

The LGBTQ+ Lawyer Discussion Guide



BE PREPARED FOR YOUR LEGAL DISCUSSIONS

Growing your family as an LGBTQ+ person can be an exciting experience! But we know there may be many stressors that can make this process feel overwhelming at times. You may have some questions, such as: What do I need? Where do I start? What kinds of questions should I even be asking? This guide is here to help you feel confident as you navigate the legal processes you may encounter on your journey to parenthood.

A note for all aspiring parents

Keep in mind that a birth certificate does NOT grant legal parental rights. Yes, both parents can go on the birth certificate, but generally, the birthing parent is considered the legal parent and the other parent, even if they are the genetic parent in the case of reciprocal IVF, will need to adopt their child. To learn more about this, you can read articles such as this one about [birth certificates](#) and this one about [confirmatory adoptions](#) from connecting rainbows.



WHAT TO KNOW IF YOU PLAN TO USE A DONOR

Whether you're using a donor egg or donor sperm, the process is the same. The first step? Choosing between using a "known donor" or going through a cryobank. Each donor type has a different legal process.

Known Donor

While a known donor could be someone you know well, this term is also used for any donor utilized **outside of a cryobank**. If you plan to use a known donor, it's recommended to do the following:

- Contact an attorney in your state before finding a donor
- Verify that your state has a donor statute
 - There are some states where you cannot enter into a legally binding contract with a sperm donor prior to the birth of a child. This means that if you're in that state, the donor can possibly change their mind after the birth of your child and fight for parental rights
 - If allowed, the attorney will draft a Known Donor Agreement between the parties to ensure that the donor waives parental rights to any child(ren)

Cryobank

If you plan to go through a cryobank, the donor has already waived rights through the bank. This means that there isn't a need for a donor agreement.





WHAT TO ASK IF YOU PLAN TO USE A DONOR

Second parent adoption

Once you or your partner is officially pregnant and in your second trimester, you'll want to start the process of second parent/stepparent adoption in your state. Every state (and sometimes county) has different rules regarding adoption, so it's always important to work with an attorney rather than completing the process on your own. You can't technically go through the official adoption until after your child(ren) is born, but you can get the paperwork started with the attorney.

Questions to ask your attorney about adoption

- Does my state follow the Uniform Parentage Act?
 - While some states follow the Uniform Parentage Act and say the birth certificate is enough for both parents, please discuss with your lawyer about travel, plans to move out of state, and estate planning, as these could have an impact on your decision to move forward with a judgment
- Does my state allow for a Judgment of Parentage (a legal document naming you the legal parents of your child) vs an adoption?
- Do we have to be legally married to adopt?
- Do we need a home study to complete the adoption?

Question to ask if you plan on carrying a donated egg

While most states view the birthing person as the legal parent regardless of genetics, it's still recommended that you ask:

- If I am going to carry the donated egg, do you recommend I obtain a Judgment of Parentage (a legal document naming you the legal parents of your child) or go through an adoption?



Important to note

It's important that you contact an attorney in your state prior to finding a donor of any kind. You can use sites like the [connecting rainbows directory](#), an LGBTQ+ friendly legal resource, for your search.



WHAT TO KNOW IF YOU PLAN TO USE A SURROGATE

Surrogacy requires a lot of legal support for both the intended parents (IP) and the surrogate. Before any fertility appointments with the surrogate, you need to have an agreement in place. This agreement should cover everything from payment to insurance to how many embryos can be transferred and everything in between. It's recommended that your agreement include some of the more difficult topics, such as termination.

Questions to ask your attorney as an intended parent

- Is surrogacy legal where we live?
- Does the state we live in have donor statutes?
- Do we have to be married to both be granted legal parentage?
- Do we both get legal parental rights or only the genetic parent?
- Does the state allow surrogacy for same sex couples?
- Do both parents go on the original birth certificate or is a temporary one issued with the carrier?
- How long does it take to receive the birth certificate with both parents?
- Does this state offer pre-birth orders of parentage or post-birth?
- If the surrogate lives in another state, can we get a pre-birth order in the state we live in, or does it have to take place where the surrogate lives?
- Do you have recommendations for lawyers in the state where the surrogate is located? Remember, each party has to have their own attorney at the cost of the IP.



Important to note

It's important that you find a local lawyer, as each county in each state has different laws around surrogacy—it's actually illegal in some places. The lawyer's job is to ensure that their client, whether the IP or surrogate, is fully protected. Search for a local lawyer in your area in the [connecting rainbows directory](#).

Support brings us together

Overall, surrogacy and donor laws are different for LGBTQ+ families state-by-state, so don't hesitate to ask your attorney any questions—no matter how simple they may seem. Along with your attorneys, Fertility Out Loud is here for you with community and connection that can help you feel more supported throughout your journey. Follow us on [Facebook](#) and [Instagram](#) to meet with others who may be going through something similar.