



AFTER DOMA

WHAT IT MEANS FOR YOU

The Supreme Court victory in *United States v. Windsor* striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

Keep in Mind:

- The Supreme Court's ruling in *Windsor* applies only to the federal government. It does not change discriminatory state laws excluding same-sex couples from state-conferred marriage rights.
- Federal agencies—large bureaucracies—may need and take some time to change forms, implement procedures, train personnel, and efficiently incorporate same-sex couples into the spousal-based system.
- Until same-sex couples can marry in every state in the nation, there will be uncertainty about the extent to which same-sex spouses will receive federal marital-based protections nationwide. For federal programs that assess marital status based on the law of a state that does not respect marriages of same-sex couples, those state laws will likely pose obstacles for legally married couples and surviving spouses in accessing federal protections and responsibilities.
- Securing fair access to federal protections that come with marriage for all same-sex couples in the nation will take some time and work. In some situations, it may require Congressional action or formal rule-making by agencies.
- Before making a decision, it is essential that you consult an attorney for individualized legal advice. This is particularly important for people who are on certain public benefits, as getting married may jeopardize your eligibility without providing you the full measure of protections other married couples enjoy. In addition, couples who travel to another place to marry and then return to live in a state that does not respect their marriage may be unfairly unable to obtain a divorce, which can lead to serious negative legal and financial consequences. People must make careful decisions when and where to marry, even as we work together to end this injustice.
- We are committed to winning universal access to federal marital protections for married same-sex couples through ongoing public policy advocacy, and, where necessary, strategic litigation. Contact our organizations if you have questions, for updates and to learn more about what you can do to achieve full equality for those who are LGBT.

This Guidance is intended to provide general information regarding major areas of federal marriage-based rights and protections based on how the various federal agencies have administered federal benefits. ***It should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.*** Past practice is no guarantee of future developments. While laws and legal procedure are subject to frequent change and differing interpretations in the ordinary course, this is even more true now as the federal government dismantles DOMA and extends federal protections to same-sex couples. None of the organizations publishing this information can ensure the information is current or be responsible for any use to which it is put.

No tax advice is intended, and nothing therein should be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Contact a qualified attorney in your state for legal advice about your particular situation.

BANKRUPTCY

Bankruptcy is a legal process designed by Congress to give debtors a fresh start from debts they can't afford to pay. It allows them to “discharge,” or eliminate, certain debts, and prevents creditors from taking further action to collect on those debts. There are specific rules about which assets you can keep if you go through bankruptcy, and which debts you can discharge. Some kinds of debt are never dischargeable. If you are married, you have different options for bankruptcy filings. Now that the Defense of Marriage Act (DOMA) has been struck down, this guidance provides basic information about bankruptcy filings, how being married matters in bankruptcy proceedings, and what married same-sex couples can expect. Consult with a professional bankruptcy advisor for information and advice about your specific situation.

What kinds of bankruptcy proceedings are available to individuals?

Married people can file for bankruptcy either singly or jointly (where both spouses file together). Businesses also can file for bankruptcy. There are many different kinds of bankruptcy proceedings. Chapter 7 and Chapter 13 are most commonly used by individuals.

In a Chapter 7 bankruptcy, the debtor's assets are sold and any proceeds are used to repay creditors. The debtor is allowed to keep certain property, known as “exempt” property. What property counts as “exempt” is a matter of either state or federal law. With some important exceptions, debts will be discharged, even if there are no non-exempt assets. Recent changes to the bankruptcy laws mean that if a debtor's income (including a spouse's income) is above a certain amount, a Chapter 7 filing will be converted to a Chapter 13 filing.

Under a Chapter 13 bankruptcy, you will be required to follow through on a court-approved payment plan to repay your debts. You will be protected from creditors while the plan is in effect, and how much you have to repay will depend in part on how much of your assets are exempt.

For either kind of bankruptcy, there are limits on how frequently you can file.

Because bankruptcy can damage your credit and have other serious consequences, it is very important to fully understand the advantages and disadvantages of filing. For more information, consult with a reputable bankruptcy attorney.

How can marriage or having been married impact a bankruptcy filing?

Married couples can file a joint petition for bankruptcy. This means that your combined property and debts are part of the same bankruptcy, and the debts of both spouses are discharged. Filing a joint bankruptcy rather than two individual bankruptcies may result in financial savings, since filing bankruptcy requires paying a filing fee to the court, and may also involve paying for a lawyer. It also may simply be more convenient to proceed in a single filing, rather than two bankruptcy filings.

There are other ways that marriage matters in a bankruptcy filing. If you are married, your spouse's income will be included in determining whether you can file for Chapter 7 bankruptcy.

This series of fact sheets produced together by:

American Civil Liberties Union | Center for American Progress | Family Equality Council | Freedom to Marry | Gay & Lesbian Advocates & Defenders
Human Rights Campaign | Immigration Equality | Lambda Legal | National Center for Lesbian Rights | National Gay and Lesbian Task Force | OutServe-SLDN.

And if you were married and get divorced, debts owed for “domestic support obligations” (such as alimony, maintenance or support) are non-dischargeable and get priority in bankruptcy, which means they will get paid off first if there are assets to pay them.

While it may make sense for a married couple to file jointly in many cases, sometimes, you or your spouse might be better off filing alone. If only your spouse has significant debt, for example, it might make more sense for your spouse to file individually. If you have significant joint debt, on the other hand, filing only one petition could mean that creditors are still free to go after the other spouse. The rules differ somewhat in community property states. For more information on how to assess whether you are better off filing singly or jointly, consult with a reputable bankruptcy attorney.

Who will be recognized as married for bankruptcy filing purposes?

The federal bankruptcy courts administer bankruptcy proceedings. These are governed by the Bankruptcy Code, but state law may determine which assets are part of the bankruptcy estate, and which are “exempt” (which means you get to keep them). The bankruptcy law says that which state’s law applies to determine your exemptions depends on how long you have lived in the state before you file for bankruptcy.

- **If you live in a state that respects your marriage:** Now that DOMA has been overturned, married same-sex couples living in states that respect their marriages will be considered married for bankruptcy purposes.
- **If you always lived in a state that doesn’t respect your marriage:** There is no federal statute or regulation that addresses how the bankruptcy courts are to determine whether a marriage is valid. You may still be recognized as married for bankruptcy purposes, although it is not entirely clear how state laws relating to exemptions will apply to joint filings by married same-sex couples. This may take some time to sort out. In our mobile society, it makes sense for the federal government to recognize all marriages that were valid where entered. We are working to ensure that the federal government respects married couples wherever possible. If you encounter problems, contact one of the legal organizations listed below.
- **If you married and lived in a state that respected your marriage but then moved to a state that does not respect your marriage:** There is no federal statute or regulation that addresses how the bankruptcy courts are to determine whether a marriage is valid. You may be recognized as married for bankruptcy purposes, and depending on when you moved, the law of your former home state might apply to determine your exemptions. Again, it may take some time for the bankruptcy courts to sort out how they will handle joint filings by married couples in states that do not respect marriages of same-sex couples. If you encounter problems, contact one of the legal organizations listed below.

How can I find out more about how bankruptcy works, and how to file?

One place to start is this website from the federal courts, which administer bankruptcies:

- www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics.aspx

For more information, see:

- <http://consumer.abi.org/consumers>

For information about how to file, see:

- www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx



FOR MORE INFORMATION, CONTACT

AMERICAN CIVIL LIBERTIES UNION

aclu.org/lgbt

NATIONAL CENTER FOR LESBIAN RIGHTS

nclrights.org

LAMBDA LEGAL

lambdalegal.org

GAY & LESBIAN ADVOCATES & DEFENDERS

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