

RUMBOLD & SEIDELMAN, LLP

ATTORNEYS AT LAW

116 KRAFT AVENUE, SUITE 3
BRONXVILLE NY 10708‡

Tel: 914-779-1050
Fax: 914-931-1786

www.adoptionlawny.com
www.adoptionlawnj.com
nrumbold@adoptionlawny.com
dseidelman@adoptionlawny.com
aschenkel@adoptionlawny.com

MARRIAGE EQUALITY IS NOT ENOUGH

WHY SAME SEX COUPLES NEED TO ADOPT TO ENSURE PARENTAL RIGHTS TO THEIR CHILDREN

Since the recent Presidential election, there has been concern in the LGBTQ community that the right for same-sex couples to marry may be in jeopardy. Although the rhetoric of the campaign may have raised these concerns, there is no realistic reason to worry that the right to marry is at risk. For reassurance on this issue we suggest you visit the NCLR¹ website at: <http://www.nclrights.org/now-that-trump-has-been-elected-can-our-marriage-be-undone/>.

Even though the right to marry is legally secure, it is very important to know that the parentage of a child born into a same-sex marriage is not.

SAME SEX PARENTS ARE STRONGLY ADVISED TO SECURE THEIR LEGAL RELATIONSHIP WITH THEIR CHILDREN BY OBTAINING A COURT ORDER OF ADOPTION.

Although there is a legal presumption that a child born into a marriage is the legal child of both spouses, the so called - marital presumption- is just that; a presumption. Even if the non-biological parent of a child is listed on the child's birth certificate, a birth certificate is not proof of parentage. If the legal relationship between a child and the child's non-biological parent is ever challenged, the presumption may be overcome by proving a lack of genetic connection to the child. Accordingly, a child may have no legally recognized relationship with one of the child's parents. An Order of Adoption on the other hand is a court judgment of parentage which must be given full faith and credit throughout the United States, even in those states which are hostile to same-sex parenting.

Attached to this handout is a copy of information posted on the NCLR website regarding the importance of a non-biological parent legally securing his or her parental rights through an adoption.

¹NCLR is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, legislation, policy, and public education.

FROM NCLR WEBSITE:

<http://www.nclrights.org/legal-protections-for-lgbt-people-and-our-families/>

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.

1. 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 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.