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## The (Un)Marriage Penalty

For couples who aren't married, financial planning poses unique challenges

By **VERONICA DAGHER**

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Ask any married couple and you'll hear: Marriage is complicated. Ask any financial planner, though, and you'll hear: Not being married is often even *more* complicated.

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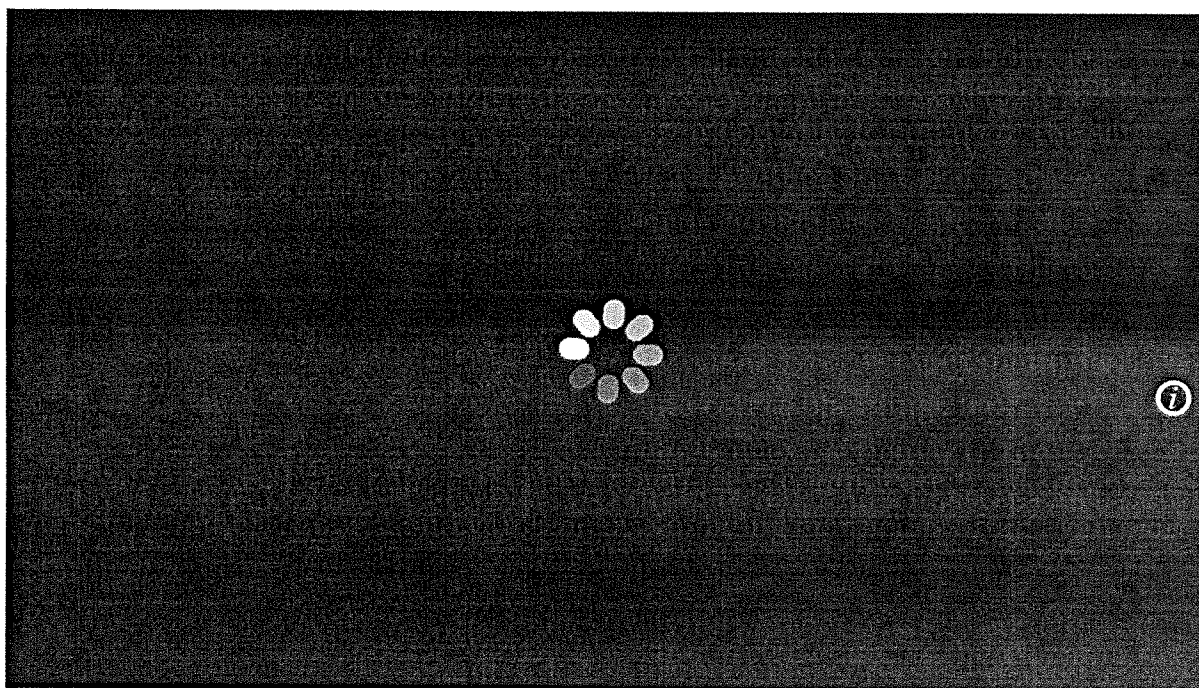
- Planning for One Is Easier Than Two -- but Hardly Easy

Unmarried couples, they'll explain, aren't eligible for many of the same legal protections or advantages as married couples, which makes thinking carefully about the future even more crucial for them. Big purchases, retirement planning, taxes and estate planning all present challenges particular to the unmarried. And a misstep can be

disastrous.

"I've seen several situations where the surviving partner was left homeless and destitute because the couple didn't do the proper planning," says Wendy Hartmann, a Los Angeles-based tax and estate-planning attorney.

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year, to about 7.5 million, according to the Census Bureau. The bureau also estimates the number of same-sex couples living together rose roughly 30% to about 620,000 this year from about 476,000 in 2009. And both those totals are expected to continue growing, as some younger couples delay marriage, older couples choose not to remarry and most states continue not to allow gay couples to tie the knot.

For many unmarried couples, the most immediate concern is how to share expenses, especially if the partners' incomes differ significantly. Financial planners often help couples determine a fair way to share monthly housing costs and other regular expenses.

It starts to get complicated when it comes to buying big-ticket items such as cars and electronics. Unmarried couples should consider buying and financing these items separately, as joint purchases or loans complicate matters in the event of a breakup, says Devin Pope, a certified financial planner based in Salt Lake City. When an unmarried couple splits, there typically is no third party involved, such as a lawyer, as there would be in a divorce to make sure assets are fairly split and debts are retitled, he says.

That lack of legal structure in a breakup is also one reason many unmarried couples choose to manage their retirement-savings accounts independently. But Jon Robertson, a certified financial planner based in Columbia, S.C., likes to show clients what would happen if they tried another approach: managing their accounts as if they were one big pot.

## Cohabiting Couples

There's a jump this year in unmarried couples living together in the U.S., according to Census Bureau estimates

Category	2010	2009	% Change
Opposite-sex couples	7,529,000	6,661,000	13%
Same-sex couples	620,000	476,000	30

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Among opposite-sex couples living together, the U.S. Census Bureau also found:

■ **More unemployment overall.** In 2008, both partners were employed in 59% of couples. But this year, it's only 49%. The percentage of couples in which one partner was employed and the other unemployed jumped from 8% in 2008 to 15% this year.

■ **Younger people living together.** Partners in newly formed couples this year are younger than those in existing couples: 37% of men in new couples are 15 to 29, compared with just 23% in existing couples. For women, 45% are in this age group in new couples, compared with 32% in existing couples.

■ **Newly formed couples live in larger households:** 24% of this group live in households with five or more members, compared with 15% of existing couples.

Source: U.S. Census Bureau's Housing and Household Economic Statistics Department

Mr. Robertson is working with a gay couple who both work and contribute to their 401(k) accounts. He says one partner's 401(k) has "great" fixed-income investment choices and "OK" U.S. large-cap investment options. The plan's small-cap, emerging-markets and international-equity options are "mediocre," however, he says—and the other partner's plan has good options for those kinds of investments.

Ideally, Mr. Robertson would like to select the investment options from both 401(k) accounts that together would make up the most promising retirement portfolio, and have each partner invest solely in those choices, just as he typically would advise a married couple to do. He points out, though, that the risk to this strategy is that if the couple breaks up, one partner could be left with significant losses that are no longer offset by gains in the other partner's account. For a married couple, that might not be a problem, because in a divorce a judge can split the couple's 401(k) assets equally. But that recourse typically isn't available for unmarried couples.

"We had to walk the couple through the decision-making process and the pros and cons of both approaches," Mr. Robertson says. In the end, the couple decided to have Mr. Robertson manage the money as one pot.

Of course, all financial planning doesn't involve the threat of a messy breakup. Tax and estate planning also become more complex for unmarried couples, planners say. It's important for planners to play "quarterback" for clients and make sure the couples are working with a certified public accountant and estate-planning attorney who understand each couple's unique situation, says Barrett Porter, a certified financial planner based in Los Angeles.

Working with a savvy accountant can help unmarried couples avoid any tax surprises such as inadvertently triggering a gift tax because of the way they title their assets, Mr. Porter says. A good CPA can also help an unmarried couple make sure they are claiming their deductions in the most tax-efficient way. For instance, if a couple that shares the title to a house has a large disparity in incomes, the higher-income earner, who would benefit more from tax deductions, may be able to deduct a larger share of the mortgage interest, he says.

When Debra Neiman, an Arlington, Mass., certified financial planner, works with an unmarried couple she emphasizes the importance of proper asset titling. While the best arrangement varies with the clients' situation, every couple needs to make sure the titling reflects their wishes, she says.

In one couple Ms. Neiman had as clients, one partner was listed as the sole owner of the house he lived in with his partner of many years. When the homeowner died, the surviving partner was left homeless. That could have been avoided if the couple had held the home in joint tenancy with rights of survivorship, she says. It's important to make sure investment accounts and other assets are properly titled as well, Ms. Neiman says.

Health-care directives—documents that give a designated person the right to make medical decisions for someone—are even more important for unmarried couples than they are for the married, says Ms. Hartmann, the Los Angeles tax and estate-planning attorney. Without proper documentation, individuals have no legal right to make health-care decisions for their partners, she says. Ms. Hartmann says she has seen several situations where one partner wasn't allowed to carry out a sick partner's medical wishes because the ailing partner didn't have a health-care directive.

It's also especially important for unmarried couples to make sure they document their wishes for their estates, Ms. Hartmann says. For one thing, if those wishes aren't documented, the laws of the state in which the couple lives will determine who their beneficiaries will be, and that is unlikely to be the surviving partner. Another problem for many unmarried couples is that family members don't approve of the couple's relationship and will do what they can to prevent a surviving partner from inheriting anything.

At the very least, unmarried couples should draft wills. But Ms. Hartmann typically recommends that unmarried couples set up trusts as well. In general,

trusts help individuals or couples dispose of their assets in the manner they choose, without the need for court proceedings that can tie up assets for extended periods. Ms. Hartmann also likes trusts for the privacy they afford, since their administration generally is not a matter of public record.

Couples with children should also have their lawyers draw up the proper adoption paperwork to make sure there's no confusion about each partner's parenting rights. Ms. Hartmann says there are many different types of adoptions, so lawyers must look at a couple's situation on a case-by-case basis to see what type is appropriate under their specific circumstances.

"Unmarried couples shouldn't underestimate the importance of documentation," she says.

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