

Tools for Protecting Your Children

Every year more LGBT people are experiencing the joys of parenthood. This 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 and transgender parents 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 and your spouse or partner are raising your child together, it is critically important to 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. Talk with your spouse or partner about your goals and expectations about each other's roles with regard to your child, and your plans for what happens in the event of separation, disability or death.
2. Look into whether your state allows **co-parent adoption** (see "Terms to Remember" on page 4 of this insert for all terms in **bold**) for second parents or for step-parents. You can start by clicking on your state at our website, www.lambdalegal.org. Consider other ways to protect your family's legal connections to each other, whether through judgments, agreements, wills or other documents.
3. For legal help, consult Lambda Legal's Help Desk at 866-542-8336, www.lambdalegal.org/help or the other resources in "Tools for Selecting an Attorney."

CO-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 co-parent adoption—if your state allows it—to establish the legal relationship between the child and each of his or her parents.

Why do I need this power tool?

Securing the legal relationship of both parents provides your child with the protection of having two legally recognized sources of parental care and support in all circumstances. Both parents 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, LGBT couples are no more immune to relationship failure than any other couples, and protections for children can be essential if their parents' relationship falls apart. Without an established legal relationship, a person who has lived with and functioned as a parent for all of a child's life may nonetheless be excluded from making any legal decisions or playing any role in that child's life.

How it works: A **second-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 legal 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 interest of the child. Couples in states that recognize their marriage, civil union or registered domestic partnership may be able to take advantage of the process for **step-parent adoption**, which works the same way, but may skip some of these steps and move a little bit more quickly. The earlier in a child's life that 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 the adoption has been completed, the child has two legal parents, and each parent stands on equal legal footing with regard to the child.

REMINDER: Even if you live in a state that respects your marriage, civil union, or statewide registered domestic partnership, adoption is still a critical way to ensure that your child(ren) are adequately protected. Although a child born to spouses is legally presumed to be the child of both adults—and may in fact have both of those parents listed on his or her birth certificate—a judgment from a court confirming joint legal parentage will receive a greater level of respect across the country than a birth certificate or legal presumption. 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.

When adoption is unavailable or impractical, some states may allow you to seek a **parentage judgment**—a court judgment confirming the legal parental status of the non-biological or non-adoptive 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 and obligations.

Generally speaking, adoption is considered a more secure way to establish parent-child ties because adoption judgments are common in every state, and parentage judgments are far less common. If an adoption judgment is not

available, however, a parentage order is much better than no court order at all. The availability and form of parentage judgments varies widely from state to state. Consult an attorney in your state to learn more about whether this type of judgment is available to you.

REMINDER: Even 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. See the sidebar on page 4, “Extra Tools In the Box.”

CO-GUARDIANSHIP & CO-PARENTING AGREEMENTS

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 a more limited court order of **co-guardianship** or 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: Though the process and requirements for co-guardianship differ from state to state, it allows a legal parent to ask the court to name the non-legal parent as a co-guardian, giving

him or her the ability to act with the legal authority of a parent, including in educational and medical contexts. The court will assess whether the appointment is in the child’s best interests, and it is a temporary status that can be terminated upon the request of any person, including the legal parent.

A co-parenting agreement sets out the parties’ intentions to co-parent to the fullest extent possible. 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. You may want to consider the following elements for the agreement:

- A provision stating that, although only one of the parents is recognized as a legal parent, both parties consider themselves and each other to be equal co-parents to the child with full parental rights and responsibilities.
- A provision stating that the non-legal parent has the authority to agree to medical care for your child or children.
- A provision stating that both parents have joint financial and other responsibilities for your child or children.

- A provision stating that both parents will name each other 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.
- Provisions to safeguard the best interests of your child or children if your relationship with your partner dissolves, including your intention to continue co-parenting and your desires regarding custody, visitation and financial support.
- 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.” Such a statement should make clear that the legal parent is waiving his or her exclusive right to care and control of the child in favor of co-parenting with the other parent.

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 for the child so health care staff will not have to sift through everything in a lengthier, 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 given the inconsistent treatment of LGBT families in some benefits programs (see inserts "Tools for Protecting Your Assets in Life" and "Tools for Protecting Your Assets After You're Gone").

TERMS TO REMEMBER

Co-guardianship: A limited legal proceeding allowing a legal parent to ask the court to give the non-legal parent the ability to act with the legal authority of a parent in certain contexts.

Co-parent adoption: A legal proceeding that establishes a legal parent-child relationship between a child and a person who will be an equal co-parent with the child's biological or previously adoptive parent. Second-parent and step-parent adoptions are types of co-parent adoptions.

Co-parenting agreement (also Shared custody agreement or Guardianship agreement): A contract in which a legal (biological or adoptive) parent agrees to share parental rights and responsibilities with another adult. May be considered where parentage judgments or orders (see Parentage judgment) or second- or step-parent adoption (see Second-parent adoption or Step-parent adoption) are not available or not available to same-sex couples.

Parentage judgment (or parentage order): A determination by a court that a person is the legal parent of a child of whom she or he is not the biological or adoptive parent. May be considered where second- or step-parent adoption (see Second-parent adoption or Step-parent adoption) are not available or not available to same-sex couples.

Second-parent adoption: A legal proceeding which gives someone, typically the partner of a legal (biological or adoptive) parent, joint legal parentage of their child.

Step-parent adoption: A legal proceeding which gives the spouse of a legal (biological or adoptive) parent joint legal parentage of their spouse's child.

T.B. V. L.R.M.

The lesbian parents in this case, identified by their initials to protect their child's privacy, had been in a long-term relationship and raised their child together for three years in Pennsylvania. After their breakup, L.R.M., the biological mother, refused to allow T.B. to visit with their daughter, despite T.B.'s daily parental role in the child's life. Though second-parent adoptions were available in the state, the couple had not gone through the process, and T.B. was left without a legal tie to her child. Lambda Legal helped T.B. eventually win justice in the Supreme Court of Pennsylvania, which ruled that a lesbian or gay parent may seek visitation or custody of a child when she or he assumed parental status by performing parental duties over time.

Power Tool Tip: T.B.'s battle to be in her child's life was a protracted and painful one. Securing an adoption or other court judgment establishing both parents' rights while the couple was still together would have provided T.B. immediate, legally binding protections and assured her custody and visitation rights with her child after her relationship with L.R.M. ended. Check to see if second-parent/step-parent adoption or other options are available in your state and take the power to protect your child's rights as well as your own.

