

FREQUENTLY ASKED QUESTIONS ABOUT SAME-SEX MARRIAGE IN WASHINGTON

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Q: We already voted last fall to extend marriage rights to same-sex couples in Washington. How does the U.S. Supreme Court ruling on the Defense of Marriage Act change things?

A: On June 26, 2013, the U.S. Supreme Court struck down Section 3 of the federal Defense of Marriage Act (DOMA) in the case *United States v. Windsor*. Practically speaking, this means that legally married same-sex couples in Washington now have access to the more than 1,100 federal protections and responsibilities that were previously only available to married different-sex couples. Same-sex married couples in Washington will continue to have access to the same rights and responsibilities afforded to other married couples under Washington state law.

Q: Was DOMA repealed entirely?

A: No. Only Section 3 of DOMA, which prohibited married same-sex couples from accessing federal protections, responsibilities, and programs, was repealed in the *Windsor* case. Still standing is Section 2 of DOMA, which allows states to discriminate against same-sex couples legally married in other states by failing to recognize the marriage. Legislation is currently pending in Congress to repeal all of DOMA but it is not expected to pass soon, so Washington marriages of same sex couples will not be recognized by a number of other states (currently 37 states)..

Q: What are some of the new benefits for legally married same-sex couples in Washington?

A: Married same-sex couples in Washington now have access to over 1,100 protections, responsibilities, and programs offered under federal law. Examples include access to Social Security survivors' benefits, the ability to sponsor a foreign-born spouse for U.S. citizenship, access to spousal benefits for federal employees, access to veterans' spousal benefits, the ability to jointly file federal tax returns, and the right to take time off to care for a spouse under the Family Medical Leave Act.

Q: How soon can same-sex couples take advantage of the new federal rights, responsibilities, and programs?

A: The Supreme Court's ruling goes into effect 25 days from the date of the decision. It is likely that many federal agencies will require additional time to make the necessary changes (such as changing policies, forms, etc.) to incorporate same-sex couples into the system.

Q: I'm legally married and living in Washington. Can I treat my same-sex partner as a spouse for federal income tax purposes?

A: Yes. There are 198 separate IRS Code provisions tied to marital status, which now apply to married same-sex couples in Washington. In addition to tax rate schedules, the newly recognized marital status means that married same-sex couples should no

longer have to pay income taxes on the value of an employer-provided health insurance for an employee's spouse and such couples should have access to tax advantaged fringe benefits (such as use of pre-tax dollars to pay premiums on employer-provided health insurance for a spouse). There are many other ways in which your marital status may affect your federal taxes; it is recommended that you consult a tax advisor for personalized advice.

Q: What if I'm in a registered domestic partnership in Washington?

A: If you do not marry or get a divorce, Washington will automatically convert your domestic partnership to a marriage on June 30, 2014 (unless one partner is 62 years old). If you are waiting for the state to automatically convert your marriage in 2014, then this may complicate the filing of your 2013 taxes. There is conflicting authority as to whether domestic partners can be treated as "married" for federal tax purposes. For your 2013 taxes, registered domestic partners will likely continue to use "single" or "head of household" filing status and engage in a process called income-splitting, in which all community income earned by both partners is added together and half is allocated to each person. Again, you should obtain individualized tax advice from a tax advisor.

Q: How does the DOMA ruling impact divorce for same-sex couples in Washington?

A: Same-sex couples transferring property because of divorce will now be able to do so without the transfer being subjected to federal income or gift taxes. Spousal maintenance payments made to a former spouse as part of dissolution of a same-sex marriage are now treated the same as maintenance payments for other married couples; such payments will now be deductible to the person making the payments on his or her federal tax return, and must be reported as income by the spouse receiving the payments. Retirement assets may now be transferred as part of a divorce without taxation.

Q: What about estate taxes?

A: With the U.S. Supreme Court's ruling in *Windsor*, married same-sex couples will now have access to the "marital deduction," which DOMA previously barred. This means that essentially,

money and assets of a deceased same-sex spouse may now be transferred upon death to the surviving spouse without any estate tax liability.

Q: We are legally married in Washington, but moved to a state that doesn't recognize same-sex marriage. What does the DOMA ruling mean for us?

A: The recent Supreme Court decision did not provide for a universal right to marriage for same-sex couples in the United States, nor did it require states to recognize the marriages of same-sex couples granted by other states. This means that legally-married same sex couples who move to a state or already reside in a state that does not recognize marriage for same-sex couples may still have access to some federal rights and benefits while being excluded from others. In determining if a marriage is valid, federal agencies have varying approaches. Some agencies (Social Security, IRS) look to the couple's state of residence, others (immigration agencies) look to the state where the couple married (called "state of celebration"), and still others look to the state "with the most significant interest" in the marriage. Some programs and agencies do not have any official rules.

Married same-sex couples who move to a state that does not recognize their marriage may also have difficulty getting a divorce, and will not be afforded the same rights, responsibilities and protections offered to married couples under Washington law. We highly recommended that such couples take steps in advance to protect themselves, such as entering into powers of attorney or second parent adoptions.

Because states that do not recognize same sex marriage may not recognize parental status based on such a marriage, it is advisable for all same-sex couples who are parenting together, whether married or domestically partnered, to complete a second parent adoption to secure both parents' legal status. Even if a couple does not have plans to move to another state permanently, it is important to secure both parents' parental status through second parent adoption.

Q: I legally married my same-sex partner in another state or country and then moved to Washington. Do I still have access to all federal rights, responsibilities, and programs?



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A: Yes. Both the federal government and the state of Washington will recognize your marriage.

Q: **My partner and I registered as domestic partners in another state. Will Washington recognize our domestic partnership or civil union?**

A: If you have a registered domestic partnership or civil union from another state and you are in Washington on a temporary basis, Washington will recognize your domestic partnership or civil union and accord you the rights accorded to married couples. If you relocate to Washington permanently, once you have been in Washington for a year, if you have not married your domestic partner, Washington will no longer recognize your domestic partnership or accord you the rights of marriage.

Q: **How does the other Supreme Court ruling on Proposition 8 impact us in Washington?**

A: On the same day the court struck down part of DOMA, the court also ruled that the supporters of California's Proposition 8 (banning same-sex marriage in California) lacked legal standing to appeal a lower court ruling that found the proposition to be unconstitutional. The ruling means that same-sex couples can legally marry again in California. The Supreme Court declined to rule on the larger issue of whether it is unconstitutional to deny same-sex couples the right to marry nation-wide.

Q: **Where can I get legal advice?**

A: The attorneys at Skellenger Bender have knowledge and experience dealing with legal issues facing LGBT clients and their families.

Additional resources regarding adoption and family formation for LGBT prospective parents, and other legal issues, can be found on our website, www.skellengerbender.com. Or give us a call at 206-623-6501 to schedule a consultation.

Two of our attorneys, Janet Helson and Raegen Rasnic, are members of the National Family Law Advisory Committee for the National Center for Lesbian Rights (NCLR). NCLR, in cooperation with other national LGBT rights organizations, has developed a series of publications about how the recent court rulings affect various federal rights.