The Supreme Court Ruling on Marriage Equality: One Year Later

In this Wealth Management Update

- Though estate planning and income tax treatment of same-sex married couples were mostly resolved by the Obergefell and Windsor decisions, numerous issues remain unclear.

- Several family law issues remain unresolved, which have the potential to impact estate plans of same-sex couples.

- Failing to understand how a state resolves questions involving property rights post Obergefell can have unanticipated consequences, and derail a well-intended estate plan.

- Same-sex married couples should re-visit the impact of income tax laws now that their marriages are recognized at both the federal and state level, particularly with respect to retirement planning.

- Your Wells Fargo relationship manager can help guide you in making sound financial decisions.
The Supreme Court Ruling on Marriage Equality: One Year Later

The historic 2013 Supreme Court ruling, United States v. Windsor, altered the landscape of marriage equality across the nation. The Court held that Section 3 of the Defense of Marriage Act (DOMA)—which defined marriage for purposes of all federal laws to mean a legal union between a man and a woman—was unconstitutional. By striking down Section 3, the Court in essence held that for purposes of applying federal law, same-sex married couples residing in a jurisdiction that recognizes same-sex marriages were to be treated the same as opposite-sex married couples. However, the Court did not decide the legal fate of same-sex married couples residing in states that do not recognize same-sex marriages nor did it mandate that states permit marriages of same-sex couples.

In June 2015, the Supreme Court, in another landmark decision of historical significance, ruled in Obergefell v. Hodges that state bans on same-sex marriage and denial of recognition of marriages performed in other states were unconstitutional. This ruling ushered in sweeping changes that, in many cases, made financial planning, estate planning and income tax planning uniform for all married couples and enabled all couples to avail themselves of this uniform treatment by electing to marry. Yet, as this paper will outline, many issues affecting same-sex couples remain unresolved, and careful consideration of the intricacies of federal and state laws are imperative to ensuring your financial and estate plan accomplishes your wealth and legacy goals.

Impacts to estate planning

Estate planning fundamentally changed for many same-sex couples after Obergefell. Prior to the Supreme Court’s decision, thirteen states—Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, North Dakota, Ohio, South Dakota, Tennessee and Texas—did not permit same-sex marriage and denial of recognition of marriages performed in other states were unconstitutional. This ruling ushered in sweeping changes that, in many cases, made financial planning, estate planning and income tax planning uniform for all married couples and enabled all couples to avail themselves of this uniform treatment by electing to marry. Yet, as this paper will outline, many issues affecting same-sex couples remain unresolved, and careful consideration of the intricacies of federal and state laws are imperative to ensuring your financial and estate plan accomplishes your wealth and legacy goals.

Defining descendants, heirs, children and issue

Many unresolved issues lie where estate planning and family law intersect. Since it is unlikely that the child of a same-sex couple will be genetically related to both parents, the ability of those couples to marry does not
appear to resolve the question of legal relationships beyond the marriage. In many states prior to Obergefell, one individual in a same-sex couple often had neither a genetic tie to the couple’s offspring nor were related to the genetic parent by marriage, and courts consequently denied many of the rights generally available to parents and children whether by genetic connection, marriage or by adoption.

In March 2016, the final state law banning adoption by same-sex partners was overturned; however, even today, in states that do not presume maternity or paternity based on a marital status of the parents, one spouse may not be recognized as a child’s parent without undergoing a co-parent adoption. Thus, if one spouse dies without a will, the child she raised and considered her own may not benefit from her estate under the state’s intestate succession laws. This could also apply to parents and grandparents who assume their estate will pass by will or trust to their surviving “grandchildren,” although those grandchildren may not be defined as such under state law.

**Defining property rights**

Unresolved questions involving property rights remain after Obergefell, especially given that Obergefell is applied retroactively to the date statutes banning same-sex marriage took effect. For example, is property acquired during marriage by a couple who married in one state but lived in a non-recognition community property state like Texas community property? The answer has an enormous impact on property rights and obligations as well as the tax attributes of the property, both during life and at death. This determination also has an enormous impact on the ability of creditors to attach the property to settle claims.

If the couple lives in a separate property state, elective share rights under state laws trump the provisions of a decedent’s will or trust. Spouses who acquire property in certain states are presumed to have taken title as Tenants by the Entireties (“TBE”). Holding title as TBE often provides significant protection against creditors of a single spouse as well as special inheritance rights. How is property acquired during marriage but prior to Obergefell then titled in non-recognition states?

What if a couple never intended to avail themselves of these laws? In at least one state, all domestic partnerships were converted automatically into marriages. Further, how do these rules apply in states that recognize common law marriages for long-term co-habiting relationships? In certain states with reverse evasion statutes, in which the state will not recognize marriages by non-residents if the home state did not recognize the marriage as valid, couples may believe they are married when they are not. As a result, property rights at divorce and at death are affected.

**Estate planning considerations**

The Windsor and Obergefell decisions provided much needed clarity to estate planning for same-sex couples who choose to marry. Significant questions remain, however, for married and non-married same-sex couples, particularly in regard to family planning and property rights. Planning for same-sex couples should involve a professional team to ensure their family and estate planning goals are fully satisfied in the event of death, divorce or in relation to the couple’s children and other descendants. Specifically, couples should:

1. Conduct a thorough review of old estate plans and revise where necessary to ensure they continue to satisfy the couple’s estate planning goals.
2. Review retirement plan and life insurance beneficiary designations.
3. Review life insurance to ensure amounts are sufficient and/or necessary. If a spouse is entitled to survivor benefits under a pension plan as a result of Obergefell, determine if life insurance is still necessary. If it is, determine whether it makes sense, considering all factors, to convert an existing single-life policy to a survivor policy.
4. For couples residing in a community property state, consider whether to convert separate property to community property.
5. If a couple has children, work with a family law attorney to gain a clear understanding of a child’s legal relationship with each individual to ensure legacy expectations are met.
6. Analyze the current state treatment of pre-existing legal relationships, such as Domestic Partnership, Registered Domestic Partnership and even marriage in states that did not recognize marriage prior to Obergefell, to ensure that failure to formally dissolve these do not cause unintended consequences down the road.
7. Consider whether to seek citizenship for a noncitizen spouse.
8. Review asset titling. In some cases, such as states permitting spouses to own title as Tenants by the Entireties, simple changes to title can confer significant creditor protection.
Impacts to retirement planning

A new marital status has far-reaching impacts on overall financial planning. To truly understand all aspects of these changes, it’s important to find a trusted set of advisors to gain insight into these changes and to update your planning as necessary.

Here are a few key considerations to discuss with your spouse and your planning team with regards to your retirement planning.

With full recognition from the IRS for all married LGBT couples, it is important to consider your new tax filing status and the impact that may have on your overall retirement planning. Let’s begin with funding an Individual Retirement Account (IRA). These considerations would apply to both your own IRA contribution and to a Spousal IRA contribution, where applicable.

Although anyone has the ability to fully maximize an annual Traditional IRA contribution, there are certain income limitations that may restrict the deductibility of those contribution dollars. When marital status changes, and therefore tax filing status changes, it’s important that you revisit these income limitations to assure proper reporting of your Traditional IRA contribution.

In addition to the income limitations related to Traditional IRA deductibility, there also are income limitations related to Roth IRA eligibility. If your income exceeds certain thresholds, you may no longer be eligible to fund a Roth IRA.

In the event that a marital status change has changed your Traditional IRA deductibility or Roth IRA eligibility, you may need to take additional steps to assure you are properly reporting these items on your tax return and to assure contributions were made to the correct type of IRA. If your new filing status makes you ineligible to deduct a Traditional IRA contribution, your taxes should reflect that fact. If a deduction was taken in error on your tax return, you should speak with your accountant or CPA to assure an amended return is filed in the appropriate time period.

If your new filing status makes you ineligible for a Roth IRA contribution AND you’ve already made a Roth contribution, it’s important that you work with a certified financial planning professional or other financial advisor to assure the contribution is re-characterized as a contribution to a Traditional IRA. Failure to correct this contribution error could result in a 6 percent excise tax for each year that the contribution dollars remain in the Roth IRA. The IRS allows for a six month grace period for regular tax filers (those that file by April 15) to re-characterize a previous year’s Roth contribution, made in error. Once that deadline passes, the ability to re-characterize your contribution expires and you must remove the contribution from your Roth IRA altogether, thus forfeiting your IRA contribution for that year. Reviewing your annual IRA contribution strategy with your financial planner and your CPA is therefore an important part of ensuring that you take advantage of and properly report tax-preferred retirement savings.

### 2016 Annual IRA Contribution Limits

| Lesser of 100% of earned income or $5,500 (for each spouse). Traditional & Roth IRA contributions are aggregated. |
| Spousal IRA contributions: A working spouse may fully fund an IRA for a non-working spouse, based on their earnings. |
| Catch-up contributions: IRA holders age 50 and older may contribute an additional $1,000 for a total of $6,500 or 100% of earned income, whichever is less. |

### 2016 Traditional Deductibility Limits

| Individual and spouse, if married, not covered by employer sponsored plan—Full deduction |
| Individual with employer plan—Deduction limits phased out by Modified Adjusted Gross Income (MAGI): |
| Single filer: $61,000-$71,000 |
| Joint filer: $98,000-$118,000 |
| Married filing separately: $0-$10,000 |

### 2016 Roth Contribution Limits

Contributions are phased out for MAGI of:

| Single filer: $117,000-$132,000 |
| Joint filer: $184,000-$194,000 |
| Married filing separately: $0-$10,000 |

Source: irs.gov
Similar income restrictions do not apply to 401(k), 403(b) and certain other qualified plans. Eligibility to participate and pre-tax contributions are allowed at all income levels.

Due to ERISA guidelines, naming anyone other than your spouse as a beneficiary on your qualified retirement plan will require full spousal consent. Many states even require a notarized authorization to assure your spouse fully approves of the designation. The same does not apply to IRA accounts, as these fall outside of ERISA guidelines and generally do not require spousal consent when naming someone other than your spouse as beneficiary.

Seek guidance from a financial professional

Though estate planning and income tax treatment of same-sex married couples were in many ways resolved by the Obergefell and Windsor decisions, important issues involving family law and property rights are rife with landmines, which, if not properly addressed, can derail the most well-intentioned financial and estate plans. Thus, it is important to educate yourself on the issues, seek to understand the laws, and engage a team of professionals to help leverage your options. We encourage you to speak with your Wells Fargo relationship manager who can help guide you in making sound financial decisions.
Disclosures

Investment and Insurance Products:  • NOT FDIC Insured  • NO Bank Guarantee  • MAY Lose Value

Wells Fargo Wealth Management and Wells Fargo Private Bank provide products and services through Wells Fargo Bank, N.A., and its various subsidiaries and affiliates. This information is for educational purposes only and should not be used or construed as financial advice, an offer to sell, a solicitation of an offer to buy, or a recommendation for any particular product or service.

Financial Advisors are employees of Wells Fargo Advisors, LLC, (member SIPC), which is a registered broker-dealer and separate non-bank affiliate of Wells Fargo & Company.

Brokerage products and services are offered through Wells Fargo Advisors. Wells Fargo Advisors is the trade name used by two separate registered broker-dealers: Wells Fargo Advisors, LLC and Wells Fargo Advisors Financial Network, LLC, Members SIPC, non-bank affiliates of Wells Fargo & Company.

Wells Fargo and its affiliates do not provide legal advice. Please consult your legal advisors to determine how this information may apply to your own situation. Whether any planned tax result is realized by you depends on the specific facts of your own situation at the time your taxes are prepared.

Wells Fargo affiliates may be paid a referral fee in relation to clients referred to Wells Fargo Bank, N.A. Wells Fargo Bank, N.A. (the “Bank”) offers various advisory and fiduciary products and services. Financial Advisors of Wells Fargo Advisors may refer clients to the bank for an ongoing or one-time fee. The role of the Financial Advisor with respect to bank products and services is limited to referral and relationship management services. The Bank is responsible for the day-to-day management of non-brokerage accounts and for providing investment advice, investment management services and wealth management services to clients. The Financial Advisor does not provide investment advice or brokerage services to Bank accounts, but does offer, as applicable, brokerage services and investment advice to brokerage accounts held at Wells Fargo Advisors. The views, opinions and portfolios may differ from our broker dealer affiliates.

Any estate plan should be reviewed by an attorney who specializes in estate planning and is licensed to practice estate law in your state.

©2016 Wells Fargo Bank, N.A. All rights reserved. Member FDIC.