



NATIONAL CENTER FOR LESBIAN RIGHTS

## Protecting Your Family After Marriage Equality: What You Need To Know

We have seen unprecedented advances in equality for same-sex couples now that we have marriage equality nationwide. In addition to the dignity and respect that marriage equality provides for our relationships, marriage provides tremendous legal and financial protections to same-sex spouses.

However, marrying does not provide all the protections your family needs to be legally secure – there are very important legal steps that all same-sex spouses and transgender spouses need to take to ensure that their families are protected.

### 1. Protect your children with an adoption or parentage judgment

We still strongly recommend that all non-biological parents get an adoption or judgment from a court recognizing that they are a legal parent, even if they are married and even if they are listed as a parent on the birth certificate. Having your name on the birth certificate does not guarantee protections if your legal parentage is challenged in court.

Being married to a birth parent does not automatically mean your parental rights will be fully respected if they are ever challenged. There is no way to guarantee that your parental rights will be respected by a court unless you have an adoption or court judgment. Without this, you could lose any right to your child if something happens to the other parent or if you break up.

For example, if the birth parent dies and you are not recognized as a parent, your child could end up in foster care or with a relative instead of being able to stay with you. If you use a known donor, depending on your situation, the donor could be considered to be a legal father unless you terminate any rights he may have in an adoption. If you end up receiving Medicaid or other government benefit, the government could bring a court case to make the donor a legal father and require him to pay for the benefit your child receives.

Spending a little time and money doing an adoption or getting a parentage judgment now can save you from being separated from your child and from spending thousands of dollars in legal fees later. For more information about how to get an adoption or parentage judgment in your state, contact NCLR.

*If you have any questions about marriage and family protections, or for more information about legal rights in your state, contact NCLR at [www.nclrights.org/gethelp](http://www.nclrights.org/gethelp) or 1.800.528.6257*

## **2. Protect your and your spouse's property and decisionmaking with estate planning**

All married couples should make sure that they have planned for what will happen to their spouse if one of them passes away through estate planning. This could be through a will or trust, or designating your spouse as a beneficiary on your financial accounts.

You should also fill out healthcare directives. See [www.caringinfo.org](http://www.caringinfo.org) for blank healthcare directives in your state.

## **3. Protect your spouse's ability to obtain public benefits**

If you or your spouse are older, or if one of you has a disability, make sure you understand your rights under Social Security and Medicare. Your spouse may be able to receive more benefits as your spouse than on his or her own.

If you think you may be able to get spousal Social Security benefits, you should apply as soon as possible because the start date for these benefits is tied to when you apply.

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