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THE EFFECT OF THE *OBERGEFELL V. HODGES*[1] DECISION AND ESTATE PLANNING FOR LESBIAN AND GAY COUPLES

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With the decision in *Obergefell v. Hodges*, the United States Supreme Court has resolved the issue of marriage equality. Married lesbian and gay couples are legally married. Every state in the Union must recognize those marriages that existed on June 26, 2015 and must permit same-sex couples to marry in the future.

The Court determined that marriage is a fundamental right and, as such, is not subject to the whim of the electorate. This opens up a wide range of benefits, rights, responsibilities and obligations to same-sex couples.

The effects of this decision on an expansive list of issues will play out over the next months and years. Contrary to the belief of many people within the LGBT community, the *Obergefell* decision has not resolved everything. Issues remain involving employment, property rights, parental rights, adoption, finances, housing, health care, transgender rights and the list goes on.

The easy part is that all married couples will be treated the same under federal and state law, including state inheritance and intestacy statutes. Same-sex married couples will no longer be treated as legal strangers. They are entitled to the benefit of state and federal laws that apply to married couples.

Following the Supreme Court's decision, a cottage industry of legislative attempts to ignore or attempt to minimize the decision has cropped up. These efforts will, for the most part, fail to be enacted; those that are will be subjected to successful court challenges and be deemed unconstitutional. It is unlikely the U.S. Supreme Court will take on another case involving LGBT issues anytime soon.

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[1] *Obergefell v. Hodges* 576 U.S. _____ (2015)
[2] 750 Ill. Comp. Stat. Ann. 5/217 (West 2008)
[3] *McKettrick v. McKettrick*, 2015-Ohio-366

Estate planners for LGBT clients--individuals and couples; married or not will need to consider a variety of issues.

These issues come to mind:

- Preexisting legal relationships that were never dissolved; including marriages, civil unions, domestic partnerships and Registered Domestic Partnerships;
- Stored genetic materials and ownership rights;
- Defining "heirs" and "descendants" when both parties are not legally, biologically or genetically related;
- Identifying and dealing with "families of origin" and "families of choice;"
- How family law matters interact with estate planning

A. Pre-existing legal relationships

Marriage has been available to same-sex couples in the United States for 11 years. In 1989, Denmark became the first state to recognize same-sex registered partnerships as marriages. The Netherlands began granting same-sex marriages in 2001. Therefore, it is possible for a same-sex couple to have a 25-year marriage.

There are over 600,000 same-sex couples in the United States. The number of married same-sex couples is harder to pin down but the number is destined to explode with the *Obergefell* decision. Still, some couples are married; others are in formal civil unions or registered domestic partnerships; and, some are in committed relationships but without any paperwork.

Before marriage became an option, a number of states allowed same-sex couples to enter into civil unions, domestic partnerships and Registered Domestic Partnerships (RDP). No one knows how many of those legally recognized relationships have never been formally dissolved. The states that provided that option to same-sex couples granted specific legal rights under state law. In some instances, the legal rights were synonymous with marital rights. And, those rights and obligations continued until the relationship was formally dissolved.

Too many members of the LGBT community adopted a cavalier approach to these legally recognized relationships. Where marriage is concerned, many believed those earlier marriages "didn't count" because they were not recognized by the couple's home state. Others believe the civil unions and domestic partnerships "didn't count" because they were not marriages. Unfortunately, those legally recognized relationships continue to exist and that situation needs to be addressed.

Lawyers representing LGBT clients must inquire about previous relationships. If the couple has a civil union, domestic partnership or a RDP in addition to a marriage, the former must be dissolved along with the marriage. This presents an interesting situation for judges who have never faced this complication. Creative lawyering in pleading the issues and presenting the case is required.

Some states automatically upgraded civil unions and domestic partnerships to marriages. The state of Washington is one example.

In 2014, Washington became a marriage equality state. As of June 30, 2014, same-sex couples could get married but SRDPs were no longer available. SRDPs continue to be available to couples where at least one party is over 62. On July 1, 2014, Washington law automatically upgraded all existing SRDPs to marriages. The state claims it notified everyone of this change but there is no way to know how many missed that little tidbit of information.

At present, the federal government does not recognize any formal relationship other than marriage. However, there is no guarantee that will not change in the future. Many couples choose to retain their civil union or RDF status rather than get married. They face myriad legal issues in family, estate planning, tax and property matters when the relationship ends. All relationships end--either through death or dissolution.

Failure to consider these earlier relationships can impact taxes, inheritance, beneficiary designations, federal benefits, estate planning and subsequent marriages.

Reverse Evasion Statutes

Reverse evasion statutes present another issue that needs to be considered. Reverse evasion laws prohibit non-residents from entering into a valid marriage if the couple's home state will not recognize the marriage.
New Hampshire repealed its reverse evasion statute in 2014. It applied the repeal retroactively to the date when marriage equality became law. Massachusetts repealed its 1913 reverse evasion law in 2008. Illinois seems to be the only state that still has a reverse evasion statute[2] and has no plans to repeal the law.

The *Obergefell* decision does not resolve this issue. The states are required to recognize valid out-of-state marriages and permit same-sex couples to marry in the state. However, these Illinois marriages were invalid from the start and the effect of the *Obergefell* decision on the Illinois' reverse evasion statute is not known.

These couples may believe they are married, hold themselves out as married but, in fact, are not married. But, the marriage's validity could be called into question and result in a will challenge.

Consider a 2015 Ohio divorce case[3] that raises the issue. A lesbian couple married in Massachusetts in 2006. One of the women owned a house in Massachusetts where the marriage ceremony occurred. The couple, however, continued to reside in Ohio. When Jennifer filed for divorce in 2013, Cheryl moved to dismiss on jurisdiction grounds. She claimed, "their purported marriage in Massachusetts was and is void." The trial court granted the motion and the Ohio 12th District Court of Appeals upheld that dismissal. Both courts cited the 1913 Massachusetts reverse evasion statute as determinative of the marriage's validity.

But the decision is wrong. The court misread the Massachusetts law and its application in similar cases. Unfortunately, it appears the plaintiff's lawyer failed to argue the matter properly.

In order for this couple to obtain a marriage license in 2006, they would have completed the "Notice of Intention of Marriage." The couple would have indicated their intent to reside in Massachusetts and become residents of the Commonwealth. Had they not done so, the clerk

[2] 750 Ill. Comp. Stat. Ann. 5/217 (West 2008)
[3] *McKettrick v. McKettrick*, 2015-Ohio-366

would not have issued the license. The fact they never became residents is considered a "technical defect" rendering the marriage "voidable." This "technical defect" is not central to the marriage itself. Until the *McKettrick* decision, no court has declared a marriage "void" based solely on the parties' failure to reside in Massachusetts.

The worst part is that Cheryl and Jennifer may still be married. Cheryl's lawyer failed to argue the marriage was "voidable" rather than void ab initio. He did not understand the Massachusetts law either. The legal issue involving the 1913 law was not as clear-cut as the defendant's lawyer and the courts thought.

If the couple is still married…and doesn't know it…how does that affect their future relationships and any estate plan each woman may develop. Can either seek a share of the other's estate as a "spouse?"

Representing LGBT clients can present unique challenges for lawyers. There are many resources available to ensure proper and intelligent representation. Lawyers that are unfamiliar with the legal issues facing LGBT clients should look to the following organizations for assistance. These organizations are ready and willing to consult with counsel on cases.

- Lambda Legal, lambdalegal.org
- National Center for Lesbian Rights, nclrights.org
- Gay and Lesbian Advocates and Defenders, glad.org
- Transgender Law Center, transgenderlawcenter.org

Asking clients questions about former relationships is the first step in identifying potential problems. Clients can be stubborn and refuse to believe they must dissolve those earlier relationships. Without doing so, however, the clients may find their estate plans are subject to challenge somewhere down the line.

B. Assisted Reproductive Technology (ART)

Lesbian and gay couples use assisted reproductive technology procedures at a consistently high rate. Gay male couples enlist an egg donor and a gestational surrogate. Lesbian couples use sperm donors and frequently have one woman contributes the ova for implantation in her partner's uterus. This is called "ovum sharing." That gives both women a genetic connection to the child.

The couple's marital status will now become an issue in determining parental rights and inheritance rights. Most people believe there is a marital presumption concerning parentage for children born during a marriage. Not all states recognize a marital presumption. And, even in those that do, it is a rebuttable presumption.

There is no reason to assume those states that have the marital presumption will apply it to same-sex married couples. That issue will be litigated and it is likely that states recognizing the marital presumption will apply it to married same-sex couples provided they did not use a known donor. That would further complicate the situation.

Lawyers representing lesbian and gay parents usually advise the couple to obtain a second parent adoption because a court order will clearly establish parental rights. A birth certificate does not establish parentage, but an adoption order is entitled to recognition under the U.S. Constitution's Full Faith and Credit Clause.

Most same-sex couples use ART to start a family. However, if both parents are recognized by the state, the child has no intestate succession rights in the estate of the unrecognized parent.

Children born after the non-legally recognized parent dies, may also be ineligible for SSA survivor benefits because they are not included in the intestate succession statute.

ART includes genetic materials that are stored by individuals and couples. Some estimates place the number of stored "leftover" embryos at over 1 million nationwide.

ART does not treat infertility and it is not the primary reason individuals and couples resort to it. These procedures offer alternatives methods of creating children. Prospective parents use ART procedures to have genetically and biologically related children.

The three primary procedures used in ART are in vitro fertilization (IVF), assisted insemination and surrogacy (traditional and gestational).

ART can use eggs and sperm donors that are unrelated to the intended parents. The donors usually do not intend to participate in raising the child. Many lesbian and gay couples, however, use known donors. Sometimes, the known donor is related to the other mother or father and that give a genetic connection to both intended parents. However, using a known donor raises issues that must be addressed concerning the donor's legal rights, responsibilities and obligations.

An excellent resource is *Assisted Reproductive Technology, Second Edition* (2011, American Bar Association) by Charles P. Kindregan, Jr. and Maureen McBrien.

C. Extended Families

Estate planning lawyers need to ask whether a client has LGBT children, grandchildren or other relatives. If they don't know, the issue remains important because discussing whether the client intends to include the children and grandchildren of any LGBT heir and their spouses or partners is essential.

The client must address existing children and grandchildren as well as posthumous children. The conversation may be difficult because some clients may be unaware that their son, daughter or grandchild is gay. The client may be estranged from their LGBT offspring. Nevertheless, the conversation must take place.

If the client intends to exclude the children of LGBT relatives, that fact must be explicitly stated in the estate documents. Clients may continue to be reluctant to recognize their LGBT offspring let alone grandchildren born to those offspring.

Not all lesbian and gay couples will marry but many same-sex couples will have children. As with unmarried heterosexual couples, the extended family must decide whether they wish to include or exclude any children from those relationships.

D. Intestate Succession

There is little guidance either by statute or caselaw for dealing with posthumous heirs in estate planning. Most of the existing cases deal with a posthumous child's entitlement to Social Security surviving dependent benefits.

The U.S. Supreme Court addressed this issue in *Astrue v. Capato*, 566 U.S. ____, 132 S.Ct. 2021, 182 L.Ed.2d 887 (2012). The case dealt with the right of a posthumously conceived child to qualify for Social Security survivor benefits. The Social Security Administration's position is that such children qualify for benefits only if they are entitled to inherit from their father under the state's intestacy statute. In a 9-0 decision, the Court agreed with the SSA's interpretation of the Social Security Act.

Children that are conceived and born after a parent dies must demonstrate eligibility to inherit under state law or satisfy a statutory alternative to the requirement. The Act's core purpose is to protect family members that depended on the decedent's income. This decision applies to all children including those born using ART techniques.

Under the Social Security Act, a child is a legal dependent and entitled to benefits if the deceased parent legally recognized the child, the parent was fully insured, the child is under 18 and was dependent on the decedent at the time of death. A posthumous child cannot meet those statutory requirements.

The decision means that a posthumous child's right to receive SSA survivor benefits will depend solely on that child's right to inherit under the state's intestacy law. Intestacy laws vary by state and those variances affect a posthumous child's entitled to these federal benefits.

The only way to overcome the Court's unanimous decision is for Congress to amend the Social Security Act and given the current state of inertia in Washington any such action is remote.

The intestacy situation must be addressed in light of property issues: (1) Did the decedent store genetic material. (2) Who is entitled to inherit that property? (3) Did the decedent make arrangements for the disposition of the material after he or she died? (4) Did the decedent intend to produce a child from the stored genetic material? These questions will undoubtedly lead to other questions and issues that have not yet been considered.

Surviving spouses have an advantage in the intestacy process because there is a presumption that a deceased spouse would want the surviving spouse to receive a portion of the estate. And, following that assumption, it is likely that a surviving spouse can make a legitimate claim to the stored genetic material. This assumption may also play out in cases where the decedent has no surviving spouse or children and the parents want to make all decisions concerning the disposition of the estate assets. Those assets would include the stored genetic material.

E. Posthumous Heirs

Posthumous children have the potential to affect the distribution of estate assets and the closing of an estate. Further, ART techniques are creating situations that make identifying a decedent's heirs difficult. A posthumous child's status is important because of the possibility that others left property "to the children" of the father in a will or if a child might me entitled to take from the estates of the father's relatives who die intestate. See *In re Estate of Kolacy*, 754 A.2d 1257 (N.J. Super. Ct. Ch. Div. 2000.

The number of cases involving requests to extract sperm from deceased men is increasing--from surviving spouses, partner, girlfriends and parents. Without statutory guidance, the courts are figuring out how to resolve these requests.

While most states have not addressed these issues, eleven states: Wyoming, Washington, Texas, Delaware, California, Ohio, Louisiana, North Dakota, Utah, Virginia and Florida have enacted statutes concerning the inheritance rights of posthumous children.

Ohio's statute, O.R.C. § 2105.14 states that an intestate's descendants conceived before the person's death but born after are entitled to inherit. Any child conceived and born after the decedent's death cannot inherit. Under the *Astrue* decision, those posthumous children would be ineligible for SSA surviving child benefits.

Some of those states ban a posthumous child from receiving an intestate share unless specific conditions are met: the deceased consented to have children using his genetic material, there is written evidence, the child must be conceived within a set time after death and the prospective mother must be the surviving spouse.

Because state legislatures have failed to resolve the issue of whether a posthumous child can inherit from a decedent, the courts have stepped in to fill the void. The rationale used by most courts is a balancing act: the rights of the posthumous child to inherit, the state's interest in an orderly probate process, the rights of the existing heirs and the decedent's stated intent or preference. It must be noted that the existing case decisions deal with male decedents. However, the same arguments can be made for female decedents who stored eggs or fertilized embryos.

There is a need for finality in the probate process. Most of the cases deal with children who were actually born after the parent's death. A more difficult question deals with the right of a surviving spouse, partner or parent to litigate in an effort to keep an estate open pending a future conception and birth. Because probate can be a difficult and expensive process, states are reluctant to leave a case open indefinitely. A decedent's existing heirs would be denied their inheritance pending the possibility of another heir being born at some point in the future.

The Supreme Courts in New Hampshire, Arkansas and Michigan have decided in the past few years that posthumous children do not qualify to inherit under the state intestacy statute because they were not considered "in being" when the decedent died. See, *Eng Khabbas v. Commissioner of Social Security*, 930 A.2d 1180 (N.H. 2007); *Finley v. Astrue*, 270 S.W.3d 849 (Ark. 2008); *Mattison v. Social Security Commissioner*, 825 N.W.2d 566 (Mich. 2012). In each case, the posthumous children were applying for Social Security survivor benefits.

California, Colorado, Iowa, Louisiana, North Dakota, Texas and Virginia provide intestate succession rights to posthumous children with certain conditions.

Iowa requires a genetic relationship between parent and child, written consent signed by the decedent and the child must be born within two years of the parent's death.

Louisiana law allows the child to be born within three years of the parent's death and allows other heirs to challenge the inclusion of a posthumous child.

North Dakota treats a posthumous child as a life in being if in utero up to 36 months or born within 45 months after the decedent's death.

In Virginia, intestate succession is permitted if the embryo is implanted before the physician is notified of the death or the decedent consented, in writing, to becoming a parent before implantation.

F. Estate Planning Challenges

There are issues of standing, intestate inheritances, definitions of "child," "descendant," "beneficiary," and "heir."

Pre-existing trust provisions must be examined to determine whether the trustor intended to include posthumous children born in the beneficiary class when the trust has already been paying out proceeds. Are those children entitled to receive retroactive as well as future payments? What about children that are not genetically related to the trustor?

Clients need to remember that stored genetic material, including embryos, is part of their estate. There are property rights in those stored materials and will be included in their probate estate.

Documenting the client's wishes concerning the disposition of that stored material is vital. Without documentation, a court will be called upon to issue an opinion and that may impact the estate in ways the testator did not intend or envision.

Many clinic forms include a provision that addresses the disposition of stored genetic materials. The contract language can be used to resolve conflicts between the signed agreement and the testator's will. The clinic agreement may contain post-death disposition provisions that are binding on family members. However, those contracts may also provide the stored materials are owned by the clinic and the intended parents have no claim on them.

1. Who is a descendant, heir or issue?

Wills and trusts that provide for "children," "issue," "descendants" and "heirs" but must also define whether the class includes posthumous children. In the drafting process, the lawyer must also determine whether the class includes some but not others.

Some existing trusts were created long before ART was anything more than a plot point in a science fiction movie. Does a posthumous child, or the parent, have standing to bring legal action for a share in the trust? Can the other beneficiaries object to including those children? To whom does the fiduciary owe a duty?

In 2007, the New York County Surrogacy Court considered this matter in *Matter of Martin B.*, NYLG 8/6/2007 (NY Co. Surr. Ct. 2007). The grantor created several trusts in 1969 to benefit his children and grandchildren. The grantor's son died in 2001 but left cryopreserved sperm. His widow used the sperm and delivered two children in 2004 and 2006. She sought to have her sons included as trust beneficiaries. The trustees filed an action in Surrogacy Court requesting a determination of the sons' qualifications as descendants or issue. The court decided the children were descendants of the grantor and should be included because the Grantor would have included them had he considered that ART would be possible.

A second New York case involved a trust created in 1959. The beneficiaries were the grantor's "issue" or "descendants" and their spouses. The trust provisions specifically excluded anyone who was adopted.

The grantor's daughter and her husband engaged a gestational surrogate using a donated egg and the husband's sperm. The pregnancy resulted in the birth of twins in California. A California court declared the daughter and her husband the twins' legal parents. The trustees petitioned the court for an opinion concerning whether the twins were included since they were not genetically

related to the grantor. The New York court decided the children were included because they were not adopted. Even though New York law declares surrogacy agreements to violate public policy, there is no prohibition against recognizing the California parentage decision. See, *In re Doe*, 793 N.Y.S.2d 878 (Sur. Ct. 2005).

Virginia, on the other hand, does not recognize any child born more than 10 months after the parent's death. Georgia requires the child to be born within 10 months of death and survive at least 120 hours after birth. New York prohibits any posthumous child from claiming a share of the estate through its omitted child statute (N.Y. Estate Powers & Trusts L. Sec. 5-3.2(b)).

The issue also arises in intestacy cases when the deceased parents have stored genetic materials--especially embryos.

That situation exists in a Texas case[4] involving a two-year old little boy who has inherited 11 frozen embryos from his deceased parents. The parents were murdered and had no will and left no instructions concerning the disposition of the stored embryos.

The Master in Chancery recommended that the clinic retain the embryos in storage until the child turns 18 at which time he will have the right to decide what to do with them. The estate will remain open until the child turns 18 and will be responsible for paying the storage costs.

But, there are many questions. If the child decides to use the embryos to create siblings, will they be entitled to inherit from the parents? There is no indication whether the estate is large enough to cover the storage costs. What happens if the storage costs exceed the estate assets? Do the needs of the surviving child trump those of the frozen embryos? Can this "property" be sold to support the existing child? No one has answered these questions.

2. Financial Considerations

If stored genetic material is property, can estate creditors force a sale in order to pay the decedent's debts? Must the estate remain open because these stored materials could produce a child and prospective heir? How long must the estate remain open? Must the existing heirs wait for their inheritance until the posthumous child is born? Who pays the expenses of keeping the estate open? Does the executor have a fiduciary duty to existing heirs or to the unborn prospective heir? How does the fiduciary decide? Who is paying the bills?

How does a testator address these financial issues? How do clients who own stored genetic materials address whether they want a posthumous child?

In *Hecht v. Superior Court of California*[5], the court decided that a decedent could bequeath stored sperm samples to his girlfriend for posthumous reproduction. The court held these cryopreserved genetic materials where estate assets and subject to distribution to named heirs. The case also inheritance and who is responsible for paying the storage bill. But, the decision does not address whether the decedent's estate must remain open, or for how long, because of the possibility of another heir.

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[4] *In the Estate of Yenenesh Abayneh Desta, Deceased*, No, PR 12-2856-1, Probate Court No.1, Dallas County, Texas.

[5] 16 Cal.App.4th 836 (Cal. 1993)

States that have no laws addressing whether a posthumous child should inherit generally consider whether keeping the estate open would pose an unreasonable burden on the orderly administration of the estate or the other heirs.

G. Unintended Heirs

The Kansas Craigslist Daddy case is an excellent teaching opportunity because it presents a scenario of other potential problems for estate planners. Do known sperm and egg donors have parental rights, responsibilities and obligations for the children that evolved from their donation?

This Kansas case involved a married, heterosexual man, who answered a Craigslist ad from a lesbian couple looking for a donor. The couple did not want to pay a doctor or go through a clinic. They wanted a DIY insemination and, using a turkey baster, accomplished the task. After the child's birth, the couple ended their relationship and the birth mother found herself needing to file for public benefits. The state required her to name the father and the donor was on the hook for child support.

The court deemed the agreement he signed with the lesbian couple to be unenforceable and did not absolve him of his parental obligations. That child is also considered his heir and entitled to inherit from him unless he disinherits the child. Had the matter been handled through a doctor, no one would ever have heard of William Marrotta[6].

Asking whether clients engaged in donor activities--eggs or sperm--allows them to include a provision in their estate plan documents that excludes any children born from those donations as heirs.

In most cases, as was the case in Kansas, these known donors are "doing a favor" for someone they know or feel sorry for. They just want to help. What they do not consider is how their actions affect their estate plans. And, most lawyers do not ask clients whether they engaged in this type of activity. As a practical matter, most lawyers and their clients never thought to discuss these issues.

Some couples have leftover eggs, sperm and embryos and decide to "donate" them to another couple that cannot afford the costs involved but want children. In some cases, the donor couple knows the donee couple. These biological parents should take the prudent step and explicitly mention this donation in their estate documents and state that any children resulting from these genetic materials are not heirs and not entitled to any portion of their estate.

Couples that consult a lawyer before they make any decisions can prepare a contract concerning the donation that includes a waiver of their parental rights and responsibilities. This can be an important part of the overall estate plan.

Under no circumstances should a couple make such a donation in an informal way. Any such donation should be conducted through a clinic or physician, according to any state law governing the situation, and include signing the necessary forms with the facility that converts the couple into "unknown donors."

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[6] *State of Kansas, ex rel. V. J.L.S. AND M.LB.S. ,* Case No. 12 D 2686; http://cjonline.com/sites/default/files/marottaRuling.pdf

In some respects, ART is a wild-west scenario. The medical advances are outpacing the ability or interest of legislatures to keep up. Some legislatures are also reluctant to open up this complex issue because of the ethical, moral and religious issues that will be raised.

H. Family Law Issues

The *Obergefell* decision dealt only with marriage. The Justices may believe they resolved the issue but, in fact, myriad other matters are coming to the forefront.

Estate planners will need to become conversant with family law issues in their home state as well as states where clients own property. The time when estate-planning lawyers operated in a world bereft of the angst faced by family law lawyers is over. Family law issues will play a role in estate planning involving LGBT couples--married and unmarried.

This will become evident when clients have children. Determining whether both parties are legally recognized parents is the starting point. Documenting that fact in their estate plan documents is important. Attaching the adoption decree often works to defer family arguments over the children.

Couples that have not pursued adoption may want to reconsider that decision. Even if the couple's home state does not permit second parent adoption, other options may be available to establish parental rights. This includes filing a Shared Parenting Agreement in court and seeking a court order adopting it.

The issues facing unmarried same-sex couples will continue to cause problems for them. The states that oppose marriage equality may use that as an excuse to treat unmarried same-sex couples and their families as pariahs. State legislatures will be reluctant to extend family protections to these couples and many will believe the only way to protect their families is to get married. Since using laws that assist unmarried heterosexual in family matters often will not apply to same-sex couples, there will be a need for creative solutions.

On another front, many LGBT individuals are estranged from their family of origin--their birth families. Estate planning under these circumstances can be challenging because members of the birth family may pop up when their gay relative dies. Anticipating that prospect, and discussing it with the client, allows the preparation of documents to address the issue and provide a solution.

When a LGBT individual has no relationship with his or her birth family, there may be strong ties with a "family of choice." While historically the natural object of our bounty is our birth family people are free to name whomever they choose as the beneficiaries of their estate. And, with nonprobate planning, the probate estate can end up consisting of pots, pans and underwear.

Within the LGBT community, clients may leave nothing to their family of origin--and specifically disinherit them and everything to their family of choice.

Marriage equality means married same-sex couples will now benefit from state laws that protects the spouse's right to inherit. *Obergefell* will spell the end of birth families claiming "but they were just roommates."

Unmarried same-sex couples, however, will continue to depend on smart, creative lawyers to protect them and their assets from greedy relatives. The *Obergefell* decision will not help them.

Conclusion

Working with LGBT clients on their estate plans is a challenge that requires creative solutions to difficult problems. Lawyers that are unfamiliar with LGBT legal issues should avail themselves of the resources available for consultation. Lawyers can help their LGBT protect their joint and individual interests. Same-sex couples seeking estate-planning assistance will raise questions about marriage (should we get married?), children (how do I protect my partner) and assets (can I prevent my family from interfering?). Lawyers need to be prepared to answer those questions. The answer are often different from those given heterosexual couples and individuals in a more traditional relationship.

Obergefell, *Lawrence v. Texas*, *United States v. Windsor*, and *Romer v. Evans* are required reading for all lawyers who intend to market to the LGBT community. The LGBT community needs qualified, sensitive, creative lawyers to provide services. But it is important that those lawyers understand the community, its needs and the legal issues faced by lesbian, gay, transgender and bisexual clients.