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Estate Planning For Same-Sex Couples

Estate planning for many same-sex married couples will change significantly in light of the United States Supreme Court's recent decision in United States v. Windsor. In that case, the section of a federal law passed in 1996 and known as the Defense of Marriage Act ("DOMA") that defines "marriage" as "a legal union between one man and one woman" and defines "spouse" as "a person of the opposite sex who is a husband or a wife" for all purposes of federal law was found to be unconstitutional.

Windsor came before the Court on a federal estate tax issue, specifically, the availability of the marital deduction to a same-sex married couple. Edna Windsor was the surviving spouse of Thea Spyer. Edna and Thea had legally married in Canada and lived in New York, which recognized same-sex marriages (including those performed outside New York). However, because of DOMA's definition of marriage, the estate was not entitled under federal law to the unlimited marital deduction available to opposite sex couples. A large federal estate tax was thus levied on the property passing from Thea to Edna at Thea's death.

In reaching its decision, the Court noted that the power to regulate domestic relations, including marriage, has traditionally been reserved to the individual states. New York, in a proper exercise of this power, had extended the definition of marriage to same-sex couples living within its borders. The effect of DOMA was to deprive this category of married persons from the benefits of federal law that were available to other married persons living within the same state, thus depriving them of the equal status the state law was intended to provide. On that basis, the definition of marriage found in DOMA was held to violate the constitutional rights of those persons. As a result of the Court's decision, Edna received a refund of the federal estate tax she had paid on the property passing to her from Thea.

Same-sex married persons who live in states that recognize their marriage (including Connecticut) can now consider incorporating certain tax strategies previously unavailable to them into their estate plans. In addition to the unlimited marital deduction, they can rely on the concept of "portability" of a spouse's unused estate tax exemption. They can also freely transfer property between each other during lifetime. If they name their spouse as a beneficiary of an IRA, the account may receive desirable "rollover" status rather than being treated as "inherited." But because the Court made clear that its decision was confined to the application of federal laws to married people living in states that recognize same-sex



marriage, it is unclear how those laws will be applied to people living in states that do not recognize the legality of same-sex marriages or that have enacted their own state version of DOMA. It may not be long before laws or courts take actions that will remove some of this uncertainty. In the meantime, however, under certain circumstances, estate planning for same-sex couples can be undertaken with a fresh eye.

Questions or Assistance?

Should you have any questions about this alert, please contact any member of our Trusts & Estates Practice Group shown below.

One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

1133 Connecticut Avenue NW
Washington, DC 20036-4305
202-469-7750

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

12 Porter Street
Lakeville, CT 06039-1809
860-435-2539

www.shipmangoodwin.com

Trusts & Estates

Stuyvesant K. Bearn
(860) 435-2330
sbearn@goodwin.com

James T. Betts
(860) 251-5150
jbetts@goodwin.com

Coleman H. Casey
(860) 251-5112
ccasey@goodwin.com

Bernardo G. Cuadra
(860) 251-5770
bcuadra@goodwin.com

Danielle P. Ferrucci
(860) 251-5105
dferrucci@goodwin.com

Stephen K. Gellman
(860) 251-5109
sgellman@goodwin.com

Bryon W. Harmon
(860) 251-5106
bharmon@goodwin.com

Charles B. Kaufmann, III
(203) 869-5600
ckaufmann@goodwin.com

Lori E. Romano
(203) 869-5600
lromano@goodwin.com

Lesley I. B. Schless
(203) 863-6431
lschless@goodwin.com

Lyn Gammill Walker
(860) 251-5146
lwalker@goodwin.com

www.shipmangoodwin.com/trustsandestates/

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