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Estate Planning and the Enactment of the New York Marriage Equality Act: What You Need to Know

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With the enactment of the Marriage Equality Act, New York is now the sixth state to permit marriage for same-sex couples. The law takes effect on July 24, 2011. There are many benefits now available at the state level to those couples wishing to marry:

- **Income Taxes.** Married couples can file New York income tax returns jointly. Couples may end up paying less or more in state income tax, depending on their income level. Generally speaking, getting married will benefit those with lower incomes while higher income couples could end up paying more tax. Nothing changes at the federal level.
- **Estate Taxes.** New York State allows a deceased spouse's estate to pass to his or her surviving spouse free of state estate tax. Unmarried couples do not qualify for this benefit. Estates exceeding \$1,000,000 passing to beneficiaries other than a spouse or charities are subject to the New York estate tax.
- **Gift Taxes.** New York has no gift tax, so nothing changes here. Since the marriage will not be recognized for federal purposes, all transfers between same-sex spouses can trigger a federal gift tax (presently 35%, but scheduled to increase to a maximum of 55% in 2013) depending on the amount. As a result of unrelated changes in the federal gift tax law, this is less of a concern for couples with less than \$5,000,000 until 2013. At that point, it could be a problem for any couple with more than \$1,000,000.
- **Intestate Rights.** Each person should always have a comprehensive estate plan. However, if a married person should die without having a will, New York State law can now help here. If the deceased spouse has no children, his or her surviving spouse will receive the entire estate. If the deceased spouse has children, the surviving spouse gets \$50,000 plus half of the estate, and the deceased spouse's children get the other half.
- **Health Insurance.** The cost of health insurance provided to an unmarried partner is generally subject to income tax. Heterosexual married couples are not taxed at the state or federal level. New York married same-sex couples will not have to pay that income tax to New York, but the IRS will still tax them. In light of the new law, some employers will cut back on partner benefits, requiring the couple to marry to continue receiving coverage. Some employers may also offer a "gross-up" salary adjustment to compensate for the greater tax burden.
- **Disposition of Remains.** A surviving spouse is the first in line to determine how his or her spouse's remains will be handled. If the couple is not married, the deceased partner's family generally gets to make this decision.
- **Claims.** A spouse may be entitled to worker's compensation benefits if his or her

spouse is injured and may also be able to bring a wrongful death claim (depending on the circumstances of the spouse's death). An unmarried partner does not have the same set of rights.

Being married (as opposed to being in a domestic partnership or a civil union partnership) is important even though the federal Defense of Marriage Act presently prevents the federal government from recognizing same sex marriages. In the event that act is struck down or repealed (its constitutionality is currently being challenged), couples who marry would then be in a position to receive federal marital recognition immediately. Until that happens, there are powerful federal estate planning opportunities available to same-sex couples (married or not) that are generally not available to couples whose marriages are recognized for federal tax purposes.

Despite its benefits, we all know that a marriage may end in divorce. Appropriate premarital planning is just as important as estate tax planning after the marriage. Before marrying, a couple should consider entering into an appropriate prenuptial agreement.

To learn more about the Marriage Equality Act and its implications for your planning, or to discuss specific estate planning opportunities that may be available to you, please contact one of the Lowenstein Sandler attorneys listed below:

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