



What Practitioners Need to Know: Securing Identity Documents for Your Transgender Clients



AGENDA

- Introduction and Overview
- Name Changes: The Basics
- Gender Marker Changes: The Basics
- Court-Ordered Changes of Gender
- X Gender Markers
- Questions



Introduction

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Overview: Why Is ID Document Work Significant?

Identification documents are required for many common commercial and governmental activities:

- Driving
- Purchasing age-restricted products
- Renting a car, hotel room, apartment, etc.
- Voting (in many jurisdictions)
- Flying
- Entering courthouses and other government buildings



Overview: Why Is ID Document Work Significant?

Obtaining accurate ID documents can be difficult for many transgender and nonbinary people

- 68% of trans people do not have any ID documents with the correct name and gender marker
- Only 11% have the correct name and gender marker on all ID documents and records

32% of trans people who showed ID that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted

Source: Report of the 2015 U.S. Transgender Survey, NCTE (2017)



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Name Changes: The Basics

Name changes and gender marker changes follow two different, parallel processes.

Name Changes

- Legal, court-centered process (usually)
- Requirements vary by state (and/or county)
- One court order can be used to update all documents and records in all jurisdictions

Gender Marker Changes

- Administrative process (usually)
- Process and requirements are different for every document and record, ranging from self-attestation to unable to change

1. Social Security record
2. Driver's license and/or state ID
3. Passport
4. Birth Certificate

All other documents
and records



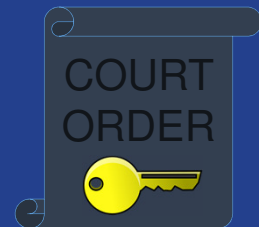
Name Changes: Sample Process

Step 1 – Gather information about client's situation, including: current address, ID status, plans to move, access to birth certificate and other documents, etc.

Step 2 – Prepare court forms, gather supporting documents, and counsel client on what to expect after filing (e.g. typical timeline, if there will be a hearing)

Step 3 – File court forms, publish notification (if required), and wait.

Step 4 – Attend hearing (if applicable), and obtain court order





Name Changes: Common Complications

Newspaper Publication	<ul style="list-style-type: none"> • Not required in 23 states and DC, required in some or all cases in all other states and territories • Often waiveable at court's discretion
Filing Fees	<ul style="list-style-type: none"> • Ranges from \$35 (some VA counties) to over \$600 (UT) • Usually cash, check, or money order only • Fee waivers often available, but standards and discretion vary
Hearings	<ul style="list-style-type: none"> • Not required by every court (if there is no hearing, court order is typically mailed) • Range from a brief formality to an extended interrogation, depending on state, court, and judge
Bars to Filing	<ul style="list-style-type: none"> • Currently or formerly incarcerated people may be barred from filing (e.g. PA) • Requirements for duration of residency (e.g. 60 days in DC, 12 months in MI)
Motions to Seal	<ul style="list-style-type: none"> • Court records are public; accessibility of those records varies by state/county • In many jurisdictions, risk of transphobic discrimination/violence is sufficient to convince the court to order the case sealed
Name Changes for Minors	<ul style="list-style-type: none"> • Requires consent of at least one parent (both in some states) • May be easier to obtain order to seal • May be in a different court from an adult order (e.g. circuit vs. family court)



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Gender Marker Changes: The Basics

Gender marker changes are almost always via administrative processes, with the exact requirements varying from state to state and document to document

In general, there are four standards to obtain a changed gender marker:

- Self-Attestation: the applicant merely needs to select what marker they wish to have
- Medical Certification: signed statement by a professional (e.g. physician, therapist) verifying the applicant's gender
- Proof of Surgery: signed statement (by a surgeon or physician) that the applicant has undergone transition related surgery (ranging from any surgery to specific procedures)
- Court-Ordered Change of Gender: judgment of a court ordering the applicant's gender changed, with the exact requirements varying wildly from state to state and often allowing for judicial discretion



Gender Marker Changes: Core Documents

Social Security Record	<ul style="list-style-type: none"> • While there is no gender marker on a Social Security card, there is one in the NUMIDENT record • Requires filing of an SS-5 Application for Social Security Card (no fee) • Standard is certification from a medical provider that the applicant has undergone "appropriate clinical treatment for gender transition" • SSA is currently exploring moving to self-attestation in fall 2022 and adding an X marker option in 2023
Driver's License or State ID	<ul style="list-style-type: none"> • The name on REAL ID-compliant IDs must match the SSA record • Standard varies: 22 states and DC use self-attestation; 8 states, Guam, and CNMI require proof of surgery; the rest fall somewhere in between • Typically the fee is the same as that for any replacement license/ID • Voter registration update is typically automatic with an updated license/ID • X markers are available in 22 states and DC
U.S. Passport	<ul style="list-style-type: none"> • Requires filing of a DS-11 Application for a U.S. Passport (or DS-82 Renewal Application) • Standard is self-attestation as of June 30, 2021 • X markers are available as of April 11, 2022 • Same fee as any other passport application
Birth Certificate	<ul style="list-style-type: none"> • Requirements vary wildly, from self-attestation to un-amendable by any means • Depending on state, the changed birth certificate may be "amended" (indicating on the document that it has been changed or even displaying both the original and new information), or "new" (indicating a document that does not indicate that the information on it has been changed) • Fees range from free to >\$100, depending on state



Gender Marker Changes: Additional Documents

The court order changing the client's name, combined with an updated license/ID, Social Security record, passport, and/or birth certificate form a "toolkit" to change other documents and records

Commercial Records

- Every company has its own standards for updating documents
- Typically businesses will update names with no serious complaint, but may not have a process for gender markers

Vital/School Records

- Most states do not yet have a set process for updating marriage records or childrens' birth certificates
- Processes vary for school records; most public schools will update records and transcripts, some private schools may refuse

Selective Service

- All AMAB people must register, even if they change their gender marker on their records before turning 18
- AFAB individuals are exempt from registration, and should request a Status Information Letter stating they are exempt



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Court-Ordered Changes of Gender

“Can’t I just save my client time and effort by getting them a court order changing their gender?”



“Shouldn’t I get a court-ordered gender change just in case?”



Court-Ordered Changes of Gender

A court-ordered change of gender is usually unnecessary, and attorneys should not pursue them unless their client’s specific situation requires it.

- Gender-change court orders are only useful to change the gender marker on license/ID and/or birth certificate in a handful of states
- A gender change case usually requires a separate filing fee, and exposes the client to potentially invasive questioning by a judge
- If the client’s license/ID or birth certificate don’t require it, a court-ordered gender change is of no benefit to them



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X Gender Markers: What Do They Mean?

The exact definition of an X gender marker varies by jurisdiction, but the U.S. Passport application has a typical definition: “Unspecified or another gender identity.”

While generally intended to provide an inclusive option so nonbinary, agender, and genderfluid individuals can have accurate documentation, X markers may be available for any applicant, and no applicant is obligated to use an X marker if they would prefer an M or F



X Gender Markers: Main Considerations

Inconsistent Gender Markers

Generally speaking, people may have different gender markers on different documents. People are not restricted from having an X marker on their passport just because they live in a state without an X option for licenses/IDs.

Safety and Privacy

- While an X marker may mean “unspecified,” its presence on a document can be thought of as automatically outing the bearer as trans or nonbinary
- An X marker passport will probably be recognized as legitimate by other countries, but may expose the bearer to discrimination or harassment by authorities



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Q&A

If you have questions or comments about this material,
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