



TEXAS LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families
in the Lone Star State

November 2016

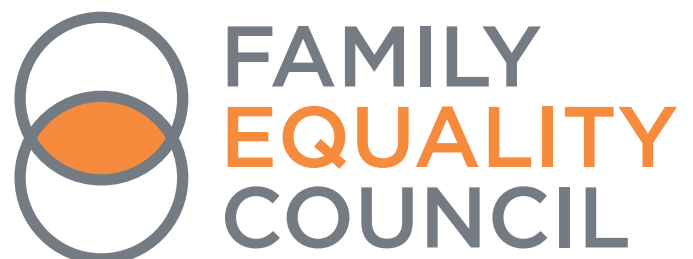


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INTRODUCTION

This guide was drafted by Family Equality Council, on behalf of Equality Texas. It addresses many of the legal rights and issues that affect LGBTQ families currently living in Texas. As LGBTQ equality advances across the nation, there are still significant gaps in the rights of LGBTQ individuals and their families, especially at the state level.

Unfortunately, the climate in Texas remains somewhat hostile towards the LGBTQ community, despite recently gaining access to marriage equality. LGBTQ families experience discrimination and are still denied equal access to education, employment, housing, healthcare, and public accommodations. In this type of an environment, it is important to understand what each area of the law is and how you can protect your family.

DISCLAIMER

This handbook is not intended to be legal advice but an overview of the current state of LGBTQ family law in Texas. Although we make every effort to keep this guide up-to-date and accurate, when making legal decisions it is important to consult an attorney or contact the authors to discuss the details of your particular situation, due to the ever-changing legal landscape of LGBTQ rights.



RELATIONSHIP RECOGNITION

In 1997, the State of Texas passed a statute that prohibited issuing a marriage license “for the marriage of persons of the same sex.”¹ In 2003, the State of Texas passed a statute stating that “a marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state” meaning that no marriage or civil union between same-sex couples, performed elsewhere, would be recognized.² In 2005, a year and a half after Massachusetts became the first state to legalize same-sex marriage, voters in the State of Texas approved Texas Proposition 2, amending the Texas State Constitution to ban all legal recognition of marriage, domestic partnerships, and civil unions between same-sex couples including those entered into in another state.³

Prior to the Supreme Court’s ruling in *Obergefell v. Hodges* on June 26, 2015, which recognized same-sex marriage for all U.S. states and territories,⁴ the Texas ban on same-sex marriage, like many similar laws, was challenged in federal court. On February 26, 2014, the U.S. District Court for the Western District of Texas found that the State’s reasons for the ban (to promote procreation and child welfare) were not rationally related to legitimate state interests, and granted a preliminary injunction to bar enforcement

of the ban.⁵ Following *Obergefell*, Texas and all other states must grant marriage licenses to same-sex couples and must also recognize same-sex marriages performed in other states. Texas must also recognize a common law same-sex marriage, which arises when individuals agree to be married, live together as a married couple, and represent to others that they are married.⁶ The issue of when a common law marriage came into existence is being resolved on a case-by-case basis in divorce and probate courts.

Religious Freedom Restoration Act

Since 1999, Texas has had a Religious Freedom Restoration Act. The Texas law mirrors the federal Religious Freedom Restoration Act, stating that the government “may not substantially burden a person’s free exercise of religion” unless the burden is justified by “a compelling governmental interest” and that it “is the least restrictive means of furthering that interest.”⁷ While the Texas Religious Freedom Restoration Act specifies that the government may not burden the religious exercise of a person, the law specifically allows religious organizations to use the provision as a defense to a failure to comply with government regulations, thereby allowing religious schools or other qualifying non-profit organizations to

1 Tex. Fam. Code Ann. § 2.001 (West 2015).

2 § 6.204.

3 Tx. Const. art. I, § 32.

4 *Obergefell v. Hodges*, 135 S. Ct. 2584, (U.S. 2015).

5 *De Leon v. Perry*, 975 F. Supp. 2d 632, 656 (W.D. Tex. 2014)

6 Tex. Fam. Code Ann. § 2.401 (West 2015).

7 Tex. Civ. Prac. & Rem. Code Ann. § 110.003 (West 2015).

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www.equalitytexas.org

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discriminate against LGBTQ individuals in their hiring practices as well as in the contents of their education efforts.⁸

Just before the Supreme Court’s ruling in *Obergefell*, bills were introduced in the Texas Legislature to expand the Texas Religious Freedom Restoration Act by creating a constitutional amendment to prevent the government from imposing “any burden” on the exercise of religion.⁹ While both resolutions failed, in early 2016, State Representative Matt Krause stated that he will file similar legislation in the 2017 Texas session.¹⁰ These efforts would broaden the exemptions, providing a wide-ranging license to discriminate on the basis of personally-held beliefs, particularly against LGBTQ individuals and couples.¹¹

Federal Benefits After *United States v. Windsor* and *Obergefell v. Hodges*

In 2012, The United States Supreme Court, in *United States v. Windsor*, found Section 3 of the federal “Defense of Marriage Act” (DOMA), the law that denied federal marriage benefits to married same-sex couples, unconstitutional. In 2015, the Supreme Court found in *Obergefell v. Hodges* that same-sex couples have a

fundamental right to marry under the U.S. Constitution, creating same-sex marriage and recognition of same-sex marriages nationwide.¹²

Because of *Windsor*, married same-sex couples who live in Texas became recognized by the federal government for federal benefits purposes. Such benefits include, but are not limited to Social Security and Veterans Administration benefits, all federal tax purposes, health insurance and retirement benefits for same-sex spouses of all federal employees, and spousal benefits for same-sex spouses of military service members. Following *Obergefell*, all federal marriage benefits have been extended to married same-sex couples nationwide.

While many federal benefits are available only to legally married spouses, one federal benefit is available only to unmarried partners. The Federal Adoption Tax Credit (\$13,460 per child in 2016) is not available if “a taxpayer pays to adopt the child of the taxpayer’s spouse,” which is often the case in a second-parent adoption. Therefore, some couples choose not to marry until after their second-parent adoption.

⁸ Tex. Civ. Prac. & Rem. Code Ann. § 110.011.

⁹ SJR 10 (2015); HJR 55 (2015).

¹⁰ Tim Eaton, “Texas could wade back into battle over ‘religious liberty’ laws,” *myStatesman* (Apr. 2, 2016), <http://www.mystatesman.com/news/business/texas-could-wade-back-into-battle-over-religious-1/nqw5b/>

¹¹ *Supra*.

¹² *Obergefell v. Hodges*, 135 S. Ct. 2584, (U.S. 2015).

Relationship Recognition Resources

For more information about the Federal Adoption Tax Credit, see:
<https://www.irs.gov/taxtopics/tc607.html>

For more information on how to access federal marriage benefits please see the Post-DOMA Fact Sheets published by Family Equality Council:
http://www.familyequality.org/get_informed/advocacy/after_doma/

IMPORTANT:

It should be noted that some federal benefits are available to married couples **ONLY**. Unmarried couples are unable to access spousal benefits from these programs. However, because same-sex marriage is now recognized nationwide, married couples living in Texas should be able to access federal benefits provided by these federal agencies, as well as any others. Please alert the authors if you find such benefits have been denied to you, as a result of the agency failing to recognize your marriage.



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Photo: Ted Eytan / flickr.com

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CHILDREN AND PARENTAGE

LGBTQ people and same-sex couples form families in various ways. Some have children from prior different-sex or same-sex relationships. Some LGBTQ people are single parents by choice. Some same-sex couples adopt or use assisted reproductive technologies to build their families together. The current state of Texas law has not explicitly accounted for these changes in what families look like, which leaves many families vulnerable. While spousal rights certainly accompany marriage, it is currently unclear which, if any, parentage rights flow directly from the marriage relationship.

If you are unsure where to find an experienced LGBTQ family law attorney, please contact either Equality Texas or Family Equality Council and we will do our best to assist you.

Equality Texas

Phone: (512) 474-5475

Email: info@equalitytexas.org

Website: www.equalitytexas.org

Family Equality Council

Phone: (617) 502-8700

Email: info@familyequality.org

Website: www.familyequality.org

Please consult an attorney experienced in LGBTQ law, or the authors, if you experience discrimination from state agencies in recognizing your family relationships on the basis of your same-sex marriage.

Likewise, if you are an LGBTQ person or same-sex couple thinking about fostering and/or adopting children either from the public child welfare system (foster care) or through private adoption, it is critical that you hire an adoption attorney who is experienced in LGBTQ family law in Texas.

It is not enough to simply hire an experienced family law attorney. There are issues unique to LGBTQ family law in Texas that can, and should, only be managed by an attorney with particular experience and expertise in this area of the law.

ADOPTION

Texas' general provisions allows any adult person, subject to standing,¹³ to petition for adoption, as long as the person:

- is at least 21 years of age,¹⁴
- is a U.S. citizen, permanent resident or other qualified alien,¹⁵
- is financially able “to meet the child’s basic material needs”,¹⁶ and
- is physically, mentally and emotionally able to “assume parenting responsibilities.”¹⁷

Venue

Venue, the place where a court case is heard, is usually in the county of residence of the principal defendant. However, if all parties agree, venue can be waived and the case can be heard in any county.¹⁸ This is often true in an adoption, which may be heard in any county which is convenient, for example, where the adoption agency has an office or where the adoptive parents live. Being able to change venue, is especially important in same-sex adoptions. Instead of potentially facing a hostile court, petitioners can choose to have their adoption heard in a county where the judges are familiar with their issues.

13 Standing defines who can bring a legal action requesting adoption; Tex. Fam. Code Ann. § 102.005 (2015).

14 40 Tex. Admin. Code. § 700.1502(2)(A) (2016).

15 § 700.1502(2)(N).

16 § 700.1502(2)(H).

17 § 700.1502(2)(I).

18 In the Interest of S.D., 980 S.W.2d 758 (Tex. App. San Antonio 1998)

Best Interests Standard

When children are involved in a custody battle or an adoption, Texas' courts general inquiry is focused on what would be in the best interests of a child.¹⁹ While this is an important inquiry, because there is no explicit prohibition barring discrimination against prospective LGBTQ parents, it may work against them. Texas courts have held that courts may not deny custody in order to punish the parent,²⁰ including for their sexual orientation or gender identity.

However, Texas courts do allow the admission of testimony concerning a parent's sexuality in court actions to terminate parental custody. Specifically, a Texas appellate court has allowed evidence of sexual orientation or sexual activity with the same-sex as a factor for the lower court to consider in determining what is in the best interests of the child.²¹

For example, a Superior Court Judge may decline to finalize the adoption process for a same-sex couple because of a personally-held belief that it is in the best interests of a child to be placed with a different-sex couple. Such a decision is unlikely to be so explicit, but the subjective nature of the “best interests” inquiry combined with the lack of protections for LGBTQ parents creates the potential for a discriminatory

19 *Hopper v. Brittain*, 612 S.W.2d 636, 638 (Tex. App. 1981).

20 *Gunther v. Gunther*, 478 S.W.2d 821, 828 (Tex. App. 1972); *Anderson v. Martin*, 257 S.W.2d 347, 353 (Tex. App. 1953).

21 *In re McElheney*, 705 S.W.2d 161 (Tex. App. 1985); *In re T.L. H.*, 630 S.W.2d 441 (Tex. App. 1982); 29A Tex. Prac., *Juvenile Law and Practice* § 56:1 (3d ed).

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opinion to become a part of the decision-making process.

Single Parent and Joint Adoption

As stated above, as long as LGBTQ individuals and couples meet the requirements for petitioning for adoption, they should be eligible to adopt. With the arrival of marriage equality to the state of Texas, married same-sex couples should be treated equally to married different-sex couples. Under state law, married couples should petition for adoption using both spouses' names.²²

However, as noted above, although there is nothing in state law that acts as a prohibition on joint adoption by LGBTQ couples, there is also no explicit protection preventing discrimination, and agencies may implement discriminatory policies. For this and other reasons, it is advisable to contact an adoption attorney. While it is critical to hire an adoption attorney who is experienced in LGBTQ family law in Texas, it is equally important to engage with foster and adoption agencies who are welcoming and affirming to LGBTQ people and same-sex couples. Please research adoption agencies and service providers before engaging in the foster care and/or adoption process.

Second-Parent Adoption

Second-parent adoption is the adoption of a child by an additional parent when the child has only one legal parent. In a second-parent adoption, the additional

²² Tex. Fam. Code Ann. §162.002(a) (2015).

parent can be recognized as such without the first parent losing any parental rights. There is no Texas law that explicitly prohibits second-parent adoption, and case law seemingly supports the practice. In fact, courts in Austin and San Antonio have allowed second-parent adoptions. In two Texas appellate cases, the court has left intact second-parent adoptions for LGBTQ parents, even after the parents have separated.

In 2006, a Texas Appeals Court held that a previous second-parent adoption order was binding.²³ However, the Court based its ruling on a state law provision that prohibits attacks on the validity of adoption orders more than six months after the order was signed so as to provide stability for the child.²⁴ In 2007, another Texas Appeals Court held that a previous second-parent adoption order was binding as well. While this court also relied on the provision prohibiting attacks on the order's validity after six months, the court also stated that "there is no direct statement of public policy ... prohibiting the adoption of a child by two individuals of the same sex."²⁵ The Texas Supreme Court denied petitions for review for both cases, thereby upholding the Court of Appeals' rulings.

However, the same protection may not be afforded to cases where parents have not completed an adoption. In 2008, a Texas Appeals Court held that a previous court

²³ *Hobbs v. Van Stavern*, 249 S.W.3d 1, 4 (Tex. App. 2006).

²⁴ *Id.*; § 162.012

²⁵ *Goodson v. Castellanos*, 214 S.W.3d 741, 751 (Tex. App. 2007).

order granting the biological mother’s partner joint custody of the child without a formal adoption decree was invalid six years after the original order.²⁶ Therefore, we strongly recommend that all same-sex couples with children complete a second-parent adoption.

In 2016, the United States Supreme Court determined that other jurisdictions should recognize a same-sex second-parent adoption validly granted in Georgia. In *V.L. v. E. L.*, the plaintiff and the defendant were a former lesbian couple. The defendant had given birth to three children and the plaintiff adopted them through a second-parent adoption with a formal adoption decree from the state of Georgia. The couple relocated to Alabama and split up, at which point the defendant restricted the plaintiff’s access to the children. The Supreme Court of Alabama sided with defendant, declaring the Georgia adoption decree void. However, the United States Supreme Court unanimously reversed that decision, determining that the adoption is valid.²⁷ The Court’s decision was based on the fact that the full faith and credit clause of the U.S. Constitution requires each State to recognize valid judgments (orders) rendered by the courts in other states.

Stepparent Adoption

Stepparent adoption is the legal adoption of a child by the spouse of the child’s legal parent. Texas law allows stepparent adoption. Procedurally, a stepparent petitioning to adopt should petition using

²⁶ *In re Smith*, 262 S.W.3d 463 (Tex. App. 2008).

²⁷ *V.L. v E.L. et al*, 577 U.S.

both spouse’s names.²⁸

Under Texas’s stepparent adoption law, the child’s other parent consents to the adoption by joining the petition, and any other legal parent or guardian(s) must voluntarily surrender all rights to the child in writing.²⁹

For voluntary surrender of parentage rights, there are two options, which vary based on the circumstances. In the case of a child whose legal parents are both still living, the child may be adopted by the stepparent, when the other parent has voluntarily relinquished all of their rights to the child or where the other parent’s rights have previously been terminated.³⁰ Note that the legal definition of “father” under Texas law requires the father to either acknowledge or adopt the child, or otherwise have legal rights through a presumption of paternity.³¹

Under the circumstances where a child only has one legal parent alive, a stepparent may adopt the child by petitioning for adoption with their spouse.³² There is nothing in Texas’s stepparent adoption statute that would prohibit a same-sex spouse from completing a stepparent adoption of their spouse’s child. However, it is advisable to contact an attorney for the same reasons mentioned above.

²⁸ Tex. Fam. Code Ann. § 162.010(b).

²⁹ § 162.001(b)(2).

³⁰ § 162.001(b)(2); § 102.005(1).

³¹ § 160.201(b).

³² § 162.010(b).

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www.familyequality.org
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An adoption decree is the single best irrefutable and undeniable proof of parentage. We strongly recommend that married same-sex couples with children ALWAYS complete a stepparent adoption.

Parental Presumption for Legal Spouses

Texas has recognized the presumption of paternity within the definition of “legal father,” which creates legal rights to a child for a man if he and the child’s mother were married when the child was born, or if he marries the mother after the child is born and recognizes the child as his own.³³ While this provision specifically refers to a male as a presumed parent, this “parental presumption” exists in most states, and now that same-sex couples can marry, the parental presumption should apply equally to married same-sex and different-sex couples.

Revised Texas policies at the Vital Statistics Unit after *Obergefell* indicate that married same-sex couples will be presumed to be the legal parents of a child born to one of the spouses during the marriage or within 300 days of the termination of the marriage.³⁴ For example, if one spouse in a lesbian marriage gives birth to a child, the non-birth spouse should be considered the second legal parent to the child. The non-birth parent’s name will be placed on the birth certificate. Being on a child’s birth

certificate is an indication of parentage, but not necessarily proof which would be upheld in court, especially in the courts of other states.

SURROGACY

Texas law has a separate section of its adoption code related to surrogacy and allows only married couples to be “intended parents.” After *Obergefell*, married same-sex couples may enter into an enforceable surrogacy contract under the law.

Texas law allows gestational surrogacy, a process in which the surrogate mother does not contribute her own egg to the pregnancy. Under Texas law, the “prospective gestational mother” along with her husband, if she is married, and any other donor must relinquish “all parental rights and duties with respect to a child conceived” in a written “gestational agreement” entered into at least 14 days before the transfer of eggs, sperm or embryos for the purpose of conception.³⁵ The intended parents must be married to each other.³⁶

Texas law requires that the gestational agreement, a document setting out the

33 Tex. Fam. Code Ann. § 162.204.

34 Texas Department of State Health Services, *Revised Policies and Procedures: Vital Records Requests from Married Same-Sex Couples*, Aug. 24, 2015.

35 §§ 160.754(a), (e).

36 § 160.754(b).

terms of the surrogacy, must be submitted to a court for validation.³⁷ The agreement must be validated to be enforceable after the birth of the child. To validate a gestational agreement, a court must find that:

- the court has jurisdiction,
- the intended mother is unable to carry a pregnancy to term,³⁸
- a home study has determined that the intended parents meet the same standards of fitness as adoptive parents,
- all parties understand and voluntarily entered the agreement,
- the prospective gestational mother has had a previous pregnancy and can carry another to term without unreasonable health risks to her or the child, and
- the parties have adequately provided for which party is responsible for all reasonable health care expenses associated with the pregnancy, including for who is responsible if the agreement is terminated.³⁹

However, the court is not required to validate a gestational agreement, and the court's determination is only reviewable for an abuse of discretion.⁴⁰ However, new policies in the wake of *Obergefell* suggest that same-sex couples should be

³⁷ § 160.756(a).

³⁸ There is very little information about the enforcement of this term. The revised policies and procedures issued by the Texas Department of State Health Services seem to assume that gestational agreements will be available to all married couples. See: <http://www.equalitytexas.org/dshs-approves-new-guidelines-recognizing-all-married-couples/>

³⁹ § 160.756(b).

⁴⁰ Tex. Fam. Code Ann. § 160.756(d).

treated the same as different-sex couples for surrogacy.⁴¹ The intended parents must provide the court with notice of the birth within 300 days of the assisted reproduction.⁴² Upon this notice, the court will “render an order that:

1. confirms that the intended parents are the child's parents;
2. requires the gestational mother to surrender the child to the intended parents, if necessary; and
3. requires the vital statistics unit to issue a birth certificate naming the intended parents as the child's parents.”⁴³

Because of the intricacies and technical requirements of Texas Surrogacy law, it is critical that LGBTQ people and same-sex couples engaging in a surrogacy arrangement do so with the assistance of an experienced family law attorney well versed in LGBTQ surrogacy and family law issues in Texas.

ASSISTED REPRODUCTION AND ARTIFICIAL INSEMINATION

Many times lesbians become pregnant with the assistance of a sperm donor. Often, a sperm bank is used and the birth mother is the child's only legal parent. Other times, a known donor is used. If a woman/couple decides to use a known donor, he

⁴¹ Texas Department of State Health Services, *Revised Policies and Procedures: Vital Records Requests from Married Same-Sex Couples*, Aug. 24, 2015.

⁴² § 160.760.

⁴³ § 160.760.

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should be a trusted relative or friend, not a stranger - and certainly not someone found online. Two Texas appellate courts have reached opposite decisions on the issue of whether a man claiming to be a donor/father has standing to assert his parental rights, so it is important to take steps to guarantee that he has no parental rights or responsibilities.⁴⁴ However, it may also be possible to guarantee that a donor will not be deemed a father by law by providing the sperm through a licensed physician, who keeps a copy of the written insemination agreement.⁴⁵ To safeguard against the known donor asserting parental rights or the birth mother requesting child support, the donor's rights, if any do exist, can be terminated based by his execution of a Waiver of Interest in a Child⁴⁶ and a subsequent court order, which terminates any parental rights that he may have. This termination is typically done as part of a second-parent adoption if the birth mother is in a relationship with another woman.

In Texas, the law governing artificial insemination uses gendered terms. The provisions require that for a married woman to be artificially inseminated, the husband must give his consent.⁴⁷ However, given the revised policies and procedures post-*Obergefell*, married lesbian couples may have full legal status as parents of children conceived through artificial insemination. However, achieving this status will require the couple to take steps

44 In re Sullivan, 157 S.W.3d 911 (Tex. App. Houston 14th Dist. 2005)

45 §§ 160.7031 and §160.704

46 §161.106

47 §§ 160.703 - 160.704

to follow another provision of Texas law which provides for an unmarried man, who intends to be the father and provides sperm for use in the artificial insemination, to be the father of the child.⁴⁸ It has not yet been made clear if Texas will provide for a similar right for unmarried lesbian couples.

Thus, under Texas law, there is a potential for conflict and discrimination due to the wording of the relevant provisions. Consequently, because an adoption decree is irrefutable proof of parentage and valid everywhere in this country, we strongly recommend that any same-sex couple using assisted reproduction complete an adoption as soon as possible.

BIRTH CERTIFICATES

Texas law states that for purposes of the birth certificate, “the signatures of the biological mother and biological father” should be recorded.⁴⁹ The “father” section on a birth certificate will only be completed if the mother and father were married at the time of conception, birth, or after the child's birth, if paternity is established by a court, or if the father has filed a valid acknowledgement of paternity.⁵⁰ However, the revised Vital Statistics Unit policies and procedures following the *Obergefell* decision state that “[b]irth certificates will be processed to same-sex couples to whom a child was born in Texas when one spouse is the birth mother, if the parents were legally married in Texas or another state at

48 § 160.7031.

49 Tex. Fam. Code Ann. § 192.002.

50 § 192.005.

the time of the child's birth."⁵¹ If the child's birth took place through a gestational surrogacy, birth certificates will be issued or amended for same-sex couples that are "legally authorized to be the intended parents of the child" under Texas law.⁵²

Similarly, the law regarding issuance of new birth certificates after an adoption requires that one parent must be female, named as the mother and the other must be male, named as the father.⁵³ However, the revised policies and procedures allow for both members of a same-sex couple to be listed on their adopted child's birth certificate and choose to be listed as "mother," "father," or "parent."

For adoptions on or after June 26, 2015, "supplementary birth certificates for children born in Texas will be issued/amended for the adopted child to include same-sex couples whose names are listed on the court order or formal certificate of adoption as the adoptive parents."⁵⁴ For any adoption before June 26, 2015, "amendments to supplementary birth certificates previously issued, will be processed and issued, as requested, to list the names of both persons of the same-sex

51 Texas Department of State Health Services, *Revised Policies and Procedures: Vital Records Requests from Married Same-Sex Couples*, Aug. 24, 2015.

52 Texas Department of State Health Services, *Revised Policies and Procedures: Vital Records Requests from Married Same-Sex Couples*, Aug. 24, 2015.

53 § 192.008

54 Texas Department of State Health Services, *Revised Policies and Procedures: Vital Records Requests from Married Same-Sex Couples*, Aug. 24, 2015.

couple if both are named as parents in the court ordered adoption."⁵⁵

To ensure that your child's records are updated properly, send a request to the Texas Vital Statistics Unit.

CUSTODY DISPUTES

Texas follows the guidance of the United States Supreme Court in *Troxel v. Granville* that it is the fundamental right of parents to make decisions concerning the care, custody and control of their children.⁵⁶ In a custody battle between a legal parent and a non-legal parent, there is a rebuttable presumption that the legal parent should be awarded managing conservatorship (primary custody) over the non-legal parent. This presumption could be applied in a conflict between a parent and a grandparent. It could also be used in a battle between same-sex parents who never completed a second-parent adoption.⁵⁷

There are currently cases in Texas and other states addressing the issue of whether marriage between same-sex partners confers not only spousal rights, but also parental rights. Until the issue is clearly resolved, the only way for a non-biological parent to protect their relationship with a child is to adopt the child.

55 Texas Department of State Health Services, *Revised Policies and Procedures: Vital Records Requests from Married Same-Sex Couples*, Aug. 24, 2015.

56 *Troxel v. Granville*, 530 U.S. 57 (U.S. 2000)

57 §153.131 (b)

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APPLYING FOR A SOCIAL SECURITY NUMBER AND CARD FOR A CHILD

To apply for a Social Security Number and Card for your child, you will need to provide your local Social Security Administration (SSA) office with a number of different documents, personal information about you, your child, and any other legal parent to the child, and a completed SS-5 application form.

You can apply at this link from the SSA website:

<http://www.ssa.gov/pubs/EN-05-10023.pdf>

You can provide SSA with these documents via letter or in person by visiting your local SSA office. Two same-sex parents may be listed on the application for a Social Security Card or Number. However, only parents listed on the child's birth certificate, or on a court-ordered adoption decree, are permitted to be included on the application.

For more information on the application process, please see Family Equality Council's FAQ:

http://www.familyequality.org/get_informed/advocacy/know_your_rights/ssa_faqs/

You can also contact the SSA at 1-800-722-1213 or 1-800-325-0778 or visit the SSA website:

www.socialsecurity.gov

If you have difficulty obtaining a Social Security Card or Number for your child, please contact the authors for assistance.

APPLYING FOR A PASSPORT FOR A CHILD

To apply for a passport for your child, you must provide the U.S. Department of State with documentary evidence, a completed DS-11 form, a photograph of the child, and personal information about you, your child, and the child's other legal parent.

You must provide these documents to the State Department in person at the nearest accepted facility or regional passport agency, listed here:

<https://iafdb.travel.state.gov/>

The materials you must provide are listed here:

<http://travel.state.gov/content/passports/english/passports/under-16/under-162.html>

Two same-sex parents may be listed on the application for a child's passport. Only parents listed on the child's birth certificate, or on a court-ordered adoption decree, are permitted to be included on the application. However, if the adoptive (or legal) parent of the child is unavailable, the State Department permits a non-adoptive parent who stands in loco parentis to

the child to complete the DS-11 form and application. In loco parentis means an adult with day-to-day responsibilities to care for and financially support a child, but with whom the child does not have a biological or legal relationship.

If you have questions about the application process, acceptable materials, or how to best proceed with your child's passport application, you can contact the National Passport Information Center at 1-877-487-2778. You can also visit the State Department website here: <http://travel.state.gov/>

This information and more is located in Family Equality Council's FAQ on applying for a U.S. passport for your child, located here: http://www.familyequality.org/get_informed/advocacy/know_your_rights/passport_faq/

If you have difficulty obtaining a passport for your child, please contact the authors for assistance.

DOCUMENTATION

If you and your spouse/partner are raising children together in Texas, we recommend keeping copies of the following documents easily accessible:

- Adoption decree
- Birth certificate
- Guardianship agreement (“Designation of Guardian” in Texas)
- Co-parenting agreement
- Marriage License
- Medical Powers of Attorney



Find more information at:
www.familyequality.org
www.equalitytexas.org

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NONDISCRIMINATION PROTECTIONS

There are currently no federal laws that explicitly prohibit discrimination of LGBTQ people in employment, housing, and public accommodations. Existing federal civil rights laws have been interpreted to provide some limited protections in housing, employment, education and even in health care, but without explicit and fully inclusive federal protections against discrimination based on sexual orientation and gender identity, LGBTQ people and our families remain vulnerable under the law.

Texas provides no statewide protections in any of these areas, which means that state law does not protect LGBTQ people from being fired, denied housing, refused service in a restaurant, or bullied at school, simply because they are LGBTQ. Again, in some instances (explained in detail below), federal law and policy may nevertheless provide protections from discrimination for LGBTQ Texans.

Texas is a “Dillon’s Rule” state, which means that municipal and county governments are prohibited from acting unless granted the power to do so by the State.⁵⁸ The Dillon’s Rule usually prohibits local governments from enacting ordinances that would provide nondiscrimination protections for LGBTQ people that go

⁵⁸ Texas Const. Art. 11 § 1; see also Matthew Sellers, National Assoc. of Counties, County Authority: A State by State Report, 170 (Dec. 2010), <http://www.naco.org/sites/default/files/documents/County%20Authority%20a%20State%20by%20State%20Report.pdf>.

beyond those provided by the State – so local municipalities throughout Texas could face difficulty when attempting to pass any LGBTQ nondiscrimination protections.

However, the Texas Constitution provides for “Home Rule” for cities with populations over 5,000,⁵⁹ meaning that these cities have the right of self-government. While the legislature can limit these cities’ authority, it must explicitly do so.⁶⁰ While there is no statewide nondiscrimination protection for LGBTQ individuals, Dallas,⁶¹ Austin,⁶² Fort Worth,⁶³ San Antonio,⁶⁴ and Plano⁶⁵ have nondiscrimination ordinances that prohibit discrimination based on sexual orientation and gender identity in the areas of employment, housing, public accommodations, and all city decisions and actions.

Thus, although Texas is a Dillon’s Rule state, local municipalities may be able to enact nondiscrimination protections based on sexual orientation and gender identity, at least as they relate to the municipality’s

⁵⁹ Texas Const. Art 11 § 5.

⁶⁰ *City of Laredo v. Webb County*, 220 S.W.3d 571, 576 (App. 3 Dist. 2007).

⁶¹ Dallas, Tx., Code of Ordinances, §§ 2-17.3, 15B, 46-1 – 46-13.

⁶² Austin, Tx., Code of Ordinances §§ 5-1-1 – 5-1-2, 5-1-13, 5-1-51 – 5-1-57, 5-2-1 – 5-2-4, 5-3-1 – 5-3-4, 5-4-1 – 5-4-2, 5-5-1 – 5-5-8.

⁶³ Fort Worth, Tx., Code of Ordinances §§ 17-1, 17-18, 17-46 – 17-48, 17-66 – 17-69, 17-86 – 17-88, 17-98.

⁶⁴ San Antonio, Tx., Code of Ordinances, §§ 2-550 – 2-552, 2-554, 2-592 – 2-593, 2-621, 2-624 – 2-627, 2-629 – 2-632, 2-640.

⁶⁵ Plano, Tx., Code of Ordinances, §§ 2-11(a) – (h).

own employees, events or vendors. Check with your local government or with Equality Texas to determine if your municipality provides such protections.

EMPLOYMENT

Texas state law does not protect LGBTQ people from discrimination based on sexual orientation or gender identity in the workplace. Even with the arrival of marriage equality, LGBTQ people are at risk, and the simple act of filing an amended W-4 with your employer could inadvertently out you, leading to discrimination in the workplace or the loss of a job. However, Texas state law does prohibit sex discrimination in employment, under which LGBTQ people may be able to bring claims against their employer for “sex stereotyping.”⁶⁶ There is little history on how Texas judges treat claims of sex stereotyping within the employment context, but nationally there has been increasing recognition that discrimination against LGBTQ people qualifies as sex discrimination. As such, if you have been denied employment because of your sexual orientation or gender identity, you should file a claim with the Texas Workforce Commission.

Federal Law

While there is no explicit federal law that bars discrimination against LGBTQ

⁶⁶ *Eure v. Sage Corp.*, 61 F.Supp.3d 651, 660 (W.D. Tex. 2014).

people in the workplace, the definition of “sex” in Title VII of the Civil Rights Act of 1964 has been interpreted to provide employment protections for LGBTQ people in limited circumstances. The Equal Employment Opportunity Commission (EEOC) hears and investigates complaints of employment discrimination under Title VII, and looks into claims against all private employers, state and local governments, federal government agencies, employment agencies, and labor unions, as long as they have fifteen or more employees or members.

In 2012, the EEOC ruled in *Macy v. Holder* that discrimination against a transgender woman was discrimination under Title VII’s prohibition of discrimination based on sex.⁶⁷ In *Veretto v. US Postal Service*⁶⁸ and *Castello v. US Postal Service*,⁶⁹ the EEOC held that employment discrimination on the basis of sexual orientation violated prohibitions of sex discrimination because it constituted discrimination based on sex-stereotypes. Most recently, the EEOC strengthened the protections for those who may face discrimination on the basis of sexual orientation by ruling in *Complainant v. Foxx* that claims of discrimination based on sexual orientation inherently amount to claims of sex discrimination and are therefore actionable under Title VII.⁷⁰

⁶⁷ No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012)

⁶⁸ No. 0120110873 (E.E.O.C. Jul. 1, 2011)

⁶⁹ No. 0120111795 (E.E.O.C. Dec. 20, 2011)

⁷⁰ No. 0120133080, 2015 WL 4397641 (E.E.O.C July 16, 2015)

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These EEOC decisions, while not binding to courts, suggest that LGBTQ individuals are protected under Title VII, and may file a claim of employment discrimination utilizing the law's inclusion of "sex" as a protected class.

If you believe that you have been the victim of discrimination in hiring or in the workplace based on your sexual orientation or gender identity, you must file a Charge of Discrimination with your local EEOC office before you can file a lawsuit in court alleging discrimination. The EEOC offices serving Texas are located in Dallas and Houston and can be reached at 1-800-669-4000.

If filing a complaint with the EEOC, you must list the basis for your claim as discrimination on the basis of your "sex," as this is the existing basis that the EEOC has linked to sexual orientation and gender identity. Generally, you must file your Charge of Discrimination within 180 days of each instance of discriminatory treatment. You can read more about the EEOC process, and your rights and responsibilities after filing a claim with the EEOC, here:
<http://www.eeoc.gov/employees/charge.cfm>

Do note that federal employees and job applicants are subject to a different timeline for making a claim (typically 45 days) and procedures for filing, which you can read about here:
http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm

Texans working for companies that contract with the federal government have access to additional protections against discrimination in employment. These protections stem from a 2014 Executive Order issued by President Obama that prohibits federal contractors from discriminating against current or prospective employees on the basis of sexual orientation or gender identity. Contractors who do business with the federal government employ 20% of American workers, all of whom are now covered by nondiscrimination protections under this Order. If you believe that you have been the victim of discrimination by an employer that contracts with the federal government, you can file a complaint and learn more about the complaint process here:

<http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm>

Company Policies

Many employers, especially ones that operate in multiple states, have enacted their own internal nondiscrimination policies that prohibit discrimination against LGBTQ employees. While these policies may not be legally binding, they can often give an employee some recourse where there would otherwise be none. A company's nondiscrimination policy should be available in the company's employee handbook or through the human resources department. You should therefore familiarize yourself with your employer's own human resources policies to see if they cover discrimination against LGBTQ persons.

In every case, if you believe that you've been the victim of discrimination on the basis of your sexual orientation or gender identity you should contact an attorney familiar with LGBTQ employment law.

HOUSING

There are currently no express prohibitions in the Texas Housing Code that prohibit discrimination against LGBTQ people. Texas, however, does prohibit discrimination on the basis of sex and familial status, consistent with the federal law.⁷¹ As described above, in the EEOC employment discrimination cases, it is currently being argued that discrimination on the basis of sexual orientation or gender identity fall into the category of prohibited discrimination on the basis of "sex."

There is little history on how judges within Texas have addressed such claims of discrimination in the housing context, but nationally there has been increasing recognition that discrimination against LGBTQ people qualifies as sex discrimination. As such, if you have been denied housing because of your sexual orientation or gender identity, you should file a claim with the municipal housing authority.

Federal Law

The federal Fair Housing Act, which was enacted as Title VIII of the Civil Rights Act of 1968 and is enforced by the Department of Housing and Urban Development (HUD),

⁷¹ V.T.C.A., Housing Code § 301.021.

does not explicitly prohibit discrimination against LGBTQ people and their families. However, an LGBTQ person experiencing discrimination on the basis of sexual orientation or gender identity may still be covered by the Fair Housing Act on the basis of such discrimination constituting discrimination on the basis of "sex," similar to the employment context.

In 2012, HUD issued the "Equal Access Rule," which prohibits discrimination on the basis of sexual orientation or gender identity by any housing or service provider that receives funding or insurance from HUD. It also prohibits lenders from determining a borrower's eligibility for Fair Housing Authority (FHA) insurance on the basis of sexual orientation or gender identity.

For example, any landlord receiving funding through the Department of Housing and Urban Development (HUD) is prohibited from refusing to rent, offering unequal and inflated rental prices, or mistreating potential renters based on their sexual orientation, gender identity, or HIV/AIDS status. Further, any lender or operator of HUD-assisted housing is prohibited from inquiring as to the sexual orientation or gender identity of an applicant, as well as barred from using such criteria in assessing an application.⁷² A violation of this rule may result in HUD pursuing a number of remedies, including sanctions against the violator.

⁷² Equal Access in HUD Programs – Regardless of Sexual Orientation or Gender Identity, Available at <http://portal.hud.gov/hudportal/documents/huddoc?id=5359-F-02EqAccessFinalRule.pdf>

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HUD allows individuals to submit housing discrimination complaints by telephone (1-800-669-9777) or online at:

http://portal.hud.gov/hudportal/ HUD?src=/topics/housing_discrimination

Complaints can also be submitted by mail to the HUD Office of Fair Housing and Equal Opportunity Texas Regional Office, located at 801 Cherry Street, Unit #45, Suite 2500, Fort Worth, TX 76102.

To learn more about filing a complaint, as well as details regarding taking your claim to court, please read this page:

http://portal.hud.gov/hudportal/ HUD?src=/program_offices/fair_housing_equal_opp/complaint-process

PUBLIC ACCOMMODATIONS

Public Accommodations are generally defined as entities, both public and private, that are used by the public. Examples include retail stores, restaurants, educational institutions, recreational facilities, etc. Private clubs and religious institutions are generally exempt from the definition.

Texas law does not protect LGBTQ people from discrimination in places of public accommodation. In fact, Texas is one of the

few states that only prohibit discrimination in public accommodations based on disability.⁷³

Federal Law

Federal public accommodations protection provisions can be found in Title II of the Civil Rights Act of 1964 and Title III of the Americans with Disabilities Act of 1990. Unfortunately, neither contains protections on the basis of sexual orientation or gender identity. However, in 1998, the Supreme Court ruled that being HIV-positive is a physical disability covered by the Americans with Disabilities Act, even if the infection has not yet progressed to the symptomatic phase.⁷⁴ Businesses that hold themselves open to the public (restaurants, stores, hotels, etc.) are therefore prohibited from refusing service or business to individuals because they are HIV-positive.

⁷³ V.T.C.A., § 121.003; See also National Conference of State Legislatures, State Public Accommodation Laws, (Mar. 13, 2015), <http://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx>.

⁷⁴ *Bragdon v. Abbott*, 524 U.S. 624 (U.S. 1998)

SCHOOL POLICIES AND ANTI-BULLYING

STATE LAW

Although Texas has enacted state-level anti-bullying policies, these policies do not enumerate the bases on which bullying is prohibited, specifically failing to mandate that schools recognize harassment of an LGBTQ student for their sexual orientation or gender identity, or the sexual orientation or gender identity of their parents, as bullying. In addition, Texas has not passed any laws that specifically prohibit discrimination based on sexual orientation or gender identity in public state schools.

However, Texas strengthened its laws related to bullying in 2011. In 2010, although the legislature failed to enumerate the bases on which bullying is prohibited, including sexual orientation, the law provided a definition of bullying, and required the State Board of Education to adopt practices to address the awareness and prevention of bullying into the health curriculum.⁷⁵ The State Board is required to consult with the Texas School Safety Center in its adoption of these practices, an organization that encourages schools to clearly state that bullying that targets LGBTQ children is against school policy.⁷⁶

⁷⁵ Tex. Educ. Code Ann. §§ 28.002, 37.0832 (West 2015).

⁷⁶ “Prevalence of Bullying amongst Vulnerable Populations,” Texas School Safety Center, <https://txssc.txstate.edu/topics/bullying/articles/prevalence-of-bullying>

Although Texas has still not recognized cyberbullying and online harassment in its anti-bullying laws, its broad definition of bullying, although not specifically prohibiting bullying based on sexual orientation and gender identity, has great potential to protect and help LGBTQ students.

Ultimately, because school district policies are determined at the local level, there can be wide variations on how proactive and protective a school is towards bullying and LGBTQ students, or students with LGBTQ parents. It can therefore be helpful and important to find out what the school district’s policies and history on the issue are.

FEDERAL LAW

While Texas state law fails to explicitly provide comprehensive protections for LGBTQ students, federal law – specifically Title IX of the United States Education Amendments of 1972 – does provide some protections and support to students facing bullying or discrimination based on their sexual orientation or gender identity. Title IX specifically prohibits discrimination against students in schools and other programs that receive federal funding, where that discrimination is based on a student’s sex or gender.

While Title IX does not explicitly include sexual orientation or gender identity as

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bases for a claim of discrimination, the law has been applied to prohibit discrimination where a student is mistreated for being sex or gender non-conforming, meaning the student faces discrimination for not subscribing to the stereotypical notions of femininity or masculinity. On these grounds, the Department of Education has specifically stated that transgender students are protected by Title IX, and lesbian, gay and bisexual students have successfully filed claims of discrimination under Title IX.⁷⁷

The Department of Education and Department of Justice have also stated that compliance with Title IX requires schools to treat transgender students consistent with their gender identity, and does not allow schools to impose a medical diagnosis or treatment requirement.⁷⁸ However, the State of Texas, along with several other states have filed a lawsuit challenging this view. And, Texas' Lt. Governor Dan Patrick has sent a letter to school superintendents⁷⁹ telling them that they need not follow the Department of

⁷⁷ United States Dept. of Education Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

⁷⁸ United States Dept. of Education Office for Civil Rights, Dear Colleague Letter on Transgender Students, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

⁷⁹ <https://www.scribd.com/doc/315170548/Lt-Gov-Dan-Patrick-s-Letter-to-Texas-School-Superintendents-on-Obama-s-Transgender-Bathroom-Policies>

Education's guidance, pending the outcome of that lawsuit.

If you believe that you or another person have been the victim of sexual orientation or gender identity discrimination in a program or activity that receives funding from the Department of Education (such as a public school, a publicly-run sports team or program, public afterschool programming, etc.), you can file a complaint with the Texas Department of Education Office of Civil Rights (OCR) located in Dallas, TX. (Tel. 214-661-9600)

You must file within 180 days of the last instance of discrimination, and you may file a complaint on behalf of yourself, a group, or another person facing discrimination. Since Title IX does not explicitly cover sexual orientation or gender identity, your complaint must list "sex" as the basis (or one of the bases) of your claim.

You can find more details on drafting a complaint, as well as an electronic complaint form, at the OCR website, located here:

<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

FEDERAL LAW

Each year, the federal government opens enrollment for individual and family healthcare coverage under the Affordable Care Act (ACA). Typically, enrollment for the following year opens in November and closes mid-February of the following year – although you may be able to enroll for a given year at another time if you experience a big life change, such as moving, getting married, or having a baby, which may qualify you to enroll in one of the ACA’s Special Enrollment Periods. For detailed information about plans, Special Enrollment Periods, or to find out where and how to enroll, go to this site (www.healthcare.gov) and select your state of residence.

Under the ACA, insurers and marketplace navigators – the people whose job it is to help you select an insurance plan that best matches the needs of you and your family – are prohibited from discriminating against consumers based on their sexual orientation or gender identity, or the sexual orientation or gender identity of a family member

Under the ACA, no individual or family may be denied coverage because of a pre-existing condition. This includes a current illness or a history of chronic illness or disease, HIV status, receiving or having received transgender-related care, or a prior pregnancy. However, it is important to note that despite the fact

that the ACA prohibits insurance providers from discriminating against individuals and families by denying them the ability to obtain healthcare coverage, the ACA does not mandate that insurance plans offer coverage that is inclusive of the many needs of LGBTQ individuals and families. For example, the ACA does not require insurers to cover transgender-related care, or treatment for HIV and AIDS. However, insurers are prohibited from categorically denying coverage for transition-related care, nor can they refuse to cover transition related care if they cover that same treatment for other people.

While insurers are not required to cover these treatments, they may offer plans that do so; we encourage you to speak with a navigator and investigate plans thoroughly to find the option that works best for you and your family. Further, definitions of “family” may be too narrow to include many dependents in an LGBTQ family structure, given the myriad LGBTQ family structures that exist.

The ACA prohibits discrimination based on sex in all health programs and activities receiving Federal financial assistance.⁸⁰ It prohibits discrimination based upon gender identity, requiring that any healthcare provider receiving federal funding, (such as Medicaid or Medicare), any health program administered by the federal government, and any health insurance marketplace,

⁸⁰ <http://www.hhs.gov/sites/default/files/1557-summary-508.pdf>

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must treat individuals consistent with their gender identity.⁸¹ It also clearly prohibits discrimination based on sex stereotyping, providing potential protections to lesbian, gay, and bisexual people.⁸²

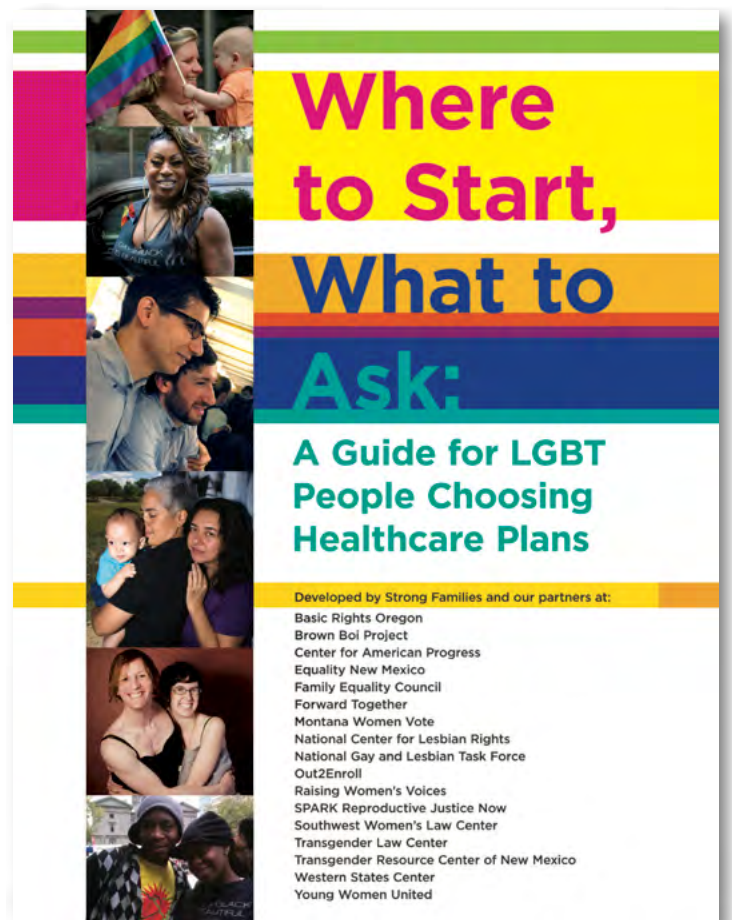
Anyone who has experienced discrimination on the basis of their sexual orientation or gender identity in a health care setting should immediately file a complaint with the United States Department of Health and Human Services Office for Civil Rights. You can find more details on drafting a complaint, as well as an electronic complaint form, at the HHS website, located here:

<http://www.hhs.gov/civil-rights/filing-a-complaint/index.html>

For more information on how the Affordable Care Act and the insurance marketplaces benefit LGBTQ-headed families, check out *Where to Start, What to Ask: A Guide for LGBT People Choosing Health Care Plans*:
<http://strongfamiliesmovement.org/assets/docs/where-to-start-what-to-ask.pdf>

81 <http://www.hhs.gov/sites/default/files/1557-summary-508.pdf>

82 *Supra*



FAMILY AND/OR PARENTING LEAVE

Texas does not require employers to provide paid family leave. However, the federal Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Eligible employees are entitled to up to 12 unpaid work weeks of leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth,
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement,
- care of the employee's spouse, child, or parent who has a serious health condition,
- a serious health condition that makes the employee unable to perform the essential functions of his or her job, or
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

FMLA applies to all public agencies (State, local, and federal) and all local education agencies (schools). The FMLA also applies to private sector employees who employ 50 or more employees for more than 20 workweeks in the current or preceding calendar year.

The Act also entitles eligible employees to 26 work weeks of leave during a single 12-month period to care for a covered service member with a serious injury or

illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

In 2010, the Department of Labor issued a clarification of the definition of "son or daughter" to include a child for whom a person provides a certain amount of day-to-day care or financial support, regardless of whether or not there is a legal or biological relationship. This clarification ensures the ability of a same-sex parent and/or partner to take time off from work to care for their child without fear of losing their job. You can read the text of the Department of Labor's clarification here: http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm

In 2014, following the *Windsor* decision and the repeal of the Defense of Marriage Act, the FMLA's benefits were extended to married same-sex couples. Because of this, married same-sex couples became entitled to take time off to care for their spouses. This was solidified further in 2015 when the definition of "spouse" in the FMLA was expanded to include all employees in a same-sex marriage regardless of whether their state of residence recognized their marriage. Finally, the *Obergefell* decision led to all federal marriage benefits being extended to all same-sex couples across the country.

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CHANGES OF NAME AND GENDER

Obtaining a change of sex/gender on the birth certificate of a transgender person born in Texas is fraught with conflicting statutory provisions, implementing regulations and court interpretations. We strongly recommend that transgender individuals born in Texas seek out a Texas attorney, experienced in such matters.

An applicant for a legal name change must submit a petition to the court. The applicant's petition must include the following information:

- present name
- place of residence
- the full name requested
- the reason for the request of the change in name
- whether the applicant has been convicted of a felony or is otherwise subject to criminal registration
- a complete set of the applicant's fingerprints⁸³

In regard to updating names and gender markers on driver's licenses, Texas law has a provision requiring any legal name changes to be registered within 30 days, but does not specify with regard to gender changes.⁸⁴

To change the gender marker on a driver's license, the Texas Department of Public Safety requires applicants to submit an original certified court order.⁸⁵ A name change requires either a certified court order, or an amended birth certificate.⁸⁶

⁸³ Tex. Fam. Code Ann. § 45.102 (West 2015); see also "Name Changes in Texas," Texas Young Lawyers Association, 2010, https://www.texasbar.com/AM/Template.cfm?Section=Our_Legal_System1&Template=/CM/ContentDisplay.cfm&ContentID=23466

⁸⁴ Tex. Transp. Code Ann. § 521.054 (West 2015).

⁸⁵ Texas Department of Public Safety, Change Information on Your Driver License or ID Card, <https://www.txdps.state.tx.us/DriverLicense/changes.htm>

⁸⁶ Supra

HATE CRIMES PROTECTIONS

Texas state law does define a crime motivated by homophobia as a hate crime. However, it is less clear whether a crime motivated by transphobia is covered by the hate crimes statute. The Texas Hate Crimes Statute provides for an increase in penalties for those defendants who “intentionally selected” their victim because of the victim’s “race, color, disability, religion, national origin or ancestry, age, gender or sexual preference.”⁸⁷ However, limitations have been placed on the Texas Hate Crime Statute in regards to the application of higher penalties.⁸⁸

However, in 2009, Congress enacted the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expands federal hate crimes to LGBTQ people. The law allows Federal law enforcement agencies, such as the FBI, to investigate and prosecute hate crimes against LGBTQ individuals when local or state authorities fail to act. If you or your family has been the victim of a hate crime, you should report the crime both to the local authorities and the FBI.

The FBI maintains field offices in Dallas, El Paso, San Antonio, and Houston, Texas:

FBI Dallas

One Justice Way
Dallas, TX 75220
Phone: (972) 559-5000
Website: dallas.fbi.gov

FBI El Paso

660 S. Mesa Hills Drive
El Paso, TX 79912-5533
Phone: (915) 832-5000
Website: elpaso.fbi.gov

FBI San Antonio

5740 University Heights Boulevard
San Antonio, TX 78249
Phone: (210) 225-6741
Website: sanantonio.fbi.gov

FBI Houston

1 Justice Park Drive
Houston, TX 77092
Phone: (713) 693-5000
Website: houston.fbi.gov

⁸⁷ Tex. Code Crim. Proc. Ann. art. 42.014 (West 2015); Tex. Penal Code Ann. § 12.47 (West 2015)

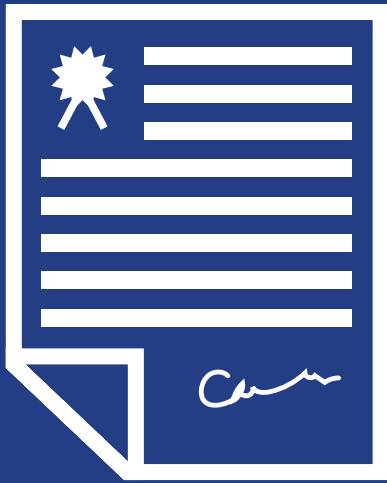
⁸⁸ See *In re M.P.*, 2002 WL 31890890.

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www.equalitytexas.org

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TIPS FOR LEGAL DOCUMENTS

- ✓ Always have copies of these forms with you, we recommend carrying electronic copies on a thumb drive attached to your keychain or available on your phone, through email or in the cloud.
- ✓ Keep several signed original copies of the forms, except for your Will (which you may keep copies of, but the original must be kept in a safe place, known to your executor).
- ✓ Write with a blue pen when completing or signing forms so health care providers don't question whether the document is an original.
- ✓ Always have original copies with you when you travel out of state.
- ✓ Keep copies online on a secure server.

RECOMMENDED LEGAL DOCUMENTS FOR SAME-SEX COUPLES

LAST WILL AND TESTAMENT

A Will is a legal document by which a person directs how real estate and personal property will be distributed upon death. Unmarried same-sex couples must have Wills in which their partners are designated beneficiaries, so that the partner will be able to inherit any of the deceased partner's property. Even if married, it is best to have a Will. In addition to deciding property distribution, a Will also provides the opportunity to designate who should become guardian to any minor children. If you are not both legal parents, and the legal parent dies, a judge will decide who the guardian will be. Naming your partner in your Will expresses your wishes and increases the likelihood that a judge will respect those wishes about who should raise your children after your death.

If you die without having made a will, your property will be distributed according to Texas law and may not go to the beneficiaries you would have selected. A will also allows the executor to serve without bond, which will make the probate process less expensive.

A Will does not affect beneficiaries you have designated on bank accounts, insurance policies, or retirement accounts. The company that holds those funds will disburse them to your designated beneficiary. You should make sure such designations are up-to-date.

We recommend consulting a Texas attorney in drafting this document.

More information is available from the State Bar of Texas, at:

https://www.texasbar.com/AM/Template.cfm?Section=Free_Legal_Information2&Template=/CM/ContentDisplay.cfm&ContentID=27979

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TEXAS LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed
Families in the Lone Star State

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES (LIVING WILL)

This document allows Texans to direct whom they want to make medical decisions for them, as well as providing for end-of-life choices in the event they are unable to express that intent at the time that care is required. You can find more information and guidance on drafting an Advance Directive for Healthcare specifically for the State of Texas at:

https://www.texasbar.com/AM/Template.cfm?Section=Free_Legal_Information2&Template=/CM/ContentDisplay.cfm&ContentID=27979

The basic form for this simple document can be found at:

<https://www.texmed.org/Template.aspx?id=64>

MEDICAL POWER OF ATTORNEY

Legal spouses can make medical decisions for each other, if one of them is incapacitated. With this document, anyone can designate who will make these decisions and visit them in the intensive care unit. It is a good idea for same-sex, married spouses to also have this document, just in case their marriage is questioned at a time when medical decision making is critical.

The basic form for this simple document can be found at:

<https://www.texmed.org/Template.aspx?id=65>

FINANCIAL POWER OF ATTORNEY

It is important that partners consider providing each other with the power to handle personal finances on their behalf through a “financial power of attorney” in the event that a partner becomes unable to manage their own finances due to sickness, disability, etc.

We recommend consulting a Texas attorney in drafting this document.

DESIGNATION OF GUARDIAN BEFORE NEED

If a court-ordered guardian is necessary because of incapacity, the court usually appoints the closest legal next-of-kin (relatives by blood or marriage). This document is especially useful for someone who does not want their next-of-kin to take control, the elderly, or anyone with a progressive illness. It allows the document's creator to direct the court's decision.

The basic form for this simple document can be found at:

<http://texasprobate.net/forms/dgadult.htm>

DIRECTIONS FOR DISPOSITION OF REMAINS

After a person is dead, their body is released to their legal next-of-kin, unless they have signed this document stating that they want another individual to handle their funeral and burial or cremation. These ceremonies can be a healing part of the grief process for the surviving spouse.

The basic form for this simple document can be found at:

http://www.fcant.org/pdf/texasforms/appoint_agent_control_disposition_remains_v20101009.pdf

BODY DISPOSITION AUTHORIZATION AFFIDAVIT

This document states your wishes regarding how your remains will be handled. If you don't have this document, your agent in the Direction for Disposition of Remains will make the decision.

The basic form for this simple document can be found at:

http://www.fcant.org/pdf/texasforms/body_disposition_authorization_affidavit_v20101009.pdf

Find more information at:

www.familyequality.org
www.equalitytexas.org

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DOMESTIC PARTNERSHIP AGREEMENT

A Domestic Partnership Agreement expresses a couple's understanding as to how they will share income, expenses, assets and liabilities. It also discusses a plan for how those things will be divided in the event the couple separates. This document is especially important for unmarried couples.

We recommend consulting a Texas attorney in drafting this document.

CO-PARENTING AGREEMENT

An agreement that expresses a couple's understanding of how they will raise children and what each parent's rights and obligations are with respect to each child while they are together and in the event that the parents separate.

Although the Co-parenting and Partnership agreements are not "standard" and will require the advice of the advice of an attorney competent in LGBTQ affairs and licensed in Texas (and, could still prove to be not legally binding), they are often useful to have. These documents can establish clear understanding between the parties and can provide clarification about the intent and wishes of all involved. They may be useful, at some future time, should an issue ever come before a court/judge in the case of death or dissolution of the relationship, etc.

We recommend consulting a Texas attorney in drafting this document.

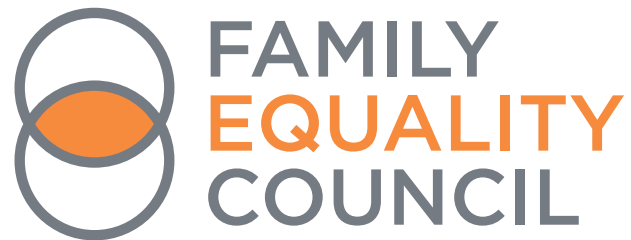
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