

## Adoption & Same-Sex Marriages: How Parental Rights Work - *Divorcemag.com*

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Same-sex couples whose marriages have dissolved have likely been asked how they could possibly want to divorce, after so many years of effort that went into gaining the right to marry.

Undoubtedly, the 2015 ruling by the U.S. Supreme Court, recognizing that same-sex couples have a constitutional right to marry, was a hard-earned battle. Fighting for that right was intense and extremely important for same-sex couples, which makes the notion of same-sex divorce that much harder.

However, same-sex couples face many of the same relationship issues as different-sex couples, and those issues, like any marriage, may ultimately lead to divorce. The process of divorce can be difficult and painful for all families, but many same-sex couples face additional pressures and complications simply for being same-sex. It is not fair, but it is a reality for many.

One of these complications includes adoption. So, how exactly does adoption & same-sex marriage work?

### **Here are Things You Should Know About Adoption & Same-Sex Marriage**

Divorcing same-sex couples address the same issues as different-sex divorcing couples, for example, alimony, custody/parenting time, child support, and equitable distribution. However, a same-sex couple is faced with some unique issues particularly relating to adoption and custody/parenting time.

Same-sex couples need to be aware of several issues as they relate to having a child and adopting a child, especially if the marriage could end in divorce.

According to the law, a legal parent is defined as a biological parent or a parent by way of adoption. When a marriage dissolves and issues of custody and parenting time arise, courts treat biological parents and adoptive parents equally. It's important to note that courts give weight to the needs of "legal" parents, with the presumption that they are acting in the best interest of the child. Same-sex couples are advised to understand what it takes to become a "legal" parent; it is not as simple as signing a birth certificate.

### **Adoption Options for Same-Sex Couples**

#### **Stepparent Adoption and Second-parent Adoption**

For same-sex married couples where one partner is already a legal parent of the child (either biological or adoptive), the other partner can adopt the child through two types of adoptions. The first is a stepparent adoption, which requires the parents to be married or in a legally recognized relationship. The second is known as second-parent adoption, in which a marriage is not required.

These methods of adoption generally require due diligence by the court, which can include criminal background checks (including child abuse), employment and financial information, home studies, or home visits.

#### **Birth Certificate and Parenting Status**

Take the scenario where a child was conceived through insemination carried out under the supervision of a physician. In addition to the biological parent, the non-biological parent is listed on the birth certificate as a parent. In general, because of the inclusion on the birth certificate, the second or non-biological parent is legally considered to be a natural parent. However, states are not required to recognize birth certificates as proof of parentage, especially when the birth certificate was created by another state.

#### **The Adoption Document and Parenting Status**

In contrast, a court-ordered adoption in a same-sex marriage is a document that all states must recognize as legal, even if one state's own laws would not have allowed the adoption to take place.

Adopted children whose same-sex parents are recognized as legal parents benefit greatly from this status. Adoption may entitle a child to benefits such as healthcare coverage, inheritance, and life insurance. Moreover, the legal status as a parent ensures several rights should the marriage dissolve, including custody and parenting time, and responsibility related to child support.

## Using the Adoption Process When There Is No Biological Relationship to the Child

In instances where neither partner is biologically related to the child (for example, when a same-sex married couple uses donor sperm and a donor egg), then both parents should go through the adoption process to ensure their legal rights.

For same-sex married couples where neither partner is a legal parent, however, there are three types of adoptions that can be considered:

### Private Adoption

Many private licensed adoption agencies are friendly to same-sex couples. Further, some states explicitly prohibit discrimination in adoption based upon sexual orientation and/or gender identity. While it is unfortunate that the majority of states (42) do not have explicit prohibitions, the following states do not allow for such discrimination:

- California
- Maryland
- Massachusetts
- Nevada
- New Jersey
- New York
- Oregon
- Rhode Island
- District of Columbia

Private agency adoption usually requires placement in the home for a period of six months before the scheduling of an adoption hearing.

In some states, it is permissible for state-licensed child welfare agencies to refuse to place and provide services to children and families, including same-sex couples, if doing so conflicts with the agency owner's religious beliefs. The states that permit licensed agencies such refusals include:

- Alabama (permitted for agencies that do not receive government funding)
- Kansas
- Michigan (permitted for agencies that do not receive government funding)
- Mississippi

- North Dakota
- Oklahoma
- South Carolina
- South Dakota
- Texas
- Virginia

### **Private Placement Adoption**

Private placement adoption avoids any state agency involvement, and is instead a direct and private adoption from a child's birth parents. The proposed adoptive parents must file a complaint for adoption within 45 days of receiving the child. Generally, a preliminary hearing, which is typically scheduled within two to three months, is required to terminate parental rights of the birth parents.

### **State Agency Adoption**

State agencies, unlike the above mentioned state-licensed child welfare agencies, are precluded from discriminating on the basis of sexual orientation. The state agencies can connect children from the state's foster care and child welfare system with adoptive parents.

In sum, a legal parent is defined as a biological parent or a parent by way of adoption, and courts believe that it is in the child's best interest to have a relationship with both legal parents. For same-sex married couples, it's critical that they are informed and understand how to firmly establish their status as legal parents, despite any rights their state seems to have given, such as being listed on the child's birth certificate.

Depending on the situation, adoption by one parent or both may be necessary. Adopting the child not only ensures the parent's legal rights regarding the child, but also provides peace of mind, should a marriage end in divorce.

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