

LGBT Parental Rights in Florida

We are all basking in the glow of our recent victories in LGBT rights, from the latest great state of New York legalizing gay marriage, to Florida's lifting the ban on gay adoption last year. We are definitely on the trajectory to equal rights that will not be denied. However, here in Florida, despite our advances, if you are the non-biological or adoptive parent of "your child" conceived or adopted by your partner whether before or during your relationship or domestic partnership, your status as parent is tenuous without further legal steps being taken.

The common scenario is you are in a committed relationship and you and your partner decides that she will inseminate and bear a child, or one of you will adopt a child with the intention that you both will parent this child. Legally, in Florida, the adoptive or birth mother is the only legal parent of the child (assuming the biological father is an anonymous donor or the child is adopted.) Without doing more, the co-parent "parent's" at the will of the legal parent. If your relationship ends badly, the co-parent can be, and often is, denied any access at all to the child. On the other hand, the legal parent does not have any right to demand child support for the child she planned that the co-parent would help support.

Now that we do have the right to adopt as gays in Florida, there is the possibility of a second parent adoption: this is not prohibitively expensive, and will likely create a legal co-parenting obligation of support and right to joint custody in the event of a break-up. This concept of a same-sex second parent adoption is new in Florida, and it remains to be seen how courts will treat same-sex families in the event of a dispute over custody and support. Given the fact that the Florida Constitution and Statutes both prohibit recognition of same-sex marriage and any relationship that bears an appearance of marriage for example, a civil union: one has to wonder whether a Florida court would treat a gay family custody case the same as a heterosexual custody case. Time will tell.

A couple that is co-parenting a child will want to create several legal documents that provide the co-parent some of the rights a legal parent will have, and to protect the interests of the child in the event of death or disability of a parent. First, as the bio-mom is inseminated and her pregnancy advances, a health care surrogate designation can be created that gives the co-parent the right to not only make medical decisions for her pregnant partner, but, also, for the unborn, or newly born child. A pre-need guardian designation will serve to assure that both the bio-mom and the baby will be cared for by the co-parent if, God forbid, the bio-mom should become disabled. Once baby is born, the co-parent will also want a document granting her authorization and consent to have temporary custody (i.e., drive the child in her car, or travel, etc.) and consent to make medical decisions for the child. Parents will want to create a "family will" or "testamentary trust" that will provide for the child in the event that one or both of them should pass away. The biological or adoptive mom(s) will have the right to name a guardian of the child when the one or both of them is deceased, as well as choosing who will manage the assets left for the child until she/he is mature enough to handle an inheritance.

As unfair as it is, the biological mother of the child you both planned to raise is going to be in the driver's seat in the event of a break up unless further legal steps are taken by you as a couple when you are still in the co-parenting state of mind. Our situation differs from the

unmarried heterosexual model, as usually the father is the biological parent as well, and the law provides him the same parental rights as though the couple were married. There is the option to enter into a custody and support agreement in which you, as a couple, agree that if you were to part, shared custody and visitation would be provided, as well as continued child support by the non-custodial parent. Unfortunately, this type of contract may or may not be recognized by a Florida court. However, couples may find it helpful to have a written contract setting forth their agreements and which, if recognized will assure that both the moms and the child will not be left in the lurch in the event of a break up.

Nationally, we've come a long way, but, we won't have full equality until same-sex marriage is recognized not only on a state by state basis, but, on a Federal level. And, especially in Florida, individual legal advice based on your needs and agreements is paramount in planning your LGBT family.

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