

Birth Certificates and Second-Parent Adoptions for Married Same-Sex Couples in Maryland

Frequently Asked Questions

May 25, 2011

On February 10, 2011, the Maryland Department of Health and Mental Hygiene (DHMH) issued a letter to state birth registrars announcing a procedure change allowing a woman to be named as a parent on the Maryland birth certificate of the child born to her same-sex married spouse, without the necessity of a court order.

http://www.lambdalegal.org/news/pr/md_20110211_birth-certificates.html

This is an important step for Maryland children, who now can count on having both their mothers listed on their birth certificates from their first days in the world. But families should still protect their children with formal adoptions by the non-biological parent.

Since 2010, when the Maryland Attorney General issued an opinion confirming that marriages between same-sex couples entered into in other jurisdictions may be recognized under Maryland law, state and local governments, private parties, and members of our communities have been assessing all the ways that marriage recognition brings protections to same-sex couples in Maryland.

What follows are responses to frequently asked questions (FAQs) about what marriage recognition means for birth certificates and second parent adoptions in Maryland.

WHAT IS THE NEW BIRTH CERTIFICATE PROCEDURE?

The DHMH letter says that “[t]o date, a same-sex female spouse has been required to obtain a court order to be named as a parent on a Maryland birth certificate. Beginning no later than March 1, 2011, if a mother (defined for the purpose of birth registration as the woman who delivers the child) indicates that she is married, information pertaining to her spouse, regardless of her spouse’s gender, is to be entered by your facility into the Electronic Vital Records System (EVRS) in the fields currently used to report the father’s information.”

http://www.lambdalegal.org/in-court/legal-docs/exec_md_20110210_ss-spouse-instructions-to-facilities.html

WHAT DOES THIS MEAN?

This means that Maryland will now issue birth certificates after a baby’s birth naming both women in a married couple as parents of the child. The women won’t first have to get a court order

providing that the non-birth mother is a parent. Children born to these couples can start life with a birth certificate reflecting both of their parents.

DOES THIS CHANGE IN THE BIRTH CERTIFICATE PROCEDURE APPLY TO TWO MEN?

No, it doesn’t. Two married fathers will still have to seek a court order to have both of their names listed on a child’s birth certificate. The DHMH letter explains this about birth certificates for children born with the assistance of a surrogate to two married men:

Procedures for registering a surrogate birth involving a father who is married to another man remain the same as in the past. In this situation, the woman who delivers the child is to be entered into EVRS as the mother. If she is unmarried and an affidavit of parentage is signed, the information concerning the father who signed the affidavit is to be entered into EVRS. The father’s same-sex spouse can have his name and information appear on a copy of the birth certificate by obtaining a court order directing [the Division of Vital Records] to delete the information about the mother and add his name and information to the birth certificate data as another father or parent. If the surrogate mother is married, her spouse’s information is to be entered into EVRS for the father. If the surrogate refuses to provide her spouse’s information, the fathers’ fields are to be left blank and may only be filled in as directed by a court order.

WHAT ARE THE BENEFITS OF HAVING A BIRTH CERTIFICATE NAME BOTH OF US AS PARENTS OF OUR CHILD?

Birth certificates are important legal records we travel with through life. Having your child’s birth certificate name you both as parents from the start can let you cut through lots of red tape, like when it comes to securing health insurance coverage from birth on one parent’s policy, being treated as a parent in a medical emergency, or applying for your child’s passport.

WE ARE A MARRIED FEMALE COUPLE, EXPECTING OUR FIRST CHILD. SHOULD WE STILL GET A 'SECOND PARENT ADOPTION' NOW THAT OUR MARRIAGE IS RESPECTED AND WE WILL RECEIVE A BIRTH CERTIFICATE NAMING US BOTH AS PARENTS?

Yes, absolutely! Being on the birth certificate is important, but a court-ordered adoption decree is the best way to ensure that you are both legally respected everywhere as your child's parents. Marriage recognition brings protections within Maryland – like birth certificates – to secure the relationship of a child born to a married parent who is unrelated by biology or adoption, but the scope of those protections has yet to be definitively determined in the state. To best make sure your child has the security of a legally recognized relationship with both parents, the non-biologically related parent should formally adopt the child. If you travel, even right across the border, many states may not recognize your marriage and the parental rights that come with it, and as long as the so-called Defense of Marriage Act (DOMA) is still law, neither will the federal government -- but these jurisdictions will respect a court-ordered adoption decree.

WHAT IF SOME PEOPLE STILL FAIL TO GIVE LEGAL RESPECT TO OUR MARRIAGE OR OUR PARENT-CHILD RELATIONSHIPS? WHAT SHOULD WE DO?

In some situations, simply asking for the particular protection and explaining why your marriage or parental rights should be respected may solve the problem. Sometimes further advocacy and assistance from an attorney will work. You should certainly feel free to reach out to Lambda Legal for help.

It's important to bear in mind that rushing into litigation often is not the answer. Many problems can be worked out without resorting to the courts. Other problems may someday need to be resolved through litigation, and important protections for same-sex couples and their children ultimately may need to be vindicated in the courts. But with marriage recognition bringing many important rights for many families, any litigation that could have broader impact on how the marriage recognition rule applies should be the product of careful thought and planning. A bad ruling could have far-reaching negative impact for your marriage and the marriages of many other couples.

For more information:

Contact Lambda Legal's Help Desk for further information. You may also want to consult with a private attorney.

Contact us here: legalhelpdesk@lambdalegal.org, 866-542-8336 (toll-free), or 212-809-8585. www.lambdalegal.org

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