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Estate Planning after DOMA Ruling

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Same-sex marriage as a social issue is often a topic of debate which garnishes attention across the nation. An important aspect of whether to recognize these unions, that did not receive much attention before this summer, is how the federal government should treat same-sex couples with respect to estate planning and the administration of government aid and benefits only allowed between legally married couples.

History of DOMA & Repealing Section 3

In June of 1996, the Federal Government passed the Defense of Marriage Act (DOMA) in response to several states permitting same-sex marriage or civil unions. Currently, DOMA was challenged by a recently widowed woman in the Supreme Court case of Windsor v. U.S. A particular section of DOMA, restricting the federal definition of marriage to between heterosexual couples only, was at issue in this case after this provision prevented the federal government from recognizing a marriage between a same-sex couple. As a result of this, the plaintiff in Windsor paid over $350,000 in estate taxes when her spouse died.

After hearing this case, the Court ruled Section 3 of DOMA was unconstitutional and in violation of the Equal Protection Clause.

Effect on Estate Planning

The role this case will play in estate planning for same-sex couples remains unclear. What is significant about the Federal Government recognizing a couple as married are a number of tax benefits, such as allowing joint income tax returns or not imposing an estate tax on the transfer of property when one spouse dies, and the ability for a spouse to transfer to his or her partner pensions, some types of

retirement funds, and the ability to receive certain benefits such as Medicare and Social Security. The repeal of DOMA earlier this summer will result in changing the way married, same-sex couples structure estate planning and collect these types of benefits from the federal government previously only available to heterosexual couples.

One of the main uncertainties in determining how the federal government will treat the estate planning needs of same-sex couples involves the varied application and status of same-sex marriage across the United States. If a same-sex couple is married in a state which permits gay marriage, but then moves to a state that chooses not to recognize this as a valid marriage, how the federal government will treat this couple is unknown. Virginia's state constitution contains an amendment banning same-sex marriage, so this difficulty in estate planning for same-sex couples will continue to apply. As more cases come before the state and federal courts, or new legislation is passed by Congress, the paths same-sex couples may use in planning will become more clear. For now, such couples need to be sure they have carefully reviewed their plans with their tax and legal advisors.

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