

Lesbian, Gay, Bisexual and Transgender Issues in Family Business Advising

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Advisors to family businesses increasingly encounter issues concerning lesbian, gay, bisexual or transgendered (LGBT) members of the client family. The purpose of this paper is to provide a context for understanding LGBT issues and provide some concrete tools useful to the advisor when dealing with such issues arising in the professional engagement.

Each family business issue that may have a major LGBT dimension for a particular client – whether succession planning, wealth management, family employment in the business, or company benefits policy – has aspects that touch on FFI's four main professions of origin: psychological, management, financial, and legal. The paper therefore deals with these issues in both depth and breadth, demonstrating the need for specific technical expertise as well as a broader multi-disciplinary perspective.

Change in society's treatment of LGBT issues has been rapid in recent years, both within the U.S. and in the larger international community. According to a report by the Human Rights Campaign released in July 2007, for example, nearly 90% of the Fortune 500 companies of the US now include workplace protections based on an employee's sexual orientation, up from 51% in 1995. Moreover, 53% of the same 500 have added benefits for same-sex domestic partners. And 25% of those companies now include gender identity in their non-discrimination policies, up from 15% in 2006 and 1.5% in 2003 (See The State of the Workplace for GLBT Americans included in the list of resources at the end of this article.)

Civil marriage of gay couples is now legal in Belgium, Canada, the Netherlands, Spain, and the Republic of South Africa, as well as Massachusetts. Registration of civil unions (providing the rights, responsibilities and benefits of marriage) is available in Connecticut, New Hampshire, New Jersey and Vermont, while domestic partnerships (providing specific but limited benefits) are permitted in California, the District of

Columbia, Hawaii, Maine, and Oregon. Domestic partner registration is also possible in Britain, Denmark, Norway, Sweden, Iceland, France, Germany, Finland, Luxembourg, and New Zealand.

Commitment ceremonies, same sex civil marriage and civil unions, and domestic partner benefits are current issues for families and families in business worldwide. Factors behind the push for fair and equal treatment include sharp disparities in benefits and legal protections for gay couples as compared with heterosexual couples; the claim for openness and dignity on the part of gay couples, many of whom have been in a committed relationship for many years; the increasing number of children born to same-sex couples, whose parents want the same family rights as heterosexuals; society's increasing acceptance of LGBT identity as inherent to the individual; and a broad feeling of impatience at being treated as "second class citizens."

With this rapid change, intense and emotionally charged conflicts are not uncommon. In a family business engagement, strong views on all sides can emerge. Surprises, family secrets, and generational differences can pose formidable challenges for the advisor and the functionality of the family enterprise.

To deal effectively with these client issues, it is important for each advisor to increase his or her level of personal understanding, familiarity, and comfort in this area. This is true whether the consultant happens to be LGBT (as we are) or heterosexual. As advisors to family businesses who happen to be gay or lesbian, we are keenly aware that there is a paucity of research, writing, and professional dialogue about this topic. This paper represents our effort to summarize relevant, practical information for family business advisors,

as there is a high likelihood that they will encounter LGBT issues in the businesses they serve.

In each of the four main FFI professions of origin, we provide an outline of issues and new developments. We conclude with a proposed statement of best practices in this area. Short lists of organizational and written resources are included at the end.

I. Psychological issues

The "coming out" process.

A fundamental psychological issue is whether an LGBT person is "out" – to him or herself, to friends, to colleagues, to family.

- The coming out process is similar to other kinds of family secrets that may seem to threaten family stability, often characterized by initial turmoil giving way to increasing levels of acceptance.
- It is not a single event, but a process or journey marked by different events radiating out from self-disclosure to widening circles and others.
- The process has been described in terms of pre-discovery, discovery and post-discovery periods – and issues and relationships change during each period. Indeed, relationships apparently damaged during the coming out process can often improve once post-discovery has been reached (see Matthews & Lease, 2000, in list of resources attached).

Fear is often an underlying emotional state of the LGBT person deciding whether to come out. Such fears include:

- losing relationships,

- losing custody of children,
- rejection,
- discrimination,
- diminished public reputation,
- losing control of the secret,
- sexually-transmitted diseases such as HIV/AIDS, and
- being seen as sick or weak or morally bankrupt.

Accompanying fear is often a low self-image and estrangement from others:

- feeling different, inferior,
- not being seen as a "real man" or "real woman,"
- a sense that the person may never be whole,
- loss of close family relations,
- inability to have a loving intimate relationship,
- losing relationship with organized religion or with God.

Loss and grief often accompanies the coming out of an LGBT person, and it may be experienced initially by the LGBT person, and later by family members. The typical stages of loss include:

- **Denial:** "It's just a phase, you haven't met the right man/woman."
- **Anger:** "Why is this happening? Why are you doing this to us?"
- **Guilt/Self-Blame:** "Where did we go wrong as parents?"
- **Bargaining:** "You can't be the next CEO if you are not (heterosexually) married."
- **Sadness:** "The child I raised is dead. It will never be the same."
- **Fear:** "Since you can't have children, this business can't pass on to the next generation."

- **Acceptance:** “I may not understand it, but I love you.”

A sense of relief. Given the potential burdens associated with the isolation of living with one’s own secret – of fear, low self-image and estrangements, and loss and grief – coming out often results in a huge sense of relief.

- Revealing one’s sexual orientation is generally done initially in discrete but emotionally significant steps – coming out to a sibling, close friend or intimate partner.
- One such step generally leads to others, sometimes on an unpredictable time-table that suits the individual and his or her surroundings.
- But there is often a gathering sense of relief that the secret has been shared and coming out has not had the negative implications as feared.
- At some stage, the person and possibly even the family will come to realize that the coming out process provides an opportunity for growth.

The key to such growth is the eventual realization that coming out is not really about revealing some feared secret or apologizing for oneself, but rather that if family, friends and colleagues do not know this aspect of the person, they will never truly come to know each other. Thus, coming out eventually becomes a sharing in proud self-identity, and is an invitation to others for a more connected, authentic relationship, characterized by mutual understanding, respect and love.

Individual, changing timetables. At all of these stages of coming out, the challenges to the family or the business of the person involved can be difficult – but it is important to realize that, just as the person coming out may have done so on his or her own timetable or in response to pointed questions,

comments, charges or revelations, so the family members or business colleagues will react and adjust on their individual and sometimes unplanned timetables. Given this uneven landscape for the support system’s adjustment, many questions can arise, often with no warning:

- How can individuals create the space to respond on their own terms and on their own timetable without damaging relationships as the process unfolds?
- Will the family respect or include the partner?
- Will the family attend or boycott a commitment ceremony? If they stay away, will they later come to regret that decision?
- If a succession decision is made on the assumption that the LGBT person will not have children, how can those discussions take place in a meaningful way?? If a grandchild is later born or adopted, how can or should the older generation respond in regard to the business?

A dynamic process, for clients and advisors. The coming out process is therefore not static but dynamic, both for the LGBT person and his or her family and colleagues. It is also dynamic for the advisor. Advisors brought in on these developments need to be aware of: (1) the possible emotional experiences faced by LGBT people and their families through the coming out process, (2) the unique and sometimes surprising way the process unfolds, and (3) the need to work with the psychological realities of all involved on their own terms, not the advisor’s.

2. Management issues

Family secrets and family dynamics are the starting point for management issues.

- Who knows? Who doesn’t?
- Is there a “Don’t ask, Don’t tell” family culture?
- Are different family members or business colleagues going through denial, reconciliation, acceptance?
- Can the LGBT person create alliances in advance of coming out – with siblings, one parent, a family advisor, or a business colleague?
- How are holiday gatherings and business social events handled? Is the partner of the LGBT person invited to come to the gathering? With what degree of acknowledgment?

Succession planning is another major management issue:

- Is the sexual orientation of the potential successor relevant? If so, in what way? How is the homophobia in such reasoning dealt with? What can the advisor do to help educate the family?
- Among two children, one LGBT and one straight, is the difference relevant to succession decisions? Why?
- Is there a fear of childlessness, so that there might be an “end of the line”? If so, how realistic is this, given the surge in births to single parents (whether LGBT or straight) and to gay couples? The existence of advances in various technologies of insemination and impregnation may make the fear substantially irrational – yet powerful.

Employment in the business is another dimension of LGBT issues.

- Is sexual orientation an element in performance review, whether stated or not?
- Does an LGBT family member receive negative discrimination? Positive? Both?

- Is the workplace culture homophobic or one of acceptance and non-discrimination? Are there any written policies in place?
- Are single-occupancy or gender neutral bathrooms/changing rooms available for transgendered employees?
- What should be the response to managers who have religious objections to homosexuality?
- Is conflict acute on these issues, with strong views and frequent employee interactions over the subject?
- Does the closeted LGBT employee feel isolated? Is this affecting his or her performance? What role can or should the advisor play if brought into the secret?

Company policies concerning sexual orientation are important in setting a climate of respect. Major issues in such policies include:

- Does or should the company have domestic partner benefits? If so, are these solely for same-sex couples, or also for unmarried heterosexual couples?
- Is there an adopted clear policy of non-discrimination concerning sexual orientation? Is this required by state law, or just a matter of company policy?
- Are there LGBT employee support groups? If so, does the company provide resources to them? If not, how might the company assist in creating such groups?
- Does the company have displays or events during "Pride Week" in the particular locality?
- Is the company taking a position on LGBT issues in the state political or legislative process (such as moves to create employment non-discrimination or domestic partner benefits)? How is such a position (or

non-position) affecting consumer groups, advertisers, or others?

- How can or should an advisor to businesses help mitigate negative consequences for any LGBT person involved in the business?
- Would the company benefit in being able to recruit and keep talented employees if the policies were clearly supportive?

Business development opportunities.

- Is the business of the company one that does or could benefit from targeted marketing to LGBT customers?
- How can such an opportunity be developed, tested and implemented?
- Does the company advertise in LGBT publications?
- Does the company act as a sponsor of major LGBT events?

The above areas where LGBT issues relate to business management are simply a brief overview. As in the case of psychological issues, the advisor needs to understand the culture, the complexity and the uniqueness of the particular situation.

3. Financial issues

Financial issues with LGBT elements include trust and estate planning, employee benefits and retirement, insurance, investments, and income tax. A well thought out financial plan will reduce or eliminate many of the risks and critical issues faced by same sex couples (similar for unmarried straight couples).

Financial planning for unmarried persons is complicated by the absence of laws and standard structure of the system available to a recognized married couple. Key examples of this are

the absence of federal estate and gift tax marital deductions. This increases the need for planning as the estate taxes cannot be deferred, hence the planning for liquidity becomes a primary consideration. Liquidity is a common issue in estate planning.

In states with domestic partner and/or civil union recognition, a number of the following issues appear in a new context, with company agreements, arrangements or policies – such as benefit programs or insurance arrangements – now being tested against new state requirements for equal treatment.

- Trust and estate planning is an important area for LGBT attention.
- A will is a very important document that will allow for a descendant's property to avoid state intestacy statutes and allow for the descendant's property to pass to his designated non-blood heir(s).
- The absence of a marital deduction under federal law will result in estate taxes due upon the first to die. State laws will vary depending upon those states that have recognition of domestic partners or civil unions or same sex marriage.
- Estate, income and gift tax implications of planning needs to be understood as the options and consequences may vary greatly. Life insurance can provide the necessary liquidity and allow for an orderly estate transition.
- There are limits on gifting that do not apply to married heterosexual couples.
- Children of LGBT families, as in any family, need to be taken into account; when the children are old enough, they should be involved in the planning.

Employee benefits and retirement issues include:

- Does the company provide domestic partner benefits? In recent years an increasing number of companies offer this benefit as a tool to attract and retain top talent. Most plans require some form of documentation of the relationship and cohabitation.
- Does the company allow for a same sex partner to be designated as a beneficiary to its pension plan? Some pension plans have been amended to allow non-spousal beneficiaries to roll over inherited benefits, pursuant to the Pension Protection Act of 2006.

Insurance issues include property, liability (casualty), life, disability and health coverages:

- If the company offers domestic partner benefits such as health insurance, the domestic partner may not be treated as a spouse and the benefits may be taxable for federal purposes but possibly not for state purposes.
- Life insurance companies may in some jurisdictions challenge whether a domestic partner has an "insurable interest" to qualify for the partner's benefits. One solution is to have one partner purchase life insurance for him- or herself and name the other cohabitant as the beneficiary. The ownership is the same as the insured and the beneficiary can be changed in the event the parties terminate the relationship.
- Life insurance is a key tool in providing liquidity to meet unexpected estate taxes that would not otherwise be paid by a married couple on the first to die. .
- Homeowner insurance may not cover damage or losses if only one partner's name appears on the deed. A solution may be to have the other

partner added as an additional insured named on the policy or rider.

- Automobile insurance may have increased liability if vehicles are co-owned. A solution is to have both names listed on the title of the automobile and the same as the insured on the automobile insurance policy.

Investment issues are easily interlinked to the previous areas discussed. It is important to have a plan that incorporates the complete financial plan to ensure that the investment plans are protected and not unnecessarily interrupted.

Some key thoughts when developing the investment plan:

- Contractual agreements can include cohabitation, partnership and dissolution agreements. Estate planning is especially important for same sex couples as these assets will not readily pass to a non-blood heir unless planned to do so. Revocable Trusts are a popular tool used to avoid will contests, as well as probate proceedings.
- Additionally, investments require time to earn a return. The untimely dissolution of a partnership or selling an investment may dramatically reduce or forfeit the yield on the investment and risk the return of principal.
- Domestic partners who wish to purchase a home or other property should consider a joint-ownership agreement, which protects both partners and is similar to a business partnership agreement. (This is also a good idea for any unmarried couple buying real estate).
- Ownership of assets ("asset titling") determines how gift tax and estate taxes will be applied and can control how assets will be distributed in the

future. Many domestic partners own assets as joint tenants with rights of survivorship, which allows an asset to pass irrevocably to a surviving partner. With the differential treatment of unmarried persons for estate tax purposes, however, those with sizable taxable estates should consider other advanced, tax efficient transfer techniques when titling of assets. An LGBT person should discuss with an advisory team well versed in these issues such options as single ownership, trusteeship, and tenants in common ownership.

Tax issues include all four areas: income, estate, gift and generation-skipping taxes.

- Income tax issues are generally related to not having the ability to file a joint return. A single filer will face higher tax rates and lower thresholds for deductions than a married couple filing jointly.
- Estate and gift taxes are considered above under the estate planning section. As noted above, the absence of a marital deduction under federal law is significant, and some state laws are in a state of flux under new domestic partner/civil union legislation.
- With respect to generation-skipping taxes and intergenerational wealth transfer, a high net worth estate should take into account the most tax efficient structure available in the changing legal and policy contexts for LGBT issues at the state level and the complex relationship with federal legal provisions.

The complexities of all of the above issues demonstrate the importance of keeping all important records related to financial planning. These records should include tracking all capital contributions and distributions, identifying executed

estate documents, and disclosing the location of all relevant documents. Most important is to have objective, professional advisors involved in the planning and implementing stages.

Financial issues, like psychological and management issues, are broad and complex, with distinct impact on many aspects of families and family businesses.

4. Legal issues

Based on the above discussion, it is evident that legal issues often intersect with psychological, management and financial issues, but they need to be addressed with full understanding of the legal technicalities and complexities of the particular situation in a particular jurisdiction. There is no one-size-fits-all handbook of legal dimensions to LGBT issues. Nevertheless, major categories of issues can be identified.

Legal issues for families with LGBT children include:

- Are LGBT children included or excluded as heirs? Is standard distribution language sufficient, or is customized language needed? What is the definition of “heirs” in this context in the particular jurisdiction? Can a private designation overcome such definitions?
- What is the status in legal documents, including Powers of Appointment, of children who themselves do not or will not have children? What about grandchildren who might not be not legally adopted – such as children of the LGBT person’s partner?
- What if any control mechanisms are in place in family documents?
- Who can claim head of household?

Registered Domestic Partnership and



Same-Sex Marriage issues have been discussed above in the section on financial issues, including implications in the benefits, insurance, investment, tax, and trusts and estate areas. In a broader sense, the legal questions posed in the context of changing statutory provisions and the increasing prevalence of non-traditional family structures include:

- What are the legal rights
- What are the property rights?
- What are the inheritance rights?

Carefully choosing an advisor well versed in the complexity of law and tax is important, given the legal issues and choices facing LGBT clients for issues

such as:

- Transfer of wealth between partners.
- Outright distribution as distinct from trusts.
- Holding title to assets.
- Real property and property tax considerations.

5. Best practices

Based on the above discussion and on our various experiences as advisors assisting clients dealing with these issues, we offer the following as a draft statement of best practices for the advisor when LGBT issues emerge in the engagement:

1. Be prepared to assist individuals in families with LGBT issues to weigh carefully (pros and cons) the choice between coming out completely, coming out to some people but not others, or remaining closeted. Help the client assess strengths, supports, allies among key family members and the business.
2. Be comfortable speaking frankly and directly, using terms like gay, lesbian, partner, sexual orientation (not sexual preference, which assumes one's orientation is a choice), homosexuality, heterosexuality, straight, transgendered, etc. If you are interviewing spouses and want to include a gay partner without explicit identification, use broad language such as spouse, partner, significant other, etc.; the modern family often includes a variety of relationships, whether gay or straight.
3. Remind yourself that LGBT issues are in some respects similar to other client issues – consider your own general approach to assisting family members to have difficult conversations with each other about various issues, hearing and responding to family secrets of various kinds, etc. Draw on your usual skills, techniques, and insights.
4. Examine your own views about homosexuality and consider your own ability to be effective in the consultation. There is a personal, professional and ethical obligation to learn about LGBT issues and to understand your attitudes toward them or to find an advisor who can effectively assist in such a situation.
5. If you yourself are LGBT, use that fact strategically and with discretion – just as you would use (or not use) any other aspects of your private life in your engagement. The implications of self-disclosure should always be tested against what will most enhance your engagement by serving the needs of the clients.
6. Help the clients cope with difficult feelings by educating them, providing information, normalizing their experience (“You are not alone!”), getting support for family members (e.g., PFLAG, see organizational resources section below), and making appropriate mental health referrals.
7. Use your network of professionals for guidance and as a resource if you feel concerned or confused about your own role. Be alert to the multi-disciplinary dimensions of LGBT issues, and be prepared to recommend experts in other fields when the particular issues are beyond your own professional competence and experience.
8. Try to stay focused on an overriding objective: Foster communication, understanding and mutual respect; until full acceptance can be achieved, promote an attitude of tolerance, “live-and-let-live.” Individuals deal with LGBT issues in their own ways. Don’t feel the need to try to change personal choices.
9. Use confidential interviews strategically. Sometimes questions can promote further thoughts and reflection among clients; planting the seeds of an issue or an approach can lead to individual changes – usually in a very private way over time – but sometimes when individuals are suddenly faced with the need to take a stand or state a position.
10. Be ready for surprises in the engagement. Stay calm, objective, responsive, positive, and confident, knowing that you have effectively handled many difficult issues before.

This list of best practices is, so far as we are aware, a “first” in the family business advising arena. It is therefore a work-in-progress. We look forward to comments, suggestions and dialogue on this important set of issues.

We conclude with a short list of organizational resources available to families, businesses and advisors, and a list of recommended books and other written materials.

Organizational resources

Human Rights Campaign (HRC): America's largest civil rights organization working to achieve gay, lesbian, bisexual and transgender equality. By inspiring and engaging all Americans, HRC strives to end discrimination against GLBT citizens and realize a nation that achieves fundamental fairness and equality for all. Also provides information about how to improve the workplace for LGBT people. Two of HRC's annual reports are listed below in Books and Other Written Resources. www.hrc.org

National Gay and Lesbian Chamber of Commerce (NGLCC): The largest LGBT business development and economic advocacy organization in the world. www.nglcc.org

Out & Equal Workplace Advocates: The pre-eminent national organization devoted to the LGBT community in the workplace. Their mission is to educate and empower organizations, human resource professionals, employee resource groups, and individual employees through programs and services that result in equal policies, opportunities, practices and benefits in the workplace regardless of sexual orientation, gender identity, expression or characteristics. www.outandequal.org

Parents, Families and Friends of Lesbians & Gays (PFLAG): A national non-profit organization and vast grassroots network with 200,000 members and supporters and over 500 affiliates in the US. PFLAG promotes the health and well-being of gay, lesbian, bisexual and transgender persons, their families and friends through support and advocacy. www.pflag.org

The Renaissance Transgender Association, Inc: Provides comprehensive education and caring support to Transgendered individuals and those close to them. This is accomplished through offering a variety of carefully selected programs and resources focused on the factors affecting their lives. www.ren.org

Straight Spouse Network (SSN): An international organization that provides personal, confidential support and information to heterosexual spouses/partners, current or former, of gay, lesbian, bisexual or transgender mates and mixed-orientation couples for constructively resolving coming-out problems www.straightspouse.org

Books and other written resources

Chauncey, George. *Why Marriage? The History Shaping Today's Debate Over Gay Equality*. (Basic Books, New York, 2005.)

Currah, Paisley; Minter, Shannon Price; and Juang, Richard M. (eds.), *Transgender Rights*. (University of Minnesota Press, Minneapolis, 2006.)

Graff, E. J. *What is Marriage For? The Strange Social History of our Most Intimate Institution*. Beacon Press, Boston, 2004.

Human Rights Campaign, *The State of the Workplace for GLBT Americans*. An annual report detailing the laws and policies surrounding sexual orientation and gender identity in the workplace. Businesses are able to use this publication to stay abreast of the rapidly changing landscape for American workers impacted by these issues. (HRC, Washington, DC, annually, including July 2007)

Human Rights Campaign, *Corporate Equality Index*, a comprehensive annual study used to rate corporate America's treatment of GLBT employees based on factors such as the existence and scope of non-discrimination policies, whether there is a company-supported GLBT employee resource group, and whether advertising is appropriate and respectful of the GLBT community. (HRC, Washington, DC, annually, including 2007)

Matthews, C. R., & Lease, S. H. "Focus on lesbian, gay, and bisexual families." In R. M. Perez, K. A. DeBord, & K. J. Bieschke (eds.), *Handbook of Counseling and Psychotherapy with Lesbian, Gay, and Bisexual Clients* (pp. 249-273), (Washington, DC: American Psychological Association, 2000).

Sullivan, Andrew (ed.). *Same-Sex Marriage: Pro and Con*. Vintage Books, New York, 2004.)

Winfield, Liz. *Straight Talk About Gays in the Workplace: Creating an Inclusive, Productive, Environment for Everyone in Your Organization*. (Haworth Press, Binghamton, NY, 3d ed. 2005)

Wolfson, Evan. *Why Marriage Matters: America, Equality and Gay People's Right to Marry*. (Simon and Schuster, New York, 2004.)



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