

JOINT CUSTODY OF CHILDREN FOR SAME-SEX COUPLES

Currently, Louisiana law does not permit unmarried couples, regardless of sexual orientation, to adopt a child.

Louisiana Children's Code Article 1198 dictates that a (1) "single *individual*," or, (2) "a married couple *jointly*," may petition the Court for adoption. Because the State considers any marriage between same-sex partners to be an absolute nullity, the second provision of Children's Code article 1198 does not apply. "Married couple" refers solely to the currently-recognized legal matrimonial union between a man and a woman. In fact, even a joint petition for adoption by a male/female unmarried couple is disallowed under current law.

Additionally, Louisiana law also prohibits an unmarried individual from adopting their partner's biological child - even with the consent of the biological parent.

So where does this leave the GLBTI couple wanting to provide for the care, custody, and nurturing of their children jointly?

For same-sex female couples, in which one of the parties is the biological mother of the child, the non-biological mother may petition the Court with an **Unopposed Petition for Joint Custody**.

Typically, one of the mothers has conceived via artificial insemination through the use of an anonymous sperm donor. Once the child is born, the father is listed on the child's birth certificate as "Unknown." After the child's birth, the non-biological mother files the **Unopposed Petition for Joint Custody**, accompanied by the biological mother's consent. This Petition basically states that the non-biological mother wishes to share joint custody of the child with the biological mother. The Petition further states that the father of the child is "not known, and cannot be known" therefore ruling-out the need for the father's consent.

Utilizing the same procedure when there is a "known father" complicates the matter somewhat. When the sperm donor is a friend of, or otherwise "known" to the conceiving mother, Courts require the biological father's consent, whereby the father acknowledges that he is aware of the Petition and that he agrees to have his parental rights and responsibilities terminated.

Louisiana Courts are often reluctant to terminate the rights of one parent, thereby depriving a child of the right to two contributing parents. Additionally, in some Courts, the father's consent has been determined "null and void" when the father reconsiders, and later decides that he does, in fact, wish to be involved in his biological child's life.

Therefore, the **Unopposed Petition for Joint Custody**, after the birth of the child who was conceived via the use of an anonymous sperm donor, is currently the best option for same-sex couples wishing to share in the joint care and custody of their children. The option is less complicated, both from a legal and financial standpoint, and provides the couple with a greater sense of finality.

"This article is not a substitute for legal advice. Neither the information contained herein, nor the receipt of such is intended to create an attorney-client relationship. Because the law constantly changes in this and other areas of practice, the reader is urged to consult professional legal counsel regarding the issues of law opined in the above article."

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