When I wrote the first edition of this book we were awaiting the decision in \textit{Goodridge v. Department of Public Health} \footnote{440 Mass. 309, 798 N.E.2d 941 (2004).} from the Massachusetts Supreme Judicial Court. That 2004 decision made Massachusetts the first state in the country to recognize same-sex marriages.

When the ABA released the second edition of this book in 2012, six jurisdictions recognized marriage equality. This third edition follows hard on the heels of the U.S. Supreme Court’s decision in \textit{Obergefell v. Hodges}. \footnote{576 U.S. \_\_ (2015).} Justice Anthony Kennedy, writing for the Court majority, stated that marriage is a fundamental right “inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, couples of the same-sex may not be deprived of that right and that liberty.”

The \textit{Obergefell} decision finally resolves the marriage equality issue in the United States. From now on there is no “same-sex marriage” or “opposite-sex marriage”; there is only marriage. In advance of the decision, Associate Justice Ruth Bader Ginsburg said that America is ready for marriage equality. And who will disagree with RBG?

What seemed an impossible pipe dream at the turn of the century is now reality.

The \textit{Windsor} decision paved the way and Justice Scalia, in his \textit{Windsor} dissent, predicted this outcome. He stated the \textit{Windsor} decision provided the roadmap for challenging all state laws prohibiting same-sex marriage. Once again, as with his dissent in \textit{Lawrence v. Texas}, the justice was prescient in his predictions.

These are exciting times to be practicing law because marriage is just part of the equation. It is the beginning, not the end, of the legal struggle in which we seek full rights for the LGBT community.
LGBT people face discrimination in other areas including employment, housing, public accommodations, public benefits, and family law. Even with marriage equality, these legal issues affecting LGBT clients will need to be resolved, and that goal will not be accomplished overnight.

With the marriage question resolved, the LGBT community continues to face an onslaught of anti-gay legislation in state legislatures throughout the country. The Kansas governor has repealed a long-standing executive order prohibiting discrimination based on sexual orientation and gender identity. He claims to be opposed to “special rights” for anyone in Kansas. His action reflects his intent to attack LGBT state employees because of his own homophobia. Shame on him.

Religion continues to be a focal point for opposition. Many seek exemptions from non-discrimination laws that include sexual orientation and gender identity. With the U.S. Supreme Court’s decision in *Burwell v. Hobby Lobby*, the push for religious exemptions to permit continuing discrimination against the LGBT community will increase. But *Hobby Lobby* dealt with federal regulations and falls far short of granting anyone a right under the U.S. Constitution to use religion as the basis for discrimination.

Churches and religious affiliates will seek exemptions to avoid providing any type of services to LGBT couples. Many churches make money renting their halls and their sanctuaries to the general public for weddings. These churches allow anyone to schedule weddings in their churches without requiring the participants to be members of the parish or even that denomination.

Religious organizations will insist they are allowed to discriminate even though they accept federal and state tax dollars to provide services—ostensibly to the public but, in their eyes, only to those members of the public that qualify under their religious tenets.

The examples of discrimination that are cropping up following the *Obergefell* decision are disheartening, and most use “strongly held religious beliefs” as the reason. A woman is fired from her nonprofit job in Texas after the executive director learns she married her female partner. In Florida, a pharmacist refuses to fill a prescription for a gay male couple because of “strongly held religious beliefs.” An Ohio municipal judge refuses to officiate at the marriage ceremony for a lesbian couple, citing his “strongly held religious beliefs.”

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This new edition of *Estate Planning for Same-Sex Couples* attempts to address how these developments affect estate planning for LGBT clients.

Preparing an estate plan for LGBT clients requires a creative and comprehensive approach. The issues these clients present are unique and involve considerations not usually seen with heterosexual clients. We need to look at these couples as blended families.

Dates will be important because the date on which a couple married may not be related to the overall length of their relationship. Legal recognition of their children will continue to be an issue. Adoption, parentage actions, the marital presumption—these are all issues those lawyers representing LGBT clients will need to address.

Lawyers working with lesbian and gay couples must be aware of their clients’ past relationships, including whether either party was married to someone else and decided “it didn’t count.” There are people that entered into legally recognized relationships but failed to formally terminate those relationships.

We will continue to have clients who, regardless of advances in legal recognition, will continue to be closeted. Their needs must also be acknowledged and addressed. And, not all same-sex couples will get married—nor should they. These families will continue to present challenges that must be addressed.

Family law is becoming an integral part of every estate planner’s practice. Right now, there are more questions than answers. Yet the field of law involving LGBT families is evolving. Lawyers have an opportunity to do things in a different way. We can do away with the adversarial and scorched-earth policies that permeate too many family disputes. We can introduce a more sensible and forward-thinking way to proceed. Collaborate with rather than clobber each other. We have the ability to recreate the practice of law to benefit clients and help promote healthy families—even when the adults are not getting along.

Elderly LGBT clients face significant problems that are unique to that community and have often been overlooked. And transgender clients find themselves in an ongoing battle against prejudice, misinformation, and ignorance.

Drafting well-considered legal documents that address each client’s individual circumstances gives them peace of mind. The legal rights, obligations, responsibilities, and status of LGBT clients remain dependent on the state in which they live or visit or through which they travel, and the issues they face remain volatile.
Estate planning has always been more than deciding how an estate will be divided post-mortem. That is part of it. The other part is life planning. What is the best way to protect the clients’ interests during their lifetime? That remains a challenging question.

As always, I intend this book to provide information to help you represent clients. Estate planning involves more than esoteric musings. Lawyers practicing in this area address the future and the present. I do hope you find it helpful in your practice.

This book has been a challenge because no sooner would one chapter be written than courts would issue rulings that changed earlier chapters. It is often said that all writing is rewriting, and that has never been truer for me than in writing this book.

Let me know what you think of the book. I want to know what issues you are facing with your LGBT clients. I hear from many lawyers and laypeople every time a new edition of the book is published. I take the suggestions and comments and use them to improve the book. I would like to hear from you.

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