

The Importance of Estate Planning for Same-Sex Couples

This past September, the Seventh Circuit Court of Appeals affirmed a decision out of the Western District of Wisconsin striking down Wisconsin's ban on same-sex marriage. The decision, *Wolf v. Walker*, held that the state's ban on same-sex marriage is a violation of the 14th Amendment's equal protection clause. Although the State appealed the decision to the U.S. Supreme Court, the Court declined to hear the appeal on October 6, 2014, meaning that same-sex marriage is now valid in Wisconsin. Although the Court's denial to hear the appeal resolves the status of same-sex marriage in Wisconsin, it does not answer the broader question of the status of same-sex marriage on a national level. As the legal status of same-sex marriage continues to evolve in Wisconsin, it is increasingly important for same-sex couples to put their estate planning affairs in order.

What does this mean for same-sex couples in Wisconsin? Most importantly, same-sex couples may now legally marry in Wisconsin. In addition, the state must recognize the marriage of a same-sex couple that occurred in another state (even if that marriage occurred before October 6, 2014, when the law in Wisconsin officially changed).

From an estate planning perspective, this also means that married same-sex couples living in Wisconsin will be entitled to state laws that benefit spouses, such as Wisconsin's marital property law, which governs the property of spouses during the marriage and upon the death of one of the spouses. Under the marital property law, both spouses have an equal ownership interest in marital property, which generally includes wealth earned or accrued during a marriage. In addition, married same-sex couples may now file joint Wisconsin income taxes, adopt one another's children as stepparents, and get divorced or legally separated in Wisconsin courts.

Although not impacted by the Court's recent decision, it is important to remember that married same-sex couples living in Wisconsin can also take advantage of federal tax provisions applicable to spouses, such as the marital deduction, and certain tax planning opportunities, such as portability of the estate tax exclusion.

If you or anyone benefiting from your estate plan is impacted by the U.S. Supreme Court's recent decision, contact your Reinhart [Trusts and Estates attorney](#) to

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