

Snowden Perspectives: *Implications of DOMA's Demise*

Reassessing financial strategies in the post-DOMA environment

July 2013

Executive Summary

- The Defense of Marriage Act (DOMA) was ruled unconstitutional, giving legally married same-sex couples across the country access to equal federal benefits
- Implications of new spousal and survivor benefits on retirement planning
- Complexities around tax treatment in gift and estate planning

On June 26, 2013 the Supreme Court ruled in *United States v. Windsor* that Section 3 of the federal Defense of Marriage Act (DOMA) is unconstitutional. DOMA defined marriage as a legal union between a man and woman and banned the federal government from recognizing same-sex marriages, despite being legal in various states, as marriage under federal law.

With the recent decision striking down DOMA, legally married same-sex couples are now entitled to the same federal benefits as heterosexual couples. This landmark decision has significant implications for legally married same-sex couples in their financial planning as they gain access to over 1000 federal benefits involving marital status, including but not limited to:

- Spousal benefits, including federal government employees' spousal pension and healthcare benefits, and military, veteran and Social Security spousal benefits
- Ability to file joint federal income tax returns
- Survivor benefits upon death of a spouse
- Marital deduction for gift and estate taxes

For the purpose of discussing these federal benefits for legally married same-sex couples, "legally married" status is defined by marriage in a state that recognizes same-sex marriage and residency in a state that recognizes same-state marriage. Section 2 of DOMA was not recently reviewed, so it is still legal for states to refuse to recognize same-sex marriages performed in other states. There are currently 13 states and the District of Columbia that do recognize marriage equality. Clarity has yet to be determined around accessing spousal-related federal benefits for same-sex couples in states that do not recognize same-sex marriage.

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About Snowden

Snowden is an independent wealth advisory firm. We embrace open-source solutions and deliver client-focused advice. For our clients, that means we can advise on their assets no matter where they are held and source appropriate investments to best meet their goals.

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Leah is Partner and Vice President at Snowden, where she provides advisory, brokerage and investment management services to Snowden's wealth advisory clients. Leah joined Snowden from Merrill Lynch where she was an integral part of The DiCiaccio Team since 1996. As a Client Associate, she was responsible for providing the group's clients with attentive service and support. In 2008, she became a Financial Advisor and lead relationship manager, providing wealth-planning advice and guidance to help clients achieve their goals. Working to consistently exceed expectations, Leah cultivates strong relationships with clients and organizes strategy implementation. She has earned the Chartered Retirement Planning CounselorSM (CRPC®) designation, as well as the CERTIFIED FINANCIAL PLANNER™ designation awarded by the Certified Financial Planner Board of Standards, Inc.

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Spousal Eligibility

Until now, same-sex couples, despite being legally married in their home state, have not been recognized as spouses at a federal level. Although couples may have been married under state law, they have been required to file federal tax returns as separate individuals. Legally married same-sex couples have been denied a marital deduction for gift and estate taxes, so they have had a significantly higher tax rate for transferring assets to their spouse in comparison to heterosexual married couples. Same-sex couples have been denied access to their spouse's social security benefits upon death. With the removal of DOMA and its restrictions, same-sex legally married couples now have eligibility for equal federal benefits.

Legally married same-sex couples are now eligible for spousal benefits, including the Family Medical Leave Act, Veteran Spouses Benefits, Medicare and Social Security. Employer-sponsored health benefits should be reviewed to determine which spouse's plan will be more cost effective or offer more coverage.

Gift and Estate Planning

With the DOMA restrictions lifted, legally married same-sex couples may engage in gift and estate planning practices without pre-existing tax penalties. As spouses, they are exempt from gift tax when transferring assets to each other.

In the event of a spouse's death, legally married same-sex couples now have equal federal tax treatment. Survivor benefits will allow legally married same-sex couples to access the marital deduction on estate taxes that they have previously been denied. This change may not only affect spouses of same-sex marriages, but their beneficiaries as well. Many of these benefits play a significant role in retirement planning.

Retirement Planning

With new access to federal benefits for legally married same-sex couples, spousal retirement strategies may need to be adapted to reflect these changes. The ability to file joint tax returns may have a significant effect on couples' savings as their tax bracket may be altered with combined incomes. Social Security benefit strategies, such as "file and suspend" can be implemented, where appropriate.

Life insurance policies, often used to compensate for missed spousal death benefits, should be reviewed for possible coverage changes. These examples, and many others, can make a significant impact on a couple's retirement plan and lifestyle.

Tax Implications

Numerous tax implications and benefits may now apply to legally married same-sex couples. For example, the allowable exclusion from gross income of gain on the sale of a primary residence is \$250,000 for an individual and \$500,000 for a joint return. The previous inability to file a joint federal return may have resulted in a couple receiving a smaller exclusion on the gains from the sale of a primary residence. Tax preparation should be simpler and less expensive as tax advisors no longer need to prepare multiple returns to comply with DOMA. Couples should explore with their tax advisor the possibility of a tax refund for the last three years.

Snowden Can Help

Snowden is well positioned to advise couples and individuals regarding financial planning, investment strategies and trust and estate issues. By removing barriers imposed by DOMA, the federal government has granted legally married same-sex couples the opportunity to achieve greater flexibility and security in their financial affairs. Married couples should reassess their financial and estate planning in this new environment. As an independent wealth advisory firm, we help our clients define their financial objectives and develop plans to help them achieve their goals.