

Legal Overview

On January 1, 2005, the Domestic Partner Rights and Responsibilities Act of 2003 (AB 205) went into effect. Under this statute, all legal presumptions that apply to married couples under the California Family Code will apply equally to registered same-sex domestic partners. In theory, this means that a lesbian couple having a baby together after January 1, 2005, will both be presumed to be legal parents, the same way that married couples having babies are.

In reality, family law is considerably more complex than that. Applying the legal parentage presumptions to married, heterosexual couples is not always easy where the husband is not the biological father of the child—there are often competing presumptions of parentage, leading to uncertainty. For this reason, it is strongly recommended that lesbian couples having children after January 1, 2005 continue to take precautions to make sure that their legal relationships with their children are protected.

Protecting Your Family

A Legal Guide for
Lesbian Couples Using
Donor Insemination



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Deborah Wald is a Bay Area attorney with over ten years experience representing lesbian and gay parents and their children. The following are some of the questions she hears most frequently in her practice, and her answers to them.

- Q.** *My partner and I will be having a baby after January 1, 2005. We have registered with the State of California as domestic partners. Since AB 205 says that we are both parents, do we still need to go to court?*
- A.** Because many other states and the federal government are refusing to honor domestic partnerships and civil unions, it is strongly recommended that lesbian couples with children not allow their legal parenthood to rest solely on the provisions of AB 205 (the California Domestic Partner Rights and Responsibilities Act of 2003). We already have seen one case where Virginia's refusal to honor Vermont civil unions is depriving a non-biological lesbian mother of contact with her child. And a Georgia hospital recently refused to honor parentage based on a domestic partnership. Given how important it is to have our parental rights recognized all over the world, it remains critical that same-sex couples having children after AB 205 continue to get court judgments acknowledging their parenthood.

Q. *What types of court judgments are available to lesbian domestic partners having children after January 1, 2005?*

A. The simplest way to obtain a judgment establishing both of your parenthood is still a domestic partner adoption. These are relatively inexpensive, and involve only a minimal court investigation (as opposed to a full home study required for many other types of adoptions). And they have the advantage that all states in the country and all countries around the world are familiar with the adoption procedure, creating less confusion when outside California. However, there may be an alternative available under the Uniform Parentage Act for establishing parentage based on the presumptions of parenthood that come with AB 205. Given the newness of the statute, these procedures are still being worked out and if you are interested, you should consult knowledgeable legal counsel.

Q. *Under AB 205, can we get both of our names on our baby's original birth certificate?*

A. In January, 2005, the California Department of Public Health ordered all hospitals to comply with the terms of AB 205 and to allow registered domestic partners to put both mothers' names on the original birth certificates. You should not have to provide proof of registration to the hospital; they should take your word for the fact that you are domestic partners (as they do with married couples). However, the birth certificate forms continue to say "mother" and "father," so the only way to put two mothers on is for the hospital to type "/parent" wherever the form

says "father," and then fill in the non-biological mother's name accordingly. But please remember: having both of your names on your child's birth certificate may not be enough to grant you full parental rights in other states or countries, or with our own federal government. An adoption or other legal proceeding is still strongly advised.

Q. *My partner and I are using a known sperm donor to become pregnant. Can we enter into a contract with our donor to prevent him from having parental rights and protect him from having to pay child support?*

A. Lesbian couples using known donors should always have written agreements with their donors to clarify everyone's intentions with regard to legal rights and responsibilities and to make sure that both moms and the donor have the same basic ideas about such things as how decisions about the child will be made. However, as a general rule you cannot either create or negate parenthood through a contract. This is because children have a right to have legal relationships with their parents, regardless of any contractual agreements between the adults. So a contract between you and your donor will not prevent a court from finding that your donor is a father, with all the rights and responsibilities that that term implies. Therefore, in addition to having a contract, you also need to make every effort to comply with the sperm donor statutes if you don't want the donor to be a legal father. For more information, consult knowledgeable legal counsel.