



Same sex
marriage,
where are
we now?

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Consumers Energy



Court Case Developments

- Federal District Court DeBoer v. Snyder, 973 F. Supp. 2d 757 (E.D. Mich. 2014) (Friedman, J.)
- U.S. 6th Circuit Court of Appeals DeBoer v. Snyder, 772 F.3d 388, 396 (6th Cir. 2014)
- Federal District Court (March 22nd 2014 marriages valid, Judge Goldsmith)
http://freemarry.3cdn.net/a23500c04c85189d47_50m6b90fz.pdf
- U.S. Supreme Court OBERGEFELL v. HODGES:
http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf 576 US ____ 2015

Windsor a Precursor?

- http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf
- The State of New York recognizes the marriage of New York residents Edith Windsor and Thea Spyer, who wed in Ontario, Canada, in 2007. When Spyer died in 2009, she left her entire estate to Windsor.

Real Money

- Windsor sought to claim the federal estate tax exemption for surviving spouses, but was barred from doing so by §3 of the federal Defense of Marriage Act (DOMA), which amended the Dictionary Act—to define “marriage” and “spouse” as excluding same-sex partners. Windsor paid \$363,053 in estate taxes and sought a refund, which the Internal Revenue Service denied.

Federal Recognition and Response

- Windsor was decided in June 26 of 2013
- Federal government then started a review of what agencies should do
- Department of Labor and Internal Revenue Service issued guidance requiring federally regulated benefits, such as tax-qualified retirement plans--ie the same benefits to same-sex spouses as any marriage
- Less clear for employers and others—welfare and health care benefits, etc.

2013—2015 Examples-Responses

- <https://www.federalregister.gov/articles/2015/10/23/2015-26890/definition-of-terms-relating-to-marital-status>
- <https://www.dol.gov/whd/regs/compliance/whdfs28f.htm>
- <https://www.dol.gov/ebsa/newsroom/tr13-04.html>
- http://archive.defense.gov/home/features/2015/0615_pride/
- <https://www.irs.gov/uac/newsroom/treasury-and-irs-announce-that-all-legal-same-sex-marriages-will-be-recognized-for-federal-tax-purposes-ruling-provides-certainty-benefits-and-protections-under-federal-tax-law-for-same-sex-married-couples>

One Impact of the Decisions

- human resources offices around the country, labor unions, benefit administrators and employees had to rethink, along with public and private employers, benefits to be provided or offered or covered for employers and their spouse and/or family

Lex Loci confusion no more?

Lex Loci Celebrationis

- After Windsor, but before the Obergefell decision, those dealing with same sex marriage often asked:
- Where is your residence?
- Where were you married (and when)?
- Have you moved from one location to another?
- Was the marriage valid in your “marriage state, and how does your state of residence treat such marriages?

Domestic Partnerships/Civil Unions Soon Dead as a Dodo?

- Before Windsor, and even after, several employers and some union contracts made allowances for various benefits for those in Domestic Partnerships and Civil Unions, however they may have been defined.
- This particularly happened in jurisdictions that did not recognize same sex marriage.
- After Windsor and especially after Obergefell, there likely will be a retrenchment of such largess—some of that has already happened.

State Governments and Some Companies Reconsider Domestic Partner Benefits

- <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/09/11/after-same-sex-marriage-ruling-states-reconsider-domestic-partner-benefits>
- Often a matter of contract negotiations so changes likely to come in next few years *Tip Inquire of your client*

Who was

Obergefell

- After two decades together, his partner now facing debilitating amyotrophic lateral sclerosis (ALS) James O was determined to marry John Arthur and both flew by medical transport plane to be married in Baltimore
- 3 months later, Arthur died, and Ohio said no way O could be listed on death certificate as surviving spouse

Who are

April DeBoer and Jayne Rowse

- Michigan nurses who celebrated a commitment ceremony to honor their permanent relation in 2007
- Fostered and adopted children including one needing around the clock care
- Michigan, however, permitted only opposite-sex married couples or single individuals to adopt, so just one legal parent/standing

Fundamental Right



- In Obergefell the majority held that the 14th Amendment required states to recognize same-sex marriages, calling the right to marriage a fundamental right under Due Process and Equal Protection Clause analysis
- Dissent_ – not truly a “liberty interest” and court decision stretches meanings of fundamental rights—legislation is better



What now?

- Don't assume that all same-sex partners, even long-term partners, plan to marry—if they do however, how will marriage change their standing?
- When a same-sex couple contemplates marriage, it's important to have a complete picture of the couple's income and assets
- Many married clients wrongly believe that a married person does not need a health care power of attorney
- http://www.americanbar.org/publications/gp_solo/2015/july-august/advising_samesex_couples_after_obergefell_and_windsor.html Zarembka

Waves of New Marriages?

- Older couples, long together, contemplating marriage—should there be an analysis of situation, or even a pre nuptial?
- Younger people?
- Any retroactive analysis or tax return or demands of employers possible?
- And couples who had already been married?

Tax and Benefit Considerations

- IRS--check two web pages as starting off:
<https://www.irs.gov/uac/answers-to-frequently-asked-questions-for-same-sex-married-couples>
- <https://www.irs.gov/retirement-plans/treatment-of-marriages-of-same-sex-couples-for-retirement-plan-purposes>
- Michigan Department of Treasury:
- https://www.michigan.gov/documents/taxes/Notice_US_Supreme_Court_Obergefell_493269_7.pdf
- http://www.michigan.gov/documents/taxes/2015_Tax_Text_Web_514768_7.pdf?20160602083111

The times, they are a changing

- Michigan Vital Records now changing forms—but more work ahead? http://www.michigan.gov/mdhhs/0,5885,7-339-71551_4645--00.html
- Michigan Law Review Commission, Draft Report: http://council.legislature.mi.gov/Content/Files/DRAFT_MLRC%20-%20Same%20Sex%20Marriage%20Report.pdf
(68 pages)

What do you think?

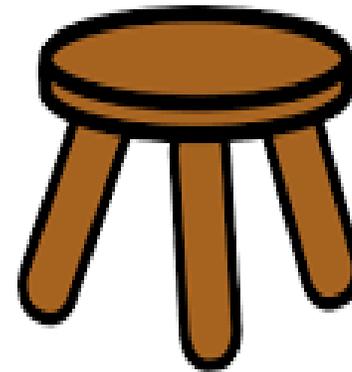
- Is Dower on the way out? Or is it like an Oprah show—you have dower, she has dower, he has dower—*Dower for Everyone!*
- What about Tenancy by the Entirety versus Joint Tenants with Rights of Survivorship?
- What about multiple marriages or ceremonies, any need to determine validity?
- Separated but never divorced?

Estate Planning/Traditional of Non-traditional? Default Provisions Under the Law

- For couples who haven't married (gay or straight) estate planning, property ownership, partnership or contractual arrangements loom in importance?
- Use language to signify importance? i.e.: "...my good friend and long-term companion. . ."
- Intestate succession NOT what many lgbt individuals desire/plan/understand
- Traditional or not, basics of estate planning remain

The 3 Legs of the Stool

- The 3 most basic items for good life and estate planning in Michigan are:
 - --Durable Power of Attorney for Finances
 - --Designation of Patient Advocate (Medical Power of Attorney)
 - --Will (guardianship/minors)
 -



Good, better, best?

- Although the three basics are important, and “*everyone should have them*” other items are probably worth considering:
 - --property sharing or partnership arrangements?
 - --HIPAA releases
 - --Trust or Trusts
 - --Funeral Representative (MCL 700.3206)

Default provisions in the law shifting



Consumers Energy Employee Group

- *NOTE:* Compiled by Bradley Vauter and the law firm of Bradley Vauter & Associates, P.C., of Grand Ledge MI, this information is offered as information only and not as legal advice or counsel. Information gathered May 2016.
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