

Do Married Same-Sex Partners Need to Adopt Children Born During Their Marriage?

June 9, 2022 | by Matthew Coleman

Q. My partner and I have been in a same-sex relationship for about ten years. We entered into a civil union before New Jersey legalized same-sex marriage. We are in the process of having a child using an anonymous sperm donor, with my partner's egg and my partner carrying the child. Now that same-sex marriage is available in our state, should we marry before my partner gives birth to our child?

A. There are many factors for you and your partner to consider when deciding whether or not to enter into a marriage since you are already in a civil union. When a woman gives birth to a child in New Jersey and that woman is in a state-recognized relationship, such as a marriage, civil union, or domestic partnership, her spouse or partner is presumed to be the child's second parent. Even if there is no biological connection between the partner and the child, the fact that the child was born during the marriage, civil union, or domestic partnership entitles the partner to be listed on the child's New Jersey birth certificate as the parent. This is true of couples in same-sex and opposite-sex relationships. New Jersey provides the non-birth parent with all the same rights and obligations as the birth parent because of the existence of the state-recognized relationship. Because you and your partner are in a civil union, both you and your partner are entitled to each have your name listed on the birth certificate as the child's parent.

Even though New Jersey will recognize you as a non-birth parent, other states may not, despite what the New Jersey birth certificate states. This is because states are not required to recognize documents created by agencies of other states. However, all states are required to recognize Court Orders from other states, such as a judgment of adoption. For this reason, a non-birth parent in a civil union should consider obtaining what is called a confirmatory adoption.

A confirmatory 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 stepparent wishes to adopt the child of their spouse.

Although adoption should not be required if a child is born during a marriage, the practical realities are that some states may not recognize a same-sex relationship or a birth certificate that lists two parents of the same sex. Same-sex couples who are married in New Jersey (or another state) should consider a confirmatory adoption.

Parents should not have to adopt their own children, but in our increasingly mobile society, couples never know where their careers and lives will take them. Same-sex couples who form families in New Jersey may find themselves residing in a state that does not recognize the New Jersey birth certificate. Non-birth parents in same-sex marriages or civil unions should obtain judgments of adoption in order to protect their parental rights.

There are other reasons that you and your partner may consider when deciding whether to enter into a marriage in New Jersey. There are [inheritance issues](#), [tax issues](#), and other issues that are impacted by marriage. Every family is different, and the way in which the country is dealing with recent developments affecting same-sex families is continuing to evolve. It is important to discuss your questions with experienced professionals who know about [how these issues impact same-sex couples](#) and who can advise you on your particular circumstances.