



NATIONAL CENTER FOR LESBIAN RIGHTS

Protecting Your LGBTQ Marriage and Family: What You Need to Know

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We have seen unprecedented advances in equality for same-sex couples with marriage now equally open to LGBTQ couples across the country. In addition to the dignity and respect that marriage equality provides for our relationships, marriage provides tremendous legal and financial protections. At the same time, marriage also comes with legal obligations.

It is important to note that although there may be efforts to roll back marriage equality, it is extremely unlikely that existing marriages would be affected even if those efforts were successful. People should not rush to marry and, as always, should think carefully about whether marriage is right based on their individual circumstances. If you do intend to marry, if possible consult an attorney to determine whether a premarital agreement is appropriate for you.

For those who are married or are considering marriage, keep in mind that marriage does not provide all the protections your family needs to be legally secure – there are very important legal steps that all same-sex and transgender spouses and parents should take to ensure that their families are protected.

1. Protect your children with an adoption or parentage judgment

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

Being married to a birth parent also does not automatically mean your parental rights will be fully respected if they are ever challenged.

The only way for non-biological parents to guarantee that their parental rights will be respected by a court is to 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 later break up or divorce.

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 or 1.800.528.6257

For example, if the biological parent dies and you are not recognized as a legal 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 it is legally clear that they are a donor, not a parent, and your legal parentage has been secured with a parentage order or through adoption. If you apply for government benefits such as Medicaid for yourself or your child, the government could bring a court case to make the donor a legal father and require him to pay child support .

Investing the time and money to obtain an adoption or a parentage judgment now can save you money and prevent trauma and heartbreak later if your parentage is challenged in court. The process and cost for obtaining adoptions and parentage judgments vary from state to state. For more information about how to get an adoption or parentage judgment in your state, contact NCLR.

2. Considerations for transgender/non-binary adults and parents of trans/non-binary youth

Parents and guardians should consider updating their/their child's identity documents to reflect their correct name and gender marker. Having identity documents that reflect a marker different from a person's gender identity may place people at risk. You may wish to prioritize updating federal identity documents (Social Security card, passport book and/or passport card).

More information can be found at [Chosen Family Law Center](#) for those considering an "x" or other nonbinary gender marker.

3. Protect your and your spouse's property and decision making 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 includes creating a will or trust, and designating your spouse as a beneficiary on your life insurance and financial accounts. If possible, speak with an attorney about how to plan for your or your spouse's death or disability.

People who have stored gametes (frozen sperm, eggs) or embryos should consult with an attorney to determine whether they may need to make any changes or should update or create agreements to clarify what will happen in the event of death (this applies to single and partnered people) and (if partnered with embryos) what will happen in the event of a future divorce or breakup.

4. Advance Directives

Advance directives are documents that allow a person to decide in advance what medical treatment they do or do not want and who they want to speak and decide for them if they cannot speak or decide for themselves. Even if you are young and healthy,

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accidents and illness can happen at any time. It is important to think about and plan for your wishes in the event of disability or death.

You can visit www.caringinfo.org for blank healthcare directive forms that meet your state's requirements.

5. Protect your spouse's ability to obtain public benefits

Make sure you understand your rights under Social Security and Medicare, especially if you or your spouse are older or have a disability. 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.

6. Additional Information

Store an official copy of all legal documents (marriage certificate, adoption or parentage judgment, estate planning stuff, birth certificates) in a safe place, and keep a scanned copy handy on your smartphone.

We know this is a concerning time for our community, and NCLR is here to help. Reach out to our helpline if you have additional questions or concerns at 1-800-528-6257 or by filling out a form on our [website](http://www.nclrights.org).

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