

Custody of Biological Children

Many same-sex couples choose to have a child by one spouse to become parents. The biological parent is automatically granted full parental rights. However, the non-biological parent might not be granted parental rights, even if his or her name is also on the birth certificate. In cases like these, the non-biological parent may have to go through a second parent adoption, also called a co-parent adoption, to secure parental rights. Even if you're granted non-biological parents' rights without this adoption, your parental rights may not be honored in the same way. If, for example, you leave the state for a vacation and your child is injured, you might not be able to gain access to your child in the hospital without having parental rights according to that state's laws. A legal adoption, on the other hand, is honored in any state.

Also, if the biological parent were to die, the other parent may not be able to retain parental rights if they were not legally established through biology or legal adoption. And, if another family member wishes to adopt the child, it may come down to a legal battle for custody.

Another important factor to consider is custody of your child should you and your same-sex spouse or partner ever separate or divorce. If you are not the biological parent, you might not be granted the same rights in a child custody agreement, leading to costly legal fees and, potentially, a drawn-out court battle. If you obtain a legal adoption, however, it will be easier to establish your parental rights in the event of a divorce or separation, this way you can seek joint custody.

Estate Planning

Same-sex couples may face issues with protecting one partner after the death of the other, as well as significant tax consequences, without a properly established estate plan. While legally married couples (same-sex or not) have an easier time retaining their rights as a spouse, same-sex couples (especially if not legally married) should create an estate plan. Estate planning documents, which may include wills, trusts, guardianship of minor children, and power of attorney, are necessary to protect the ones you love in case the worst should happen. It is the best way to ensure your assets are distributed in the way you wish them to be and your children are entrusted to the person you choose.

Healthcare Issues

Establishing your partner or spouse as your medical and/or financial power of attorney can be very beneficial, especially when it comes to healthcare. In a health emergency, there may be circumstances where only a spouse will be permitted, and sometimes same-sex partners face discrimination from healthcare staff and nurses when asked to establish such a connection. Whereas healthcare staff may take heterosexual couples at their word when they say they are the spouse of the ill or injured person, they may ask to see legal proof from a same-sex couple. This discrimination is unfair, certainly, but establishing power of attorney can protect both of you, legally, and can provide you with access to one another in a medical emergency.

For these and other family law needs, Kinney Mason is here to support you.



**Kinney Mason proudly serves
the LGBTQ community.**

**If you need help with a family
law or estate planning issue,
we're here for you.**