The concerns of gay and lesbian elders have been overlooked and ignored.<sup>13</sup>
2. DOMA and mini DOMAs can really affect older gays and lesbians who may depend on Veterans and Social Security benefits, and can mean the difference between spousal impoverishment and long-term security into the golden years.

**VI. Putting it all together**

- a. Asking questions that lead to more about family structure and fears than about assets
- b. Traps for the unwary—issues for the practitioner to be aware of:
  - i. Titling and re-titling of assets
  - ii. Joint bank accounts
  - iii. Filing federal and state income tax returns
  - iv. Moving to another jurisdiction
  - v. Visiting another jurisdiction

\*Thanda Brassard would like to thank Massachusetts Continuing Legal Education, Inc. for allowing her to rely on the following materials in preparing this outline and to reproduce the memo in the Appendix hereto: Chapter 15 (“Estate Planning for Same-Sex Couples: Selected Issues”), Volume II of A Practical Guide to Estate Planning in Massachusetts, chapter authored by Thanda Fields Brassard, Esq. and edited by Jon E. Steffensen and Charles E. Rounds et al. (2<sup>nd</sup> ed. 2007).\*

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<sup>13</sup> Nancy J. Knauer, *Symposium: Family, Life, and Legacy: Planning for the LGBT Community*, 11 Florida Coastal Law Review, 2010.

## APPENDIX A

Appendix Source: Lambda Legal <http://www.lambdalegal.org/states-regions/><sup>14</sup>

<b>State</b>	<b>Licenses Marriages for Same Sex Recognition</b>	<b>Honors marriages of same-sex couples from other jurisdictions</b>	<b>Recognition of Civil Unions or Domestic Partnerships</b>	<b>Who May Adopt</b>	<b>Second Parent Adoptions*</b>
Alabama	No	No	No	Any unmarried adult or husband and wife jointly Ala. Code § 26-10A-5.	Approved in some lower courts.
Alaska	No	No	No	Any unmarried adult; married persons must petition jointly unless excused by court. Alaska Code § 25-23-020.	Granted by some judges but not yet affirmed in appellate case law or confirmed in statute.
Arizona	No	No	No	Any adult. ARS § 8-103	Not yet permitted.
Arkansas	No	No	No	Any unmarried adult; married persons must petition jointly unless excused by court. Ark. Stat. §9-9-204.	Not yet permitted.
California	No	No	Yes	Any adult. Fam. Code §§ 8600, 8601.	Expressly permitted statewide by <i>Sharon S. v. Superior Court</i> , 31 Cal. 4th 417 (2003). Statute also permits stepparent adoptions by registered domestic partners.
Colorado	No	No	No	Any adult. Colo. Code § 19-5-202.	Authorized by Colo. Rev. Stat. § 19-5-203 et seq.
Connecticut	Yes	Yes	Yes		Expressly permitted by 2000 statute that overruled court decision to the contrary.

<sup>14</sup> Used with permission

<b>State</b>	<b>Licenses Marriages for Same Sex Recognition</b>	<b>Honors marriages of same-sex couples from other jurisdictions</b>	<b>Recognition of Civil Unions or Domestic Partnerships</b>	<b>Who May Adopt</b>	<b>Second Parent Adoptions*</b>
Delaware	No	No	No	Unmarried person or married persons petitioning jointly can generally adopt. 13 Del Code § 908.	Approved in <i>In re Hart</i> 806 A.2d 1179 (Del. Fam. Ct. 2001)
Florida	No	No	No	No "homosexual" may adopt. Fla. Stat. § 63.042(3)	Not yet permitted.
Georgia	No	No	No	Any adult. OCGA § 19-8-3.	Numerous granted in lower courts.
Hawai'i	No	No	Yes	Any adult or married persons petitioning jointly. Hawaii Rev. Stat. § 578-1.	Granted by many judges but not yet affirmed in appellate case law or confirmed in statute.
Idaho	No	No	No	Any adult. Idaho Code § 16-1501	Not yet permitted.
Illinois	No	No	Yes	Any person. 750 ILCS 50/2	Approved in <i>Petition of K.M.</i> 653 N.E.2d 888 (Ill. App. 1995); reaffirmed in <i>In re C.M.A.</i> , 715 N.E.2d 674 (Ill. App. 1999)
Indiana	No	No	No	Any person. Ind. Stat. § 31-19-2.	Approved in <i>Adoption of K.S.P.</i> , 804 N.E.2d 1253 (Ind. Ct. App. 2004) (by partner of biological parent); <i>Adoption of M.M.G.C.</i> , 785 N.E.2d 267 (Ind. Ct. App. 2003) (by partner of adoptive parent)
Iowa	Yes	Yes	Yes	Any unmarried adult; spouse must join petition unless excused by court. Iowa Code 600.	Approved in lower courts.

<b>State</b>	<b>Licenses Marriages for Same Sex Recognition</b>	<b>Honors marriages of same-sex couples from other jurisdictions</b>	<b>Recognition of Civil Unions or Domestic Partnerships</b>	<b>Who May Adopt</b>	<b>Second Parent Adoptions*</b>
Kansas	No	No	No	Any adult. KS Stat. 59-2113.	Not yet permitted
Kentucky	No	No	No	Any adult. Ky. Rev. Stat. 199.470. Any unmarried adult; generally, spouse must join petition if married.	Not yet permitted
Louisiana	No	No	No	Single person or married couple jointly. La. CHC 1198, 1202	Not yet permitted
Maine	No	No	Yes	Unmarried person or married couple jointly. 18-A Maine Statutes § 9-103.	Not yet permitted
Maryland	No	Yes	No	Any adult. Can't deny petition because applicant is single. Md. Code § 5-309.	Approved in lower courts.
Massachusetts	Yes	Yes	Yes	Any "person of full age"	Mass. Gen. L. ch. 210, §1
Michigan	No	No	No	Any person. Mich. Probate Code §710.24	Approved in some lower courts but ordered discontinued in Washtenaw County
Minnesota	No	No	No	Any person. Minn. Stat. § 259.22	Approved in lower courts
Mississippi	No	No	No	Unmarried adult or married persons jointly. Same-sex couples expressly prohibited from adopting. Miss. Code § 93-17-3.	Not yet permitted.
Missouri	No	No	No	Any person. Mo. Stat. § 453.010.	Approved in some lower courts.

State	Licenses Marriages for Same Sex Recognition	Honors marriages of same-sex couples from other jurisdictions	Recognition of Civil Unions or Domestic Partnerships	Who May Adopt	Second Parent Adoptions*
Montana	No	No	No	Unmarried adult or, generally, married persons petitioning jointly. Mont. Code 42-1-106.	Not yet permitted.
Nebraska	No	No	No	Any adult person. Neb. Rev. Stat. § 43-101(1)	Not permitted in <i>In re Adoption of Luke</i> , 263 Neb. 365, 2002 WL 360741 (March 8, 2002)
Nevada	No	No	No	Any adult person or any two persons married to each other. NRS 127.030	Approved in lower courts.
New Hampshire	Yes	Yes	Yes	Unmarried adult; married persons must generally petition together. N.H. Rev. Stat. 170-B:4	Not yet permitted.
New Jersey	No	Yes	Yes	Any person. N.J.S.A. 9:3-43.	Approved in <i>In re Adoption of two Children by H.N.R.</i> , 666 A.2d 535 (N.J. Super. 1995)
New Mexico	Unsettled	Unsettled	No	Any individual who has been approved by the court as a suitable adoptive parent may adopt. N.M. Stat. § 32A-5-11.	Approved in some lower courts
New York	No	Yes	No	An adult unmarried person or an adult husband and his adult wife together may adopt another person. D.R.L. § 110.	Approved in <i>In re Jacob</i> , 86 N.Y.2d 651, 636 N.Y.S.2d 716, 660 N.E.2d 397 (1995)
North Carolina	No	No	No	Any adult. N.C. Gen. Stat. 48-1-103. But if petitioner is unmarried, no other person may join. N.C. Gen. Stat. 48-2-301.	Not yet permitted.

State	Licenses Marriages for Same Sex Recognition	Honors marriages of same-sex couples from other jurisdictions	Recognition of Civil Unions or Domestic Partnerships	Who May Adopt	Second Parent Adoptions*
North Dakota	No	No	No	Any unmarried adult; married persons must generally petition jointly unless excused by court. N.D. Cent. Code 14-15-03.	Not yet permitted.
Ohio	No	No	No	Unmarried adult; spouse must generally join petition if married. Ohio R.C. 3107.03	Disapproved by intermediate appellate court in <i>In re Adoption of Jane Doe</i> , 719 N.E.2d 1071 (Ohio App. 9th Ninth Dist. 1998).
Oklahoma	No	No	No	Unmarried adult or married persons jointly. 10 Okla. Stat. 7503-1.1.	Not yet permitted.
Oregon	No	No	Yes	Any person. ORS 109.309(1)	Approved in lower courts.
Pennsylvania	No	No	No	Any individual. 23 Pa. C.S.A. 2312.	Expressly permitted by <i>In re Adoption of R.B.F.</i> , 803 A.2d 1195 (Pa. 2002).
Rhode Island	No	No	No	Any person. R.I. Stat. § 15-7-4	Approved in lower courts.
South Carolina	No	No	No	Any person. SC Laws § 20-7-1680.	Not yet permitted.
South Dakota	No	No	No	Any adult. S.D. Laws § 25-6-2	Not yet permitted.
Tennessee	No	No	No	Any person. 36 TCA § 36-1-115.	Not yet permitted.
Texas	No	No	No	Any adult. Tex. Fam. Code. § 162.001	Approved in lower courts
Utah	No	No	No	Any adult. But "a child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state." <a href="#">Utah Code § 78B-6-117 (2008)</a>	Not yet affirmed in appellate case law or confirmed in statute.

State	Licenses Marriages for Same Sex Recognition	Honors marriages of same-sex couples from other jurisdictions	Recognition of Civil Unions or Domestic Partnerships	Who May Adopt	Second Parent Adoptions*
Vermont	Yes	Yes	Yes	Any person. 15A V.S.A. § 1-102(a)	Approved in <i>Adoptions of B.L.V.B. and E.L.V.B.</i> , 628 A.2d 1271 (Vt. 1993), codified at 15A V.S.A. 1-102(b)(if family consists of parent and partner, and adoption is in child's best interest, stepparent adoption may be allowed).
Virginia	No	No	No	Any natural person. Va. Code. § 63.1-219.9	Not yet permitted.
Washington	No	No	Yes	Any person. RCW §26.33.140	Approved in some lower courts
Washington, D.C.	Yes	Yes	Yes		
West Virginia	No	No	No	Any unmarried person, or a married person filing either with spouse's consent or jointly with spouse. W. Va. Code § 48-22-201	Not yet permitted.
Wisconsin	No	No	Yes	Unmarried adult or husband and wife jointly. Wisc. Stat. § 48.82	Disapproved in <i>In the Interest of Angel Lace M.</i> , 516 N.W.2d 678 (Wis. 1994)
Wyoming	No	No	No	Any adult. <a href="#">Wyo. Stat. § 1-22-103</a>	Not yet affirmed in appellate case law or confirmed in statute.

\*A second-parent adoption allows a second parent to adopt a child without the "first parent" losing any parental rights.

## APPENDIX B

### Memorandum Regarding Joint Representation in Estate Planning

When an attorney represents parties together, each party should understand that they can have differing, and sometimes conflicting, interests and objectives regarding estate planning issues.

If each party were to have his or her own lawyer, each party would have an “advocate” for his or her position and would receive totally independent and confidential advice from his or her own lawyer. All information given by a party to his or her separate lawyer would be confidential, and none of that information could be disclosed to the other party without the consent of the client.

By contrast, when a lawyer or law firm undertakes to advise two persons jointly, the lawyer or law firm cannot be an advocate for one person against the other. Thus, when a lawyer at a firm represents parties jointly in estate planning, his or her efforts are to assist them in developing a coordinated estate plan. Should the parties’ interests differ, the lawyer should endeavor to explain to both clients what their respective interests are and what the effect of a particular course of action might be on each of them. By agreeing to joint representation, each party agrees that communications and information provided by one of them to their lawyer may be disclosed to the other.

If one party were to request that a firm provide separate representation to each of them so as to preserve confidentiality in all communications between each party and the lawyer, under appropriate circumstances the firm might be able to accommodate that wish, once both parties were informed in greater detail than can be undertaken in this memorandum of the nature of the possible conflicts of interest that may arise in the context of the representation. The lawyer should be ready to explore these issues with clients if requested.

Unless joint clients specifically ask for separate representation and a written agreement defining the parameters of that representation is signed by all parties, any representation provided to them will be considered joint representation.