

Planning for Same-Sex Married Couples



On June 26, 2015 the Supreme Court issued the *Obergefell v. Hodges* opinion, holding that same-sex marriage must be recognized nationwide, invalidating state laws banning same-sex marriage. Prior to the *Obergefell* decision, fourteen states prohibited same-sex marriage. Though same-sex couples were able to avail themselves to all federal benefits of marriage after the Supreme Court's 2013 *United States v. Windsor* decision, *Obergefell* allows same-sex married couples to now benefit from state level benefits associated with marriage. *Obergefell* provides same-sex couples with a broad range of state level spousal rights not previously afforded to same-sex couples.

Income Taxes

As a result of the 2013 *Windsor* decision, married same-sex couples can file joint federal income tax returns. However, prior to *Obergefell*, married same-sex couples domiciled in non-recognition states were not able to file joint state income tax returns. Instead, those couples were forced to file separately for state purposes but jointly for federal purposes. After the Supreme Court's ruling in *Obergefell*, same-sex married couples in all states can now file jointly for federal and, if applicable, state income tax purposes.

Married same-sex couples residing in states that previously did not allow joint filing should determine whether filing an amended return for prior years would reduce state income taxes paid. Additionally, it may be prudent to determine whether filing status and claimed allowances should be changed and whether state quarterly estimated income tax payments need to be adjusted.

Estate Planning

After *Windsor*, married same-sex couples were able to benefit from the unlimited federal spousal exclusion, which allows married individuals to make unlimited lifetime gifts or testamentary transfers to a spouse without being subject to federal estate tax liability. After *Obergefell*, the unlimited spousal exclusion now applies to same-sex married couples that live in states with a state level estate tax, reducing possible exposure to state estate tax liability.

Prior to *Obergefell*, a same-sex spouse could have been disinherited if his/her spouse died without executing the appropriate estate planning documents. Now, same-sex couples in all states will have the right to inherit from a spouse under state intestacy statutes.

Retirement Planning

For spousal retirement benefits provided through a private employer, federal law required the plan to provide spousal protections to same-sex spouses regardless of state of domicile after the *Windsor* decision in 2013. For retirement plans offered through a state or local government, such plans should now be required to treat same-sex spouses equally.

Additionally, same-sex couples should now uniformly benefit from tax deferral options provided to retirement assets. A surviving same-sex spouse should be able to do a spousal rollover of a deceased spouse's IRA. A spousal rollover allows a surviving spouse to defer IRA distributions until the survivor's age 70½, resulting in tax deferral.

Prior to *Obergefell*, married same-sex couples likely had to live in a state that recognized same-sex marriage to ensure they would receive spousal Social Security benefits. After *Obergefell*, all married same-sex couples should be recognized as married for purposes of determining Social Security benefits.

Healthcare

Same-sex spouses should now be recognized in healthcare matters concerning an incapacitated spouse and in the event of a guardianship or conservatorship proceeding. Additionally, for hospitals that restrict visitation rights to spouses or blood relatives, hospital visitation rights should be available to same-sex spouses.

Divorce

Prior to *Obergefell*, same-sex couples who were married in a state that recognized same-sex marriage but were domiciled in a state that did not recognize same-sex marriage may not have been able to file for divorce in their domicile state. *Obergefell* serves to provide all same-sex couples with the ability to divorce in the state of domicile.



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