

Gay Adoption Issues

From [Deborah Wald](#)

Choosing an LGBT Friendly Attorney

Gay couples looking to adopt face a number of challenges that married, heterosexual couples do not. Adoption laws in the United States remain a patchwork quilt when it comes to lesbians and gay men adopting. Many states do not allow adoptions by any unmarried couples, which automatically precludes same-sex couples from adopting in those states; and a few states – including Florida, Mississippi, Nebraska, Oklahoma, Utah and Virginia – have enacted laws that specifically bar gay individuals or couples from adopting. (For an up-to-date survey of adoption laws in the United States as they relate to gay people, go to www.theTaskForce.org.)



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Here's an example: A gay couple wants to adopt a newborn. They are chosen by a birth mother in a state that doesn't allow lesbian or gay couples to adopt jointly. They fly to that state to be present at the birth and to help welcome their new daughter into the world; the birth mother tearfully presents the baby to them with her blessings and their promise to send her photos and keep her memory alive forever. Their plan is to bring the baby back to their home state and adopt her there, since gay couples are allowed to adopt as couples in their home state, and not in the state where the child was born. Unfortunately, once they return home they discover that even though they have the birth mother's full consent, and even though their state has no problem with their adoption, they are unable to adopt as a couple because the Interstate Compact on the Placement of Children (ICPC) requires the state in which their daughter was born to approve the adoption, and that state's law expressly prohibits adoption by couples of the same gender.

Because of complications like these, it is not uncommon for a same-sex couple wishing to adopt a child to have to adopt that child more than once, to assure that the adoption is recognized everywhere. For example, the couple will be able to obtain ICPC approval from the state in which the child was born for one of them to adopt in their home state; and once that adoption is completed, the adoptive parent will then have the authority to consent to her partner adopting their son by way of a "second parent" adoption, assuming this also is permitted in their home state. So by completing two separate adoptions of the same child, they can both become full legal parents.

Gay adoptions are complex, and laws vary from state to state. It is critical that any same-sex couple looking to adopt a child be represented by a lawyer who is familiar and up-to-date with the latest issues. Here are some tips on how to find such a lawyer:

1. **Research** - Give yourself enough time to do research. Contact friends to see if they have had good experiences with attorneys in cases similar to yours. Check with any local LGBT organizations, and with national organizations such as the [National Center for Lesbian Rights](#), the [ACLU](#) or [Lambda Legal](#). These organizations have referral lists of attorneys in your area who have handled these types of cases before, and who will understand the particular complexities of your case. Keep in mind that the most experienced adoption attorneys in your area may never have handled a same-sex adoption, although they may be willing to do so.
2. **Contact** - Once you have a list of possible attorneys, contact them. Prepare a list of questions to ask them which will help you determine their knowledge, experience, and comfort with LGBT people and adoptions.
 - **"Knowledge"** refers to whether the attorney understands the special legal needs of the LGBT community in a case like yours. LGBT people are often treated differently under the law than straight people, and you need to find out how much the attorney knows about those differences.
 - **"Experience"** refers to whether the attorney has actually handled cases like yours. Just as you wouldn't take a Chevrolet to an excellent Volvo specialist for repairs, you don't want to take your adoption case to an attorney who excels at handling personal injury cases; and ideally you will want an attorney who has handled a same-sex adoption case before, especially if your case will involve interstate or intercountry issues.

- **“Comfort”** refers to both the lawyer’s comfort with you and your comfort with the lawyer. Some very good attorneys can be uncomfortable around LGBT families. Adoptions involve interactions with social workers and the courts. You deserve to have an adoption attorney who will advocate for your family and take your legal issues seriously. Therefore, do not hesitate to come out to the lawyer and gauge his or her reaction. The conversation is confidential, and you need to be comfortable talking to your lawyer about your family and your case. If you aren’t comfortable with this attorney, move on to someone else.

There are plenty of good attorneys all over the country who are experienced at handling gay adoptions and will be glad to represent you. Take the time to do some homework, ask plenty of questions, and you will be well on your way to finding a lawyer who can help you build and protect your family.

Deborah H. Wald, Esq. is a San Francisco Bay Area attorney specializing in family formation law, with an emphasis on LGBT families. As a practitioner, teacher, and author, her goal is to ensure that all families and children receive the highest quality legal protections available.

Back to [Gay Adoption Basics](#).

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