



Supreme Court Strikes Down Defense of Marriage Act: What Does it Mean for Your Planning?

Syracuse, New York

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The United States Supreme Court recently issued its decision in *Windsor v. United States*, striking down as unconstitutional Section 3 of the Defense of Marriage Act (DOMA) that defined “spouse” as “a person of the opposite sex who is a husband or wife”.

Background

The *Windsor* case involved a New York resident, Edith Windsor, who had legally married her same sex spouse, Thea Spyer, in Canada in 2007. When Spyer died in 2009, she left her entire estate to Windsor. Windsor filed an estate tax return claiming the estate tax marital deduction for all of Spyer’s property that passed to Windsor. Because of DOMA, the Internal Revenue Service (IRS) could not recognize the marriage between Windsor and Spyer and denied the marital deduction. Windsor filed suit in Federal Court in New York claiming that the provision of DOMA that restricted federal rights derived from marriage to heterosexual couples was unconstitutional. Both the District Court in New York and the Second Circuit Court of Appeals found in Windsor’s favor. On June 26, 2013, the United States Supreme Court held that Section 3 of DOMA is unconstitutional and that the regulation of marriage should be left to the states.

What does that mean for same sex couples living in New York?

In 2011, New York passed the Marriage Equality Act, which requires the State to legally recognize same sex marriages in New York and those legally allowed in other states and countries. Because DOMA no longer bars federal recognition of a legal marriage in New York, a valid legal marriage between same sex partners in New York is also a valid legal marriage for federal purposes. For estate planning purposes, same sex couples residing in New York are now treated the same as opposite sex married couples with respect to state and federal rights, entitlements, and obligations, including:

- Claim Social Security survivor benefits;
- Treatment as married for purposes of Medicare and Medicaid eligibility;
- Allow a surviving spouse as the beneficiary of qualified retirement plan or individual retirement account (IRA) assets to “roll over” the assets into an IRA for the surviving spouse;
- Claim the marital deduction for gift and estate tax purposes, which allows property to pass outright to a spouse or to a qualified terminable interest property (QTIP) trust without being subject to gift or estate tax;
- Elect portability of a deceased spouse’s unused exclusion amount; and
- Split gifts to third parties for annual exclusion purposes.

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**Estates & Trusts Practice Group Alert****Supreme Court Strikes Down Defense of Marriage Act:
What Does it Mean for Your Planning?****What about outside of New York?**

The Supreme Court left it to each state to regulate marriage within that state. In New York, the District of Columbia, and the other 12 states that permit same-sex marriage, the Federal Government will respect those marriages for purposes of federal law. However, in the 36 states that have banned same-sex marriage, a same sex couple will not be recognized as married for state or federal purposes.

Although the Supreme Court struck down the provision of DOMA that restricted rights and privileges under federal law to only heterosexual married couples, the Court was not asked to consider Section 1 of DOMA, which provides that states do not need to give "full faith and credit" to a same sex marriage that is valid in another state or country. Therefore, DOMA still permits states to deny recognition of same sex marriages that are valid in other states or countries.

A same sex married couple who is legally married in New York will enjoy both New York State and federal benefits while they reside in New York. However, if they were to move to a state that has restricted marriage to only opposite sex couples, their marriage would no longer be valid for either state or federal purposes. This could be of particular concern for couples who may currently reside in New York and may either move out of state or maintain a residence in another state if the other state does not permit same sex marriage (i.e., Florida). Estate planning for same sex couples will need to take this into consideration.

For more information and to discuss how this ruling impacts your estate planning needs, please call:

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**Bousquet Holstein Estates & Trusts Practice Group**

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