

LGBTQ Families

New Jersey LGBT Family Lawyers Advising Same-Sex Couples and LGBTQ Individuals

Families form in a myriad of different ways, and over the last 15 years, there has been significant and fast-changing progress in recognition of same-sex relationships and LGBTQ families. The family law attorneys at Einhorn Barbarito are committed to serving all populations. As part of this commitment, we have developed the practice area of LGBTQ Family Law. The lawyers in our practice are at the forefront of legal developments impacting same-sex relationships and LGBTQ families and individuals. They work one on one with LGBTQ clients in New Jersey to address all of their family law needs.

When it comes to family law matters, lesbian, gay, bisexual, transgender and questioning/queer people must confront many of the same issues that all couples and family units face. These individuals and couples must also deal with additional challenges and questions that are unique to members of their LGBTQ community, such as:

- How do you dissolve a relationship if you have entered into both a civil union and the marriage with the same partner?
- Are you entitled to support if you have entered into a domestic partnership, and the relationship ends?
- Are there unique challenges to the family formation through the adoption process or gestational surrogacy?
- What are my rights to child custody if I haven't entered into a legal relationship with the child's other parent?

Dissolution and Divorce for Same-Sex Couples in New Jersey

Because of the timing of different states enacting different statuses of legal recognition about same-sex couples, it can be difficult for couples to understand their rights and obligations fully. In New Jersey alone, same-sex couples, depending on when they first entered into a legally recognized relationship

status, could have entered into a domestic partnership, a civil union or marriage. Each status category confers different legal rights and obligations to the parties. For example, when a domestic partnership ends in New Jersey, there is no right alimony or support, no right to equitable distribution of assets, and no right to pension benefits.

In 2007, the New Jersey Legislature enacted the Civil Unions Act which created civil unions for same-sex couples. Under this Act same-sex couples who have entered into a civil union are afforded almost all the same rights under New Jersey law which are afforded to married, opposite-sex couples. As a result of the Civil Unions Act, no new domestic partnerships are available to couples, unless each party is at least 62 years of age or older. Under New Jersey state law, when a civil union dissolves, the parties to the union have the same rights as married couples, including rights to alimony and support and equitable distribution of assets. However, because the federal government does not recognize civil unions, federal tax benefits, Social Security benefits, and estate benefits are not available to couples in a civil union.

In 2013 New Jersey began to recognize marriages for same-sex couples. Shortly after that, the United States Supreme Court recognized the rights of same-sex couples to enter into marriages throughout the United States. The Supreme Court's groundbreaking decision in *United States v. Windsor* struck down the federal Defense of Marriage Act (DOMA) and its subsequent decision in *Obergefell v. Hodges* ruled that it is unconstitutional for any state to deny same-sex couples the right to marry. Although this now means that same-sex married couples have the same rights and obligations as opposite-sex couples, including both federal and state benefits, there are still many legal questions and issues to address in these new marriages.

LGBT Adoptions

New Jersey has for many decades been an extremely friendly state for LGBT adoptive parents. The New Jersey state agency which oversees the placement of foster children is precluded from discriminating against potential LGBT parents. There are also many private adoption agencies which work with LGBT individuals and same-sex couples. Regardless of how you choose to grow your family, it is important to realize that the adoption process can be lengthy and complicated. Therefore, it

is always best for individuals and couples to seek out advice from an experienced New Jersey LGBT family lawyer.

When LGBT individuals and same-sex couples choose to create a family where one party is the biological parent of a child we advise clients to obtain additional legal protections by way of a second parent adoption.

Under New Jersey law, when a party who is married or in a civil union gives birth to a child in the state, the spouse or partner of the birth parent is automatically presumed to be the child's second parent. This holds true even if there is no biological connection between the partner and the child. In such a situation, both the birth parent and the non-birth parent have the right to be listed on the child's New Jersey birth certificate. This applies to both same-sex and opposite-sex couples.

However, because not all states treat LGBT parents the same way, second-parent adoption is recommended. Second-parent adoption is a legal procedure that allows a same-sex parent to adopt his or her partner's biological child without terminating the first parent's legal status as a parent. This is essentially the same process that couples go through when a step-parent wishes to adopt the child of their spouse.

Parents should not have to adopt their own children, but same-sex couples who form families in New Jersey may find themselves residing in a state that is much more hostile to their relationship and does not recognize the New Jersey birth certificate. Therefore, our LGBT family law attorneys strongly recommend that non-birth parents in same-sex marriages or civil unions obtain judgments of adoption in order to protect their parental rights.

Name Changes and Changes to Gender Markers on Birth Certificates

For many transgender individuals, legally changing their name is an important step in the transitioning process. A legal name change allows an individual to obtain identification documents, such as drivers' licenses and social security cards, listing the person's name that accurately reflects their gender identity.

In New Jersey, any individual over the age of 18 can change their name for any reason, so long as the name change is not for fraudulent purposes, such as avoiding creditors or criminal prosecutions. An individual seeking to legally change their name can begin the process by submitting a petition to the Superior Court of New Jersey to obtain a Judgment for a Name Change.

To change a gender marker on a New Jersey birth certificate, the State of New Jersey currently requires that an individual has undergone sexual reassignment surgery. Many transgender individuals, however, choose not to have or cannot afford this expensive surgery. There has been recently proposed legislation which would remove the statutory requirement for surgery to correct a transgender individual's birth certificate, however, such legislation is still not enacted.

Helping LGBTQ Individuals and Families Navigate a Changing Legal Landscape

Everyone's circumstances are different and the ways in which New Jersey law, and other state and federal laws, treat same-sex couples and LGBTQ individuals continue to evolve. Therefore, it is important to discuss your questions with experienced legal professionals who have a full understanding as to how these developments may impact your specific situation.

Whether you are entering into marriage, looking to expand your family through adoption, or contemplating a divorce, the attorneys at our firm will provide compassionate and effective representation every step of the way. We have decades of experience handling all types of family law matters and are committed to assisting LGBTQ clients with any problems or challenges they may have, including issues :

- Marriage, Civil Unions, and Domestic Partnerships
- Adoption
- Child Custody
- Divorce
- Support
- Child Support
- Palimony
- Alimony
- Cohabitation

- Estate Planning
- Prenuptial Agreements
- Living Wills
- Powers of Attorney
- Discrimination

At Einhorn Barbarito the LGBT family law and divorce attorneys in our New Jersey practice focus on the individual needs of our clients. We take the time to listen and we let our clients dictate their own goals. We also know that family law matters are complicated and often involve very strong and conflicting emotions – our objective is to provide you with the information and advice you need to protect your rights and make the best decisions for your future and the future of your family.

Contact a New Jersey LGBT Family Lawyer at Einhorn Barbarito Today

Given the emerging and evolving nature of LGBTQ family law issues in New Jersey and throughout the nation, we encourage you to discuss your situation with an experienced family lawyer at our firm. Our attorney's counsel and advise clients throughout New Jersey on marriage, divorce and dissolution, civil unions, adoption, child support, estate planning and other LGBTQ matters. We are a knowledgeable and caring team of professionals dedicated to helping you find the family law solutions that work best for you and the people you care about most. You can reach a New Jersey LGBT divorce lawyer or family law attorney at our firm by calling 973-627-7300.