

THE REAL DEAL

Historic Ruling on DOMA Boosts Real Estate Benefits for NYC's Same-Sex Couples

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By Mark Maurer



From left: Edith Windsor, U.S. Supreme Court and Malcolm Taub

The U.S. Supreme Court's landmark ruling yesterday to overturn the Defense of Marriage Act will have a substantial impact on the lives of same-sex married couples nationwide, granting them some 1,000 new federal rights and benefits. In the world of New York City real estate, the decision will impact the process of selling a home, estate planning and tax exemptions for those couples.

"Housing-wise, it's a great day to be gay," said real estate attorney **Adam Leitman Bailey**.

The law, enacted in 1996, defined marriage as between a man and a woman, effectively denying federal benefits to gay and lesbian couples, even in states that allow same-sex unions.

Since gay marriage has been legal in New York State since 2011, city and state laws — such as those governing rent regulation and real property — will not be affected. For example, there will be no change to whether spouses can pass on rent-controlled apartments to their same-sex partners.

However, same-sex spouses selling a home will now receive a full marital tax deduction of \$500,000, instead of \$250,000 for single people. A homeowner can also change a deed to include his or her spouse without owing additional taxes. Likewise, a gift of real estate between same-sex spouses is no longer taxable, though it would be for the friend of a homeowner.

"The benefits are exactly that of a married couple," said Malcolm Taub, divorce lawyer at Davidoff Hatcher & Citron.

These couples will also be exempt from a capital gains tax as well an inheritance tax — which are often levied as part of property transfers — as with a traditional marriage. A person can leave an entire estate to his or her spouse and not owe taxes on it. The living spouse can hold onto it without having to dispose of assets, Taub said.

“When a man or woman in a same-sex marriage dies, the IRS will have a much different role,” said Jason Haber, CEO of residential brokerage Rubicon Property.

While the size of a person’s tax bill, of course, varies based on his or her income, wealthy New Yorkers likely pay hundreds of thousands of dollars in estate and capital gains taxes.

Plus, a drop in some couples’ income tax rate from an estimated 35 percent to 15 to 20 percent “will provide them with more monetary power to purchase a better home,” **Bailey** said. Low- and high-income couples may not see as much tax relief as middle-income households.

Federal housing benefits, such as Section 8, will change as well. A gay person can now apply for public housing with a spouse, rather than only individually, **Bailey** said.

The case that sparked the Supreme Court’s 5-4 ruling – Windsor v. United States – centered on New York resident Edith Windsor, who married her longtime partner in Toronto in 2007. After her wife died in 2009, Windsor was required to pay more than \$360,000 in estate taxes on her inheritance. The high court, which also rejected an appeal of a California marriage ban, decided DOMA was unconstitutional.

Heterosexual married couples “probably don’t realize they get them,” **Bailey** said, referring to the many federal benefits. “Every gay person knows they don’t get them.”