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The benefits of same-sex marriage: It's not just about the love thing

by Janis McDonagh, Esq., and Portia Rose, CPA

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Since the Defense of Marriage Act was effectively nullified by the U.S. Supreme Court in June 2013, same-sex couples have been rushing to the altar. In striking down the traditional definition of marriage as a union between a man and a woman, the court made it easier for more non-traditional families to take their vows.

For all of you hopelessly in-love couples who have either taken the plunge or are considering marriage, you might want to be aware of some of the more practical benefits, rights and protections that a ring and the related legal document can provide.

In the Supreme Court's decision striking down DOMA (United States v. Windsor), same-sex couples married in one of the 19 states plus the District of Columbia, or in a foreign country that recognizes same-sex marriage, qualify for many federal benefits previously limited to opposite-sex married couples. Unfortunately, the rules for eligibility vary by federal agency, since the court didn't address whether federal agencies must recognize the marriages of same-sex married couples living in non-recognition states.

Because the benefits vary from federal agency to agency and from state to state, every couple must thoroughly consider how those benefits will apply to their particular circumstances. So before making the big decision, take off the rose-colored glasses and think about the following:

Tax benefits

The IRS now recognizes all same-sex marriages regardless of what state you live in. You are now able (and required) to file a federal joint-income tax return with your spouse and are afforded many of the benefits of filing jointly, including but not limited to: less time and expense in filing one return as opposed to two separate returns and a potentially lower combined income-tax bracket, if two spouses have substantially different levels of income, to name just a couple. On the other hand, however, you may find that you and your betrothed are now subject to the so-called "marriage penalty." Your combined income may eliminate deductions and credits that might have been available at the lower individual-income thresholds. You may also find yourself in a higher tax bracket. Additionally, filing jointly mandates that you are jointly responsible for the entire tax liability.

Your annual tax filings may also become more complicated both on the federal and state tax levels as you combine your income and expenses. On the federal level, you will file “married filing jointly” or “married filing separately.” Depending on the state you live in as well as the state you are filing in, you may have to file married or single. If you are living or filing in a state that doesn’t recognize your marriage, you will have to file as single.

Talk to your tax professional about the pros and cons. It may pay to wait until January before taking your vows, since your tax-filing status is based on your marital status on Dec. 31. The tax savings could pay for your honeymoon!

Estate-planning benefits

As a married couple, you will be eligible to receive an exemption from both estate taxes and gift taxes for the property you give or leave to your spouse. Married couples can combine their personal estate-tax exemptions as well; this is referred to as “portability.” The second spouse to die can leave property worth up to \$10,680,000 (2014 exemption, indexed for inflation) free from federal estate taxes if the first spouse to pass away did not utilize any of his or her exemption amount. Unmarried couples do not get portability, so the second partner to die can leave only \$5,340,000 tax-free. Additionally, spouses have priority if a conservator needs to be appointed by the court; that is, you would be the one making the financial and/or medical decisions on your spouse’s behalf.

On the flip side of the estate-planning coin, you cannot “disinherit” your spouse. Your spouse has the right of election against your estate and has the first right to serve as your estate executor. A prenuptial agreement can address these aspects of your estate planning. You will want to talk to your lawyer about the intricacies of succession planning, particularly if children are involved.

Death benefits

Married couples are eligible to make burial and other final arrangements for their spouses — an important, if uncomfortable, caveat to contemplate as you weigh the advantages of marital bliss.

Medical benefits

Visiting your spouse in a hospital intensive-care unit or during restricted visiting hours is another benefit to being married. Hospitals can restrict visitors and most often limit who can see a patient to family members. As a spouse, your visitation rights are less restricted. Whether or not you are married, it is important to have a health-care proxy to ensure someone you trust will be able to make decisions about your health care.

Federal benefits

Some federal agencies, such as the Social Security Administration, only recognize marriages that are valid in the state of domicile (where the couple lives) for the purpose of granting federal benefits. This means that if you’re in a same-sex marriage but you live in a non-recognition state

at the time of your application, you aren't eligible for Social Security benefits on your spouse's work record. If you live in one of the states or Washington, D.C., where same-sex marriage is recognized, you will qualify for benefits. This rule also applies to Medicaid and Supplemental Security Income, bankruptcy filings and benefits under the Family Medical Leave Act.

Family benefits

If the married family includes children, either spouse may file for stepparent status or joint adoption or joint foster-care rights.

Also within your new family rights is the right to dissolve the marriage in the unfortunate case that your wedded bliss does not survive intact. You will need to involve attorneys to separate your combined lives. If you divorce, you will be entitled to equitable division of marital property and Qualified Domestic Relations Orders to split marital assets without income-tax consequences. Spousal or child support, child custody and visitation will have to be considered, if applicable. Also, if you are living in a state that doesn't recognize your marriage, you won't be able to divorce in that state; you will need to consult with your lawyer as well as your accountant, to make certain that the financial impacts of divorce are fully considered and planned for.

Housing benefits

As a married couple, either spouse may automatically renew a home or apartment lease signed by the other.

Consumer benefits

Married couples qualify for many types of consumer discounts and incentives offered at family rates, including health, homeowners', auto and other types of insurance; tuition discounts and use of school facilities; and a variety of others. On the other hand, when it comes time for college, you may find that your child no longer qualifies for financial aid based on your combined incomes.

Other legal benefits and protections

Spousehood also comes with a variety of legal advantages not available to unmarried partners, such as the right to sue a third party for wrongful death of your spouses, loss of consortium (intimacy) or offenses that interfere with the success of your marriage, such as alienation of affection and criminal conversation (laws available in only a few states). Spouses can also claim the marital-communications privilege, meaning a court can't force you to disclose the contents of confidential communications between you and your spouse during your marriage. You can also receive recovery benefits if your spouse is the victim of a crime; obtain immigration and residency benefits for a non-citizen spouse; and exercise visitation rights in facilities where visitors are restricted to immediate family.

The decision to marry has many practical and pragmatic implications, some that are beneficial

and some that aren't. Thoughtful consideration of all aspects is the key. The LGBT & Non-Traditional Family Practice at Marcum LLP is well versed in many of the considerations that can affect your decision to marry except, of course, the most important one — who you are going to ask. For additional information, visit www.marcumllp.com/LGBT.

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