THOMAS D. SHANAHAN P A

PRACTICING IN NEW YORK & FLORIDA

EDUCATIONAL GUIDE

Top Ten Issues for LGBTQ+ Elder & Estate Planning

What every LGBTQ+ person should know before choosing an elder law plan — grounded in research, built for Florida.

PROUD MEMBER OF

ELDER LAW COLLEGE

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Why This List Exists

Elder law and estate planning already involve difficult questions for every family: who makes decisions if you can't, who inherits, and how to pay for long-term care. For LGBTQ+ individuals and couples, those questions come with an additional layer of complexity — because the default rules built into most states' laws were written around a narrower definition of family than many LGBTQ+ people actually have.

Marriage equality since 2015 solved some of these problems, but not all of them — and it introduced new ones for people whose lives, families, and identities took shape before that year. This guide walks through ten issues we believe every LGBTQ+ person should think through when building or reviewing an elder law and estate plan, with particular attention to Florida law where it applies.

2.7M+
Americans 50+ identify as LGBT

4M+
projected by 2030

11%
receive care from biological family

A Case in Point

Recent family law scholarship describes a scenario that captures nearly every issue on this list at once. A gay man and his partner of several decades — together since long before marriage equality existed — had put reciprocal powers of attorney in place naming each other as agent for health care and finances. Years later, a health crisis required hospitalization. The man's adult daughter from an earlier marriage, who had never accepted her father's relationship, moved him out of state, cut off contact with his partner without telling him, destroyed the existing power of attorney, and had her father sign new documents naming her as his health care decision-maker instead. It eventually took an advocate and a pro bono elder law attorney to help him reestablish his legal rights and reconnect with his partner — though the two never lived together again.

The case illustrates, in a single story, why this list exists: reliance on documents drafted before marriage equality, coercion and undue influence by an unaccepting family member, disregard for existing legal instruments, and the practical invisibility LGBTQ+ elders can face even after doing everything the standard advice recommends.

Adapted from Wayland, S., Candrian, C., & Mars, L. (2026). Elder Justice: Considerations for LGBTQ+ Family Systems. Family Court Review, 64(2), 254–267.

The Current Landscape in Florida

This guide exists in a specific moment. Drawing on tracking by Equality Florida, the Human Rights Campaign, and Lambda Legal, the legal environment for LGBTQ+ people in Florida has grown measurably more volatile in recent years — and that volatility is precisely why proactive, non-marital, well-documented planning matters as much as it does. A plan built to withstand a shifting legal landscape doesn't depend on which laws are in effect this year.

46th
of 50 states, 2026 LGBTQ+ Business Climate Index

4 of 5
2026 anti-LGBTQ+ bills stopped by public advocacy

8–1
SCOTUS ruling narrowing conversion therapy bans

RECENTLY ENACTED OR LITIGATED FLORIDA LAW

"Anti-Diversity in Local Government" (SB 1134/HB 1001) — passed 2026
Restricts cities and counties from actions recognizing sexual orientation or gender identity — Pride events, LGBTQ+ cultural competency training, existing DEI programs — with officials threatened with removal from office. Effective January 1, 2027; carve-outs secured for the Pulse Memorial and Pride festival permitting.

SB 254 (2023) — gender-affirming care restrictions
Banned Medicaid coverage of gender-affirming care and restricted care for minors. A trial court struck down the Medicaid ban and enjoined the minors' ban, but Florida's appeal remains active in the Eleventh Circuit as of 2026 — the legal status remains genuinely unsettled.

HB 1557, "Don't Say Gay or Trans" (2022)
Remains in effect after a federal court declined to block it; restricts classroom instruction on sexual orientation and gender identity.

> **A national ruling worth watching:** In *Chiles v. Salazar* (March 31, 2026), the Supreme Court ruled 8–1 that a conversion-therapy ban, as applied to a licensed counselor's talk therapy, must survive strict First Amendment scrutiny. Florida has no statewide ban to begin with; this ruling makes local Florida ordinances banning the practice more vulnerable, and signals tougher judicial review of LGBTQ-protective laws nationally.

Why this belongs at the front of this guide: none of this is presented to alarm — it's the actual operating environment this guide's recommendations are built for. Laws affecting local recognition, health coverage, and workplace protections have changed multiple times in recent years, sometimes within a single session. Estate planning documents don't depend on the legislature's next session or the next court ruling — they're the part of this picture you can lock in today.

Sources: Equality Florida (eqfl.org); Human Rights Campaign, 2026 State Equality Index; Lambda Legal Florida litigation library; Chiles v. Salazar, 607 U.S. ___ (2026); 2026 Florida LGBTQ+ Business Climate Index.

The Research at a Glance

This guide draws on peer-reviewed research on LGBTQ+ aging and elder justice — principally a 2026 *Family Court Review* article by Sherrill Wayland, Carey Candrian, and Lori Mars, a landmark 2010 policy analysis by the Movement Advancement Project (MAP), SAGE, and the Center for American Progress, and data from the National Center on Elder Abuse. Three findings matter most.

Three pillars, compounding failures. Successful aging rests on financial security, health & health care, and social support. Policy and social barriers rarely hit just one — they erode all three at once, and the damage compounds.

Isolation carries a measurable health cost. Over 10% of LGBTQ+ elders surveyed in one national study had only one person, or no one, in their social network — and network size is a documented predictor of general health outcomes.

Not only an LGBTQ+ problem. Almost one-third of all Americans 65+ are widowed, and 4% never married — most aging-policy systems assume a married heterosexual couple that doesn't describe a large share of elders generally.

Chosen family fills a structural gap. LGBTQ+ elders are twice as likely to live alone and four times as likely to be childless as heterosexual peers — yet only 11% receive care directly from biological family.

ELDER ABUSE, BY THE NUMBERS

1 in 10
older Americans abused annually

50%+
of abuse is by family / trusted others

1 in 24
cases are ever reported

22.1%
LGBT 60+ harmed by a caregiver

Sources: Wayland, Candrian & Mars (2026); Adams, Krehely & Mushovic (2010), Movement Advancement Project; Fredriksen-Goldsen (2016); Bloemen et al. (2019); Kim et al. (2024); Atkinson & Roberto (2023).

PART ONE

The Ten Issues Worth Planning Around

Ranked roughly from foundational to situational — though all ten deserve a place in a complete plan.

1. Marriage's Protections Aren't Permanent

Obergefell v. Hodges remains the law of the land, with no case currently before the U.S. Supreme Court to overturn it. But the legal landscape around it is not as settled as many assume. Florida's own statutory and constitutional bans on same-sex marriage were never repealed — they simply became unenforceable the moment *Obergefell* was decided, and would technically remain "on the books" if that decision were ever narrowed.

The federal Respect for Marriage Act (2022) requires every state to recognize a same-sex marriage validly performed elsewhere — but it doesn't guarantee any state keeps issuing new licenses. The lesson isn't to panic; it's to build a plan on documents that don't depend on marital status alone.

PRACTICAL STEPS TO CONSIDER

- ☑ Don't rely on marriage alone for hospital visitation, medical decision-making, or inheritance rights.
- ☑ Keep non-marital backup documents (POA, health care surrogate, will/trust) current regardless of marital status.
- ☑ If marrying in Florida, know the marriage remains valid nationwide under federal law even if the legal landscape shifts later.

> **Does marriage last?** The Williams Institute (UCLA) finds same-sex couples divorce at rates similar to, or slightly lower than, different-sex couples overall (1.1% vs. ~2% annually). That average hides a consistent gender gap, though: lesbian couples divorce at roughly twice the rate of gay male couples across the UK, Norway, and Sweden. See Appendix J for the full picture.

2. Chosen Family Has No Legal Standing

This is the single most common theme across every resource on LGBTQ+ elder law planning. Absent documents that say otherwise, Florida law — like every state's — recognizes only biological and legal family for hospital visitation, medical decision-making, and inheritance when someone dies without a will. A partner of thirty years with no marriage certificate and no documents has, by default, no legal standing at all.

The fix requires action: a Durable Power of Attorney, a Designation of Health Care Surrogate, a HIPAA authorization, and a Preneed Guardian Declaration together ensure the people you've actually chosen — not a court's default list — hold authority when it matters. One gap people miss: without a written designation, Florida's default priority for authorizing burial or cremation runs through next-of-kin, not a partner (F.S. 497.005 lets you name your own agent).

2×	4×	11%
as likely to live alone	as likely to be childless	get care from biological family

PRACTICAL STEPS TO CONSIDER

- ☑ Execute a Durable Power of Attorney naming your partner or chosen family member as agent.
- ☑ Execute a Designation of Health Care Surrogate and HIPAA authorization for real access.
- ☑ File a Preneed Guardian Declaration so a court knows your choice if guardianship becomes necessary.
- ☑ Sign a written designation naming who controls disposition of your remains (F.S. 497.005).

3. Audit Every Beneficiary Designation

A will controls what passes through probate — but retirement accounts, life insurance, and payable-on-death accounts pass by beneficiary designation, which overrides the will entirely. This is a particularly common issue for LGBTQ+ elders previously married to an opposite-sex spouse before coming out, or who set up accounts decades before meeting a current partner: the old form is often still on file, quietly routing assets to an ex-spouse or estranged relative.

PRACTICAL STEPS TO CONSIDER

- ☑ Request a current beneficiary summary from every account and policy.
- ☑ Update any designation still naming a prior spouse or unintended family member.
- ☑ Recheck designations after every major relationship change.

4. Plan for a Contest From Unaccepting Family

LGBTQ+ clients disproportionately face the risk of a will or trust contest brought by biological family members who disapprove of a partner or chosen-family beneficiary, typically framed as claims of incapacity or undue influence. The best defense is built at signing, not after a dispute arises.

PRACTICAL STEPS TO CONSIDER

- ☑ Use disinterested witnesses (not beneficiaries) at every signing.
- ☑ Consider a signed Statement of Testamentary Intent explaining your wishes in your own words.
- ☑ In higher-conflict families, consider a contemporaneous physician's capacity note.

5. Vet Long-Term & In-Home Care

Discrimination against LGBTQ+ residents in long-term care and elder housing is documented and ongoing. A landmark investigation by the Equal Rights Center found that **48% of older same-sex couples** who applied for elder housing were subjected to discrimination, and separate research found 25% of transgender older adults have experienced housing discrimination.

It isn't only facilities, either. Because LGBTQ+ elders are less able to rely on family caregiving, they depend more heavily on in-home providers — and fear of a hostile home health aide can push someone to delay care indefinitely, or move into a nursing home earlier than medically necessary. The same vetting questions apply to a home care agency as to a facility.

48%
of same-sex couples faced housing discrimination

25%
of transgender elders report housing discrimination

41%
worry they'll need to hide who they are

PRACTICAL STEPS TO CONSIDER

- Ask whether a facility or agency has SAGECare credentialing or is on the Long-Term Care Equality Index.
- Ask to see written non-discrimination, visitation, rooming, and complaint policies before move-in.
- Visit in person, or request a trial in-home visit, and observe how staff interact with LGBTQ+ residents.

6. Transgender-Specific Documentation

Beyond the basics that apply to everyone, transgender elders benefit from a few added layers: consistent legal name and gender marker across ID, insurance, and legal documents avoids friction at hospital intake, and an advance directive addendum addressing continuation of gender-affirming care, correct name/pronoun use, and room-assignment preferences ensures none of this is left to chance.

PRACTICAL STEPS TO CONSIDER

- Confirm legal name and gender marker are consistent across all documents.
- Add a gender-affirming care addendum to your health care advance directive.
- Discuss room-assignment and pronoun preferences with any facility before an emergency makes it urgent.

7. Reinforce Parentage

Many LGBTQ+ families include children born or adopted before marriage equality, or in a state slow to recognize both parents. Marriage generally establishes parentage today, but that protection is only as durable as the marriage recognition it depends on — a second-parent adoption or parentage judgment is a second, more durable layer.

PRACTICAL STEPS TO CONSIDER

- If parentage was never formally confirmed, consider doing so even if already married.
- Name the non-biological parent explicitly in your estate documents.

8. Check for Missed Social Security History

Couples together for years or decades before marriage was legally possible sometimes lost access to spousal or survivor Social Security benefits simply because marriage wasn't an option yet. This is a narrow but real issue worth having reviewed specifically rather than assumed away.

PRACTICAL STEPS TO CONSIDER

- Have a long-term relationship predating 2015 reviewed for benefit eligibility.
- Gather documentation of the relationship's duration in case it becomes relevant.

9. LGBTQ+ Veterans & Discharge Status

Veterans discharged under "Don't Ask, Don't Tell" or earlier policies solely for their sexual orientation sometimes carry a less-than-honorable discharge that blocks VA benefits — including VA Aid & Attendance, which can meaningfully offset long-term care costs. A discharge upgrade process exists and is worth exploring.

PRACTICAL STEPS TO CONSIDER

- If discharge was related to sexual orientation, look into the upgrade process before assuming ineligibility.
- Factor potential VA Aid & Attendance into long-term care funding once discharge status is resolved.

10. Isolation Is the Biggest Predictor of Exploitation

Elder financial exploitation is far more common than most families realize — roughly one in five older adults experiences it. Smaller support networks, estrangement from biological family, and the loss of a longtime partner all raise that risk further for LGBTQ+ elders. Exploitation by someone trusted tends to follow recognizable patterns: theft, misuse of power-of-attorney authority, duress, deception, or undue influence.

1 in 5	22.1%	60%+
older adults experience financial exploitation	of LGBT 60+ harmed by a caregiver	experienced psychological abuse

PRACTICAL STEPS TO CONSIDER

- Put a Preneed Guardian Declaration and Trusted Contact Person designation in place before they're needed.
- Build a "circle of trust" of multiple, unrelated visitors so no single person controls contact.
- Enable bank alerts for large or unusual transactions, and never share account credentials.
- Connect with SAGE or a local Area Agency on Aging for ongoing community support.

PART TWO

Quick Reference & Resources

The figures, checklists, and organizations behind the guidance above — built for easy reference when you need it.

Long-Term Care Community Tour Checklist

Bring this along on tours and phone calls — skilled nursing, assisted living, memory care, or hospice. The same questions apply across every setting.

- [ ] The written non-discrimination policy explicitly names sexual orientation, gender identity, and expression.
- [ ] The visitation policy protects resident choice, including chosen family and same-sex partners.
- [ ] The rooming policy explains how couples and transgender or nonbinary residents are supported.
- [ ] Staff can clearly explain how complaints and bias incidents are handled.
- [ ] Intake forms allow for the name a resident actually uses and correct pronouns — regardless of legal name.
- [ ] Staff can describe specific LGBTQ+ cultural competency training, not just general sensitivity training.
- [ ] Programs, activities, and common spaces feel affirming rather than narrowly gendered.
- [ ] Direct questions about LGBTQ+ inclusion get a respectful, concrete answer rather than deflection.
- [ ] You can picture living there without needing to hide important parts of who you are.

If a community doesn't check every box: in rural areas or regions with fewer options, no community may check every box. Use the list to decide which protections matter most, compare realistic options, and identify where extra advocacy may be needed after move-in.

Source: adapted from SAGE's Checklist for Finding an LGBTQ+ Inclusive Long-Term Care Community, National Resource Center on LGBTQ+ Aging.

Florida Elder Law & Medicaid Figures (2026)

Durable Power of Attorney
Takes effect immediately under F.S. 709.2101; two witnesses plus notarization.

Health Care Surrogate & Living Will
Names your medical decision-maker (F.S. 765).

Preneed Guardian Declaration
Names your choice of guardian in advance (F.S. 744.3045).

Medicaid Asset Protection Trust
Shields assets after 5 years; you can't serve as trustee or touch principal.

Disposition of Remains Designee
Names who controls funeral/burial decisions (F.S. 497.005).

Income cap (single)	**$2,982/mo**
Asset limit (single)	**$2,000**
Community Spouse Resource Allowance	**$162,660**
Spousal income allowance	**$4,066.50/mo**
Home equity exemption	**$752,000**
Personal needs allowance	**$160/mo**
Penalty divisor (2026)	**$10,645**
Look-back period	**60 months**

The cost of care: semi-private ~$10,000–$10,500/mo; private ~$11,500–$12,000+/mo, higher in South Florida.

Figures adjust annually — confirm current numbers with a Florida elder law attorney before relying on them.

Predator & Exploitation Protection Reference

Built for elders with limited support networks — a description that fits many LGBTQ+ elders whose chosen family may be smaller than a biological network, or who are estranged from biological relatives entirely.

RISK SCREENING FLAGS

- ☑ Lives alone or has no daily in-person contact with trusted family or friends.
- ☑ Estranged from biological family — common among LGBTQ+ elders.
- ☑ A new romantic interest, "caregiver," or friend is pushing for exclusivity or secrecy.
- ☑ Unexplained account withdrawals, new authorized users, or missing property.

PROTECTIVE SAFEGUARDS

Trusted Contact Person & transaction alerts
Banks can notify a designated contact and delay suspicious transactions.

Written Caregiver Agreement
Fair-market pay and defined duties distinguish real care from exploitation.

Representative Payee (Social Security)
A trusted person manages SS income, with mandatory SSA accounting.

Marriage-related protections
An irrevocable trust funded before any future marriage, plus a Statement of Testamentary Intent.

Circle of trust
Multiple, rotating, unrelated visitors so no single person controls contact.

> **Florida law (F.S. 415)** requires anyone who suspects exploitation of a vulnerable adult to report it: **1-800-96-ABUSE**.

Where These Issues Reach Family Court

Family law scholarship identifies a recurring set of contexts where LGBTQ+ elder issues reach a courtroom. None are unique to LGBTQ+ families, but each carries added risk when chosen family has no automatic legal recognition.

Estate Planning
Wills naming chosen family are sometimes challenged by excluded biological relatives.

Financial Insecurity
A lifetime of income disparities compounds uncertainty over decision-making authority.

Property Ownership
Property titled in one partner's name can leave the other exposed to a challenge.

Medical & Nursing Visitation
Policies sometimes restrict access to "immediate family" only.

Medical Emergencies
Hospitals may default to an estranged relative instead of a partner.

Abuse in Long-Term Care
Staff discomfort with LGBTQ+ status can itself become a vector for neglect.

Beneficiary Designations
Life insurance and pensions sometimes default to next-of-kin over a partner's wishes.

Custody, Visitation & Guardianship
LGBTQ+ grandparents can be cut off, and family can petition to exclude a partner.

Source: adapted from Wayland, Candrian & Mars (2026), Family Court Review.

What Marriage Equality Changed & Didn't Fix

In 2010, years before marriage equality existed nationally, MAP, SAGE, and the Center for American Progress cataloged exactly how federal and state law shortchanged LGBT elders. Here's what *Obergefell* (2015) resolved — and what it didn't.

RESOLVED FOR MARRIED COUPLES

- **Social Security spousal & survivor benefits** — now equal for legally married spouses.
- **Medicaid spousal impoverishment protections** — now apply equally.
- **Pension & retirement plan inheritance** — equal spousal rollover rights.
- **Estate tax marital deduction** — applies equally to a surviving spouse.
- **Health insurance taxation** — spousal coverage no longer taxed as extra income.
- **Disposition of remains** — a spouse now generally holds default priority.

WHAT'S STILL UNRESOLVED

For unmarried couples, none of this changed. Every protection at left depends on legal marriage. Many LGBTQ+ elders remain unmarried after decades together — this is exactly why the non-marital tools throughout this guide matter as much as marriage itself.

Some gaps were never about marital status. Family/medical leave, exclusion from mainstream aging programs, and unfamiliar health care environments were never marriage-dependent — see Items 2, 5, and 10.

Source: Adams, Krehely & Mushovic (2010), MAP/SAGE/CAP; updated to reflect Obergefell v. Hodges (2015).

Health Considerations for Early Planning

A power of attorney or health care surrogate is only valid if you have legal capacity when you sign it. Several well-documented health patterns make starting that paperwork in your 40s and 50s — not your 60s or 70s — a genuinely different calculation for LGBTQ+ people.

29%	50%+	76%	28%
more likely to report subjective cognitive decline	of Americans with HIV are 50 or older	worried about finding inclusive long-term care	have actually done any LTC planning

Cognitive decline & dementia risk
LGB adults were roughly twice as likely to report early dementia symptoms in one national study, linked to cumulative "minority stress." Sign your POA and health care surrogate well before they might be needed.

HIV & accelerated aging
Long-term survivors develop cardiovascular, bone, and cognitive comorbidities at younger chronological ages — the planning timeline for a 65-year-old may need to start considerably earlier.

The "needing while avoiding" paradox
LGBTQ+ elders need long-term care at higher rates, yet are more reluctant to access it out of fear of discrimination — making an advance plan more important, not less.

Long-term care insurance
Cash-indemnity policies restore choice of provider; many carriers offer domestic-partner discounts without requiring marriage; transgender applicants should work with an experienced broker.

This is general health information, not medical advice. Sources: Flatt et al. (2018); Hsieh & Liu (2021); UCLA Health (2022); Moone (2023); State of LGBTQ+ Aging Study (SAGE).

Same-Sex Divorce & Relationship Dissolution Data

A common question in planning conversations: do same-sex marriages last as long as different-sex marriages? The Williams Institute at UCLA — the leading academic center on LGBTQ demographic research — gives a fairly clear answer at the aggregate level, and a more nuanced one once the data is split by gender.

1.1%
annual same-sex dissolution rate (Williams Institute)

~2%
annual different-sex divorce rate, same period

2×
lesbian vs. gay male divorce rate, across countries

WITHIN SAME-SEX COUPLES: A CONSISTENT GENDER GAP

United Kingdom
Lesbian couples divorced at about 14% vs. 7% for gay male couples over the same period.

Norway (2022 study, data through 2018)
20 years post-marriage: divorce risk 5% lower for male-male couples, 29% higher for female-female couples, vs. different-sex couples.

Sweden (1995–2012)
30% of both male same-sex and heterosexual marriages ended in divorce, versus 40% for female same-sex marriages.

> **Transgender people:** no comparable national rate exists. As UCLA researchers noted in 2019, there is relatively little research on relationship dissolution among transgender people specifically, and no agency tracks a population-level "transgender divorce rate." Existing research instead examines what happens to a marriage when one spouse transitions during it — a different question entirely.

A note on data quality: *many websites on this topic list hyper-specific statistics attributed to vague, untraceable sources. Those were excluded here. Figures above come only from the Williams Institute, the UK Office for National Statistics, and peer-reviewed demographic studies (Andersson et al. 2022; Statistics Sweden).*

Local & National Resources

WILTON MANORS & FORT LAUDERDALE

The Pride Center at Equality Park

South Florida's largest LGBTQ+ community center — weekly Coffee & Conversation, SAGEWorks tech training, fitness classes.

2040 N. Dixie Hwy, Wilton Manors • (954) 463-9005

The Poverello Center

Nutritional assistance for those living with HIV/AIDS — relevant for long-term survivors aging into their 60s and 70s.

(954) 561-3663 • poverello.org

SunServe

Senior Care Management linking older adults to medical, social, financial & housing resources; free senior day-care.

(954) 764-5150 • sunserve.org

SAGE at Sunshine

SAGE's Friendly Visitor program for homebound LGBTQ+ elders, based at Sunshine Cathedral.

sageusa.org/friendlyvisitors-fl

NATIONAL ORGANIZATIONS & HOTLINES

SAGE / SAGECare / National Resource Center on LGBTQ+ Aging	**sageusa.org**
Long-Term Care Equality Index	**hrc.org**
Lambda Legal	**lambdalegal.org**
Eldercare Locator / Adult Protective Services	**1-800-677-1116**
National Elder Fraud Hotline	**1-833-372-8311**
Florida Elder Helpline	**1-800-963-5337**
Florida Abuse Hotline	**1-800-96-ABUSE**

Thomas D. Shanahan, P.A. — Practicing in New York & Florida
Florida: 2301 Wilton Drive, Suite C1A, Wilton Manors, FL 33305 | New York: 60 East 42nd Street, 46th Floor, New York, NY 10165
Office: (954) 759-3695 | info@shanahanlaw.com | shanahanlaw.com