

# Financial Strategies in a Post-DOMA World

The Supreme Court's decision declaring The Defense of Marriage Act (DOMA) unconstitutional was a watershed event that may require some same-sex couples to reconsider the financial strategies they currently have in place.

But uncertainties abound. Federal agencies still need to interpret portions of the Supreme Court's ruling. And, with some states not recognizing same-sex marriages, challenges remain for those looking to update their financial strategies and approaches.

Here's a brief overview of the post-DOMA ruling.

## Taxes

Legally married same-sex couples are eligible to file joint federal tax returns and may want to consider amending previous years' returns. Also, they will be eligible for capital-gains treatment accorded to the sale of a home. However, as a married couple, they may also be subject to the "marriage penalty" associated with certain tax treatments and rates.<sup>1</sup>

## Retirement

### Social Security Benefits

Same-sex spouses are now eligible for some Social Security and Medicare spousal benefits.<sup>2</sup> Medicaid, on the other hand, is administered by the state, so couples living in a state that doesn't recognize gay marriage may be denied spousal benefits.

### Federal Retirement Benefits

For federal government employees with pensions, legal spouses are eligible for survivor benefits regardless of whether the state in which they live recognizes gay marriage.

### IRAs

A surviving spouse in a legal same-sex marriage will be allowed to roll over a deceased spouse's IRA funds to his or her IRA, preserving its tax-deferred benefits. Spousal IRA contributions will also be permitted.<sup>3,4</sup>

### Qualified Retirement Plans

Same-sex spouses will be able to leave a pension to the surviving spouse. Should a married same-sex couple divorce, a qualified domestic relations order (QDRO) would be available to ensure that both spouses receive their share of a qualified retirement plan.<sup>5</sup>

## Estate Strategies

The surviving spouse of a legal same-sex marriage will no longer have to pay federal estate taxes on assets received from the deceased spouse, nor will same-sex spouses be required to pay federal gift taxes when transferring funds to one another.<sup>6</sup>

Same-sex partners need to take into account the fact that some states still do not recognize same-sex marriage, however.

Same-sex partners should consider:

- how property is titled, especially the home, so as to ensure transfer to the surviving partner;
- a revocable living trust to pass assets, in order to avoid the transfer being contested by blood relatives;<sup>7</sup>
- a power-of-attorney that allows a partner to manage financial issues if the other partner becomes incapacitated;
- listing a partner as primary beneficiary on retirement accounts;
- additional life insurance to cover the assets reduced by estate taxes.<sup>8</sup>

The DOMA ruling represents an ideal time for same-sex couples to revisit their financial strategies to ensure they reflect the changes in the landscape and fulfill their objectives.

1. Internal Revenue Service, 2013

2. U.S. Department of Health & Human Services, 2014

3. Internal Revenue Service, 2013

4. Withdrawals from traditional IRAs are taxed as ordinary income and, if taken before age 59½, may be subject to a 10% federal income tax penalty. Generally, once you reach age 70½, you must begin taking required minimum distributions.

5. Internal Revenue Service, 2013

6. Internal Revenue Service, 2013

7. Using a trust involves a complex set of tax rules and regulations. Before moving forward with a trust, consider working with a professional who is familiar with the rules and regulations.
  
8. Several factors will affect the cost and availability of life insurance, including age, health and the type and amount of insurance purchased. Life insurance policies have expenses, including mortality and other charges. If a policy is surrendered prematurely, the policy holder also may pay surrender charges and have income tax implications. You should consider determining whether you are insurable before implementing a strategy involving life insurance. Any guarantees associated with a policy are dependent on the ability of the issuing insurance company to continue making claim payments.