



Frequently Asked Questions About North Carolina's New Guidelines Regarding Birth Certificates for Children of Married Same-Sex Couples

On May 13, 2015, North Carolina Vital Records issued guidelines that allow the same-sex spouse of a woman who gives birth to a child during the marriage to be listed as a parent on the child's birth certificate. Couples may have questions about what this means for their families. Here are answers to some frequently asked questions. Please note: This overview is not intended to provide individualized legal advice.

If we get a birth certificate that lists both of us as parents, does that establish that we are legal parents? Do we still need to do a step-parent adoption or take other action to ensure that we will both be recognized as legal parents of our child?

Birth certificates do not establish legal parentage and should not be relied on for this purpose. And the fact that a couple is married at the time of the child's birth does not necessarily establish that the non-biological parent is a legal parent.

North Carolina law provides that when married couples have children through assisted conception, under some circumstances both spouses are legal parents; however, it is not yet clear how this law will be applied. We therefore strongly recommend that couples in this situation obtain a step-parent adoption or other court ordered judgment of parentage for the non-biological parent. This is the only way to ensure that the child's relationship with both parents will be recognized.

Even if the non-biological parent is recognized as a legal parent under North Carolina law, this doesn't necessarily mean that other states will honor this. The only way to make sure the non-biological parent will be recognized as a legal parent in all states is to get an adoption or other court ordered judgment of parentage.

If you have questions about protecting your legal parent-child relationship, are having trouble obtaining a step-parent adoption or other court ordered judgment of parentage, or are facing challenges to your legal parental status, please contact the ACLU of North Carolina at 919-834-3466, or a North Carolina family law attorney knowledgeable about these issues.

What if we're a married male couple having a child through a surrogate? Do the new guidelines allow both of us to be named on the birth certificate?

Married male couples who have a child through surrogacy must follow separate procedures applicable to children born through surrogacy arrangements. We recommend consulting with an attorney who is experienced with surrogacy for information about this process.

What if we aren't married? Can we still both be listed on the birth certificate?

No. The new guidelines only apply to married couples. If you are not married, the non-biological parent may not be able to establish legal parentage. However, where an unmarried couple creates a family together and jointly parent a child, the non-biological parent may be able to pursue custody or visitation in the event the couple separates, but will not have full legal parental rights.

What if we jointly adopted a child who is not the biological child of either spouse?

Just like married different-sex couples who jointly adopt a child who is not the biological child of either spouse, married same-sex couples who do so can get an amended birth certificate listing them as parents once the adoption is finalized.

Can we get a birth certificate listing both of us if our child was born prior to our marriage?

The spouse who is the non-biological parent will not be listed as a parent on the birth certificate unless the child was born during the marriage. Couples who had children prior to marrying can obtain a step-parent adoption if the child does not already have two legal parents (or one of the parents consents to the adoption and surrenders his or her parental rights). After a step-parent adoption, a birth certificate can be amended to name the adoptive parent.

What if our child was born after we married but before North Carolina recognized our marriage and, therefore, we already obtained a birth certificate naming only the biological parent?

The new guidelines provide that married couples who have had a child since October 10, 2014 (the date North Carolina began recognizing marriages of same-sex couples) can obtain an amended birth certificate naming both spouses as parents and the fee for an amended birth certificate will be waived. Vital Records has not indicated yet whether spouses who had a child prior to October 10, 2014, after getting married in another state, can also obtain an amended birth certificate free of charge.

To obtain an amended birth certificate complete this [form](#). In response to question 2, "Record Change (Only if Applies)," check "Other" and write in "Change of Law" in the space provided. For further assistance with this particular issue, call North Carolina Vital Records at 919-792-5991.