



NATIONAL CENTER FOR LESBIAN RIGHTS

## **Adoption by LGBT Parents**

A second parent adoption (also called a co-parent adoption) is a legal procedure that allows a same-sex parent, regardless of whether they have a legally recognized relationship to the other parent, to adopt her or his partner's biological or adoptive child without terminating the first parent's legal status as a parent.

Married spouses must also be allowed use their state's stepparent adoption procedures in every state to confirm their parentage. States that recognize comprehensive domestic partnerships or civil unions allow couples joined in these legal unions to use the stepparent adoption procedures.

It is important to recognize, however, that a same-sex partner who plans the birth or adoption of a child with his or her partner is a parent – not a stepparent. Parents should not have to adopt their own children, but it is legally advisable for non-biological parents to get an adoption or parentage judgment to ensure that their parental rights are fully protected no matter where they move or travel to, even if they are married, in a civil union, or a registered domestic partnership.

### **States That Allow Second Parent Adoption for Same-Sex Couples Who Are Not Married or in a Civil Union or Domestic Partnership**

Currently, a number of states and the District of Columbia have a state statute or appellate court decision allowing same-sex couples to get a second parent adoption or co-parent adoption. They are:

1. California<sup>1</sup>
2. Colorado<sup>2</sup>
3. Connecticut<sup>3</sup>
4. District of Columbia<sup>4</sup>
5. Idaho<sup>5</sup>
6. Illinois<sup>6</sup>
7. Indiana<sup>7</sup>
8. Maine<sup>8</sup>
9. Massachusetts<sup>9</sup>
10. New Jersey<sup>10</sup>
11. New York<sup>11</sup>
12. Oklahoma<sup>12</sup>
13. Pennsylvania<sup>13</sup>
14. Vermont<sup>14</sup>

Although there are undoubtedly others, some counties in other states have granted second parent adoptions to unmarried same-sex couples at some point, including:

1. Alaska

2. Delaware
3. Florida
4. Georgia
5. Hawaii
6. Iowa
7. Louisiana
8. Maryland
9. Minnesota
10. Oregon<sup>15</sup>
11. Rhode Island
12. Texas
13. Washington
14. West Virginia

### **State Laws That Limit or Prohibit Adoption by Unmarried LGBT Individuals or Couples**

The following states have laws that limit or prohibit adoption by unmarried LGBT individuals or couples. However, married same-sex couples in these states have the same right to a step-parent adoption as all other married couples.

1. The Alabama Court of Appeals ruled that (unmarried) same-sex couples cannot use the stepparent adoption procedures.<sup>16</sup> However, married same-sex spouses must be allowed to do so.
2. Arizona gives a preference to married couples over a single adult in adoption placement.<sup>17</sup>
3. The Kansas Court of Appeals recently ruled that Kansas does not permit second parent or co-parent adoption by unmarried couples.<sup>18</sup>
4. A Kentucky court has said that Kentucky does not permit unmarried couples to use the stepparent adoption procedures.<sup>19</sup>
5. Mississippi has a statute that prohibits “[a]doption by couples of the same gender,”<sup>20</sup> but under the Supreme Court ruling, Mississippi must allow same-sex spouses to adopt on equal terms with other married couples.
6. Nebraska does not permit second parent or co-parent adoption by unmarried couples.<sup>21</sup>
7. North Carolina does not allow second parent or co-parent adoption by unmarried couples.<sup>22</sup>
8. Ohio does not permit second parent or co-parent adoption by unmarried couples.<sup>23</sup>
9. Utah prohibits anyone cohabiting in a non-marital sexual relationship from adopting.<sup>24</sup> Utah also gives a preference to married couples over any single adult in adoptions or foster care placement.<sup>25</sup>
10. Wisconsin does not permit second parent or co-parent adoption by unmarried couples.<sup>26</sup>

Note: Until recently, Florida was the only state to categorically prohibit lesbian, gay, and bisexual individuals from adopting, but that state law was held unconstitutional in September 2010.<sup>27</sup> Arkansas previously prohibited anyone cohabiting with an unmarried partner from adopting or being a foster parent, but the Arkansas Supreme Court struck down this statute as unconstitutional.<sup>28</sup>

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## End Notes

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- <sup>1</sup> *Sharon S. v. Superior Court*, 73 P.3d 554 (Cal. 2003).
- <sup>2</sup> COLO. REV. STAT. ANN. §§ 19-5-203(1), 19-5-208(5), 19-5-210(1.5), 19-5-211(1.5).
- <sup>3</sup> CONN. GEN. STAT. ANN. § 45a-724(a)(3) (providing that “any parent of a minor child may agree in writing with one other person who shares parental responsibility for the child with such parent that the other person shall adopt or join in the adoption of the child”).
- <sup>4</sup> *M.M.D. v. B.H.M.*, 662 A.2d 837 (D.C. 1995).
- <sup>5</sup> *In re Adoption of Doe*, No. 41463, 2014 WL 527144 (Idaho Feb. 10, 2014).
- <sup>6</sup> *In re Petition of K.M. & D.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995).
- <sup>7</sup> *In re Adoption of M.M.G.C.*, 785 N.E.2d 267 (Ind. Ct. App. 2003); *In re Adoption of K.S.P.*, 804 N.E.2d 1253 (Ind. Ct. App. 2004). See also *In re Infant Girl W.* 785 N.E.2d 267 (Ind. App. 2006) (same-sex couple may jointly adopt).
- <sup>8</sup> *Adoption of M.A.*, 2007 ME 123 (Me. 2007).
- <sup>9</sup> *In re Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993).
- <sup>10</sup> *In re the Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995).
- <sup>11</sup> *In re Jacob*, *In re Dana*, 660 N.E.2d 397 (N.Y. 1995).
- <sup>12</sup> *Eldredge v. Taylor*, 2014 OK 92 (2014).
- <sup>13</sup> *In re Adoption of R.B.F. & R.C.F.*, 803 A.2d 1195 (Pa. 2002).
- <sup>14</sup> *In re Adoption of B.L.V.B. & E.L.V.B.*, 628 A.2d 1271 (Vt. 1993); VT. STAT. ANN. tit. 15A, § 1-102(b) (providing that, if family unit consists of parent and parent’s partner, partner of parent may adopt child without terminating parent’s rights)).
- <sup>15</sup> According to Basic Rights Oregon, courts in all counties have granted second parent adoptions to same-sex couples. See [www.basicrights.org](http://www.basicrights.org).
- <sup>16</sup> *In re Adoption of K.R.S.*, 109 So.3d 176 (Ala. Ct. App. 2012) (refusing to allow a same-sex couple who had married in another state to use the step-parent adoption procedures). Previously, some attorneys had obtained second-parent adoptions in some counties in Alabama.
- <sup>17</sup> Ariz. Rev. Stat. § 8-103.
- <sup>18</sup> *Adoption of I.M.*, 48 Kan.App.2d 343 (Kan. Ct. App. Nov. 9, 2012). However, a person who has openly acknowledged themselves as a child’s parent, even if they are not a biological parent, may be able to obtain a parentage order in Kansas. *Frazier v. Goudschaal*, 296 Kan. 730, 295 P.3d 542 (2013).
- <sup>19</sup> *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804 (Ct. App. Ky. 2008) (holding that the biological mother could not challenge her partner’s adoption of the child more than a year after the adoption was finalized, but noting in dicta that an unmarried couple cannot use the step-parent adoption procedures in Kentucky to establish legal parentage for both partners).
- <sup>20</sup> MISS. STAT. § 93-17-3(2).
- <sup>21</sup> *In re Adoption of Luke*, 640 N.W.2d 374 (Neb. 2002).
- <sup>22</sup> *Boseman v. Jarrell*, 704 S.E.2d 494 (N.C. 2010). However, a non-biological parent who has raised a child with the consent and encouragement of a legal parent may be able to seek custody. *Id.* See also *Mason v. Dwinnell*, 660 S.E.2d 58 (N.C. Ct. App. 2008).
- <sup>23</sup> *In re Adoption of Doe*, 719 N.E.2d 1071 (Ohio Ct. App. 1998). However, a non-biological parent may be able to seek custody if the legal parent had previously agreed to share custody. *In re Bonfield*, 97 Ohio St. 3d 387, 780 N.E.2d 241 (2002); *In re Mullen*, 129 Ohio St. 3d 417, 953 N.E.2d 302 (2011).
- <sup>24</sup> UTAH CODE 78B-6-117(3)(b).
- <sup>25</sup> UTAH CODE §§ 78A-6-307(19), 78B-6-117 (4).
- <sup>26</sup> *In the Interest of Angel Lace M.*, 516 N.W.2d 678 (Wis. 1994).
- <sup>27</sup> *Fla. Dep’t of Children & Families v. X.X.G.*, 45 So.3d 79 (Fla. Ct. App. 2010) (Florida’s Third District Court of Appeal held that the ban had no rational basis and violated the equal protection guarantee of the Florida Constitution). This decision is binding on all Florida trial courts. The Florida Department of Children and Families has issued a memorandum instructing its staff to immediately cease questioning prospective adoptive parents about their sexual orientation and not consider sexual orientation as a factor in determining fitness to adopt. The Department’s staff are to focus instead on the quality of parenting that adoptive parents would provide, and their commitment to love an adopted child.

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<sup>28</sup> *Arkansas Dept. of Human Services v. Cole*, 2011 Ark. 145 (Ark. April 7, 2011) (striking Arkansas Initiative Act 1 (2008) as violating the Arkansas Constitution).