

Post-DOMA Financial Planning for Non-Traditional Families

On June 26, 2013, the United States Supreme Court ruled in the case of *U.S. v Windsor* that Section 3 of the Defense of Marriage Act (DOMA) was unconstitutional. This section of DOMA had specifically identified marriage as between one man and one woman. In this ruling, the Supreme Court struck down a law that made it impossible for a legally married same-sex couple to receive federal marital and estate tax deductions, as well as other benefits like Social Security spousal and survivor benefits.

Over 1100 federal rights and obligations available to married couples nationwide have become available to same-sex couples who are legally married in the 12 states and the District of Columbia that allow and recognize such marriages.

Since Washington has legally recognized same sex marriage as a result of last November's election results, many Washington same sex couples are now facing a significant change in the status quo of financial planning. There are several key areas that will change for same sex legally married couples.

Health Insurance—Prior to this ruling, many states and employers offered health insurance coverage to domestic partner and same sex spouses, but since a same sex spouse wasn't recognized by the federal government an employee who had health insurance for his or her same sex spouse couldn't receive the same tax treatment for the insurance premiums. In fact, the additional premium for the same sex spouse was taxable to the employee as imputed income if the employer paid the premium because the employer was technically giving something of value to that employee for someone who wasn't considered to be related to them. Many employers chose to "gross-up" the contribution to compensate the employee for the additional tax on this employee benefit. Now, the same sex couple can be treated the same as an opposite sex couple with respect to health insurance premiums.

Federal Income Tax Filing—Since DOMA did not federally recognize marriage between same sex couples even in states where their marriage was legal, that couple was unable to jointly file their federal income taxes. This means that higher-earning same sex couples may have had larger tax bills since each spouse was required to federally file "Single" returns. Itemization, exemptions, and other deductions available to conventionally married couples were only available at a higher threshold for two single filers. In addition, under DOMA a same sex married couple who had one wage earner providing all living expenses for the "stay-at-home" spouse may be required to furnish a Form 1099 for the amount of income provided to that spouse, who in turn would be required to pay tax on that income. The repeal of DOMA would allow these couples to receive the same tax benefits as opposite sex couples.

Transfer of Property—A married opposite sex couple has had the ability to transfer an unlimited amount of property between each other without owing federal gift tax. For example, if a husband in a conventional marriage chose to purchase his wife a \$40,000 sports car he may do so without any recourse. If a same sex couple did the same thing, the amount over the federal gift tax exemption of \$14,000 would be subject to gift tax, and the spouse purchasing the gift would be required to file a gift tax return and pay taxes on \$26,000. In the same way, the death of a spouse in an opposite sex marriage allows the surviving spouse to receive all property of his or her deceased spouse without paying federal estate tax. Since DOMA prohibited recognition of same sex marriage, a surviving spouse in a same sex marriage would potentially face estate taxation of assets left by the deceased spouse's estate. Those assets could potentially be taxed again at the death of the surviving same sex spouse.

Social Security—A married opposite sex couple has certain rights under Social Security. These include Spousal and Survivor benefits which are designed to provide for a spouse at retirement and at the death of a spouse. A legally married same sex spouse could not receive any spousal retirement or survivor benefits. The repeal of DOMA will provide the same benefits to any legally married couple.

Family and Medical Leave Act—Under this federal law, an employee may take up to 12 weeks of unpaid leave to care for a spouse with a serious medical condition, and to take a job-protected leave for the birth or adoption of a child, or to care for a child who has a serious health condition whether or not the child is biologically related to the employee. A same sex couple did not have the rights under FMLA except to care for a child. This Supreme Court ruling would grant equality to married spouses, both same sex and opposite sex under this federal Act.

Pension and Retirement Beneficiary – In a situation where a married individual fails to designate a beneficiary for their retirement or pension plan; current laws determine that individual's spouse to be the legal beneficiary of these funds. This was not the case with married same sex couples under the DOMA rules. With the repeal of Section 3 of DOMA, a legally married same sex spouse will now be considered the legal beneficiary when no other beneficiary exists.

These are but a few of the many changes in the law that will occur as a result of the overturn of DOMA. An additional factor that a domestic partnership or same sex couple should consider is that the Supreme Court failed to overturn Section 2 of DOMA. This section allows each state to determine the legality of same sex marriage. So, the Supreme Court essentially determined that legally married same sex couples were constitutionally entitled to equality under federal consideration of various laws and statutes governing married couples, but every state still has the power and right to determine who may legally marry.

There will be many issues that will still have to be determined and many laws re-written to reflect these changes. A person or couple who is affected by these changes should consult their tax advisor, legal professional and financial advisor to determine what changes in their personal financial plan may need to be made. The repeal of DOMA raises almost as many questions as it provides answers. There will be an ongoing tide of legislation and debate as state and federal legislators work to clarify and streamline current laws.

Solid planning is important for any individual or couple with respect to their long-term financial needs and goals. Couples who fall outside of conventional laws governing issues discussed here as well as many others, should carefully consider their options and rights. Many people in a committed relationship are not aware that their wishes for their loved ones may not comply with the law. There are ways to properly structure one's financial plan using wills, trusts, beneficiary designations, and the like. A careful review of an individual's or couple's plans—especially in light of the new legal rulings discussed here—should take on a new priority in personal financial planning.

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