

# The Overturn of DOMA and its Impact on Financial Planning

In 1996, President Clinton signed the Defense of Marriage Act (DOMA), which defined marriage as being the union between one man and one woman. The legislation, which passed overwhelmingly in the House and Senate, also mandated that no individual state should feel compelled to recognize same-sex marriages granted under the laws of other states for purposes of federal legislation. As more states began to legalize gay marriage, however, more cases began to arise that suggested DOMA may have been unconstitutional.

One such case involved 84-year-old Edith Windsor and her partner of 40 years, Thea Spyer. In 2009, Ms. Spyer passed away after a battle with multiple sclerosis and left the entirety of her estate to Ms. Windsor. Because their marriage was not federally recognized, Windsor was charged \$363,053 in estate taxes. As a result, Ms. Windsor sued the United States in November of 2010, claiming DOMA was unconstitutional. The case ultimately made its way to the U.S. Supreme Court where, on June 26, 2013, the court decided that DOMA was, in fact, unconstitutional. The law (DOMA) "places same-sex couples in an unstable position of being in a second-tier marriage," Justice Anthony Kennedy wrote for the court in a 5-4 decision. "The differentiation demeans the couple, whose moral and sexual choices the Constitution protects, and whose relationship the state has sought to dignify."

While many Americans view the subject of same-sex marriage in the context of a social issue, the financial ramifications of the court's ruling are more far reaching than many people may realize. In fact, according to the Congressional Budget Office, there are 1,138 statutory provisions in which marital status of the individual is a factor in determining eligibility for "benefits, rights and privileges."

---

## What Does the Overturn of DOMA Mean for Financial Planning?

At the moment of the court's ruling, Ms. Windsor became eligible for a tax refund, plus interest for the estate taxes paid on behalf of Ms. Spyer's estate. But what does this mean for other married same-sex couples, and how should the gay community prepare itself for the dramatic financial ramifications resulting from the overturning of DOMA?

As of today, the court's ruling on DOMA means that couples who marry and live in states that recognize same-sex marriage will have their union recognized by the state and federal government. These states include: California, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont and Washington. Following, we examine some of the areas that will be most affected by the court's ruling and steps that couples affected can take with their advisors to help ensure their financial plans are updated accordingly.

### The IRS Responds to the Court's Ruling

Two months after the Supreme Court overturned DOMA, the IRS ruled that all legally married same-sex couples will receive federal tax benefits previously granted to only heterosexual married couples. The ruling is critical because previous to the IRS's ruling, same-sex married couples could only receive federal tax benefits if they lived in states that recognized same-sex marriage. This ruling covers all federal tax provisions in which marriage is a factor, including standard deductions, IRAs, employee benefits, as well as personal and dependent exemptions. And while this ruling reduces a great deal of confusion over how federal benefits will be extended to same-sex couples after the overturning of DOMA, not all federal agencies are moving as quickly as the IRS. The Social Security Administration, for example, is continuing to use a "place of residence" standard in determining spousal and survivor benefits. As the federal government continues to determine how to implement the changes resulting from DOMA, it will be important for couples affected to understand how the changes could impact their overall financial plan.

### Estate Planning

#### Unlimited Marital Estate and Gift Tax Deduction

While all couples should regularly review their estate planning strategies, the estate planning options now made available for married same-sex couples are among the most significant in scope following the court's DOMA ruling. In fact, it was an estate planning issue that was at the core of the court's decision to overturn DOMA in the United States vs. Windsor.

As is evidenced in the case of Ms. Windsor and Ms. Spyer, same-sex couples traditionally had to pay federal estate taxes on wealth transferred in excess of the federal estate tax exemption threshold. For taxpayers with gross estates over the current \$5.25 million exemption, a tax rate of 40% would

---

be assessed to assets over that exemption amount. Married same-sex couples can now have the ability to claim the unlimited marital deduction from federal estate and gift tax. This means that an individual may transfer property in any amount to his or her same-sex spouse, during his or her lifetime or at death, without incurring federal estate or gift tax.

### **Portability**

[Portability](#) refers to the ability of one spouse to pass his or her unused federal estate tax exemption to a surviving spouse at the time of death. With the new portability rules that went into effect in 2013 as part of the American Taxpayer Relief Act, same-sex couples now have the ability to pass their unused federal tax exemption, currently \$5.25 million per individual, to a spouse for a total exemption of \$10.5 million. This allows the surviving spouse to make additional tax-free gifts or simply reduce the tax liability of the estate.

### **Marital Trust Strategies**

Certain marital trusts strategies may now play an important role in same-sex couples' estate planning, as well. Marital trusts can often provide spouses unique protections or access to assets that otherwise may not be possible. These types of trusts may also be important if there are children or other beneficiaries to whom the couple would like to designate property after their deaths.

It should also be noted that many immigration benefits are connected to marital status. For same-sex couples in which one partner is a non-U.S. citizen, legal residency and potential U.S. citizenship may be of particular importance. Strategies such as a qualified domestic trust, which allows for non-U.S. citizen surviving spouses to postpone paying estate taxes, may be of interest to couples in this circumstance.

Another consideration is that insurance policies intended to pay estate taxes may now be rendered unnecessary due to the court's ruling. In addition, the titling of assets and beneficiary designations may need to be modified to ensure they remain consistent with any changes that have taken place within an estate plan due to the new laws.

### **Social Security**

Same-sex couples eligible to receive Social Security benefits will now have several options available that could have a major impact on their retirement plans. Social Security spousal benefits will now be available, providing an option for a beneficiary to claim a percentage of his or her spouse's primary insurance amount (P.I.A.) if the spouse is currently claiming benefits on an earnings record. By becoming eligible for spousal benefits, same-sex couples are now able to take advantage of certain [distribution strategies](#), such as File and Suspend, which can work to maximize earning benefits. Couples will also be eligible to receive survivor benefits, which are particularly important for the spouse with a lower earnings record, as that spouse will be able to inherit the deceased spouse's greater benefit amount for the remainder of his or her lifetime.

---

## Filing Taxes Jointly

Prior to the court's DOMA ruling, same-sex couples living in states where same-sex marriage is legal could file jointly as a married couple in their state, while filing as single for federal taxes. Moving forward, this complication can be avoided, as couples in these states will be able to file jointly as a married couple for both state and federal taxes. Some couples may find, however, they are still better off filing separately, as the top-end tax bracket for single filers is \$400,000 before reaching the top-end tax rate of 39.6%, while the bracket for married couples is a combined \$450,000 before reaching the top rate. Couples in these states will have the option of refiling their federal taxes over the last three years, assuming they have been married during that time.

## Retirement Planning

Under DOMA, when a person who was not a spouse inherited an IRA or 401(k), the funds within that account had to be distributed over a set period of time. Individuals who inherit a spouse's retirement account, however, are afforded the option to wait to take distributions until they reach age 70 ½. Up until now, same-sex couples who inherited these types of retirement accounts had to begin taking distributions immediately. Same-sex couples will now have the same option to wait and take required minimum distributions at age 70 ½, or even roll the funds of the deceased spouse's retirement funds into an IRA. Additionally, same-sex spouses of federal government employees with pensions will now be eligible for survivor benefits.

## Health Insurance Tax

Currently, if a husband or wife participates in a spouse's employer sponsored health care plan, it is a tax-free benefit to the employee. Conversely, if an individual named a domestic partner as part of the employer sponsored plan, he or she had to pay federal income tax on the employer contribution, also called imputed income, to the partner's health insurance premium. Moving forward, same-sex couples will receive the same tax favored benefit for employer sponsored health care plans.

## Conclusion

As stated previously, the changes taking place for married same-sex couples as a result of the DOMA ruling are only applicable to states that recognize gay marriage – at least for now. It remains to be seen how transferable these new benefits will be for couples that move or temporarily relocate to states that do not recognize same-sex marriage. As the law is written today, a same-sex couple could legally marry in Massachusetts and have the marriage recognized fully under state and federal law. If the couple were to then move to a state that does not recognize same-sex marriage, those state and federal laws are seemingly lost. While a considerable number of questions remain relating to the implementation of new laws after the overturning of DOMA, there is currently a great opportunity for same-sex couples to reassess their financial plans.

Should you have any questions relating to your financial plan or the opportunities presented as a result of the overturning of DOMA, don't hesitate to contact your advisor at 1-855-579-6910 or visit our website at [www.firstpointfinancial.com](http://www.firstpointfinancial.com).



[www.firstpointfinancial.com](http://www.firstpointfinancial.com)

FirstPoint Financial is an independent, national wealth advisory firm that provides unbiased financial advice focused on meeting client needs. FirstPoint's expert wealth advisory teams help clients achieve and maintain financial peace of mind – preserving the wealth they have created and building a legacy for future generations of family and business leaders.

This document is for informational use only. Nothing in this publication is intended to constitute legal, tax, or investment advice. There is no guarantee that any claims made will come to pass. The information contained herein has been obtained from sources believed to be reliable, but FirstPoint Financial does not warrant the accuracy of the information. Consult a financial, tax or legal professional for specific information related to your own situation.

FirstPoint Financial ("FPF") is an SEC registered investment adviser with its principal place of business in the State of Kansas. FPF and its representatives are in compliance with the current registration and notice filing requirements imposed upon registered investment advisers by those states in which FPF maintains clients. FPF may only transact business in those states in which it is notice filed, or qualifies for an exemption or exclusion from notice filing requirements. Any subsequent, direct communication by FPF with a prospective client shall be conducted by a representative that is either registered or qualifies for an exemption or exclusion from registration in the state where the prospective client resides. For additional information about FPF, including fees and services, please contact FPF or refer to the Investment Adviser Public Disclosure website ([www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov)). Please read the disclosure statement carefully before you invest or send money.