

## Economic Security Issues of Married Couples versus Unmarried Couples

Cohabiting heterosexual couples and homosexual partners face a number of financial security issues that are different from those faced by married couples. This paper provides an overview of the bases for this differentiation and how financial security issues are related to assumptions regarding married and unmarried couples. The differences in financial security issues among the three types of couples are described.

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Marriage qualifies male-female unions for numerous public and private economic benefits, from health insurance coverage to the estate tax spousal exemption to reduced "family" rates at the local health club. Unmarried couples, whether heterosexual or homosexual, do not always have access to these benefits as they are treated as single individuals.

Cohabiting heterosexual couples choose to forego marriage, and the economic advantages it conveys, for a variety of reasons. Because, currently, no state sanctions homosexual marriages, the economic advantages and responsibilities of marriage are unavailable to same-sex partners. Over the life course, those who are not married and are maintaining families find that their financial security issues, strategies and decisions are different from those who are married. Furthermore, some security issues are different for cohabiting heterosexual couples than for cohabiting same-sex couples.

The traditional married-couple-with-children family model does not represent all family types. While family economists include single-parent families and, to some extent, remarried families in their curricula, few references can be found regarding unmarried couples, whether heterosexual or homosexual. The diversity of families and their disparate economic concerns needs to be consistently addressed (Stum & Dolan, 1994).

It is estimated that about 13 percent of the adult population is cohabiting (Waite, 1995). Ten percent or more of the population may be homosexual (Allen & Demo, 1995). Together, this is too large a segment of the population with economic concerns to ignore.

The purpose of this paper is to provide an overview of the financial security issues facing the three types of couples and their families, i.e., married

couples, cohabiting heterosexual couples, and cohabiting same-sex couples. For simplicity's sake, married couples will be referred to as "spouses," cohabiting heterosexual unmarried couples as "cohabitators," and cohabiting same-sex couples as "partners." An overview of why married and unmarried couples are treated differently is presented. Discussion of financial security issues is divided into three sections: those which appear to favor spouses, those which appear to favor unmarried cohabitators and partners, and those relating to children.

### Overview

Married persons are assumed to be interdependent upon one another while no similar inference is associated with unmarried persons (Jaff 1988). Cohabitation has some of the characteristics of marriage but is not marriage, so likewise cohabitators are sometimes treated as spouses and sometimes treated as single individuals. Gay and lesbian partners, even those who considered themselves life partners, fall outside the traditional definitions of family based on blood and marriage ties (Allen & Demo, 1995), and therefore are regarded as single individuals.

Independence, rather than interdependence, was found to characterize cohabitators' financial "style" through a tendency to maintain separate financial identities (Blumstein & Schwartz, 1983). Blumstein and Schwartz (1983) found that same-sex couples pooled income and shared financial decisions less frequently than married couples did, but more than cohabitators. The lesbian couples interviewed by DePoy and Noble (1992) indicated that sharing financial decisions symbolized their commitment to the relationship, the same conclusion reached by Blumstein and Schwartz (1983). In his study of gay, lesbian, and

heterosexual couples, Kurdek (1994) found that both partners and cohabitators listed finances as one of the top issues for arguments.

Married couples have more wealth than cohabitators (Waite, 1995) and save more than never-married persons. Waite (1995) speculated that wealth accumulation is encouraged by the expectations associated with the married state.

It is a myth that cohabitators who live together "long enough" are automatically considered married by virtue of so-called common law marriage. In fact, ten states<sup>3</sup> have laws which prohibit heterosexual non-marital cohabitation (Seff, 1995). Only 13 states<sup>4</sup> continue to recognize common law marriages (Seff, 1995). Cohabitators are not afforded the same rights and privileges as spouses because to do so might be perceived as profoundly undermining the institution of marriage (Seff, 1995). However, a cohabiting heterosexual couple can "pass" as married and assume the benefits of marriage (Seff, 1995).

Cohabitators may believe they will eventually be considered married and make decisions accordingly. Partners may need to make special efforts to secure their financial security.

### **Married Status Favored**

Many policies embrace the premise of interdependency between spouses (Table 1) and thereby give spouses preferential treatment. Intestacy and inheritance laws assume that a spouse wishes to support his or her surviving spouse and dependents even if not explicitly expressing these wishes in a will. Social Security provides a retirement, survivor and disability benefit for a dependent spouse. Survivor and spousal benefits are not granted to partners or cohabitators, although some benefits have been granted to common law spouses in states recognizing common law marriages (Seff, 1995).

The inheritance and estate tax rates for surviving spouses and direct lineage decedents are consistently lower than other relationships. Surviving partners and cohabitators are taxed at the same rate as a stranger because no assumption of dependence exists for unmarried couples no matter how long they have lived together or how financially interdependent they are (Jaff, 1988). Although having a valid will to leave property and assets to one's cohabitor or partner resolves some inheritance issues, it may not resolve all financial security issues. For example, in New York, a cooperative apartment cannot be bequeathed to anyone other than a spouse or child without the express

approval of the cooperative's Board of Directors (Jaff, 1988).

The concept of economic interdependence of spouses also accounts for the ease with which spouses can insure each other's lives and their joint property. Cohabitators and partners may qualify for the so-called "family" policy for their jointly owned property, but when personal and real properties are owned individually, the cost-saving "family" policy may not be available to them. For example, if the couple rents, each may have to buy a separate renter's policy. Life insurance companies may require partners and cohabitators to prove an insurable interest in each other's lives in order to obtain life insurance. Comparable proof is not required of spouses (Stum & Dolan, 1994).

The longer a couple lives together, the more likely they will run into financial and legal decisions. When a long-term relationship breaks up, the economic claims of the former lovers, whether the couple is heterosexual or homosexual, may need to be decided by a court and may not be protected by so-called domestic laws. When spouses divorce, the assets acquired by the couple during marriage are generally considered to be "marital property" no matter whose name is on the title. Cohabitators and partners cannot expect to share each other's assets when the relationship breaks up unless they agreed beforehand to share assets (Seff, 1995).

Some laws, although few in number, do recognize and protect unmarried couples under certain circumstances (Beattie, 1991). For example, although NH does not recognize common law marriage, at the death a cohabitor if the couple has resided together for at least three years and presented themselves as a married couple, the surviving cohabitor will be considered a spouse under the state's intestacy laws and property inherited by the survivor is taxed at the spousal rate (NH RSA 457:39).

The federal Equal Credit Opportunity Act prohibits discrimination in any credit transaction on the basis of marital status. Lenders, including mortgage lenders, must, therefore, treat an unmarried couple the same as a married couple when applying for credit (Beattie 1991). Cohabitators may find it easier than partners to get joint credit because it is unlawful for creditors to inquire about marital status.

Rental housing decisions and choices may be limited for cohabitators and partners. Cohabitators cannot be discriminated against in public housing, but may face difficulties renting in the private sector. Partners have no protection from discrimination in either public housing (Hann v. Housing Authority of the City of Easton, 1989) or private-sector rental housing

Table 1  
Economic Security Issues: Spouses Favored.

Issue	Spouses	Cohabitors	Partners
Social Security benefits	<ul style="list-style-type: none"> <li>• categorically eligible for spousal retirement &amp; survivor benefit</li> </ul>	<ul style="list-style-type: none"> <li>• not eligible for spousal benefit, with some exceptions</li> </ul>	<ul style="list-style-type: none"> <li>• not eligible for spousal benefit</li> </ul>
Pension benefits	<ul style="list-style-type: none"> <li>• eligible for survivor benefit</li> </ul>	<ul style="list-style-type: none"> <li>• survivor benefit option not available</li> </ul>	<ul style="list-style-type: none"> <li>• survivor benefit option not available</li> </ul>
Inheritances	<ul style="list-style-type: none"> <li>• statutorily defined survivor</li> <li>• taxed at low "spouse" rate</li> </ul>	<ul style="list-style-type: none"> <li>• no inheritance through intestacy laws, with some exceptions</li> <li>• taxed at highest rate</li> </ul>	<ul style="list-style-type: none"> <li>• no inheritance through intestacy laws</li> <li>• taxed at highest rate</li> </ul>
Estate taxes	<ul style="list-style-type: none"> <li>• estate passes to surviving spouse tax-free</li> </ul>	<ul style="list-style-type: none"> <li>• estate must pay federal estate taxes</li> </ul>	<ul style="list-style-type: none"> <li>• estate must pay federal estate taxes</li> </ul>
Health insurance	<ul style="list-style-type: none"> <li>• benefits through spouse's health plan</li> <li>• employer contribution tax exempt</li> </ul>	<ul style="list-style-type: none"> <li>• benefits only if domestic partner policy includes cohabitators</li> <li>• employer contribution taxable income</li> </ul>	<ul style="list-style-type: none"> <li>• benefits only if domestic partner policy available</li> <li>• employer contribution taxable income</li> </ul>
Life insurance	<ul style="list-style-type: none"> <li>• automatically considered to have an insurable interest in spouse's life</li> </ul>	<ul style="list-style-type: none"> <li>• may have to prove insurable interest in cohabitor's life</li> </ul>	<ul style="list-style-type: none"> <li>• may have to prove insurable interest in partner's life</li> </ul>
Property insurance	<ul style="list-style-type: none"> <li>• property automatically jointly insured</li> </ul>	<ul style="list-style-type: none"> <li>• may only be able to jointly insure if jointly owned</li> </ul>	<ul style="list-style-type: none"> <li>• may only be able to jointly insure if jointly owned</li> </ul>
Housing availability	<ul style="list-style-type: none"> <li>• always considered to be "immediate family"</li> <li>• eligible for public housing</li> </ul>	<ul style="list-style-type: none"> <li>• may be denied rental housing</li> <li>• may be denied ability to buy cooperative housing</li> <li>• may violate lease as not "immediate family"</li> <li>• eligible for public housing</li> </ul>	<ul style="list-style-type: none"> <li>• may be denied rental housing</li> <li>• may not be able to buy cooperative housing</li> <li>• may violate lease as not "immediate family"</li> <li>• not eligible for public housing</li> </ul>
Mortgage/credit availability	<ul style="list-style-type: none"> <li>• discrimination prohibited</li> </ul>	<ul style="list-style-type: none"> <li>• discrimination prohibited</li> </ul>	<ul style="list-style-type: none"> <li>• joint mortgage may be difficult with no protection from discrimination</li> </ul>
Family dissolution	<ul style="list-style-type: none"> <li>• family court</li> <li>• community property and/or equitable distribution</li> </ul>	<ul style="list-style-type: none"> <li>• may be civil court depending on state</li> <li>• right to share of cohabitor's property tenuous</li> </ul>	<ul style="list-style-type: none"> <li>• civil court likely</li> <li>• no right to share of partner's property</li> </ul>
Taxation	<ul style="list-style-type: none"> <li>• married filing jointly lower tax rate</li> </ul>	<ul style="list-style-type: none"> <li>• individual higher tax rate unless "passing" as married</li> </ul>	<ul style="list-style-type: none"> <li>• individual higher tax rate</li> </ul>

(Jaff, 1988). States' anti-discrimination laws may not protect all cohabitators (Jaff 1988). MA and MN courts have allowed rental property owners to discriminate against unmarried couples, while an AK court did not ("Alaska supreme court...", 1995). If a lease limits occupancy to a tenant's immediate family, an unmarried couple may face eviction (Beattie 1991).

In general, individuals have higher income tax rates at both the state and federal levels. Not being able to pool itemized deductions for federal income tax purposes may well result in a higher overall tax burden for the unmarried couple. Couples who live in states with state income taxes face similar tax disadvantages.

#### Domestic partner policies

While spouses are always eligible for insurance coverage under an employer's benefit plan, only recently have domestic partner policies begun to extend this coverage to unmarried couples. Same-sex partners may have an advantage over heterosexual cohabitators as not all domestic partner policies apply to

cohabitators. The rationale is that cohabitators are choosing not to marry and could change their status at any time to qualify for benefits as spouses. Same-sex couples are prohibited from marrying and are therefore in a special category.

Domestic partner policies may require couples to meet certain criteria to prove their relationship. Similar proof is not required of married couples (Berger, 1991). Cohabitators who claim to be married generally are not required to provide proof of their status to obtain benefits, as the assumption is made that they are telling the truth (Berger, 1991).

Federal laws differentiate between spouses and domestic partners receiving benefits. Although an employer is required by law to extend health insurance coverage for the married worker and family after the worker leaves the employer, no comparable requirement exists to continue benefits for domestic partners. Moreover, any contribution an employer makes toward insurance or other benefits through a

Table 2  
 Economic Security Issues: Unmarried Couples Favored.

Issue	Spouses	Cohabitors	Partners
Taxation	• higher taxes if using standard deduction	• lower taxes overall if both using standard deduction	• lower taxes overall if both using standard deduction
Debts	• responsible debts of the marriage, especially in community property states	• responsible for own debts and those debts obtained jointly	• responsible for own debts and those debts obtained jointly
"Necessaries"	• responsible to provide	• not responsible	• not responsible

domestic partner policy is considered taxable income by the IRS.

### Unmarried Status Favored

Cohabitors and partners may experience favorable economic treatment through not being considered interdependent. Whether individual couples perceive these as advantageous would depend upon their circumstances. For example, unmarried couples have an economic advantage over spouses by not being responsible for each other's debts (Table 2). In community property states, spouses are responsible for all the debts of the marriage. In other states, both spouses are responsible for debts to provide the "necessaries" of life, and for debts where both spouses benefit (American Bar Association, 1990). Unmarried couples are responsible for only those debts that they incur as an individual or specifically incur together.

In the area of medical care, spouses face the potential for economic impoverishment from the cost of having one spouse institutionalized long-term. As neither partners nor cohabitators are responsible for each other's "necessaries," unmarried couples avoid the burden of being legally responsible for supporting an institutionalized lover, or for paying the cost of medical care during the final illness.

Based on current federal income tax laws, married couples may actually pay higher taxes than unmarried couples earning the same total income and using the standard deduction. Although individual tax rates are higher than those for spouses, combined income could push a married-couple-filing-jointly into a higher tax bracket.

### Financial Security Issues Related to Children

Spouses, cohabitators and partners all have the potential of being parents of children. And parents are required to support their children. When cohabitators have mutual children, they are treated no differently than a married couple. Gays or lesbians who have

biological or adopted children are the legal parents of those children. But the same-sex partner of the legal parent will have few rights, or obligations, regarding the child even if that person is considered by the child to be a parent (Table 3).

Child support may be the one area where married and unmarried persons are treated equally. Courts have ordered non-biological, non-adoptive "parents" to pay child support after a relationship has ended (e.g., Karin T. v. Michael T., 1985).

In most other areas of financial security, the key factor is legal parent status as children are considered dependent upon parents, not on other persons. Intestacy laws do not recognize "social" parents for inheritance purposes. Any inheritance through a will is taxed at the "stranger" rate rather than the undoubtedly lower direct lineage rate. A cohabiting father needs to be identified as the legal father in the way the state requires in order for children to inherit through state intestacy laws and to have inheritances taxed at the direct lineage rate (Weyrauch & Katz, 1985). A minor child would not be eligible to receive a minor's Social Security survivor or retirement benefit unless the deceased or retired partner or cohabitor was the legal parent.

Single people can adopt in all states. However, private adoption agencies may prohibit single people from adopting (Jaff 1988) or place them after married couples on waiting lists. State agencies, which do not discriminate based on marital status, may only place older children for adoption. Unmarried couples may not be able to adopt as a couple.

While homosexual individuals are not generally prohibited from adopting children,<sup>5</sup> the ability to form a legal relationship with a partner's child/ren is tenuous. Only in VT, NY, and MA have the states' highest courts found that the respective state adoption laws do not preclude unmarried partners from being considered together as parents (e.g., Adoption of Tammy, 1993; Dao, 1995). In eleven other states, lower courts have made similar rulings (Dao, 1995). These decisions are advantageous to the child's economic

Table 3  
Economic Security Issues Related to Children.

Issue	Spouses	Cohabitors	Partners
Social Security benefits	<ul style="list-style-type: none"> <li>• dependent child benefits from either parent</li> </ul>	<ul style="list-style-type: none"> <li>• dependent child benefits from either parent</li> </ul>	<ul style="list-style-type: none"> <li>• dependent child benefits from legal parent only</li> </ul>
Inheritances	<ul style="list-style-type: none"> <li>• statutorily defined survivor if parent dies intestate</li> <li>• taxed at low, direct lineage rate</li> </ul>	<ul style="list-style-type: none"> <li>• statutorily defined survivor if parent dies intestate</li> <li>• taxed at low, direct lineage rate</li> </ul>	<ul style="list-style-type: none"> <li>• statutorily defined survivor only if deceased is legal parent if parent dies intestate</li> <li>• taxed at low, direct lineage rate if legal parent; taxed at high, non-relative rate otherwise.</li> </ul>
Health insurance	<ul style="list-style-type: none"> <li>• coverage through policy of either parent's employer or individual "family" policy</li> </ul>	<ul style="list-style-type: none"> <li>• coverage through policy of either parent's employer</li> <li>• individual "family" policy may be available to cover all family members</li> </ul>	<ul style="list-style-type: none"> <li>• coverage through policy of legal parent only</li> <li>• individual "family" policy will cover legal parent and child only</li> </ul>
Adoption	<ul style="list-style-type: none"> <li>• always an option</li> </ul>	<ul style="list-style-type: none"> <li>• individuals may adopt</li> <li>• cohabitators adopting jointly may not be possible in every state</li> </ul>	<ul style="list-style-type: none"> <li>• individuals may adopt in 48 of the 50 states</li> <li>• only 3 states allow same-sex partners to adopt as joint parents</li> </ul>
Child support	<ul style="list-style-type: none"> <li>• parents required to support children</li> <li>• child support order at divorce mandatory</li> </ul>	<ul style="list-style-type: none"> <li>• parents required to support children</li> <li>• child support order at dissolution mandatory</li> </ul>	<ul style="list-style-type: none"> <li>• parent required to support children</li> <li>• former partner of parent may be ordered to pay child support</li> </ul>

well-being. For example, if the adoptive parent dies, the child would not only be able to inherit through the state's intestacy laws if no will was left, but the inheritance would be taxed at the lower rate for family members, and the child would be able to collect Social Security as a dependent of a deceased worker.

Employer health insurance policies, and individual so-called "family" policies, will only cover the child and legal parent. If the partner who is the child's legal parent is the one without employer-sponsored health insurance, the cost of an individual policy will be high. If neither partner has employer-sponsored health insurance available, the couple would not be able to buy a "family" policy to cover them all, but each adult would have to buy a separate individual policy at higher cost.

### Discussion and Conclusions

Family economists and financial practitioners (i.e., planners, counselors and educators) need to be aware of the economic security issues faced not only by married couple families, but also by unmarried couples and their families. While some heterosexual couples cohabit for a relatively short time before marrying or breaking up, others cohabit for long periods, commingling their lives into spouse-like interdependencies. Gays and lesbians, prohibited from legal marriage with their life partners, may also commingle their financial resources and decision making as symbolic of their commitment to each other. Families, no matter how they are constituted, are presumed to fulfill particular essential needs which

include the creation of an economic unit to provide for the necessities of family members (Jaff 1988). Family financial practitioners and the financial management literature both must recognize the unique issues facing both cohabitators and partners, and assist them in making informed decisions as an economic family unit interested in achieving financial security over the life course.

The similarities and difference among the three types of couples are not easily discovered. There has been very little research on the financial issues of unmarried couples. Information comes from anecdotes and legal journals. Individual states may have rules which apply to unmarried couples in vary narrow circumstances. Family economists and practitioners will need to explore the laws and court decisions of their states to determine where the variations exist.

A few of these problems can be mitigated through certain legal documents. A living-together agreement (Seff, 1995) provides a framework for who owns what and how property will be divided if the relationship ends. A will directs the distribution of property in the way each person desires. One way around the life insurance problem is for an unmarried person to insure his or her own life and name his or her partner or cohabitor as beneficiary (Seff, 1995). These remedies, however, offer only a limited range of security.

Unmarried couples, like single-parent families, should not be treated as deficient. Families of same-sex partners and heterosexual cohabitators are not "broken" or deviant, simply different. Family economists may need to make a conscious effort to

alter their own assumptions regarding "family" to facilitate the inclusion of unmarried couples in their paradigms.

While talking about these issues does nothing to resolve them, it does alert people to the differences in financial security whether they are currently part of an unmarried couple or contemplating it. The discussion of family economic well-being should encompass both same-sex families and cohabiting heterosexual families on the principle of equality, concern, and respect for all types of families.

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### Endnotes

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3. ID, FL, IL, MI, MS, NM, NC, ND, VA and WV.
4. AL, CO, GA, ID, IA, KS, MT, OH, OK, PA, RI, SC, TX and DC.
5. NH and FL have adoption prohibitions, and NH alone enforces the statute (RSA 170-B:4). Conversely, NY specifically prohibits excluding potential adoptive parents solely on the basis of homosexual orientation ("Homosexual parenting..," 1989).