

## MARRIAGE EQUALITY: THE 10 MOST SIGNIFICANT CHANGES IN PLANNING FOR SAME-SEX COUPLES

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On June 26, 2015, the Supreme Court of the United States (“SCOTUS”) ruled in a 5-4 decision that the right to marry is a fundamental right under the Fourteenth Amendment.<sup>1</sup> In [Obergefell v. Hodges](#), the Court states that “[t]he limitation of marriage to opposite-sex couples may long have seemed natural and just, but its inconsistency with the central meaning of the fundamental right to marry is now manifest.”

As a result of this decision, states may no longer ban same-sex marriage and are required to issue marriage licenses to same-sex couples. Additionally, states are required to recognize the marriages of same-sex couples who are/were married in other states. Given this landmark decision, below are 10 of the most significant changes that must be considered in planning for same-sex couples.

1. **Marital Deduction** – An unlimited amount of assets can now be transferred to a same-sex surviving spouse upon the first death without incurring estate taxes.
2. **Gift Splitting** – Married couples will qualify for gift splitting, meaning each spouse is treated as giving half the property gifted by the other.
3. **Portability of the deceased spouse’s unused exclusion amount** – The portability of an individual’s federal exemption amount is only permitted between spouses. This can provide tremendous benefit to the surviving spouse of a same-sex marriage and allows additional flexibility in any estate plan.

### THE SUPREME COURT OF THE UNITED STATES:

*“..the right to marry is a fundamental right inherent in the liberty of the person.... The Court now holds that same-sex couples may exercise the fundamental right to marry.”*

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<sup>1</sup> *Obergefell v. Hodges, et al.* 576 U. S. \_\_\_\_ (2015).

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4. **Filing “married” status on federal income tax returns** – A same-sex married couple must now file annual federal and state income tax returns using the “married filing jointly” or “married filing separately” filing status regardless of the state of residence.
5. **Taxability of spousal health insurance** – Group health insurance coverage provided by the employee spouse’s employer will no longer be considered taxable income to the non-employee spouse.
6. **Social Security benefits** – Spousal and survivor benefits will now be available regardless of where the couple resides now or where they were married.
7. **Continuation of pension benefits** – The surviving spouse is now eligible to receive pension benefits after the death of the employee spouse.
8. **Change of residence state** – Changing your resident state after being married in another state will not have an impact on the marriage. Previously, getting married in a state that recognized the marriage and later relocating to a state that did *not* recognize the marriage would deny spousal rights such as health care decisions, and survivorship rights.
9. **Divorce** – A same-sex marriage can now be dissolved in any state regardless of where the marriage took place.
10. **Spousal protection on retirement plan elections** – Employer sponsored retirement plans must now extend spousal protection and benefit distribution rights to same-sex spouses. If a beneficiary other than the spouse is designated, a written consent/waiver is required for the transfer to be deemed valid.

#### ITEMS TO REVIEW NOW

- Review prior years’ income tax returns to determine if any returns should be amended.
- Review current estate plans to identify potential opportunities under new law.
- Review asset titling to coordinate with the updated estate plan.
- Review beneficiary designations on all employer sponsored retirement plans including pensions and 401(k) plans. If someone other than the spouse is named as beneficiary of the plan, the spouse’s written consent must be obtained or it will be deemed invalid.
- Review existing life insurance coverage. Given the unlimited marital deduction, the need for life insurance for estate planning purposes may have changed; however, it may still be needed for other purposes. Consider enrolling the non-employee spouse in any group life insurance offered by the employee spouse’s employer.
- Review current health care plans to determine whether either spouse may be eligible for better or less expensive coverage through the other spouse’s employer.
- Review annual IRA funding, as well as designated beneficiaries. Annual contributions may or may not be permitted based on combined income and workplace retirement plan availability of both spouses. Consider spousal IRAs when only one spouse has income and neither have a retirement plan through their employer.



## CONCLUSION

The Supreme Court ruling in *Obergefell* has simplified the planning process for same-sex married couples. However, it is still recommended that married couples review their estate plan, income tax returns, life insurance, health benefits, etc. and how these changes will impact their specific situation. Not every couple chooses to marry. Regardless of whether or not a couple is married, there are various planning needs and considerations to discuss with an advisor who specializes in this area.

### ABOUT THE AUTHOR:

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