Protecting Families

Standards for LGBT Families

GLAD
EQUAL JUSTICE UNDER LAW

NCLR
National Family Law Advisory Council

In 1999, a concerned group of activists, lawyers, mediators, social workers and mothers (Jenifer Firestone, Silvia Glick, Arline Isaacson, Joyce Kauffman, Sandra Lundy, Maureen Monks, and Diane Neumann) came together at the offices of Gay & Lesbian Advocates & Defenders in Boston to serve as a sounding board and editor to the author of the original document, Attorney Mary L. Bonauto of GLAD. See GLAD, Protecting Families: Standards for Child Custody in Same-Sex Relationships, *10 UCLA Women's L. J. 151 (1999).*

This most recent revision has been a collaborative effort among three groups: GLAD, NCLR, and NCLR's National Family Law Advisory Council.

To view this publication online, including a list of individual endorsers, visit:

www.glad.org/protecting-families

Protecting Families:
Standards for LGBT Families

We are incredibly proud of our community's successes in creating families with children and doing the loving, joyful and challenging work of parenting. Bringing children into a family is a transformative experience and integrates us into the larger community. However, our children are vulnerable to being separated from their parents because the law does not always fully recognize our families.

There are steps you can – and should – take to protect your child's relationship with his or her parents to prevent that devastation:

- **DO** obtain legal recognition of your parent-child relationships and make it a top priority! Being busy is not an excuse.

- **DO** work together to come to an agreement if your relationship ends, especially when you have children. Do not begin by fighting in court. Litigation can bankrupt you, deprive your child of one of his or her parents, and make law that will hurt others for years to come.

There is so much at stake for your children, for you, and for our larger community. PLEASE read on and consider this message.

Failure to Legally Protect Your Parental Relationships Could Result in Losing Those Relationships

You cannot fully protect your legal relationship to your children unless you take affirmative steps. The good news is that there are affirmative steps you can take in almost every state. Failure to take advantage of these steps creates the significant risk that your child will be unprotected because one of you is not seen as a "parent." Imagine your child at the hospital and the non-biological or non-adoptive parent shows up first and is denied access to the child needing comfort or medical decision-making.

In an emergency, do you want to rely on the mercies of others who may be homophobic or transphobic? If one of you dies, do you want the child placed with extended family members or with the state while the survivor launches a court battle to maintain custody of your own child? You can avoid these outcomes!

What Can You Do About This?

CONTACT knowledgeable lawyers in your community to establish the best legal recognition possible in your state.

State law – and not federal law – determines who is a parent and each state has its own set of laws. And even people joined in marriage, civil union or domestic partnership (in states where these statuses are available) need to take additional steps to protect their children because those statuses could change and also may not be recognized in other states.

- In states where second parent adoption or parentage judgments are available, all non-biological parents should take one of these steps. This is the best way to ensure that you will be recognized as a parent nationwide.

- If you cannot adopt or get a parentage judgment it may be possible for you to do a co-guardianship or parenting agreement through the courts.

- If you cannot adopt or get a parentage judgment, you should:

- Be sure the biological or adoptive parent writes a will naming you as guardian for the child in the event of the parent's death.
- Be sure the biological or adoptive parent signs an authorization for you to consent to medical care.
- Enter into a written agreement clarifying your intention to jointly parent your children.

We want LGBT families and their children to be protected and are fighting every day to create the means to do so in every state in the nation. Find out what you can do in your state.

Go to the websites of organizations like Gay & Lesbian Advocates & Defenders; National Center for Lesbian Rights; Lambda Legal; the ACLU; the National LGBT Bar Association; Family Equality Council; Equality Federation; Human Rights Campaign; the National Gay and Lesbian Task Force; and COLAGE to find information and resources.

We believe (as with ducks) that if it looks like a family, if it holds itself out as a family, and if it functions like a family, then it is a family. But this position may not be respected in all states, so please do what you can to protect your children and your family now.

The Laws Do Not Always Protect Our Families

In our culture, we often turn to courts for resolution. Yet, many states lack a legal framework to recognize our families and may not apply the existing legal rules to resolve disputes about parental responsibilities or dividing property.

Even in those states with a legal framework, there are many novel issues that arise. As a result, many court rulings have disrespected our families and the relationships of one or both parents to the children. Going to court can be damaging to the real relationships that a family has nurtured for many years. It can also create a negative precedent of disrespect that will haunt other LGBT families for years to come.

What You Can Do About It

No matter what state law is, our first responsibility is to our children. Whether state law recognizes the relationship between the adults or not, you have the power to agree to maintain the parental relationships your children count on. If you're fortunate enough to reside in a state where the courts will affirm your custody agreements, it's important to obtain that legal protection. But if you separate and rely on the courts to determine what is best for your children, rather than coming up with your own negotiated resolution, you could bankrupt yourself financially and emotionally and destroy your child's relationship with another parent.

How the Standards Can Help

Respecting our own families requires us to honor our relationships with our children and with each other. The overarching aim of these standards is to help families remember the importance of ensuring that we protect the families we create and that our children continue to have meaningful relationships with the people they see as their parents, especially during times of crisis or a break-up.

We believe that, even in the midst of the emotional upheaval that inevitably accompanies the end of the adult relationship, families can do a great deal to resolve their differences in a manner that puts their children first.

We ask all lawyers who work with LGBT families to share these standards with their clients and explain the importance of showing respect for and protecting our families.

We encourage you to accept and use these standards as a guide to making sure that we protect our families however and wherever we can, at the beginning of our relationships when there is love and trust, and at the end of our relationships, when that love and trust has been ruptured. We owe this to our children.

Standards for LGBT Families

1. Support the Rights of LGBT Parents.

Our children deserve to be loved, and our families deserve to be protected. We must respect LGBT families and our children's relationships with their parents. Even through the dissolution of our families, we must protect the best interests of our children and show respect for LGBT families.

2. Honor Existing Relationships Regardless of Legal Labels.

Recognize and affirm the actual relationships between the parents and the children. You should sign written agreements and, where possible, establish legal protections of parental relationships. Regardless of whether you have taken these steps, agreements to share parenting or allow an important relationship to develop with another parent or significant adult should control, whether those agreements are written or not.

3. Honor the Children's Existing Parental Relationships After a Break-Up.

The well-being of our children depends on the continuity of their relationships with the significant adults in their lives. Abrupt termination of such relationships is damaging. Sustaining these relationships should be the primary goal of the resolution of any custody dispute.

4. Maintain Continuity For the Children.

Parents who are separating should start with the presumption that an arrangement which most closely resembles the children's relationships with the people they regard as parents is best, taking into account, of course, whether there has been any abuse or neglect that interferes with a person's ability to parent. All parents should continue to provide financial support for the children.

5. Seek a Voluntary Resolution.

Using mediation will reduce the conflict and disruption that the children face. If the parents are at an impasse, consider retaining the services of a mediator knowledgeable about LGBT families who can help the parents reach an agreement.

If possible, have the agreement confirmed by a court. A court order approving the parents' agreement and setting out a custody or visitation arrangement is the best solution.

6. Remember That Breaking Up Is Hard to Do.

The end of a relationship is difficult and disruptive. Parents should avoid impulsive and expedient decisions which are likely to be harmful to the children. Seek professional assistance to help determine what will be best for the children.

7. Investigate Allegations of Abuse.

Abusive relationships can and sometimes do occur in LGBT families. Allegations of abuse, whether true or false, have a serious impact on everyone in the family and should be carefully assessed. If abuse has occurred, seek assistance from domestic violence services and tell your attorney about the situation.

False allegations of abuse can and do occur and threaten to disrupt the children's relationship with their parents. Do not use false allegations of abuse as a tool to get an edge in the custody dispute.

Attorneys must explore allegations of abuse in order to determine whether abuse has actually occurred and, if it has, to determine an appropriate parenting plan.

8. The Absence of Agreements or Legal Relationships Should Not Determine Outcome.

Whether or not legal steps have been taken should not be the only determining factor. Legal protections, in fact, are not available in many states. What matters is how the adults have viewed their relationships with their children over time. Respect for the children's relationships with the adults they view as parents is paramount.

9. Treat Litigation as a Last Resort.

Litigation is the kind of winner-takes-all approach that can destroy existing relationships and undermine the trust needed to share parenting responsibilities. It is also costly and time consuming and, because court proceedings are usually open to the public, compromises the family's privacy. Equally important, however, is that litigation can establish bad legal precedent and thereby institutionalize disrespect for LGBT families.

10. Refuse to Resort to Homophobic/Transphobic Laws and Sentiments.

It is wrong and unethical for parents or lawyers to take advantage of anti-LGBT laws. Do not resort to arguments that a person who is not a "legal" parent has no right to seek custody or visitation. The stress or angst over the end of a relationship can sometimes stir the flames of internalized homophobia or transphobia. A parent's own anti-LGBT sentiments can have a negative impact on the children and should be confronted. The best interests of the children should control decisions concerning custody and visitation.

No one should reveal, or threaten to reveal, the sexual orientation or transgender status of an opposing parent in an attempt to harass or intimidate the other parent.

The following organizations have endorsed these standards

HUMAN
RIGHTS
CAMPAIGN®

The National LGBT Bar Association
An Affiliate of the American Bar Association

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