

Relationships & the Law Today

Relationships & Law: Protecting parental rights after adoption, surrogacy

By Jillian B. Steinberg

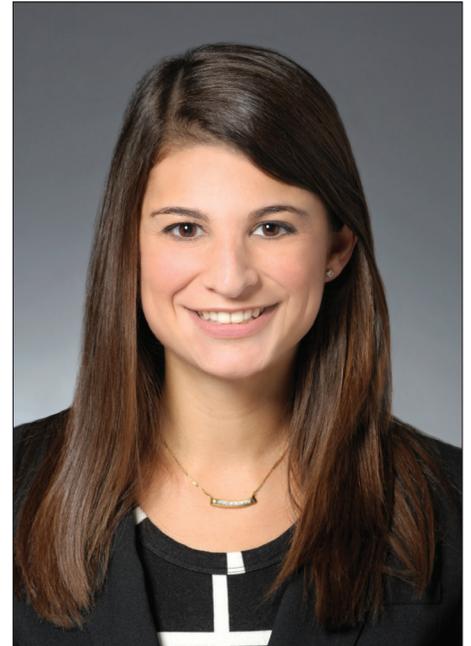
Choosing to expand your family can be an exciting and rewarding time for any couple, but entering this phase of life presents a unique set of challenges to the LGBTQ community.

According to the United States Census data for the state of Illinois, there are over 34,000 same-sex couples in long-term relationships within the state, 21 percent of whom are raising children. Many of those same-sex couples choose to become parents through surrogacy or adoption. Illinois became the 16th state in the nation to recognize marriage equality in 2014, and had provided equal adoption and surrogacy options to same-sex couples before that time. Nevertheless, with many states nationwide refusing to recognize the right for same-sex couples to adopt and enter into surrogacy agreements, LGBTQ couples in Illinois should be aware of the challenging legal landscape nationwide and take steps necessary to ensure their parental rights are recognized in any state throughout the country.

Today in Illinois, the legal requirements to adopt a child who is not biologically related to either parent are few: the prospective parent(s) must be 18 or older, and if married or in a civil union, the individual's spouse must also adopt the child. Under these requirements, married couples, whether LGBTQ or

heterosexual, and those couples in civil unions, must file a joint petition to adopt a child, and upon approval, both individuals will automatically be granted parental rights.

Illinois law similarly allows for same-sex couples to pursue gestational surrogacy, which provides for one partner to be able to have a biological



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connection to a child, through the Illinois Gestational Surrogacy Act (the "Act"). The Act does not expressly mention surrogacy agreements involving same-sex couples, but there has been no suggestion—nor is it the practice in this state—that those in LGBTQ relationships are prevented from being protected under the law.

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The Act mandates that the intended parents of a child brought to term through gestational surrogacy be the legal parents immediately upon birth.

Thus, Illinois provides no distinction between same-sex and heterosexual adoptions and surrogacy agreements. Not all states, however, provide for such equal parentage rights, and other states are not required to recognize parentage listed on Illinois birth certificates. Consequently, other

certificate without taking additional legal steps. These couples may find themselves in difficult situations when traveling to these various other states, such that both parents may have trouble asserting their parental rights in emergency situations, as when a child is injured and hospitalized.

For a same-sex couple to protect their rights in those situations, a non-biological parent has the option to obtain a court order establishing

A second-parent adoption provides a non-biological parent the ability to adopt the biological child of his or her partner without waiving his or her partner's own parental rights. It additionally ensures that both parents will have the same rights in custody, visitation, and inheritance matters. Even where other states do not recognize same-sex second-parent adoptions, those states must recognize second-parent adoption judgments from other states.

Therefore, through the second-parent adoption process, an Illinois same-sex couple can be confident that both partners' parental rights will be recognized.

Although Illinois guarantees equal rights for adoption and surrogacy to the LGBTQ community, the national legal landscape regarding those rights is less certain. Same-sex couples continue to ask: "how do I protect my parental rights in Illinois and elsewhere?" If you are interested in pursuing or learning more about adoption, surrogacy, or parental rights in Illinois, consult with an experienced family attorney in your area.

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states are not required to recognize parental rights for those children who are born through surrogacy to same-sex parents. The same is true where one parent gives birth to a biological child and lists her partner on the birth

parentage or adoption of a child who is biologically related to only to one parent. The best and most legally binding way to ensure parental rights are recognized is to complete a second-parent adoption in Illinois.

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