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Same Sex Marriage Update

On June 26, 2013, in *United States v. Windsor*, the Supreme Court of the United States ruled that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional. Section 3 of DOMA defined the terms "marriage" as a union between a man and a woman and "spouse" as a person of the opposite sex who is a husband or wife. Under its terms, married same-sex couples were effectively prohibited from receiving the rights, benefits and privileges afforded to traditional married couples under more than 1,000 federal statutes. Many of these rights, benefits and privileges are central to and critical in estate planning. These include, among many others, the surviving spouse's right to Social Security income and death benefits, veteran's spousal benefits, spousal right to IRA benefits and roll-over, the ability to file joint federal income tax returns, marital deductions applicable to federal and state estate taxes, entitlement to distributions from federal retirement plans, portability of the unified credit, and Medicare and Medicaid benefits.

While the Court's ruling greatly expands the rights of same-sex couples who wish to marry or have already married and live in states where same-sex marriage is permitted, questions still remain as to how this ruling will affect the rights of individuals in states which prohibit same-sex marriage. Even in states which permit same-sex marriage, many issues remain unclear. Same-sex couples will still be challenged in making decisions which traditional married people need not consider, such as whether and to what extent a move to a state which does not recognize the marriage will affect their rights and/or the rights of their children, what documents to carry with them when traveling to states which do not recognize the marriage, whether their death in such a state will affect inheritance rights, whether the non-biological parent should adopt a child or children born during the marriage, whether to implement or change estate planning documents to take advantage of the newly realized rights and benefits, grandparents' rights for grandparents who reside within or outside a state that recognizes their child's same-sex marriage.

In further good news for same-sex married couples, Governor Andrew Cuomo has announced that estate tax refunds are available to qualified spouses of same-sex couples. This is an area of law that is rapidly changing and we at Berwitz & DiTata LLP are committed to helping our clients and friends stay up to date as things continue to develop and to help resolve their concerns.