

## WHAT IS U.S. v. WINDSOR?

On June 26, 2013, in *U.S. v. Windsor*, the Supreme Court struck down Section 3 of the Defense of Marriage Act (DOMA), which for all federal purposes restricted the word “marriage” to a legal union between one man and one woman and the word 'spouse' to a person of the opposite sex who



is a husband or a wife.

The majority held that the federal government treated same-sex marriages as “second-class

marriages for purposes of federal law.” The effect of this decision is that same-sex couples would now receive the same federal rights and benefits as their heterosexual counterparts. Shortly after this decision, President Obama directed the U.S. Citizenship and Immigration Service (USCIS) “to review immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse.”

## WASHINGTON STATE

On December 6, 2012, same-sex marriages became legal. The same same-sex marriage bill had previously passed both houses of the state legislature, was signed by Governor Gregoire, and was approved by the voters in a referendum on November 6, 2012. For the first time in Washington State, same-sex marriages were legal. The effect of this historic event is that under Washington State law, as is true under federal law following the decision in *Windsor*, same-sex couples would now receive the same rights and benefits as their heterosexual counterparts.

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The information stated herein is intended for informational purposes only and does not amount to legal advice. If you desire professional legal advice and want to know your legal rights, you should contact an attorney.

## YOUR RIGHTS UNDER U.S. v. WINDSOR



## THE IMPACT OF WINDSOR

### IMMIGRATION

After *Windsor*, a path to U.S. permanent residency or citizenship may be available for a foreign national spouse of a same-sex U.S. Citizen or Permanent Resident; and a fiancé or fiancée of a same-sex partner who is a U.S. citizen. Generally, the USCIS follows the law of the place where the marriage was celebrated to determine whether the marriage is legally valid for immigration purposes. The state laws and policies on same-sex marriages



where the couple resides will not bear on whether the USCIS will recognize a marriage as valid. Moreover, in cases where immigration law conditions a benefit

on the existence of a “marriage” or on one’s status as a “spouse,” same-sex marriages qualify as marriages for purposes of such benefits.

### ESTATE PLANNING

Following *Windsor*, the U.S. Department of Treasury and the Internal Revenue Service (IRS) announced that all same-sex married couples will receive equal treatment under the tax code, regardless of whether the marriage is recognized in the state they reside. This, with the legalization of same-sex marriages in Washington, for the first time ever same-sex married couples who live in Washington state enjoy all the same rights and benefits under state and federal tax codes. The potential benefits at the federal level are numerous. Same-sex couples can now take advantage of the estate tax marital deduction, which was the issue in *Windsor*. Same-sex couples are now treated the same as heterosexual couples when it comes to dividing assets or title accounts, owning property jointly, paying obligations for one another, child support and gift taxes. Furthermore, taxes previously paid for health benefits offered to

same-sex spouses and their children may be refundable, and our attorneys are currently looking into filing claims on behalf of clients for a refund from the IRS.

In the wake of *Windsor*, all beneficiaries in private Medicare plans are now entitled to care in the skilled nursing facility where their spouse resides. Previously, seniors may have been faced with the choice of being separated from a same-sex spouse or having to pay for skilled care out-of-pocket in order to remain together in their declining years. Now, the U.S. federal government acknowledges that the right for a married couple to spend their final days together belongs to all couples.

At the state level, same-sex couples now enjoy all the rights and privileges heterosexual married couples enjoy under the Revised Code of Washington (RCW). Tax protections for estate and transfer taxes, and marital protections such as spousal support and maintenance are now available to all Washington State married couples. As is true at the federal level, at the state level same-sex couples who marry will enjoy a host of rights and privileges for the first time ever.

### ASYLUM

LGBTQ persons often face persecution in many countries throughout the world. It has been over 20 years since Fidel Armando Toboso Alfonso, a gay man from Cuba, was granted withholding of deportation in the United States based on his sexual orientation. That decision paved the way for hundreds of lesbian, gay, bisexual, and transgender individuals, as well as individuals with intersex conditions (LGBTI), to obtain refugee and asylum status in the United States.

Although all clients are unique and all matters contain distinctive issues, LGBTQ asylum claims present certain unique challenges not present in almost all other matters. The attorneys at CHUNG, MALHAS & MANTEL, PLLC, are here to help you determine whether you qualify for asylum in the United States based on your sexual orientation, and, if so, to assist you in attaining asylum. Our immigration attorneys are sensitive to the issues, familiar with the terminology, and familiar with relevant country of origin information when seeking asylum for LGBTQ clients. Our attorneys are mindful that such claims involve the most private of matters – sexual orientation, gender identity, and sometimes serious illness.

## WHEN TO SEEK LEGAL COUNSEL

The attorneys and professionals at CHUNG, MALHAS & MANTEL, PLLC provide comprehensive assistance to individuals and families.

It is the goal of the attorneys and professionals at CHUNG, MALHAS & MANTEL, PLLC to replace the confusion and anxiety of U.S. immigration law with clarity, confidence and reassurance at every step in the process by developing clear objectives and a cohesive and effective legal strategy best suited to a client’s needs. In regard to estate planning, due to the complex and ever changing laws governing trusts and estates, it is imperative that an individual take measures to protect his or her assets and to ensure that the interests of their loved ones are protected.

From our very first meeting with a potential client, we work closely at every step in the process to understand a client’s objectives and needs, and to develop a clear and comprehensive plan to achieve those needs.

Understanding diversity is at the core of our practice. We speak *Arabic, Berber, Bulgarian, French, German, Greek, Hebrew, Japanese, Macedonian, Chinese (Mandarin), Russian and Spanish*. Our clientele is as diverse as our staff serving them. We draw from the numerous cultural backgrounds and experiences of our team of attorneys, associates and staff in our practice of law. Call today for a **free consultation at (206) 264-8999**.



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