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Windsor v. U.S. and the Defense of Marriage Act: What Does it Mean?

by Jessica A. Hayes, Esq.

The Supreme Court of the United States made an historic ruling on June 26, 2013 in *Windsor v. United States*, striking down Section 3 of the Defense of Marriage Act (DOMA) as unconstitutional. Originally enacted in 1996, DOMA contains three sections: Section 1 simply names the Act the "Defense of Marriage Act"; Section 2 provides that no state or territory shall be required to recognize a same-sex marriage which is recognized by another state or territory; and Section 3 defines the word "marriage" to mean "only a legal union between one man and one woman as husband and wife," and the word "spouse" to refer only to "a person of the opposite sex who is a husband or a wife."

In its June 26th ruling, the Supreme Court issued a 5-4 decision declaring Section 3 of DOMA to be unconstitutional "as a deprivation of the liberty of the person protected by the Fifth Amendment." As a result of this ruling, the federal government's definition of "marriage" has been expanded to include legal unions between couples of the same sex. Although the full effect of this ruling is yet to be seen, we can begin to speculate about its impact on numerous federal benefits and policies which affect Hook Law Center's clients. The following are what we believe will be the ultimate implications of this ruling, based on our preliminary research on this matter; over time, the implications will become more certain.

Social Security Benefits

In general, same-sex married couples will now be eligible for Social Security benefits that are available to spouses. Benefits are available when one spouse retires (Retirement Spousal Benefit), in the event of a disability (Disability Spousal Benefit), and when one spouse has passed away (Survivor's Benefit). Previously available only to heterosexual married couples, the broadening of Social Security benefits to include a spouse of the same sex will result in more income to the spouse. A caveat, however: The laws of the state in which the couple resides at the time they apply for the benefit may determine whether or not the couple will be treated as "married," because the SSA traditionally uses place of domicile to determine marital status. The SSA is in the process of working out what effect the *Windsor* ruling will have on these policies.

Windsor v. U.S. and the Defense of Marriage Act: What Does it Mean? (con't)

Medicaid

Each state has its own Medicaid program which is partially funded by the federal government. As a result of the ruling in *Windsor v. United States*, every state that recognizes marriages between same-sex couples will recognize such marriages for Medicaid purposes. States that do not recognize same-sex marriage will most likely not recognize the marriage for Medicaid purposes, although some states may provide hardship protections to a partner of a person receiving long-term care.

Military Benefits

Valid same-sex marriages will be recognized for all military benefits, regardless of where those individuals are stationed. This includes medical benefits (Tricare), housing, ID cards, military base privileges, post-9/11 education benefits, Service Connected Disability Compensation, Death Indemnity Compensation for survivors, joint duty assignments, burial in national cemeteries, etc.

Veterans' Administration Benefits

So long as the couple was validly married in a state which permits same-sex marriage, or the state in which the couple resides when VA Benefits accrue permits same-sex marriage, same-sex married couples (or a widow(er)) should be able to collect VA Benefits which were previously available only to heterosexual married couples. A same-sex couple may not, however, receive VA Benefits if they are living in a state that does not recognize same-sex marriage. This issue will need to be resolved.

Federal Income Taxes

Couples in valid same-sex marriages should now be able to file income taxes identifying themselves as married. Filing status is generally determined on the last day of the year; therefore, if you are married on the last day of the year, you will identify yourself as "married" on your taxes for that year.

Federal Estate and Gift Taxes

Previously, if one member of a heterosexual marriage passed away without using his or her full estate tax exemption, portability permitted the remaining spouse to use the remaining amount of the exemption, thereby decreasing the total estate tax liability of both spouses. Now that the federal government recognizes same-sex marriages, portability will be available to individuals in valid same-sex marriages, resulting in estate tax savings. In addition, the federal estate and gift tax marital deductions which were previously available only to heterosexual married couples will now be available to spouses of the same sex.

These are just a few examples of what the implications of the *Windsor* ruling may be. As you can see, there is much to be determined in the wake of *Windsor*. In addition, although Section 3 of DOMA has been deemed unconstitutional, and the federal government will now recognize same-sex marriages, it is important to note that Section 2 still stands; therefore, a state which does not recognize same-sex marriage may continue to refuse to recognize a same-sex marriage sanctioned by another state, at least for the time being.

Disclaimer: This newsletter and the opinions and projections contained herein are not to be construed as legal advice. For a more in-depth analysis of what the Windsor ruling means for you, please contact an attorney.



Perils of Driving with a Pet

Hook Law Center: Kit Kat, is it safe to drive with a pet?

Kit Kat: Well, as much as we love our furry friends, the answer is "no," according to the latest research. The new study included 2,000 drivers, nearly 700 of whom frequently drive with a pet. The age of the drivers was 70 years old or older. What the researchers found was that those drivers who always drove with their pets had double the risk of an accident than those who never or sometimes drove with their pet. The study was conducted by scientists at the University of Alabama at Birmingham and published in the journal, [Accident Analysis and Prevention](#).

What this particular study didn't tease out was the difference between driving with the pet restrained or riding free, usually in the front passenger or a rear seat. Previous studies indicate 83% of drivers agree that driving with an unrestrained pet is dangerous, yet only 16% use some type of restraint while driving. So now we know--it's really not safe to drive with an unrestrained pet! So each person should examine his/her habits, and make a decision to change, if they are not already using safe, driving practices. One could say for older people, driving with an unrestrained pet is like driving while texting. And everybody knows that's a "no-no." Let's make the roads safe for everyone!



Here are links to some videos about the Memory Care Center, an assisted living center in Virginia Beach, VA. It has a special care unit for those with dementia or Alzheimer's. Check them out to learn about some of the latest ways facilities are attempting to prolong memory in people with these conditions in a therapeutic setting.

<http://www.cox11.com/2013-cox-connections-607c-the-memory-center/>

<http://www.youtube.com/watch?v=AyYaV-clTKQ&feature=youtu.be>

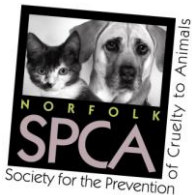


(Source: <http://consumer.healthday.com/Article.asp?AID=676077>. 5/30/2013)

Upcoming Events

- Hook Law Center will be presenting a seminar to the Virginia Society of Enrolled Agents at the Airport Hilton, 1500 North Military Highway, Norfolk, VA 23502 on **July 17, 2013 at 8:00 a.m.**
- Hook Law Center will be presenting at the Towne Bank Senior Partners Conference at TowneU, Harbour View Blvd., Suffolk, VA on **July 31, 2013 at 5:00 p.m.**
- Hook Law Center will be presenting a seminar on Special Needs Trusts at Hope House, 801 Boush Street, Suite 302, Norfolk, VA 23510 on **August 6, 2013 at 6:00 p.m.** This event, hosted by ARC of South Hampton Roads, is free and open to the public.
- Hook Law Center will be presenting at the Advanced Elder Law Seminar sponsored by Virginia Continuing Legal Education at The Place at Innsbrook, 4100 Cox Rd., Glen Allen, VA on **September 11, 2013.**
- Hook Law Center will be presenting a seminar on Providing for Pets in Estate Plans at Care-A-Lot Pet Supply, 5457 Indian River Road, Virginia Beach, VA on **September 19, 2013 at 6:30 p.m.** This event, hosted by the Norfolk SPCA and Care-A-Lot Pet Supply, is free and open to the public.
- Hook Law Center will be hosting a shred event at our Virginia Beach office on **September 21, 2013 from 9 a.m. - 12 p.m.**
- Hook Law Center is participating in the Alzheimer's Association Walk to End Alzheimer's on **October 13, 2013** to raise funds and awareness. We know **Team Hook Law Center** can make a difference with your support! It's easy to give online using this link: http://act.alz.org/site/TR/Walk/VA-SoutheasternVirginia?team_id=87329&pg=team&fr_id=3766. If you would like to join **Team Hook Law Center**, raise funds and walk with us, please email **Jennifer Woods-Pagano, CECC**, our team captain, at pagano@hooklawcenter.com for more information.

Special Offer for Subscribers of Hook Law Center News: **This Summer, Bring Home a New Best Friend!**



The Norfolk SPCA is offering subscribers of Hook Law Center News a discount on adoptions this summer. As kids get out of school, it's a perfect time to welcome a new family member into your home! The adoption discount lasts through Labor Day. Bring the whole family and find a wonderful new addition for your home!

Adoption Discount

Bring a copy of this ad at the time of adoption and receive a 20% discount off adoption fees:

- **\$30 off of the regular dog adoption fee of \$150.**
- **\$20 off of the regular cat adoption fee of \$100.**

View all the adoptable pets and check out the hours of operation at www.NorfolkSPCA.org/adopt. The Norfolk SPCA is open seven days a week and has lots of loving, homeless pets in need of new, forever homes. The shelter is located just off I-264 at the Ballentine Blvd. exit. Phone: (757) 622-3319.

Care-A-Lot Pet Supply and the Norfolk SPCA announce their new

Companion Animal Education Program

with guest speakers
Attorneys and Estate Planning Experts

Andrew H. Hook, Esq.
and

Jessica A. Hayes, Esq.
of Hook Law Center

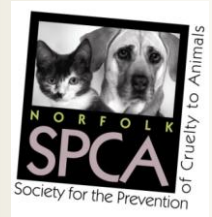
on
“*Providing for Your Pets in Estate Plans*”

at

Care-A-Lot Pet Supply
5457 Indian River Road, Virginia Beach, VA

on

Thursday, September 19, 2013 at 6:30 p.m.



*For more information, please visit NorfolkSPCA.org or
contact us at 757-622-3319 ext. 126 or info@NorfolkSPCA.org*

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