

# DOMA defeated, now what?

Accounting and legal ramifications  
for same-sex couples, employers

By AMBROSE CLANCY

When same-sex couples marry, their financial future is often on equal footing with their desire to publicly and joyously declare their love as a motivating factor.

For Tom and John Malanga, getting married meant the hope of more financial peace of mind and security.

"Finances were always in my mind," Tom said.

An attorney by trade and principal contracts examiner in the purchasing division of Suffolk County, Tom married John in January 2009 in Stonington, Conn.

At the time, the marriage of the Central Islip couple was recognized by New York State, but not by the federal government, since the Defense of Marriage Act, a law passed by Congress, was still in effect. DOMA threw roadblocks into the Malangas' shared financial paths, especially in relation to Social Security benefits, filing with the Internal Revenue Service as a married couple rather than as individuals and estate taxes.

Finances were also an important factor when Rich Leidenfrost-Wilson and his husband, Chris, decided to marry five years ago in Massachusetts.

"There was a financial motivation behind it, besides just



See DOMA, 31A

JOSEPH MILIZIO: He is advising companies on revising employee benefit policies in the wake of DOMA's demise.

## From 29A

wanting to get married," said Rich, a Baldwin resident.

But marriage for both couples meant navigating through a fog of regulations from separate government agencies, where bureaucracies take time to reverse course and don't always communicate with each other on policy.

Even with a key provision of DOMA overturned in June by an historic Supreme Court ruling, same-sex couples and their accountants and financial advisers are still monitoring through the aftershocks, often forced to take a wait-and-see attitude on how government agencies will proceed.

## The personal is political

Liberation and gaining equal rights comes slowly. Just ask Joseph Milizio, managing partner at the Lake Success law firm Vishnick McGovern Milizio. Milizio heads up VMM's lesbian, gay, bisexual and transgender practice, with a focus on the financial needs of LGBT clients.

Recognition of gay marriages performed outside New York was made official by the state in 2008, three years before same-sex couples could marry here.

"So couples had all state rights, but absolutely no federal rights," Milizio said. "More than 1,000 federal rights were denied to couples married in New York State."

Most important of the rights denied was Social Security. In the case of one spouse dying, the other couldn't pick up the spouse's federal retirement benefits.

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## Staying ahead of the learning curve

To say there's been a period of transition to endure since the legalization of gay marriage and the DOMA decision is an understatement, Milizio said.

"Each day something new comes along that we have to acclimate ourselves to," he said.

Carol Markman agrees.

"We're really in a stage of learning," said Markman, a partner at the Syosset accounting firm, MayerMeinberg.

Prior to the beginning of the fiscal year, the IRS puts out what's called a "Priority Guidance Plan," Markman said, noting this is a list of what the agency will decide to do with upcoming federal tax policies that may have changed.

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The second greatest inequality was that a couple was not entitled to any spousal estate tax benefits, Milizio said.

"But validly married couples can, for federal purposes, pass on all of their assets between each other on death without any estate taxes," Milizio said.

"But when the IRS put it out for the current year, no one anticipated we'd be concerned with same-sex marriages and DOMA," Markman said.

In addition, Gov. Andrew Cuomo sent out a press release concerning people who were married in New York on how to deal with amended state tax returns if one of the spouses dies. Just one more wrinkle, among many, to consider, Markman said.

Janis McDonagh, a partner with Marcum, the Melville accounting firm, lines up with her colleagues in advising clients to have patience and see how the dust settles after the landmark DOMA ruling, with accountants and advisers stuck with Rumsfeldian conundrums of "knowns and unknowns."

"There are a lot of unknown questions,"

McDonagh said.

Confusing the matter is that each agency of the federal government defines marriage in its own way.

"Some define it as where it was celebrated, and others will define it as where the couple lives," McDonagh said.

But even knowing how an agency defines the institution isn't always a help, she added, since the IRS, for example, defines marriage based on the place where the couple resides. So if two people of the same sex marry in New York, but live in Florida — a state that not only doesn't accept gay marriage but makes it illegal — they don't get any federal benefits.

Despite the current confusion, advisers see better financial times ahead for their gay clients.

## The employer's duty

With DOMA's demise, businesses are now scrambling to get up to speed on new policies, Milizio said, noting he's represented firms in how to go about instituting employee benefits.

If, for instance, an employee had his or her same-sex spouse on an employer's insurance policy, the value of the benefits to the spouse was taxable, for income tax purposes, to the employee.

"But any other married couple, if they had a spouse on their health insurance, the value of the spouse's coverage is not taxable," Milizio said.

Company pension plans are also affected. With the downfall of the DOMA provision, spouses of same-sex couples must be named as the default beneficiary on pension plans unless they sign a waiver in writing not accepting it. If the employee wants the benefits to go to someone else, but the spouse has not signed off on the idea, it could end up in court.

A small detail, but if an employer is unaware of it, or overlooks it, the price could be very steep.