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NATIONAL CENTER FOR LESBIAN RIGHTS

Adoption by LGBT Parents

A second parent adoption (also called a co-parent adoption) is a legal procedure that allows a same-sex parent to adopt her or his partner's biological or adoptive child without terminating the first parent's legal status as a parent. States that recognize marriage between same-sex couples or that have comprehensive domestic partnerships or civil unions allow couples joined in these legal unions to use the stepparent adoption procedures that married couples may use. It is important to recognize, however, that a same-sex partner who plans the birth or adoption of a child with his or her partner is a parent – not a stepparent. Parents should not have to adopt their own children, but it is legally advisable for LGBT parents to get an adoption or parentage judgment to ensure that their parental rights are protected.

States that allow second parent adoption

Currently, a number of states and the District of Columbia have a state statute or appellate court decision allowing same-sex couples to get a second parent adoption or co-parent adoption. They are:

1. California[1]
2. Colorado[2]
3. Connecticut[3]
4. Delaware[4]
5. District of Columbia[5]
6. Hawaii[6]
7. Idaho[7]
8. Illinois[8]
9. Indiana[9]
10. Iowa[10]
11. Maine[11]
12. Maryland[12]
13. Massachusetts[13]
14. Minnesota[14]
15. Nevada[15]
16. New Hampshire[16]
17. New Jersey[17]
18. New Mexico[18]
19. New York[19]
20. Oregon[20]
21. Pennsylvania[21]
22. Rhode Island[22]
23. Vermont[23]
24. Washington[24]

Although there are undoubtedly others, some counties other states have granted second parent adoptions, including:

1. Alaska

2. Georgia
3. Louisiana
4. Texas
5. West Virginia

State Laws That Limit or Prohibit Adoption by LGBT Individuals or Couples

1. The Alabama Court of Appeals ruled that same-sex couples cannot use the stepparent adoption procedures.[25]
2. Arizona gives a preference to married couples over a single adult in adoption placement.[26]
3. The Kansas Court of Appeals recently ruled that Kansas does not permit second parent or co-parent adoption.[27]
4. A Kentucky court has said that Kentucky does not permit unmarried couples to use the stepparent adoption procedures.[28]
5. Mississippi prohibits "[a]doption by couples of the same gender."[29]
6. Nebraska does not permit second parent or co-parent adoption.[30]
7. North Carolina does not allow second parent or co-parent adoption.[31]
8. Ohio does not permit second parent or co-parent adoption.[32]
9. Utah prohibits anyone cohabiting in a non-marital sexual relationship from adopting.[33] Utah also gives a preference to married couples over any single adult in adoptions or foster care placement.[34]
10. Wisconsin does not permit second parent or co-parent adoption.[35]

Note: Until recently, Florida was the only state to categorically prohibit lesbian, gay, and bisexual individuals from adopting, but that state law was held unconstitutional in September 2010.[36] Arkansas previously prohibited anyone cohabiting with an unmarried partner from adopting or being a foster parent, but the Arkansas Supreme Court struck down this statute as unconstitutional.[37]

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End Notes

[1] Second parent adoption (*Sharon S. v. Superior Court*, 73 P.3d 554 (Cal. 2003)) and domestic partner/stepparent adoption (CAL. FAM. CODE §§ 9000, 297.5, 308(b)-(c); *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013); CAL. FAM. CODE §§ 297, 297.5).
[2] Second parent adoption (COLO. REV. STAT. ANN. §§ 19-5-203(1), 19-5-208(5), 19-5-210(1.5), 19-5-211(1.5)) and civil union/stepparent adoption (COLO. REV. STAT. ANN. §§ 14-15-107, 14-15-117, 19-5-202(5)).
[3] Second parent adoption (CONN. GEN. STAT. ANN. § 45a-724(a)(3) (providing that "any parent of a minor child may agree in writing with one other person who shares parental responsibility for the child with such parent that the other person shall adopt or join in the adoption of the child")) and stepparent adoption by married couples (CONN. GEN. STAT. ANN. §§ 45a-724(a)(2), 46b-20(4); 46b-38aa *et seq.*).
[4] Civil union/stepparent adoption (DEL. CODE tit. 13, §§ 903, 201 *et seq*, 101; DEL. CODE tit. 13, § 129). Some counties have also allowed second parent adoptions.
[5] Second parent adoption (*M.M.D. v. B.H.M*, 662 A.2d 837 (D.C. 1995)); stepparent/domestic partner adoption (D.C. CODE §§ 16-302, 46-401).

[6] Civil union/stepparent adoption (HAW. REV. STAT. §§ 578-16, 572B-9, 572-1). Some counties have also allowed second parent adoptions.
[7] Second parent adoption (*In re Adoption of Doe*, No. 41463, 2014 WL 527144 (Idaho Feb. 10, 2014)).
[8] Second parent adoption (*In re Petition of K.M. & D.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995)) and stepparent/civil union adoption by statute (750 Ill. Comp. Stat. 50/2; 750 Ill. Comp. Stat. 75/20; 750 Ill. Comp. Stat. 80/1 *et seq.* (effective June 1, 2014)).
[9] Second parent adoption (*In re Adoption of M.M.G.C.*, 785 N.E.2d 267 (Ind. Ct. App. 2003); *In re Adoption of K.S.P.*, 804 N.E.2d 1253 (Ind. Ct. App. 2004)). *See also In re Infant Girl W.* 785 N.E.2d 267 (Ind. App. 2006) (same-sex couple may jointly adopt).
[10] Stepparent adoption by married couples (Iowa Code § 600.4; *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009)). Additionally, some counties in Iowa have granted second parent adoptions.
[11] Second parent adoption (*Adoption of M.A.*, 2007 ME 123 (Me. 2007)) and stepparent adoptions (ME. REV. STAT. ANN. tit. 19-A, § 650-A).
[12] Stepparent adoption by married couples (MD. CODE. ANN., FAM. LAW § 2-201). Additionally, some counties in Maryland have granted second parent adoptions.
[13] Second parent adoption (*In re Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993)) and stepparent adoption (MASS. GEN. LAWS ANN. ch. 210 § 1; *Goodridge v. Dep't of Pub. Health*, 440 Mass. 309 (2003)).
[14] Stepparent adoption (MINN. LAWS, ch. 259, § 259.59; MINN. LAWS ch. 74, § 2). Additionally, some counties in Minnesota have granted second parent adoptions.
[15] Domestic partner/stepparent adoption (NEV. REV. STAT. §§ 127.045, 122A.200).
[16] Stepparent adoption (N.H. REV. STAT. ANN. §§ 170-B:4, 457:1-a).
[17] Second parent adoption (*In re the Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995)) and civil union/stepparent adoption (N.J. STAT. ANN. §§ 9:3-50, 37:1-31; *Garden State Equality v. Dow*, No. L-1729-11 (N.J. Sup. Ct. Sept. 27, 2013) stay denied 2013 WL 5687193 (N.J., Oct. 18, 2013)).
[18] Stepparent adoption (N.M. Stat. Ann. § 32A-5-32; *Griego v. Oliver*, 316 P.3d 865 (N.M. 2013)).
[19] Second parent adoption (*In re Jacob, In re Dana,* 660 N.E.2d 397 (N.Y. 1995)); stepparent adoption (N.Y. Dom. Rel. Law §§ 110, 10-a). New York also recognizes civil unions from other states. *Debra H. v. Janice R.*, 14 N.Y.3d 576, 930 N.E.2d 184 (N.Y. 2010).
[20] Domestic partner/stepparent adoption (OR. REV. STAT. ANN. §§ 109.041(2), 106.340; *Geiger v. Kitzhaber*, No. 6:13-cv-01834-MC (D. Or. May 19, 2014)). Additionally, according to Basic Rights Oregon, courts in all counties have granted second parent adoptions to same-sex couples. *See* www.basicrights.org.
[21] Second parent adoption (*In re Adoption of R.B.F. & R.C.F.*, 803 A.2d 1195 (Pa. 2002)) and stepparent adoption (23 Pa. Cons. Stat. Ann. § 2903; *Whitewood v. Wolf*, No. 1:13-cv-01861-JEJ (M.D. Pa. May 2014)).
[22] Stepparent/civil union adoption (R.I. GEN. LAWS §§ 15-7-4, 15-1-1 *et seq.*). Additionally, some counties in Rhode Island have granted second parent adoption.
[23] Second parent adoption (*In re Adoption of B.L.V.B. & E.L.V.B.*, 628 A.2d 1271 (Vt. 1993); VT. STAT. ANN. tit. 15A, § 1-102(b) (providing that, if family unit consists of parent and parent's partner, partner of parent may adopt child without terminating parent's rights)); civil union/stepparent adoption (VT. STAT. ANN. tit. 15A, § 4-101; VT. STAT. ANN. tit. 15 §§ 1a *et seq.*, 1204).
[24] Domestic partner/stepparent adoption (WASH. REV. CODE §§ 26.33.100, 26.04.010, 26.60.100). Additionally, some counties in Washington have granted second parent adoptions regardless of marital status.
[25] *In re Adoption of K.R.S.*, 109 So.3d 176 (Ala. Ct. App. 2012) (refusing to allow a same-sex couple who had married in another state to use the stepparent adoption procedures). Previously, some attorneys had obtained second-parent adoptions in some counties in Alabama.
[26] Ariz. Rev. Stat. § 8-103.
[27] *Adoption of I.M.*, 48 Kan.App.2d 343 (Kan. Ct. App. Nov. 9, 2012). However, a person who has openly acknowledged themselves as a child's parent, even if they are not a biological parent, may be able to obtain a parentage order in Kansas. *Frazier v. Goudschaal*, 296 Kan. 730, 295 P.3d 542 (2013).
[28] *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804 (Ct. App. Ky. 2008) (holding that the biological mother could not challenge her partner's adoption of the child more than a year after the adoption was finalized, but noting

in dicta that an unmarried couple cannot use the stepparent adoption procedures in Kentucky to establish legal parentage for both partners).

[29] MISS. STAT. § 93-17-3(2).

[30] *In re Adoption of Luke*, 640 N.W.2d 374 (Neb. 2002).

[31] *Boseman v. Jarrell*, 704 S.E.2d 494 (N.C. 2010). However, a non-biological parent who has raised a child with the consent and encouragement of a legal parent may be able to seek custody. *Id. See also Mason v. Dwinnell*, 660 S.E.2d 58 (N.C. Ct. App. 2008).

[32] *In re Adoption of Doe*, 719 N.E.2d 1071 (Ohio Ct. App. 1998). However, a non-biological parent may be able to seek custody if the legal parent had previously agreed to share custody. *In re Bonfield*, 97 Ohio St. 3d 387, 780 N.E.2d 241 (2002); *In re Mullen*, 129 Ohio St. 3d 417, 953 N.E.2d 302 (2011).

[33] UTAH CODE 78B-6-117(3)(b).

[34] UTAH CODE §§ 78A-6-307(19), 78B-6-117 (4).

[35] *In the Interest of Angel Lace M.*, 516 N.W.2d 678 (Wis. 1994).

[36] *Fla. Dep't of Children & Families v. X.X.G.*, 45 So.3d 79 (Fla. Ct. App. 2010) (Florida's Third District Court of Appeal held that the ban had no rational basis and violated the equal protection guarantee of the Florida Constitution). This decision is binding on all Florida trial courts. The Florida Department of Children and Families has issued a memorandum instructing its staff to immediately cease questioning prospective adoptive parents about their sexual orientation and not consider sexual orientation as a factor in determining fitness to adopt. The Department's staff are to focus instead on the quality of parenting that adoptive parents would provide, and their commitment to love an adopted child.

[37] *Arkansas Dept. of Human Services v. Cole*, 2011 Ark. 145 (Ark. April 7, 2011) (striking Arkansas Initiative Act 1 (2008) as violating the Arkansas Constitution).