

Ask Lambda Legal

Our attorneys field your questions on the issues that matter to you most. **By Staff Attorney Beth Littrell**

Q My partner and I have been together for some time and are considering having a family. Is it legal for us to adopt in any state? Are there other important legal considerations we should bear in mind?

A Courts increasingly recognize that the sexual orientation of parents has no bearing on the well-being of children. However, because adoption has yet to be recognized as a constitutional right, the ability for LGBT people and couples to adopt can vary from state to state.

JOINT ADOPTION. For couples who are not having a child biologically, joint adoption might be an option. While some states expressly allow joint adoptions by same-sex couples and a few states do not, most state laws are unclear as to whether judges may grant a joint adoption to an unmarried or same-sex couple. It is important to involve a family-law attorney throughout this process, not only to help formalize your parental relationship with your child, but also to explain any risks and to plan a parenting and custody agreement in the event you break up.

PARENTAL PRESUMPTION: If you and your partner are married, in a civil union or registered as domestic partners and a child is born who is biologically related to one of you, your state may automatically and legally recognize the parental rights of the non-biological partner (called a presumption of parenthood—reinforced recently in Iowa in a case led by Lambda Legal, *Gartner v. Newton*). However, because other states have laws barring same-sex couples from marriage, problems can arise where legal parentage is only gained through presumption of parenthood. We suggest non-biological parents also adopt their children through a second-parent or step-parent adoption.

SECOND-PARENT ADOPTION: This process allows a non-biological parent to adopt while preserving the parental rights of the biological parent. If you and your partner are not



Couples should take legal steps to protect their parental rights.

married, in a civil union or registered as domestic partners, and one of you has a child, second-parent adoption is an important tool to make sure you're both legally recognized as parents. Many states require the biological parent to terminate his or her parental rights before another, unmarried adult can adopt. This, Lambda Legal has repeatedly argued, would lead to the absurd result of denying many children of same-sex parents two legal parents. Such children would also be vulnerable to losing their non-biological parent in the event of a break-up or the death of their biological parent. Whether judges in your state will grant a second-parent adoption, and whether it would be upheld if challenged, are state-specific questions that, unfortunately, cannot always be answered with certainty based on the evolving law in this area in many states. Although some state courts have ruled that second-parent adoptions are not available to same-sex couples, many state courts (and every other child welfare organization) have agreed with Lambda Legal that adoption laws should be construed to protect the best interest of the child.

As with joint adoptions, it's important to hire a family-law attorney to help you and your partner petition for the adoption and draw up an agreement, or help you get a court order, that sets out parenting and custodial rights in the event that you split up. As in several recent custody-dispute cases involving same-sex couples, an ex-partner may move to a state whose laws discriminate against same-sex couples or otherwise move to invalidate the other partner's rights. These actions create harmful precedent that hurts our community for years. We encourage everyone to protect the best interests of their children and show respect for LGBT families—even through

the dissolution of their adult relationships—by avoiding litigation that seeks to deny their children a relationship with their other parent.

INTERSTATE INVALIDITY: In addition to the possibility of a breakup and custody dispute, disparities in state law can come into play if same-sex parents travel or move to other states where their parental rights are less clear. Non-biological parents should seek to formalize their parental relationship to their child through any means available, even if the state where they live recognizes their parental relationship as a result of their relationship to each other. Options include adoption, court orders (e.g. establishing parentage or joint custody) and agreements regarding parental status. Protections for LGBT families remain a state-by-state battle, and Lambda Legal is fighting for families in all states. **L**



IF YOU NEED FURTHER INFORMATION or encounter discrimination in your efforts to adopt or formalize parental rights: call Lambda Legal's Legal Help Desk at 866-542-8336 or visit www.lambdalegal.org/help-form