

CONTRIBUTOR

10 Things LGBT People (And Everyone Else) Should Consider Before Getting Married

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Elizabeth Schwartz has been practicing law since 1997 and is a nationally recognized advocate for the legal rights of the lesbian, gay, bisexual and transgender (LGBT) community. She is the author of *Before I Do: A Legal Guide to Marriage, Gay and Otherwise* (The New Press, 2016), and her Miami-based law practice focuses on estate planning, probate, family formation (adoption, insemination, and surrogacy) and dissolution.

It's a beautiful thing to find love in one's golden years. One of the pioneers who helped achieve marriage equality, after the death of her longtime partner and a fight that went all the way to the Supreme Court, recently celebrated a new marriage. Mazel tov to [Edie Windsor and her wife Judith Kasen!](#)

[Windsor](#) was the plaintiff in the [U.S. v Windsor](#) case, which struck down the core of the bigoted federal Defense of Marriage Act (DOMA) in 2013. Windsor had married her partner of 40 years, Thea Spyer, in Canada, then got hit with a massive estate tax bill upon Thea's death. DOMA meant they were legal strangers, not spouses able to pass wealth to one another tax free. Windsor's landmark victory set the stage for the 2015 [Obergefell v. Hodges](#) case, which brought nationwide marriage equality by declaring the remaining statewide marriage bans similarly unconstitutional.

We are grateful that Windsor's grief and outrage inspired her to take up this critical fight. We cheer her journey from widowhood to the altar once again. Edie Windsor helped teach the nation how important the fundamental right to marry is in endowing our relationships with the dignity they deserve.

Having been through it all, Windsor certainly knows what rights and responsibilities come with marriage. Based upon my experience, many LGBT people do not. Who could blame us when few ever thought we would live to see marriage equality? Of course straight people have long cornered the market on shotgun weddings with disastrous consequences. But because we haven't had this opportunity to wed until relatively recently, LGBT people haven't needed to be well-versed in the legal ins and outs of marriage. Now we need to catch up.

In twenty years of working with Lesbian, Gay, Bisexual and Transgender (LGBT) and heterosexual people as a family and estate attorney, I have seen

many clients shocked at the legal consequences they face upon divorce or a disability or death. The increase in these surprises has been exponential since marriage equality became the law of the land. Clients who have tied the knot without knowing someone well enough have been mortified when they had to pay part of their retirement account to their soon to be ex-spouse upon divorce. Other clients thought that, even after marriage, their estate plans would continue to provide for their children as they always intended. Not true.

I can't stress enough to all LGBT people the importance of looking and learning before you say "I Do." Here are ten things to consider before getting married:

1. This might sound obvious, but as a general matter, make sure you truly know the person you're marrying, their family, health issues, and anything else that might be an unwelcome surprise. (My book's chapter "Starting Out" has a great list of 15 questions to ask one another. Discuss those more than once over the course of time as answers may change).
2. Talk to an accountant to learn what the tax implications of marrying would be.
3. Make sure you're on the same page about whether — and how — you want to have children, if kids are a consideration.
4. Consult with a lawyer about what the consequences would be at death or divorce and whether a prenuptial agreement would be appropriate.
5. Get clear about where you both want to live in the future, including retirement, and if caring for either's family members might be part of that picture.
6. Be clear whether any benefits you receive based on your household income, like Medicaid, student financial aid, and much more. These payments could be compromised by the combined household income upon marriage.
7. If you're getting social security benefits as a divorced or surviving spouse, contact your local Social Security office or call 800.772.1213 to see if your benefits would be affected by marriage.
8. Understand one another's specific assets, debts and whether tax filings and payments are current.
9. Be sure you're informed about any pending lawsuits or criminal issues past or present.
10. Examine your current estate plan and whether any changes need to be made to realize your intentions.

Services and Advocacy for GLBT Elders (SAGE) said it best with their [Talk Before You Walk](#) campaign. SAGE focuses on older adults who have an

additional set of considerations but all can visit the site for more information on marriage's various legal and financial consequences before walking down the aisle.

Love is always in season and even more meaningful when all parties understand the rights and responsibilities of legal marriage.

Elizabeth Schwartz is an attorney, author of [Before I Do: A Legal Guide to Marriage, Gay and Otherwise](#) (The New Press, 2016), and co-chair of the national board of SAGE. Upcoming book [events](#) include a November 1, 2016 [book launch party](#) benefiting the [National Center for Lesbian Rights](#) in San Francisco, [November 5 at Laurel Books in Oakland, CA](#), November 16 in [Chicago](#) and November 19 at the [Miami Book Fair International](#).

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