

Legal considerations for lesbian and gay parents

By Joan M. Burda, JD

After five years together, Gail and Amy have decided to become parents. That alone causes them some sleepless nights. When they consider the legalities involved, they feel overwhelmed. Where do they start? What do they do first?

This is an evolving area of law. Plan ahead. If, you and your partner are thinking about becoming parents, consider these things – **before** there is a pregnancy. You owe it to yourself and your children.

There are many questions that come up when people decide to have children. Lesbian and gay couples need to have the questions asked and answered before the patter of little feet hit the floor.

- 1 | **Who will be the biological parent?** Generally, for lesbians, one partner will give birth; for gay men, one partner will be the sperm donor. This decision will, in most states, determine many parental legal rights.
- 2 | **Known or Unknown Donor (Egg/Sperm):** Using a known donor can create future problems. There is no guarantee an agreement in which the donor gives up his rights will be enforced in court. A known donor can come back and seek custody and or visitation rights. Discuss this with a lawyer who is familiar with the laws on donor insemination and artificial reproductive technology.
- 3 | **Surrogacy Agreements:** There are no uniform laws dealing with surrogacy agreements. Some states prohibit them and some states won't enforce them. You need to know the law in your state **before** you sign any contracts or the surrogate becomes pregnant. You also need to know whether the law allows the surrogate to change her mind about giving up the baby after the birth. Any surrogacy contracts must be carefully drafted. Don't do this on your own. The expense of hiring a lawyer is most likely less than trying to fix things later.

4 | **Adoption:** You should be aware of the laws in your state. As of 2010, there are at least two states that prohibit adoption. Florida law specifically prohibits adoption by lesbians and gay men. No exceptions. Utah will not permit unmarried individuals to adopt. Arkansas passed a resolution banning adoptions by lesbians and gay men, but that has been struck down in court. Some states permit second parent and co-parent adoptions; some do not; and, others are silent on the matter. Adoptions granted in one state are recognized in every other state because the United States Constitution requires recognition of court orders, like court-ordered adoptions. Adoption law is state-specific. Talk to a lawyer to find out what your state law says.

5 | **Parenting Agreements:** For the sake of your children, draw up a Parenting Agreement. Decide now what will happen if your relationship ends. Don't put your children in the middle. It happens often and can be avoided. If there is no second-parent or co-parent adoption, the biological parent's rights are superior. The non-biological partner will need to establish she is a parent to the child – and there are no guarantees that a judge will agree that a parent-child relationship exists.

These agreements can provide for custody, support and visitation rights, obligations and responsibilities. Also, without the agreement, the non-biological parent may have no legal obligation to support the children. So, if the non-biological parent decides to end the relationship, the other parent may have no right to seek support. And, file the agreement with the appropriate court – then you have an enforceable court order.

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In addition to the issues mentioned, you need to consider birth certificates, last names, guardianship, schools and whether to execute an authorization allowing the non-biological parent the right to pick up the child from school. If you do not plan ahead, remember this: the non-biological parent has no established parental rights. Problems will most likely being decided by the courts.

It isn't easy being gay or lesbian and becoming parents. It can't happen by accident. Put as much thought into the legal aspect as you do into what color to paint the nursery.

This article was prepared by Attorney Joan M. Burda. The opinions expressed in this article are those of the author and may not necessarily reflect those held by Massachusetts Mutual Life Insurance Company.

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