

Estate Planning for Same-Sex Married and Unmarried Couples: Latest Developments

Optimizing Estate, Tax and Family Planning Opportunities
in Recognition and Non-Recognition States

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Outline on Parentage and the LGBT Community

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Background. Basic law in the United States is that a biological mother and biological father are the legal parents of a child. For the LGBT community, the issue is how to make both partners a legal parent to their child, or if a parent is single, to insure that the other biological parent is not a legal parent. The following Outline sets out the basic structures of how these goals may be accomplished.

I. Introduction:

When a legally married couple has a child, they are both automatically presumed to be the legal parents of the child. However, not all courts and not all states will recognize this legal relationship, particularly those states with DOMA statutes or constitutional amendments. Therefore, if there is an issue between the couple regarding legal status, for example, in a break-up, or the issue is raised in another context, the nonbirth parent, or nonadoptive parent's rights may not be recognized. Accordingly, it is incumbent upon the nonlegal parent to obtain a court order, if possible, establishing that parent's legal rights. See Debra H. v. Janice R., 276, 106569/08, Supreme Court of New York, Appellate Division, First Department, April 9, 2009. See, *also*, Miller v. Jenkins litigation in Vermont and Virginia; Prashad v. Spivey-Copeland in Virginia.

II. Importance of Full Faith and Credit

The U.S. Constitution requires every state and jurisdiction to give "full faith and credit" to the laws and judgments of every other state and jurisdiction. The laws "prong" on full faith and credit has a public policy exception, which has allowed states to refuse to honor the laws of other states and jurisdictions. The judgment "prong," however, allows for no exceptions. Accordingly, it is crucial for parents to get a court order that establishes their relationships to their children. That court order will be portable, whereas parental relationships devolving from state law, may not be.

III. Methods That Same-Sex Couples Can Employ To Protect Their Legal Rights as Parents and/or Obtain Visitation and Custody Rights

A. Adoption (Joint and Second Parent):

1. Definition of Adoption

“The creation of a parent-child relationship by judicial order between two parties who are usually unrelated.” It “creates a parent-child relationship between the adopted child and the adoptive parents with all the rights, privileges, and responsibilities that attach to that relationship.” Blacks Law Dictionary (8th ed. 2004).

2. Basis of Adoption

Although the history of adoption is extensive (Greeks, Romans, Egyptians, and Babylonians all had systems of adoption), it was virtually unknown at common law and thus is entirely a creature of statute. Adoption Overview, http://www.adoptioninformation.com/Adoption_overview (2007); Black’s Law Dictionary (8th ed. 2004). In the US, adoption is governed by state law. Adoption Overview, <http://www.childwelfare.gov/adoption/overview.cfm> (2008). The general rule in Maryland, DC, and Virginia is that any single adult may petition the court to adopt a child. D.C. Code § 16-302; MD Code Ann. Fam. Law, §5-331, 5-345; VA Code Ann. § 63.2-1201.

3. Status of Joint Adoption

DC: Allows Same-Sex Couples to Jointly Petition to Adopt

In 1995, the District’s Court of Appeals held that joint adoption petitions by unmarried couples, both opposite sex and same sex, should be granted or rejected on a case-by-case basis, based on the best interest of the child. In re M.M.D., 662 A.2d 837 (D.C. 1995).

MD: Does Not Explicitly Prohibit Same-Sex Couples from Jointly Petitioning to Adopt

Maryland state law provides that a husband and wife may jointly petition to adopt, and does not explicitly provide for joint adoption by other couples. No Maryland state court has heard the issue of whether same-sex couples can or cannot jointly petition to adopt.”

VA: Does Not Explicitly Prohibit Same-Sex Couples from Jointly Petitioning to Adopt

There is no explicit prohibition, but no state court has heard the issue of whether same-sex couples can or cannot jointly petition to adopt.

4. Second Parent Adoption

1. A second parent adoption is: “an adoption by an unmarried cohabitating partner of a child’s legal parent, not involving the termination of a legal parent’s rights.” Although not all states recognize second-parent adoptions, the practice is becoming more widely accepted. Black’s Law Dictionary (8th ed. 2004). Second parent adoptions become particularly important if a same-sex couple separates. Without a second parent adoption, a legal parent (either a birth parent or a current adoptive parent) may prevent a nonlegal parent from continuing a relationship with the children of the couple. Second parent adoptions are crucial in guaranteeing that full faith and credit will be given to the nonlegal parent’s parental status. *In re Sebastian*, N.Y. Sur. Ct., No. 38-08, 4/9/09.

2. Status of Same-Sex Second Parent Adoption in...

DC: Allows Same-Sex Second Parent Adoption

a. In 1995, the District Court of Appeals found that “a same-sex co-parent can petition to adopt the child of his or her partner or child of the relationship.” Adoption, Human Rights Campaign, <http://www.hrc.org/issues/parenting/adoption.asp>, citing *In re M.M.D.*, 662 A.2d 837 (D.C. 1995).

MD: Allows Same-Sex Second Parent Adoption in Most Jurisdictions

a. Maryland recognizes second parent adoptions where a child with one legal parent is adopted by a second nonlegal parent, without severing the prior-existing parental relationship with the legal parent. *Conaway v. Deane*, 401 Md. 219, 335 (2007), citing *In re Petition of D.L.G. & M.A.H.*, No. 95-179001/CAD, 2 MFLM Supp.21 (1997) (Cir. Ct. Balt. City, June 27, 1996).

b. Maryland's trial courts have granted same-sex couples second parent adoptions and have noted that such adoptions are in the best interests of the child. *Id.*

c. “Thus, sexual orientation is not a factor in adoption proceedings in Maryland, and the children adopted by same-sex couples are treated under Maryland law in the same way as children adopted by a heterosexual or married couple.” *Conaway v. Deane*, 401 Md. 219, 335 (2007).

VA: Does Not Explicitly Prohibit Same-Sex Second Parent Adoption

There is no explicit prohibition, but no state court has ruled on whether a same-sex partner can or cannot petition to adopt a partner’s child or child of the relationship.

3. Factors That Must Be Considered With Adoptions

Indian Child Welfare Act (“ICWA”):

ICWA must be taken into consideration when either one or both of the child's natural parents is from a recognized Indian tribe. In a case where the child has enough of a blood quantum to be considered part of the tribe (each tribe is different as to how much Indian blood they require the child to have), ICWA will apply (*i.e.*, the tribe will have jurisdiction over the adoption, as opposed to the state).

What is ICWA?

When Congress enacted ICWA in 1978, it stated the Act's policy as follows: "...it is the policy of this Nation, to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing assistance to Indian tribes in the operation of children and family service programs." 25 U.S.C.A. §1902.

"Two questions must be answered affirmatively before ICWA applies to a particular case: 1) Does the case involve an "Indian child" as defined by the Act? 2) Is the proceeding a "child custody proceeding" as defined by ICWA" ICWA, Powerpoint by Philip (Jay) McCarthy, Jr. (2009).

Indian Child is defined under ICWA as: "...any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C.A. §1903 (4).

A Child Custody Proceeding under ICWA includes foster care placements, guardianships, any proceeding resulting in the termination of the parent-child relationship, pre-adoptive and adoptive placements. 25 U.S.C.A. §1903 (1). However, divorce proceedings between the child's parents are not included in ICWA's definition of Child Custody Proceedings.

"ICWA sets forth placement preferences for foster care, pre-adoptive and adoptive placements. 25 U.S.C.A. §1915. The preferences are, in descending order, as follows:

- 1) A member of the Indian child's extended family;
- 2) Other members of the child's tribe;
- 3) Other Indian families."

ICWA, Powerpoint by Philip (Jay) McCarthy, Jr. (2009).

The ICWA placement preferences may be waived or modified if the Court determines "good cause" exists. The ICWA does not include a definition of what constitutes "good cause" and it is left to the discretion of the Court. In determining if "good cause" exists, courts have given significant consideration to the

Department of Interior, Bureau of Indian Affairs, Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67584. The BIA Guidelines, at 67594, state that “good cause” may be based on one or more of the following:

- 1) The request of the biological parent(s) or when the child is of sufficient age;
- 2) The extraordinary emotional or physical needs of the child, as established by the testimony of a qualified witness;
- 3) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.”

ICWA, Powerpoint by Philip (Jay) McCarthy, Jr. (2009).

“In addition to the BIA Guidelines, a majority of courts have held that the “best interests” of the Indian child must be considered in determining whether or not “good cause” exists.”

Furthermore, “a parent’s request to deviate from the placement preferences can constitute good cause.”

ICWA, Powerpoint by Philip (Jay) McCarthy, Jr. (2009).

B. De Facto Parents

1. Definition. When the nonlegal parent in a same-sex relationship has failed to adopt the couple’s child, and the couple breaks up, de facto parenthood is generally the primary legal recourse for the nonlegal parent to seek custody/visitation of the child. “Many states recognize that, where a same-sex partner participated in the caretaking of the child and maintained a parent-like relationship with the child, he or she has standing to ask a court for visitation or custody.” Legal Recognition of LGBT Families, National Center for Lesbian Rights, www.nclrights.org. Because the status of the de facto parent is subordinate to that of a legal parent, a person who is afforded the status of de facto parent should, if possible, attempt to adopt the child (although this is very difficult to do if the legal parent is fit). Black’s Law Dictionary (8th ed. 2004).

2. Status of de facto parents.

D.C.: Recognizes De Facto Parenthood by Statute

“(1) “De facto parent” means an individual: (A) Who: (i) Lived with the child in the same household at the time of the child’s birth or adoption by the child’s parent; (ii) Has taken on full and permanent responsibilities as the child’s parent; and (iii) Has held himself or herself out as the child’s parent with the agreement of the child’s parent or, if there are 2 parents, both parents; or (B) Who: (i) Has lived with the child in the same household for at least 10 of the 12 months immediately preceding the filing of the complaint or motion for custody; (ii) Has formed a strong emotional bond with the child with the encouragement and intent of the child’s parent that a parent-child relationship form between the child and the third party; (iii) Has taken on full and permanent responsibilities as the child’s parent; and (iv) Has held himself or herself out as the child’s parent with the agreement

of the child's parent, or if there are 2 parents, both parents." D.C. Code § 16-831.01 (2009).

Maryland: Does Not Recognize De Facto Parenthood

In Janice M. v. Margaret K., 404 Md. 661 (2008), the Court held that Maryland law does not recognize de facto parenthood. "As a result of Janice M., a legal parent has the constitutional right to govern the care, custody and control of his or her child. A person who qualifies as a de facto parent and seeks custody or visitation over the objection of the legal parent must prove exceptional circumstances or unfitness before getting to the best interest standard. In its opinion, the Court held that meeting the de facto parent test was a fact that could be considered in meeting the exceptional circumstances test but it was not, in and of itself, determinative as a matter of law." MICPEL 2009 Outline.

Virginia: Has Not Yet Recognized De Facto Parenthood

The Court in Stadter v. Siperko, 52 Va. App. 81 (2008), notes that no appellate court in Virginia has ever applied the de facto parent doctrine, "despite numerous opportunities to do so," see, e.g., Surles v. Mayer, 48 Va. App. 146 (2006). The Court then declines to apply the de facto parent doctrine in Stadter, finding that the former lesbian cohabitant failed to prove by clear and convincing evidence that denial of visitation would actually harm the child (*i.e.*, "Court may grant visitation to a non-parent in contravention of a fit parent's expressed wishes only when justified by a compelling state interest.") Id.

C. Joint Custody Orders

Virginia: Joint Legal and Physical Custody of Children for Same Sex Partners in Virginia. (In lieu of an adoption) § [16.1-241](#). The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members.

It is not uncommon for gays and lesbians in Virginia to share joint legal and physical custody over their children. Petitions for custody and visitation are filed in Juvenile and Domestic Relations Court. With few exceptions, most matters are not open to the public.

The case of Denise v. Tencer, 617 S.E. 2nd 413 (Va. 2005) supported the position that if the biological parent agrees to an order conferring custodial rights on another person, for whatever reason, (it may or may not because they are committed partners in a same-sex relationship), the other person gets elevated status and has the continued right to be involved in the child's life.

Thanks to Margo Owen, a Virginia practitioner in Fairfax, Virginia, for this information.

D. Parentage Acts

D. C. Parentage Act

- § 16-909: Proceedings and Matters → **Divorce, Annulment, Separation, Support, Etc. → Proof of child's relationship to parents**
 - (a-1)(1) A mother-child relationship is established by a woman having given birth to a child, by an adjudication of a woman's parentage, by operation of subsection (e) of this section, or by an unrebutted presumption under paragraph (2).
 - (a-1)(2) There shall be a presumption that a woman is the mother of a child if she and the child's mother are or have been married, or in a domestic partnership, at the time of either conception or birth, or between conception or birth and the child is born during the marriage or domestic partnership or within 300 days after the terminal of marital cohabitation...or the domestic partnership
 - (e)(1) A person who consents to the artificial insemination of a woman as provided in subparagraph (A) or (B) of this paragraph with the intent to be the parent of her child, is conclusively established as a parent of the resulting child.
 - (A) Consent by a woman, and a person who intends to be a parent of a child born to the woman by artificial insemination, shall be in writing signed by the woman and the intended parent.
 - (B) Failure of a person to sign a consent required by subparagraph (A) of this paragraph, before or after the birth of the child, shall not preclude a finding of intent to be a parent of the child if the woman and the person resided together in the same household with the child and openly held the child out as their own.
 - (e) (2) A **donor** of semen to a person for artificial insemination, other than the donor's spouse or domestic partner, is **not a parent** of a child thereby conceived **unless the donor and the person agree in writing that said**

donor shall be a parent. Notwithstanding any other provision in this title, genetic test results shall not establish parentage of a semen donor unless:

- (A) The donor of semen is the spouse or domestic partner of the child's mother; or
- (B) The donor and the child's mother agree in writing that said donor shall be a parent.

- § 7-205: Human Health Care and Safety → General → Vital Records → Birth registration
 - (e) For the purposes of preparation and filing a birth certificate the following rules apply:
 - (3A) For the purposes of the certificate, the consent to parent a child born by artificial insemination pursuant to § 16-909(e) shall be on a form prescribed and furnished by the Registrar that:
 - (A) Acknowledges consent by the mother and the intended parent to the insemination with the intent to be a parent of the child:
 - (B) Is signed under oath (which may include signature in the presence of a notary);
 - (C) Includes written notice that legal consequences, rights, and responsibilities as a parent arise from signing the consent; and
 - (D) Contains the full names, social security numbers, and dates of birth of the parents and child, the addresses of the parents, the birthplace of the child, and a statement indicating that both parents understand the rights, responsibilities, and consequences of signing the affidavit
- § 16-2342: Particular Actions, Proceedings and Matters → Family Division Proceedings → Parentage Proceedings → Who may bring a complaint; time:
 - (c) Except as otherwise provided in subsection (d) of this section, a proceeding to rebut the presumption of parentage of a child having a presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2) shall be commenced not later than 2 years after the birth of the child, after which time the presumption becomes conclusive.
 - (d) A proceeding seeking to disprove the parent-child relationship between a child and the child's presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2) may be maintained at any time if the court determines that the presumed parent did not live with the child's mother during the

300 days before the birth of the child and never openly held out the child as his or her own.

- § 16-2345 Particular Actions, Proceedings and Matters → Family Division Proceedings → Parentage Proceedings → New birth record upon marriage or determination of parents
 - o (a) ...when an agreement and affidavit that meet the requirements of section 16-909.01(a)(2) are submitted to the Registrar, or when a consent to parent a child born by artificial insemination pursuant to § 16-909(e)(1)(A) and § 7-205(e)(3A), is submitted to the Registrar, a new certificate of birth bearing the original date of birth and the names of both parents shall be issued and substituted for the certificate of birth then on file.

E. Agreements

There is a recent case from the Kansas Supreme Court which approved a Co-Parenting Agreement between two women, giving the non-birth mother rights to the child they planned for and raised together before separating. Frazier v. Goudschaal, <http://www.kscourts.org/Cases-and-Opinions/opinions/SupCt/2013/20130222/103487.pdf>. The decision relied on the Kansas Parentage Act and the fact that the known sperm donor was not a parent under Kansas law.

V. Birth Certificates

A birth certificate by itself does not create a legal relationship between the parents named on the birth certificate and the child. However, many clients believe that is the case. In those states where LGBT couples can marry or enter into civil unions and some domestic partnerships, they will most likely both be on the birth certificate at the time of the baby's birth. But, it is crucial for these clients to obtain a second-parent adoption if at all possible, as the legal relationships from the marriage or civil union may not cross state lines or be recognized by the federal government.

Maryland has instituted a new policy allowing a married lesbian couple who give birth in Maryland to both be on the child's birth certificate. In the District of Columbia, if a lesbian couples is married, registered as Domestic Partners, or sign a document that they will parent the child together, they will both be on the birth certificate at the child's birth.

After an adoption, the state where the child was born is required to issue a new birth certificate with both names of the adoptive parents, including same-sex couples. There has been significant litigation around this issue, and to date, every state refusing to issue such a birth certificate has lost. *See, for example, Fisher Davenport v. Little-Bowser*, Supreme Court of Virginia. However, there is a case pending in the 5th Circuit, that is being reheard en banc, that may reverse this trend. *See Adar v. Smith*. In addition, Texas has a specific statute allowing only a mother and father to be on a Texas birth certificate.

VI. Alternative Reproductive Technologies (“ART”): Establishing Parentage

A. Egg “Swapping”

1. Egg swapping is a process whereby one female in the relationship donates her egg to her partner, who then, through in vitro fertilization, carries and bears the child. In vitro fertilization, unlike artificial insemination, is a medical procedure that requires the assistance of a physician. It is apparently the practice of fertility doctors to require egg donors to surrender their rights to children subsequently born from those eggs, even in situations where there is no legal requirement that they do so. In re Adoption of Sebastian, N.Y.S.2d, 2009 WL 1141728. Practitioners should counsel their clients, and fertility centers, that lesbian couples should not sign these documents.

2. So, What Happens If the Couple Breaks Up and Both Women Claim Parentage Rights?

Since the process of egg swapping is on the cutting-edge of ART, at present there is no clear law in DC, Maryland, or Virginia, determining the relationship between a child and various women who may lay claim to parentage through genetic or gestational relationship.

3. Egg Donor’s Intent Is Key

However, California has dealt with a case of this nature: *K.M. v. E.G.*, 117 P3d 673 (Cal. 2005). In this case, a woman who had donated her eggs so that her former lesbian partner, with whom she was registered a domestic partnership, could bear a child through in vitro fertilization, filed a petition to establish a parental relationship with her partner’s twin children after the relationship ended. The Court held that *both lesbian partners were parents of these children*, despite the woman’s execution of written waiver of right to resulting children at time of donation. Under the Uniform Parentage Act (UPA), the woman’s genetic relationship to the children constituted evidence of mother-child relationship. The

Court found that she did not intend to simply donate her eggs, but rather designed her donation so that her partner could give birth to a child that would be raised in their joint home. Because of her intent, the Court found that the statute directing that the sperm donor be treated as if he was not the natural father of the child did not apply.

B. Donor Insemination

1. Issue – Whether a donor of semen will be a legal parent to a child conceived with the donor’s sperm? Donor Insemination can be through a sperm bank such that the donor is anonymous or legally unidentifiable, or a known donor. Donor insemination statutes generally apply to anonymous donors and/or to married couples or contemplate that the insemination be performed by a physician.
2. Options for terminating a donor’s parental rights:
By statute – The District of Columbia is one of the few states without a donor insemination statute. However, the DC Parentage Act provides that a donor of semen IS NOT the legal parent of a child UNLESS there is a written agreement between the parties that he will be a legal parent. Maryland’s statute only applies to married women (presumably heterosexual), and under the statute, a donor is not considered the child’s father if the woman is married at the time of the insemination and her husband consents to the procedure. Md. Estates and Trusts Code Ann. Sec. 1-206 (2009). Under Virginia law, “the parentage of any child resulting from the performance of assisted conception shall be determined as follows: (1) The gestational mother of a child is the child’s mother;)2_ The husband of the gestational mother of a child is the child’s father; (3) A donor is not the parent of a child conceived through assisted conception, unless the donor is the husband of the gestational mother.” VA Code Ann. Sec. 20-158 (2009)
3. Donor Agreement Waiving Parental Rights. Generally, parental rights are created by law and cannot be created by contract. It is a rare court that has ever upheld such a contract. Nevertheless, a donor agreement is recommended to show the intent of the parties.
4. Petitioning a Court for Termination of Donor’s Parental Rights. Generally this is accomplished through consent to a second-parent adoption if the donor is known. In a second-parent adoption an unknown donor’s parental rights are usually waived by the Court.

Thanks to Nancy Polikoff, Professor at the Washington College of Law, American University, in the District of Columbia, for the above information.

C. Surrogacy

1. Definition. There are two types of surrogacy: (1) traditional, in which a woman provides her own egg, which is fertilized and the woman carries the fetus and gives birth to child for another person; (2) gestational, in which one woman provides the egg, which is fertilized, and another woman carries the fetus and gives birth to the child for another person. This is often the route to parentage for gay men who wish to have biological children.
2. International. Because surrogacy can be very expensive and gay men may have difficulty under state law participating in a surrogacy, they are turning to surrogacy in other countries, primarily, India, Mexico, and Guatemala. Intended parents must be very careful working with a surrogate in another country to be sure the parents can bring the child into the U.S. and obtain a consent to a second-parent adoption, if possible.
3. Pre-Birth Orders. Prior to the birth of a child, a gay male couple may be able to obtain a pre-birth order that they are each the parent of the child and both will appear on the child's birth certificate at the time of birth. The surrogate is then not on the birth certificate. The Order is important for full faith and credit purposes, but a second-parent adoption, if available, may be a safer option.
4. Examples

Maryland. The law regarding surrogacy in Maryland is unsettled. The Office of the Attorney General issued an Opinion, No. 00-035, 2000 Md. AG Lexis 31, December 19, 2000, in the context of an adoption, that appears to indicate that traditional surrogacy is illegal in Maryland. The Opinion is an excellent discussion of the issues surrounding surrogacy. A 2002 case, *In re Roberto*, 399 Md. 267, 923 A.2d 115), also contained dicta that surrogacy is illegal in Maryland. However, there is no statute or appellate ruling specifically addressing this issue. In addition, there may be different results on the question of surrogacy in Maryland depending on whether the Court is addressing "traditional" or "gestational" surrogacy.

District of Columbia. The District has a statute that specifically prohibits surrogacy. D.C. Code 16-402. Prohibitions and penalties. (a) Surrogate parenting contracts are prohibited and rendered unenforceable in the District. (b) Any person or entity who or which is involved in, or induces, arranges, or otherwise assists in the formation of a surrogate parenting contract for a fee, compensation, or other remuneration, or otherwise violates this section, shall be subject to a civil penalty not to exceed \$10,000 or imprisonment for not more than 1 year, or both.

Virginia. Virginia allows surrogacy and egg donation, but excludes same-sex couples. However, a single man can become a parent through surrogacy in Virginia. Donors of eggs and sperm are not legal parents. VA Code Ann. Sec. 20-156 (2009)

VII. Legal Documents

1. Last Will and Testament – A guardian of a child can be named in a Will, and in most instances, the decedent’s wishes will be followed. Where a second-parent adoption is not available, at a minimum a parent can name his or her partner the guardian of the child upon the legal parent’s death
2. Designation of Standby Guardian – Many states have statutes allowing a parent to name a “standby guardian” in the event of the parent’s physical or mental incapacity. A legal parent should execute such a document to give his or her partner parental rights in these circumstances, if a second-parent adoption is not available. *See, for example*, D.C.Code Sec. 16-4803; Md. Code Ann., Est. & Trusts Sec. 13-904.
3. Temporary Guardian and Power of Attorney for Minor. – Prior to a second-parent adoption, or if a second-parent adoption is not available, the legal parent should execute a document giving the other parent authority to make medical and other decisions for the child.
4. Co-Parenting Agreements – Prospective parents should execute a Co-Parenting Agreement, particularly when a second-parent adoption is not available. Although it is unclear whether such an agreement will be upheld by a court, the agreement is important evidence of the parties’ intent.
5. Any other documents provided by state law.

VIII. National Resources

1. **National Center for Lesbian Rights**, www.nclrights.org – Up-to-date analysis of cases and issues, publications and downloads for practitioners, advice to attorneys
2. **Human Rights Campaign, Family Project**, www.hrc.org – Resources for clients, also comprehensive overview of state laws, including adoption and surrogacy
3. **Lesbian and Gay Law Notes**, www.nyls.edu/centers/harlan_scholar_centers/justice_action_center/publications/lesbiangay_law_notes – Monthly publication with details of cases, legal events, and law review articles from the entire country
4. **Lambda Legal**, LambdaLegal.org – Descriptions of its cases
5. **ACLU**, www.aclu.org/lgbt-rights - Descriptions of its cases
6. **Freedom to Marry**, www.freedomtomarry.org – General information
7. **Family Equality Council**, www.familyequality.org – General information
8. **Bar Websites** – These websites often have standard forms available that comport with state law