

5 Questions About LGBT Surrogacy, Adoption in Florida

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1. How does the recognition of same sex marriage in Florida impact same sex spouses' use of a surrogate?

When using a Florida surrogate, prior to marriage equality, there were additional steps required for same sex spouses (i.e. commissioning couple) to ensure parental rights for the biological and non-biological parent involving state adoption laws. Now, same sex spouses can utilize Florida's expedited and simplified process of affirming both parents as the legal parent of the child born via a surrogate under the gestational surrogacy statute, which eliminates the need to obtain a consent to adoption from the surrogate and avoids a home study.

Once the child is born, Florida's surrogacy friendly procedures permit the commissioning couple, within three days after the birth, to petition the court for a birth certificate with their names as the biological parents. This procedure eliminates the quandary in many states where in order to have the same-sex parents' names on the birth certificate, they are forced to adopt their own biological child.

2. How do LGBT singles use a surrogate in Florida?

Since surrogacy agreements under the state surrogate statute- which allow for automatic parental

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rights for both parties in the commissioning couple- are limited to legally married couples, LGBT singles (i.e. intended parent) looking to use a surrogate must proceed under Florida's adoption laws.

After selecting a surrogate, the intended parent enters into a "pre-planned adoption agreement" with the surrogate and her spouse/partner. This is an agreement by which the surrogate agrees to bear a child and relinquish parental rights to the intended parent. Florida law has mandatory requirements of what must be included in this type of agreement to effectively terminate the surrogate's parental rights. Following the birth of the child, the intended parent files an adoption petition that terminates the parental rights of the surrogate and names the single parent as the legal parent.

3. How do same sex, unmarried couples use a surrogate in Florida?

Since agreements under the state surrogate statute are limited to legally married couples, same-sex unmarried couples also must proceed under a pre-planned adoption agreement.

Following the surrogate birth, the process in which the nonbiological partner obtains full parental rights is through a second parent adoption. When the child is born, only the biological parent will have parental rights. Without a second parent adoption, the nonbiological parent has no legal rights to the child.

4. Can a stepparent in a same sex marriage file a stepparent adoption of the spouse's child and avoid filing a second parent adoption and home study?

Yes. In Florida, a stepparent adoption, previously limited to heterosexual married couples, is a court proceeding allowing a stepparent to adopt his/her spouse's child. The benefit of a stepparent adoption is that it avoids the extra expense of a home study, background check, fingerprints and multiple hearings to finalize an adoption; these items are required with a second parent adoption.

A stepparent in a same-sex married couple can adopt his/her spouse's child through a more streamlined, inexpensive and simplified stepparent adoption to become the legal parent of the child and place both parents' on the birth certificate. Without being recognized as the legal parent of a spouse's child, the nonlegal stepparent ultimately has no parental rights.

5. Can same sex spouses adopt a child jointly?

Yes. Because Florida recognizes same-sex marriage, as long as a same-sex couple is legally

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married, they can jointly adopt a child and have both parents' names put on the birth certificate at the same time instead of having to file a separate adoption proceeding for one of the spouses and then file another separate second parent adoption (i.e. second parent adoption).

Marla Neufeld, Esq. is the Chair of the surrogacy law group at Greenspoon Marder Law. Her personal experience with surrogacy exposed her to available third-party reproductive technologies and adoption laws in Florida.