



A Few Legal Tips to Help Keep Your Family Together

Deborah Wald is a San Francisco attorney who has been advising gay families for over a decade about the legal consequences of their decisions and actions. Many people move forward building their families without legal counsel and sometimes it works out fine. But there are risks.

By Deborah Wald

What if you break up with your partner without having adopted your child? What if you move to a state that doesn't recognize same-sex domestic partnership or marriage? Will your family be legally protected?

Here are some tips to consider. By no means is this a comprehensive list of legal suggestions for gay people becoming parents. Legal advice inevitably depends on the circumstances of the particular situation.

- Under California law, a sperm donor is a man who provides sperm to a licensed physician or sperm bank for purposes of inseminating someone other than his wife. When a man donates sperm directly to a woman without a medical provider acting as a go-between, he is likely to be considered a legal father by the courts whether or not the donor and recipient have a contract stating that he intends to be a sperm donor and not a parent.
- California has strong domestic partner laws that protect families. However, these laws only apply within the boundaries of the state. When California domestic partners travel outside our borders, they are subject to the laws of whatever state they are in; so if their parentage is based exclusively on recognition of their domestic partnership, they won't be a parent in any state where the partnership is not recognized. That's one reason why it's important for a non-biological parent or parents to adopt a child in California, even if they would already be considered a parent in California without the adoption. Under the Full Faith and Credit Clause of the United States Constitution, an adoption lawfully performed in any state must be recognized in all states.
- California law draws a sharp distinction between "traditional" and "gestational" surrogacy. Even if the parties have a contract stating clearly that a woman is

acting as a surrogate, if the child she is carrying was conceived from her own egg she generally will have the legal rights of a parent unless she waives them after the child is born. This means that if she wants to assert custody of the child after it is born, she probably will be able to do so.

According to Wald, for non-intimate co-parenting teams—and for lesbian couples using known sperm donors—it is particularly important that all parties be on the same page in terms of how they'll deal with a variety of issues that could arise during a child's minority. Written agreements are particularly important in these situations, and can serve several functions: they help assure that the parties have thought through their arrangement and that there are no casual misunderstandings about important issues; they can serve as a reminder years later about what the agreements were that led the parties to decide to bring a child into the world together; and, in extreme situations, they can serve as important evidence in court to help a judge understand the intended terms of the co-parenting or donor arrangement.

"There are people who do it right with no help at all," Wald said. "But there is so much room for misunderstanding, and the limited time it takes to get it right from the get-go can avoid huge heartbreak down the road."

For couples raising a child together, generally the goal is to make sure it's a level playing field for both parents, without one having more legal rights than the other. This often requires an adoption or parentage action to assure that the courts will recognize both parents equally.

Wald argues that the changes in the law that force registered same-sex domestic partners to go through a full court divorce, rather than just "unregistering," have generally been good for the community. "During the moment of break-ups, people are not at their best," Wald said. "The court system forces them to play fair."

For lesbians and gay men looking for a do-it-yourself approach to making good legal decisions, Nolo Press offers good guidebooks on many issues. Wald particularly recommends *Do*

Your Own California Adoption and A Legal Guide for Lesbian and Gay Couples. However, if you and your partner decide to hire an attorney, make sure whoever you engage is familiar with same-gender legal issues as even very experienced family law attorneys may not understand the different ways the laws apply to same-sex families than to different-sex families.

For more on Deborah Wald and the Wald Law Group, go to www.waldlaw.net.