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ESTATE PLANNING UPDATE

How Yesterday's Supreme Court Ruling Affects Same-Sex Couples

By: Attorneys George F. Bearup & Gregory R. Kish, CELA

The Earth's axis moved yesterday with the Supreme Court's decision in the Windsor vs. United States case.

With the Court's decision that the federal Defense of Marriage Act (DOMA) is unconstitutional, there will now be equal treatment under federal law for all married individuals, both opposite-sex and same-sex married couples. The implications for past and future estate planning are stunning.

There will now be an unlimited marital deduction for federal estate and gift tax transfers between married same-sex couples. The unused federal estate tax exemption of one same-sex spouse can be transferred to the surviving same-sex spouse with a 'portability' election. A same-sex married spouse can now rollover an IRA to their own IRA upon the death of his or her spouse without any income tax consequence, thus deferring the recognition of taxable income to the survivor for potentially a much longer period of time, with more protection if the survivor ever faces bankruptcy. Similarly, a surviving same-sex spouse is now entitled to a survivor's annuity under the decedent spouse's federal ERISA governed retirement plan, which was not the case in the past.

Whether same-sex spouses will have more ready access to dependent and survivor benefits from government programs, such as pension and healthcare benefits from the Veteran's Administration, is less clear since some (but not all) of these programs hinge eligibility on whether the marriage is valid under state law.

There will be a myriad of other income tax and property law consequences that arise from the Windsor decision that will require same-sex married couples to revisit existing estate plans, beneficiary designations, and property ownership arrangements. There will also be considerable confusion to sort through since not all states recognize same-sex marriages. In turn, this makes estate planning and will and trust distribution provisions much more complex to interpret and administer, since it is unclear if one state will recognize and enforce the estate planning documents that were created in a jurisdiction that recognizes same-sex marriages.

George has practiced law in Traverse City for 36 years. He is recognized in Michigan and the nation as a leader in the areas of estate planning, retirement planning, and divorce. George is one of only 2,600 attorneys in the nation elected to be a Fellow of the American College of Trust and Estate Counsel, where only the highest level of integrity, commitment to the profession, competence, and experience as trust and estate counselors are chosen in the nation. George can be reached directly at 231-486-4510 or gbearup@shrr.com.

Greg is an experienced attorney in Smith Haughey's Traverse City office, where he practices primarily in the areas of elder law, estate planning, long-term care planning, probate, trust administration, special needs planning, and real estate law. Greg Kish is a member of the Elder Law and Disability Rights Section of the State Bar of Michigan and the National Academy of Elder Law Attorneys. He is one of a select group of elder law attorneys who has earned the designation of Certified Elder Law Attorney from the National Elder Law Foundation. He is also accredited by the US Department of Veterans Affairs. Please contact Greg if you would like to learn more about his work. Greg can be reached directly at 231-486-4557 or gkish@shrr.com.