

Tools for Protecting Your Children

Every year more same-sex couples are experiencing the joys of parenthood. This new baby boom has increased the visibility of families headed by LGBT parents—but it has also increased the calls to Lambda Legal as same-sex couples confront the horrors that can occur when one parent is not legally tied to their child. For instance, a non-legal parent can be forced to argue again and again that she or he has the authority to make important decisions about school or medical care. There is even the risk of losing the child to relatives or the state if the legal parent dies and the relationship between the other parent and the child has not been secured legally. If you are raising your child together with a same-sex partner and you intend your partner to be recognized as your child's other parent, you must take the steps to formalize both parent-child relationships legally.

Please note: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation.

FIRST STEPS

1. Look into whether your state allows second-parent or step-parent adoptions. You can start by clicking on your state at our website, www.lambdalegal.org.
2. Consult the following resources for legal help:
 - Lambda Legal's Help Desk, 866-542-8336 or send email by visiting www.lambdalegal.org/help/online-form (for legal assistance on LGBT and HIV related issues or help identifying an LGBT/HIV friendly attorney in your area.)
 - www.lawhelp.org (for help determining whether there is an affordable attorney or legal aid organization in your area)
 - www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

SECOND-PARENT AND STEP-PARENT ADOPTION & PARENTAGE JUDGMENTS

Take the power! If you and your partner are parenting children together but one of you is not a legal parent, get a second-parent adoption if your state allows it. Same-sex couples in states that recognize their marriage, civil union or broad domestic partnership also may be able to do a step-parent adoption.

Why do I need this power

tool? Both parents in a same-sex couple must have the unquestioned authority to make decisions for their children at school, in medical settings or if the other parent dies. Your children also may need access to health insurance and Social Security disability or survivor benefits, all of which depend on having a recognized relationship with a parent. Additionally, same-sex couples are no more immune to relationship failure than different-sex couples, and protections for children can be essential if their parents' relationship falls apart.

How it works: A second-parent or step-parent adoption is a legal proceeding in which a child with one legal parent is adopted by a second parent without ending the first parent-child bond. There may be an evaluation of the home and family as part of the process, so the judge can make sure the adoption is in the best interests of the child. The earlier a couple seeks an adoption, the better because difficulties can arise at any time. For couples anticipating a child's birth together, much of the work can be done even before the baby is born. An attorney is instrumental to success.

When adoption is unavailable or impractical, you might consider

seeking a court judgment confirming the parental status of the nonbiological or nonadoptive parent. These judgments usually make a legal determination that an adult is a legal parent of a child based on the adult's conduct with respect to the child. For example, you may have planned with another adult (often your spouse or partner) for creation of a child using donated genetic material and medical assistance. A non-biological parent in this position often also welcomes the newborn child into her or his home and holds the child out publicly as her or his own, either with the child's other parent or as a single parent depending on the circumstances of the child's birth. The conduct of helping to bring a child into the world and/or of forging an emotional bond with a child, providing a home and publicly affirming one's parental responsibilities to the child can give a court the factual basis for ruling that a person is a parent, and should be held to those commitments and have corresponding rights.

Adoption generally is considered a more secure way to establish parent-child ties because adoption judgments are common in every state, and parentage judgments are still unusual in some areas. If an adoption judgment is not available, however, a parentage order is much better than no court order at all. Accordingly, if you consult with an attorney about requesting a court judgment of parentage in your state, keep in mind that such orders should confirm your parental status based on your actions as a parent, not your actions as a domestic partner or same-sex spouse, because many states still deny legal respect to same-sex couples' relationships. Your lawyer can increase the

likelihood that your parentage order will be respected in other jurisdictions by basing the order only on your actions as a parent.

- Even if you live in a state that respects same-sex relationships and you are married or have a civil union or broad domestic partnership, your child(ren) may not be adequately protected. For instance, you may travel or move to other states that bar recognition of your committed relationship and may require proof of parent-child relationships in emergency or other situations. For maximum protection of your family, attorneys recommend that same-sex couples secure all parent-child relationships legally through adoption or other court judgments regardless of the couples' own relationship status.
- With an adoption or parentage court order, you still should anticipate that something could happen to both of you together and identify a guardian of your children in your will or other life planning documents.

CO-PARENTING, SHARED CUSTODY OR GUARDIANSHIP AGREEMENT

Take the power! If you live in a state where you cannot get a second-parent or step-parent adoption or a parentage judgment, create what protection you can for your child through an agreement. Depending on where you live this may be called a co-parenting, shared custody or guardianship agreement.

Why do I need this power tool?

You should do what you can to authorize both parents to make decisions affecting your children, and to make sure that your children's interests are protected if your relationship with your partner falters or fails.

How it works: At minimum, the agreement works to the extent that the two of you abide by it. It will not have the legal effect of an adoption or parentage judgment, but depending on the state you live in, it may be enforceable; at the very least, it can give important guidance to the court about your shared intentions should you later have a serious dispute. You should have an attorney help you draw up any kind of parenting agreement.

- Include a provision stating that the non-legal parent has the authority to agree to medical care for your child or children.
- Include a provision stating that both parents have joint financial and other responsibilities for your child or children.
- Include a provision stating that the legal parent will name the non-legal parent as a guardian in any will or other estate planning document. Make sure you take the time to express your wishes in legal documents, so your child or children are not left in the care of the state or relatives if you both die.
- Include provisions to safeguard the best interests of your child or children if your relationship with your partner dissolves. Address custody, visitation and financial support.

EXTRA TOOLS IN THE BOX:

Walking proof Even if you have legal authority to make decisions for your child(ren), it may be questioned by school, medical, or law enforcement officials, or by airline and customs personnel when you travel. Have your documents with you at all times, consider leaving copies with your child(ren)'s school and doctor's office, and check what additional documents might be required for travel.

Your will Make sure you have identified a guardian for your child(ren) in your will, even if both parents have a legal relationship to the child(ren). There is always the chance that you both may die before the child(ren) reach adulthood.

Authorizations If one of you is a non-legal parent, consider having your attorney draft two stand-alone documents:

1. A document that authorizes the non-legal parent to agree to medical treatment so health care staff will not have to sift through everything in a more lengthy, personal agreement addressing multiple subjects.
2. A similar, context-specific document that authorizes the non-legal parent to act whenever school officials require parental involvement or approval (such as for parent-teacher discussions, extracurricular activities, disciplinary hearings).

Life and disability insurance You may need more insurance to protect your children if you or your spouse/partner dies or becomes disabled due to the discrimination against same-sex couples in some benefits programs.

- Consider including a statement such as the following from the legal parent: "As the legal parent of [child or children], I am hereby exercising my constitutional right to share permanently all my parental rights and responsibilities existing under state and federal law with my spouse/partner [name], and to establish to the maximum extent permissible by law this family that I believe to be in my child's [or children's] best interest. Intending to provide permanent protection and stability to my child [or children], I hereby waive my right to revoke this

agreement and statement in the future."

