



NATIONAL CENTER FOR LESBIAN RIGHTS

Legal Protections for LGBT People and Our Families After the 2016 Election

“By a slim margin, this nation has elected a demagogue who trafficked in bigotry, stoked racist hatred and normalized misogyny. The election of Donald Trump as President threatens basic principles of human dignity and justice. Many of our most cherished values—inclusion, honoring difference, embracing equality, dismantling oppressive systems—are in jeopardy, but we will not be deterred. This is the moment we are called to resist. We are about to be tested as never before, and speaking for myself, and NCLR, we will not stand down, sit idle or be silent in the face of oppression, bullying or threat. This election result is devastating for our nation and especially for the most vulnerable. But we will fight on and will never give up. We must be the ones we are waiting for. Together, we fight on and we fight back. We must harness our grief, fear and outrage and serve justice.”—NCLR Executive Director Kate Kendall

In light of possible negative policy changes towards LGBT people from the next U.S. presidential administration, NCLR has put together a FAQ for our community about legal protections that are important to know about that people can take action on before the next administration, or soon after.

Marriage, Relationship Recognition, and Parentage

1. Do I need to take any steps to protect our legal marriage?

If you are already married, there are no additional steps you need to take to protect your marriage. It is very unlikely that same-sex couples' marriages will be invalidated. The law is very strong that if a marriage is valid when entered, it cannot be invalidated by any subsequent change in the law. So people who are already married should not be concerned that their marriages can be taken away. To the contrary, it is important that they continue to live their lives as married couples.

All married couples should also 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.

If you have questions about this document or about your legal rights, contact NCLR at www.nclrights.org/gethelp or 1.800.528.6257

You should also fill out healthcare directives. See www.caringinfo.org for blank healthcare directives in your state.

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.

2. We are considering marriage. Should we get married before the next president is sworn in?

Getting married is a very important and personal decision. It is unlikely the Supreme Court will in the near future overturn its 2015 decision requiring marriage laws to be equally applied to same-sex couples. If there are any particular legal protections of marriage you are concerned about, we encourage you to speak with an attorney. You can contact NCLR for help finding an LGBT-friendly attorney in your state.

3. How do I protect my relationship with my child(ren)?

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. If you are low-income you may be able to get free legal help from a legal aid organization in your state. You can search for a legal aid organization near you on www.lawhelp.org. You can also contact NCLR for help finding an attorney

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who may work for a reduced fee or no fee. You can also contact NCLR if you want more information about how to get an adoption or parentage judgment in your state.

Immigration

1. Should I apply for asylum now?

If a person fears persecution in his country of origin based on his political opinion, religion, race, nationality, or membership in a particular social group, he may be eligible to apply for asylum in the U.S. LGBT people fall under the category of being in a “particular social group” and thus are eligible for asylum. Under current law, a person must apply for asylum within one year of their last entry into the U.S. In limited circumstances, an applicant may be able to overcome the one year filing deadline by showing either the existence of changed circumstance that materially affect the applicant's eligibility for asylum, or extraordinary circumstances that justify the delay.

We encourage anybody considering applying for asylum to speak with an attorney before they file. It is especially important to speak with an attorney before you file if:

- You have ever been arrested or had a criminal conviction
- You have been in the U.S. for over a year
- You have ever been deported or ordered removed from the U.S.

2. How will DACA be affected?

DACA will remain in place at least until January 20, 2017 when the new president is inaugurated. However, it is possible that the new administration will discontinue DACA. The Immigrant Legal Resource Center (ILRC) has a guide for DACA recipients or potential applicants:

https://www.ilrc.org/sites/default/files/resources/post-election_talking_points.pdf

Name and Gender Changes

For information about name and gender changes in light of the recent election, please refer to our other post-election guide on this topic at <http://www.nclrights.org/wp-content/uploads/2016/11/FAQ-Name-and-Gender-Change-post-election.pdf>

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