The Changing Sense of “Family”

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The Changing Sense of “Family”

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Know how federal and state laws governing the definition of family impact your practice.

The IRS rejected the return and Windsor was left with a tax bill of $363,053. Windsor filed suit in New York State’s Southern District Court seeking a refund of the taxes paid.

The court granted Windsor’s petition and ordered a refund for Windsor, finding that Congress’s intention in excluding same-sex marriages from the definition of marriage for federal purposes failed under equal protection grounds. The lower court’s ruling was appealed and, by a 2-1 decision, the Second District Court of Appeals held that the Defense of Marriage Act (DOMA)
was unconstitutional under the Equal Protection Clause of the Fifth Amendment to the U.S. Constitution.

The Supreme Court of the United States (SCOTUS) accepted the case for review and on June 26, 2013, handed down its ruling, which granted same-sex couples access to 1,138 benefits formerly available only to traditionally defined married couples. This ruling further prohibited the federal government from using any classifications on the recognition of marriage and determined that marriage, per se, is a state issue (Karbijanian, 2013).

What does all that have to do with your practice as a financial services professional? You are now faced with planning issues many of you have never experienced before, especially those of you with lesbian, gay, bisexual and transgendered (LGBT) clients.

According to the Government Accounting Office, DOMA affects 1,138 federal benefits. What are some of the benefits available to LGBT couples today that have not been available to them before on the federal level and, in many cases, the state level as well? The first and most obvious is the ability to file a joint federal income tax return. Additional considerations in the financial planning area include:

- Claiming marital deductions for gift and estate taxes
- Splitting lifetime gifts
- Naming a spouse as beneficiary under a qualified retirement account
- Allowing rollover of qualified accounts into his or her account at the death of a spouse
- Simplifying rules related to joint ownership of property
- Granting of Social Security, Medicare and Medicaid benefits
- Strengthening federal provisions relating to hospital visitation rights

While this ruling may have normalized the issue relating to financial services on the federal level, the situation is very different on the state level (where licensed financial advisors and insurance professionals live their daily professional lives). At present, only 12 states and the District of Columbia recognize same-sex marriage. As of this writing, I anticipate California becoming the 13th state as a result of a separate ruling issued just one day before Windsor v. United States.

You are now faced with planning issues many of you have never experienced before, especially those of you with lesbian, gay, bisexual and transgendered clients.

As the number of same-sex couples grows, depending on where you live and your practice’s primary focus, you will need to expand your knowledge base and gain the necessary skills to serve your LGBT clients in a relatively short time frame.

One thing you would be wise to do is examine all of your financial planning agreements to make sure you address the new meanings of words such as, “spouse,” “partner,” etc. If you are in a state where same-sex marriage is not permitted, you will need to associate with a law firm that can assist your clients with legal documents pertaining to estate planning and joint ownership. While you cannot draw up the estate planning and joint ownership documents used by same-sex couples yourself in those states, you owe it to your clients, professionally and ethically, to be aware of those documents and where they can be drafted.

The family is changing. The financial services world is changing. Won’t you join in the change in your community so you can serve all the families who need your financial skills and advice? Remain awake. Adjust to new ideas. Remain vigilant.

I would like to acknowledge George Karbijanian’s excellent summation of the two cases mentioned in this article. They can be found, in their entirety, at Karbijanian, G. (2013) LISI Estate Planning Newsletter # 2110, (June 26, 2013) at http://www.leimbergservices.com Copyright 2013 Leimberg Information Services, Inc.