



# NEW MEXICO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families

December 2016



# TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
INTRODUCTION.....	2
RELATIONSHIP RECOGNITION.....	3
Federal Benefits After <i>United States v. Windsor</i> and <i>Obergefell v. Hodges</i> .....	4
Relationship Recognition Resources .....	4
CHILDREN AND PARENTAGE.....	5
Adoption.....	6
Joint Adoption.....	7
Second-Parent Adoption.....	7
Stepparent Adoption.....	9
Parental Presumption.....	9
Surrogacy.....	10
Assisted Reproduction & Artificial Insemination.....	10
Birth Certificates.....	11
Applying for a Passport for a Child .....	12
NONDISCRIMINATION PROTECTIONS.....	14
Employment .....	14
Federal Law .....	14
Company Policies.....	16
Housing.....	16
State Law.....	16
Federal Law .....	16
Public Accommodations .....	17
State Law.....	17
Federal Law .....	18
SCHOOL POLICIES AND ANTI-BULLYING .....	18
State Law .....	18
Federal Law.....	19
HEALTHCARE.....	21
Federal Law .....	21
FAMILY AND/OR PARENTING LEAVE .....	23
CHANGES OF NAME AND GENDER.....	24
HATE CRIMES PROTECTIONS.....	25
FAMILY SAFETY AND GUN LAWS .....	25
RECOMMENDED LEGAL DOCUMENTS FOR SAME-SEX COUPLES.....	27
Last Will and Testament .....	27
Advance Directive for Healthcare.....	27
Domestic Partnership Agreement.....	28
Pre- or Post-Nuptial Agreement.....	28
Co-Parenting Agreement.....	28

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

**NEW MEXICO LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

# INTRODUCTION

This guide was drafted by Family Equality Council, on behalf of Equality New Mexico. It addresses many of the legal rights and issues that affect LGBTQ families currently living in New Mexico. As LGBTQ equality advances across the nation, there are still significant gaps in the rights of LGBTQ individuals and their families, especially at the state level. While the climate in New Mexico is far more

accepting of the LGBTQ community than in some states, LGBTQ families may still experience discrimination and be denied equal access to education, employment, housing, healthcare, and public accommodations. In this type of an environment, it is important to understand what the law in each area is and how you can protect your family.

## DISCLAIMER

This handbook is not intended to be legal advice but an overview of the current state of LGBTQ-family law in New Mexico. The law is changing quickly and dynamically so it is important to consult an attorney or contact the authors to discuss the details of your particular situation and to ensure that information provided herein is still accurate.



# RELATIONSHIP RECOGNITION

Unlike many other states, New Mexico has never had a statute specifically prohibiting the issuance of a marriage license for a marriage between persons of the same-sex. Indeed, New Mexico courts recognized the marriages of same-sex couples performed in other jurisdictions. However, other statutes read together had the effect of precluding same-sex couples from marrying. After the Supreme Court's decision in *U.S. v. Windsor*, several county clerks began to voluntarily issue marriage licenses to same-sex couples, while many others did not.

In 2013, nine years after Massachusetts became the first state to legalize same-sex marriage, a lawsuit was brought to establish whether or not marriage licenses could be issued to same-sex couples. At the time that the case was heard by the New Mexico Supreme Court, eight county clerks were issuing marriage licenses to same-sex couples while twenty-four were not. The New Mexico Supreme Court held "that the State of New Mexico is constitutionally required to allow same-gender couples to marry and must extend to them the rights, protections, and responsibilities that derive from civil marriage under New Mexico law."<sup>1</sup> Therefore, two years before the Supreme Court's ruling in *Obergefell v. Hodges* on June 26, 2015, which recognized same-sex marriage for all U.S. states and territories,<sup>2</sup> same-sex marriage was recognized in New Mexico.

1 *Griego v. Oliver*, 316 P.3d 865, 872 (N.M. 2013).

2 *Obergefell v. Hodges*, 135 S. Ct. 2584, (U.S. 2015).

Since 2000, New Mexico has had a Religious Freedom Restoration Act. The New Mexico law mirrors the federal Religious Freedom Restoration Act, stating that government agencies "shall not restrict a person's free exercise of religion" unless the restriction is either "a rule of general applicability and does not directly discriminate against religion" or is "essential to further a compelling governmental interest and is the least restrictive means of furthering that" interest.<sup>3</sup> Furthermore, the New Mexico Religious Freedom Restoration Act is limited to actions where the government is a party, and may not be used as a defense for failure to comply with non-discrimination laws protecting LGBTQ New Mexicans.<sup>4</sup>

Just before the Supreme Court's ruling in *Obergefell*, a bill was introduced in the New Mexico Legislature to expand the New Mexico Religious Freedom Restoration Act to make the law applicable to disputes between private individuals.<sup>5</sup> These efforts would provide a broad license to discriminate on the basis of personally-held beliefs, particularly against LGBTQ individuals and couples.<sup>6</sup> Fortunately, the legislation introduced in late 2015 has failed and has not yet been reintroduced

3 N.M. Stat. Ann. § 28-22-3 (2016).

4 *Elane Photography, LLC v. Willock*, 309 P.3d 53 (N.M. 2013).

5 H.B. 55, 52d Leg., 2d Reg. Sess. (N.M. 2016).

6 *Id.*

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

**NEW MEXICO LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

## Federal Benefits After *United States v. Windsor* and *Obergefell v. Hodges*

In 2013, the United States Supreme Court, in *United States v. Windsor*, found Section 3 of the federal “Defense of Marriage Act” (DOMA), the law that denied federal marriage benefits to married same-sex couples, unconstitutional. In 2015, the Supreme Court found in *Obergefell v. Hodges* that same-sex couples have a fundamental right to marry under the Constitution, creating same-sex marriage and recognition of same-sex marriages nationwide.<sup>7</sup>

Because of *Windsor*, married same-sex couples who live in New Mexico became recognized by the federal government for federal benefits purposes. Such benefits

include, but are not limited to Social Security and Veterans Administration benefits, all federal tax purposes, health insurance and retirement benefits for same-sex spouses of all federal employees, and spousal benefits for same-sex spouses of military service members. Following *Obergefell*, all federal marriage benefits have been extended to married same-sex couples nationwide.

### Relationship Recognition Resources

For more information about how to access federal marriage benefits please see the Post-DOMA Fact Sheets published by Family Equality Council:

[http://www.familyequality.org/get\\_informed/advocacy/after\\_doma/](http://www.familyequality.org/get_informed/advocacy/after_doma/)

<sup>7</sup> *Obergefell v. Hodges*, 135 S. Ct. 2584, (U.S. 2015).



## IMPORTANT:

It should be noted that some federal benefits are available to married couples **ONLY**. Unmarried couples are unable to access spousal benefits from these programs. However, because same-sex marriage is now recognized nationwide, married couples living in New Mexico should be able to access federal benefits provided by these federal agencies, as well as any others. Please alert the authors if you find such benefits have been denied to you as a result of the agency failing to recognize your marriage.

## CHILDREN AND PARENTAGE

LGBTQ people and same-sex couples form families in various ways. Some have children from prior different-sex or same-sex relationships. Some LGBTQ people are single parents by choice. Some same-sex couples adopt or use assisted reproductive technologies to build their families together.

While New Mexico recognizes the right of same-gender couples to raise children, the current state of New Mexico law has not explicitly accounted for these changes in what families look like, which leaves many families vulnerable. To add yet another layer of uncertainty, there are a handful of parentage rights that flow directly from the marital relationship; most, but perhaps not all, courts in New Mexico are recognizing these rights and enforcing parents' rights after a divorce.

However, the authors still strongly recommend that the non-biological parent of children born during the marriage adopt those children.

If you and your spouse/partner are raising children together in New Mexico, we recommend keeping copies of the following documents easily accessible:

- Adoption decree
- Birth certificate
- Guardianship agreement
- Co-parenting agreement
- Marriage License
- Medical Powers of Attorney

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

**NEW MEXICO LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

## ADOPTION

Please consult an attorney experienced in LGBTQ law, or the authors, if you experience discrimination from state agencies in recognizing your family relationships on the basis of your same-sex marriage.

Likewise, if you are an LGBTQ person or same-sex couple thinking about fostering and/or adopting children either from the public child welfare system (foster care) or through private adoption, it is critical that you hire an adoption attorney who is experienced in LGBTQ family law in New Mexico. It is not enough to simply hire an experienced family law attorney.

There are issues unique to LGBTQ family law in New Mexico that can, and should, only be managed by an attorney with particular experience and expertise in this area of the law. If you are unsure where to find an experienced LGBTQ family law attorney, please contact either Equality New Mexico (<http://eqnm.org>) or Family Equality Council ([www.familyequality.org](http://www.familyequality.org)) and we will do our best to assist you.

New Mexico's general adoption provisions allow any adult resident of New Mexico to petition for adoption, as long as the person is "approved by the court as a suitable adoptive parent."<sup>8</sup> A married individual must petition with their spouse unless:

- the non-joining spouse is a parent of the adoptee;
- the individual and the non-joining spouse are legally separated; or
- the failure of the non-joining spouse to join in the adoption is excused for reasonable circumstances as determined by the court.<sup>9</sup>

While New Mexico law neither explicitly allows nor prohibits adoption by LGBTQ individuals and couples, the New Mexico Supreme Court stated in *Griego v. Oliver* that "New Mexico law recognizes the right of same-gender couples to raise children."<sup>10</sup> The adoption court's general inquiry is focused on what would be in the best interests of the child.<sup>11</sup> While this is an important inquiry, because there is no explicit prohibition barring discrimination against prospective LGBTQ parents, it may work against them. For example, a District Court Judge could decline to finalize the adoption process for a same-sex couple because of a personally-held belief that it is in the best interests of a child to be placed with a different-sex couple. Such a decision is unlikely to be so explicit, but the subjective nature of the "best

8 N.M. Stat. Ann. § 32A-5-11 (2016).

9 § 32A-5-11(2).

10 *Griego v. Oliver*, 316 P.3d 865 (N.M. 2013).

11 § 32A-5-36(F)(7), (H).

An adoption decree is the single best irrefutable and undeniable proof of parentage. We strongly recommend that married same-sex couples with children ALWAYS complete a stepparent adoption.

interests” inquiry combined with the lack of protections for LGBTQ parents creates the potential for a discriminatory belief to become a part of the decision-making process.

It should be noted that while New Mexico courts have stated that courts may not deny custody solely because of a parent’s sexual orientation, New Mexico courts do allow for the admission of testimony concerning a parent’s sexual and associational conduct in actions to terminate parental custody.<sup>12</sup> However, because of the New Mexico Supreme Court’s specific recognition of the right of same-gender couples to raise children, and the United States Supreme Court decision in *Obergefell*, courts should have more trouble justifying the use of such evidence to remove custody from LGBTQ parents solely on the basis of sexual orientation or gender identity.

## Joint Adoption

As stated above, as long as LGBTQ couples meet the requirements for petitioning for adoption, they are eligible to adopt. With the 2013 arrival of marriage equality to the state of New Mexico, married same-sex couples must be treated equally to married different-sex couples. Under state law, married couples should petition for

<sup>12</sup> A.C. v. C.B., 829 P.2d 660, 664 (N.M. App. Ct. 1992).

adoption using both spouses’ names.<sup>13</sup>

However, as noted above, although there is nothing in state law that acts as a prohibition on joint adoption by LGBTQ couples, there is also no explicit protection preventing discrimination, and agencies may implement discriminatory policies. For this and other reasons, it is advisable to contact an adoption attorney. While it is critical to hire an adoption attorney who is experienced in LGBTQ family law in New Mexico, it is equally important to engage with foster and adoption agencies who are welcoming and affirming to LGBTQ people and same-sex couples. Please research adoption agencies and service providers before engaging in the foster care and/or adoption process.

## Second-Parent Adoption

Second-parent adoption is the adoption of a child by an additional parent who is not married to the legal parent of the child. In a second-parent adoption, the additional parent can be recognized as such without the first parent losing any parental rights. There is no New Mexico law that explicitly prohibits second-parent adoption, and case law seemingly supports the practice.<sup>14</sup> In

<sup>13</sup> N.M. Stat. Ann. § 32A-5-11 (2016).

<sup>14</sup> National Gay and Lesbian Taskforce, “Second Parent Adoption in the U.S.,” last visited Aug. 9, 2016, <http://www.outfront.org/files/pg332/Secondparentadoption.pdf>.

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

**NEW MEXICO LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

*Griego v. Oliver*, the court acknowledges that New Mexico law “recognizes the right of same-gender couples to raise children” and refers without judgment to a same-sex couple’s intent to complete a second-parent adoption.<sup>15</sup> Courts across New Mexico have allowed second-parent adoptions.

Furthermore, in 2012, the New Mexico Supreme Court specifically extended protection to an adoptive mother’s partner who had not completed an adoption herself, finding that the non-

adoptive mother had standing to pursue custody as a natural parent.<sup>16</sup> However, the most secure method of ensuring legal parentage is an adoption order. Therefore, we strongly recommend that unmarried same-sex couples with children complete a second-parent adoption.

In 2016, the United States Supreme Court determined that other jurisdictions should recognize a same-sex second-parent adoption validly granted in Georgia. In *V.L. v. E. L.*, the plaintiff and the defendant were

<sup>15</sup> *Griego*, 316 P.3d at 871, 874.

<sup>16</sup> *Chatterjee v. King*, 280 P.3d 283, 285 (N.M. 2012).



a lesbian couple. The defendant had given birth to three children and the plaintiff adopted them through a second-parent adoption with a formal adoption decree from the state of Georgia. The couple relocated to Alabama and split up, at which point the defendant restricted plaintiff's access to the children. The Supreme Court of Alabama sided with defendant, declaring the Georgia adoption decree void. However, the United States Supreme Court unanimously reversed that decision, determining that the adoption is valid.<sup>17</sup> This is important because it makes clear that the Supreme Court of the United States will uphold these adoptions, even against challenges by other states.

## Stepparent Adoption

Stepparent adoption is the legal adoption of a child by the spouse of the child's legal parent. New Mexico law allows stepparent adoption. Procedurally, a stepparent petitioning to adopt need only petition under his or her own name.<sup>18</sup>

Under New Mexico's stepparent adoption law, the child's other parent must consent to the adoption, and any other legal parent or guardian(s) must voluntarily surrender all rights to the child in writing.<sup>19</sup> If the child has lived with the stepparent for more than a year, the court placement and 90 day period between petition and adoption decree may be waived.<sup>20</sup> If the child has not yet lived a year with the stepparent, then the adoption will proceed

17 *V.L. v E.L. et al*, 577 U.S. \_\_\_\_

18 N.M. Stat. Ann. §§ 32A-5-11, 32A-5-32 (2016).

19 § 32A-5-17.

20 § 32A-5-32.

as an independent adoption.<sup>21</sup>

For voluntary surrender of parentage rights, there are two options, which vary based on the circumstances. In the case of a child whose legal parents are both still living, the child may be adopted by the stepparent, when the other parent has voluntarily relinquished all of his/her rights to the child or where the other parent's rights have previously been terminated.<sup>22</sup> Note that the legal definition of "father" under New Mexico law requires the father to either acknowledge or adopt the child, or otherwise have legal rights through a presumption of paternity.<sup>23</sup>

Under the circumstances where a child only has one legal parent alive, a stepparent may adopt the child by petitioning for adoption.<sup>24</sup> There is nothing in New Mexico's stepparent adoption statute that would prohibit a same-sex spouse from completing a stepparent adoption of their spouse's child. However, it is advisable to contact an attorney for the same reasons mentioned above.

## Parental Presumption

Parental Presumption is the idea that when a married woman gives birth, her spouse is the other legal parent. It has, traditionally, been applied exclusively to different-sex spouses.

21 *Id.*

22 §§ 32A-5-16 – 32A-5-17.

23 § 40-11A-201.

24 § 32A-5-32.

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

**NEW MEXICO LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

New Mexico has recognized a “presumption of paternity” within the definition of “legal father,” which creates legal rights to a child for a man if he and the child’s mother were married when the child was born, or if he marries the mother after the child is born and recognizes the child as his own.<sup>25</sup> A New Mexico Supreme Court case, *Chatterjee v. King*, stated that the legislature intended for the parental presumption to be applied to a woman because of the “determination of maternity” provision within the New Mexico Uniform Parentage Act and the Equal Rights Amendment to the New Mexico Constitution.<sup>26</sup> Therefore, while this provision specifically refers to a male as a presumed parent, the parental presumption should apply equally to married same-sex and different-sex couples.

## SURROGACY

New Mexico law neither authorizes nor prohibits gestational surrogacy agreements (where the surrogate mother does not contribute her own egg to the pregnancy).

New Mexico law provides that if a birth results under a gestational agreement where there is a gestational mother and intended parents, and the agreement is held to be unenforceable under other New Mexico law, that the parent-child relationship will be determined under the presumption statutes.<sup>27</sup> Because

25 N.M. Stat. Ann. § 40-11A-204 (2016).

26 *Chatterjee*, 28 P.3d 283 (N.M. 2012)

27 § 40-11A-801.

a gestational agreement will not automatically be upheld, it is critical that LGBTQ people and same-sex couples engaging in a surrogacy arrangement do so with the assistance of an experienced family law attorney well versed in LGBTQ surrogacy and family law issues in New Mexico.

## ASSISTED REPRODUCTION & ARTIFICIAL INSEMINATION

In New Mexico, the law governing artificial insemination and assisted reproduction uses gender-neutral terms. It provides that donors are not the parents of the child conceived, unless the person provided the donated egg, sperm, or embryo with the intent to be the parent of a child.<sup>28</sup> Furthermore, the intended parent(s) must consent to the assisted reproduction in a record signed by them, in order to be the legal parents of the child conceived.<sup>29</sup> While the statute governing the establishment of a parent-child relationship uses contradictory gendered language when referencing the parentage of a child conceived through assisted reproduction,<sup>30</sup> *Chatterjee v. King* provides that all provisions for the determination of paternity must also be applied to the determination of maternity, meaning that a female same-sex couple who conceives a child through assisted reproduction should both be considered the legal parents of the child.<sup>31</sup>

28 §§ 40-11A-702 – 40-11A-703.

29 § 40-1A-704.

30 N.M. Stat. Ann. § 40-11A-201 (2016).

31 *Chatterjee*, 280 P.3d 283 (N.M. 2012).

However, because an adoption decree is irrefutable proof of parentage and valid everywhere in this country, we strongly recommend that any married same-sex couples using Assisted Reproduction to have children complete a stepparent adoption as soon as possible, and that any unmarried same-sex couples using Assisted Reproduction to have children complete a second parent adoption as soon as possible.

## BIRTH CERTIFICATES

New Mexico law uses gendered language for the purposes of the birth certificate, stating that the “father” section on a birth certificate will only be completed if the mother and father were married at the time of conception, birth, or after the child’s birth, if paternity is established by a court, or if the father has filed a valid

acknowledgement of paternity.<sup>32</sup> Two women or two men can be listed on a child’s birth certificate at the time of birth. However, a birth certificate is not a Court Order, and is only evidence of what the parties intended. It is still recommended that same-sex couples complete either second-parent or step-parent adoption as soon as possible.

However, new birth certificates are required to be issued following adoption, legitimation, and paternity judgments, so same-sex parents should be able to be listed on the birth certificate after completing an adoption of the child.

To ensure that your child’s records are updated properly, send a request to the Vital Statistics Unit.

---

32 § 24-14-17.

## APPLYING FOR A SOCIAL SECURITY NUMBER AND CARD FOR A CHILD

To apply for a Social Security Number and Card for your child, you will need to provide your local Social Security Administration (SSA) office with a number of different documents, personal information about you, your child, and any other legal parent to the child, and a completed SS-5 application form.

You can apply at this link from the SSA website:

<http://www.ssa.gov/pubs/EN-05-10023.pdf>

You can provide SSA with these documents via letter or in person by visiting your local SSA office:

<https://secure.ssa.gov/apps6z/FOLO/fo001.jsp>

Two same-sex parents may be listed on the application for a Social Security Card or Number. However, only parents listed on the child's birth certificate, or on a court-ordered adoption decree, are permitted to be included on the application.

For more information on the application process, please see Family Equality Council's FAQ:

[http://www.familyequality.org/get\\_informed/advocacy/know\\_your\\_rights/ssa\\_faqs/](http://www.familyequality.org/get_informed/advocacy/know_your_rights/ssa_faqs/)

You can also contact the SSA at 1-800-722-1213 or 1-800-325-0778 or visit the SSA website:

<http://www.socialsecurity.gov>

If you have difficulty obtaining a Social Security Card or Number for your child, please contact the authors for assistance.

## APPLYING FOR A PASSPORT FOR A CHILD

To apply for a passport for your child, you must provide the State Department with documentary evidence, a completed DS-11 form, a photograph of the child, and personal information about you, your child, and the child's other legal parent. You must provide these documents to the State Department in person at the nearest accepted facility or regional passport agency, listed here:

<http://iafdb.travel.state.gov/>

The materials you must provide are listed here:

<http://travel.state.gov/content/passports/english/passports/under-16/under-162.html>

Two same-sex parents may be listed on the application for a child's passport. However, only parents listed on the child's birth certificate, or on a court-ordered adoption decree, are permitted to be included on the application. However, if the adoptive (or legal) parent of the child is unavailable, the Department of State permits a non-adoptive parent who stands in loco parentis

to the child to complete the DS-11 form and application. In loco parentis means an adult with day-to-day responsibilities to care for and financially support a child, but with whom the child does not have a biological or legal relationship.

If you have questions about the application process, acceptable materials, or how to best proceed with your child's passport application, you can contact the National Passport Information Center at 1-877-487-2778. You can also visit the State Department website here: <http://travel.state.gov/>

This information and more is located in our FAQ on applying for a U.S. passport for your child, located here:

[http://www.familyequality.org/get-informed/advocacy/know\\_your\\_rights/passport\\_faq/](http://www.familyequality.org/get-informed/advocacy/know_your_rights/passport_faq/)

If you have difficulty obtaining a passport for your child, please contact the authors for assistance.



Find more information at:  
[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

**NEW MEXICO LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

# NONDISCRIMINATION PROTECTIONS

There are currently no federal laws that explicitly prohibit discrimination against LGBTQ people in employment, housing, and public accommodations. Existing federal civil rights laws have been interpreted to provide some limited protections in housing, employment, education and even in health care, but without explicit and fully inclusive federal protections against discrimination based on sexual orientation and gender identity, LGBTQ people and our families remain vulnerable under the law.

New Mexico provides statewide protections in many of these areas under its Human Rights Act, prohibiting the firing of LGBTQ people, denial of housing to LGBTQ people, refusal of service in a restaurant, or bullying at school, simply because they are LGBTQ. Again, in some instances (explained in detail below), federal law and policy may also provide protections for LGBTQ New Mexicans from discrimination.

## EMPLOYMENT

Even with the arrival of marriage equality, LGBTQ people are at risk and the simple act of filing an amended W-4 with your employer could inadvertently out you, leading to discrimination in the workplace or even the loss of a job. However, New Mexico state law specifically prohibits employer and labor organizations from discriminating against an employee based upon the employee's sexual orientation or

gender identity.<sup>33</sup> The Act also prohibits discrimination in hiring based upon sexual orientation and gender identity, including prohibitions on any inquiries into potential applicants' orientation or gender identity.<sup>34</sup> If you have been denied or fired from employment because of your sexual orientation or gender identity, you should file a claim with the New Mexico Human Rights Bureau.

## Federal Law

While there is no explicit federal law that bars discrimination against LGBTQ people in the workplace, the definition of "sex" in Title VII of the Civil Rights Act of 1964 has been interpreted to provide employment protections for LGBTQ people in limited circumstances. The Equal Employment Opportunity Commission (EEOC) hears and investigates complaints of employment discrimination under Title VII, and looks into claims against all private employers, state and local governments, federal government agencies, employment agencies, and labor unions, as long as they have fifteen or more employees or members.

In 2012, the EEOC ruled in *Macy v. Holder* that discrimination against a transgender woman was discrimination under Title VII's prohibition of discrimination based on sex.<sup>35</sup>

33 N.M. Stat. Ann. § 28-1-7(A) – (E) (2016).

34 Id.

35 No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012)

In *Veretto v. US Postal Service*<sup>36</sup> and *Castello v. US Postal Service*,<sup>37</sup> the EEOC held that employment discrimination on the basis of sexual orientation violated prohibitions of sex-discrimination because it constituted discrimination based on sex-stereotypes. Most recently, the EEOC strengthened the protections for those who may face discrimination on the basis of sexual orientation by ruling in *Complainant v. Foxx* that claims of discrimination based on sexual orientation inherently amount to claims of sex discrimination and are therefore actionable under Title VII.<sup>38</sup> These EEOC decisions, while not binding to courts, suggest that LGBTQ individuals are protected under Title VII, and may file a claim of employment discrimination utilizing the law's inclusion of "sex" as a protected class.

If you believe that you have been the victim of discrimination in hiring or in the workplace based on your sexual orientation or gender identity, you must file a Charge of Discrimination with your local EEOC office before you can file a lawsuit in court alleging discrimination. The EEOC office serving New Mexico is located in Albuquerque and can be reached at 1-800-669-4000.

If filing a complaint with the EEOC, you must list the basis for your claim as discrimination on the basis of your "sex," as this is the existing basis that the EEOC has linked to sexual orientation and

36 No. 0120110873 (E.E.O.C. Jul. 1, 2011)

37 No. 0120111795 (E.E.O.C. Dec. 20, 2011)

38 No. 0120133080, 2015 WL 4397641 (E.E.O.C July 16, 2015)

gender identity. Generally, you must file your Charge of Discrimination within 180 days of each instance of discriminatory treatment. You can read more about the EEOC process, and your rights and responsibilities after filing a claim with the EEOC, here:

<http://www.eeoc.gov/employees/charge.cfm>

Do note that federal employees and job applicants are subject to a different timeline for making a claim (typically 45 days) and procedures for filing, which you can read about here:

[http://www.eeoc.gov/federal/fed\\_employees/complaint\\_overview.cfm](http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm)

New Mexicans working for companies that contract with the federal government have access to additional protections against discrimination in employment. These protections stem from a 2014 Executive Order issued by President Obama that prohibits federal contractors from discriminating against current or prospective employees on the basis of sexual orientation or gender identity. Contractors who do business with the federal government employ 20% of American workers, all of whom are now covered by non-discrimination protections under this Order. If you believe that you have been the victim of discrimination by an employer that contracts with the federal government, you can file a complaint and learn more about the complaint process here:

<http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm>

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

**NEW MEXICO LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families



However, an LGBTQ person experiencing discrimination on the basis of sexual orientation or gender identity may still be covered by the Fair Housing Act on the basis of such discrimination constituting discrimination on the basis of “sex,” similar to the employment context.

In 2012, HUD issued the “Equal Access Rule,” which prohibits discrimination on the basis of sexual orientation or gender identity by any housing or service provider that receives funding or insurance from HUD. It also prohibits lenders from determining a borrower’s eligibility for Fair Housing Authority (FHA) insurance on the basis of sexual orientation or gender identity.

For example, any landlord receiving funding through the Department of Housing and Urban Development (HUD) is prohibited from refusing to rent, offering unequal and inflated rental prices, or mistreating potential renters based on their sexual orientation, gender identity, or HIV/AIDS status. Further, any lender or operator of HUD-assisted housing is prohibited from inquiring as to the sexual orientation or gender identity of an applicant, as well as barred from using such criteria in assessing an application.<sup>43</sup> A violation of this rule may result in HUD pursuing a number of remedies, including sanctions against the violator.

HUD allows individuals to submit housing

---

<sup>43</sup> Equal Access in HUD Programs – Regardless of Sexual Orientation or Gender Identity, Available at <http://portal.hud.gov/hudportal/documents/huddoc?id=5359-F-02EqAccessFinalRule.pdf>

discrimination complaints by telephone (1-888-560-8913), by mail, or online here: [http://portal.hud.gov/hudportal/ HUD?src=/topics/housing\\_discrimination](http://portal.hud.gov/hudportal/ HUD?src=/topics/housing_discrimination)

The HUD Office of Fair Housing and Equal Opportunity serving New Mexico is the Texas Regional Office located at 801 Cherry Street, Unit #45, Suite 2500, Fort Worth, TX 76102.

To learn more about filing a complaint, as well as details regarding taking your claim to court, please read this page: [http://portal.hud.gov/hudportal/ HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/complaint-process](http://portal.hud.gov/hudportal/ HUD?src=/program_offices/fair_housing_equal_opp/complaint-process)

## PUBLIC ACCOMMODATIONS

Public Accommodations are generally defined as entities, both public and private, that are used by the public. Examples include retail stores, restaurants, educational institutions, recreational facilities, etc. Private clubs and religious institutions are generally exempt from the definition.

### State Law

The New Mexico Human Rights Act explicitly protects LGBTQ people from discrimination in places of public accommodation on the basis of sexual orientation and gender identity.<sup>44</sup> Specifically, the law prohibits any distinction in offering or refusing services, facilities, accommodations or goods

---

<sup>44</sup> N.M. Stat. Ann. § 28-1-7 (2016).

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

**NEW MEXICO LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

because of “race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap.”<sup>45</sup>

The New Mexico Supreme Court affirmed the Human Rights Act in *Elane Photography, LLC v. Willock*. The court held that the photographer’s refusal to photograph a same-sex commitment ceremony, while photographing different-sex weddings was a violation of the Human Rights Act, and further stated that allowing “discrimination based on conduct so closely correlated with sexual orientation would severely undermine” the New Mexico Human Rights Act.<sup>46</sup> The court therefore concluded that there was “no basis for distinguishing between discrimination based on sexual orientation and discrimination based on

45 § 28-1-7(F).

46 *Elane Photography v. Willock*, 309 P.3d 53, 59, 61 (N.M. 2013).

someone’s conduct of publicly committing to a person of the same sex.”<sup>47</sup>

## Federal Law

Federal public accommodations protection provisions can be found in Title II of the Civil Rights Act of 1964 and Title III of the Americans with Disabilities Act of 1990. Unfortunately, neither contains protections on the basis of sexual orientation or gender identity. However, in 1998, the Supreme Court ruled that being HIV-positive is a physical disability covered by the Americans with Disabilities Act, even if the infection has not yet progressed to the symptomatic phase.<sup>48</sup> Businesses that hold themselves open to the public (restaurants, stores, hotels, etc.) are therefore prohibited from refusing service or business to individuals because they are HIV-positive.

47 *Id.* at 62.

48 *Bragdon v. Abbott*, 524 U.S. 624 (U.S. 1998)

# SCHOOL POLICIES AND ANTI-BULLYING

## STATE LAW

New Mexico mandated that school districts implement local anti-bullying and cyber-bullying policies by the 2013-2014 school year, stating that “bullying includes, but is not limited to, hazing, harassment, intimidation, or menacing acts of a student, which may, but need not be based on the student’s race, color, sex, ethnicity, national origin, religion, disability, age, or

sexual orientation.”<sup>49</sup> While not specifically addressing bullying based on gender identity, the preceding list is a floor, and individual school districts may have expanded their bullying policies to include bullying based on gender identity, or may have expanded bullying based upon sex to gender identity.

Ultimately, because school district policies are determined at the local level, there can be wide variations on how proactive

49 N.M. Code R. § 6.12.7.8 (2016); N.M. Stat. Ann. § 22-2-21 (2016).

and protective a school is towards bullying and LGBTQ students, or students with LGBTQ parents. It can therefore be helpful and important to find out what the school district's policies and history on the issue are.

Various school districts have adopted transgender-inclusive policies, allowing transgender students to live consistent with their gender identity, using their preferred name and pronouns and allowing restroom and locker room use consistent with their gender identity.<sup>50</sup> These school districts include Albuquerque Public

---

50 Kim Burgess, APS Recognizing Transgender Students' Gender Identity, Albuquerque Journal, Jun. 16, 2016, <http://www.abqjournal.com/792647/aps-quietly-issues-new-transgender-policies-for-students.html>.

Schools and Santa Fe Public Schools.<sup>51</sup>

## FEDERAL LAW

In addition to New Mexico's protections for LGBTQ students, federal law – specifically Title IX of the United States Education Amendments of 1972 – also provide some protections and support to students facing bullying or discrimination based on their sexual orientation or gender identity. Title IX specifically prohibits discrimination against students in schools and other programs that receive federal funding,

---

51 Kim Burgess, Santa Fe Schools Quietly Adopt Transgender Rules for Students, Albuquerque Journal, Apr. 16, 2016, <http://www.abqjournal.com/756746/sf-schools-quietly-adopt-transgender-rules-for-students.html>



where that discrimination is based on a student's sex or gender. While Title IX does not explicitly include sexual orientation or gender identity as bases for a claim of discrimination, the law has been applied to prohibit discrimination where a student is mistreated for being sex or gender non-conforming, meaning the student faces discrimination for not subscribing to the stereotypical notions of femininity or masculinity. On these grounds, the Department of Education has specifically stated that transgender students are protected by Title IX, and lesbian, gay and bisexual students have successfully filed claims of discrimination under Title IX.<sup>52</sup> The Department of Education and Department of Justice have also stated compliance with Title IX requires schools to treat transgender students consistent with their gender identity, and does not allow schools to impose a medical diagnosis or treatment requirement.<sup>53</sup> For more information, see our publication "Creating Transgender Inclusive Schools; Navigating the Federal Transgender Education Guidance":

[http://www.familyequality.org/\\_asset/xz7npo/Creating-Transgender-Inclusive-Schools-Aug2016.pdf](http://www.familyequality.org/_asset/xz7npo/Creating-Transgender-Inclusive-Schools-Aug2016.pdf)

If you believe that you or another person have been the victim of sexual orientation

---

<sup>52</sup> United States Dept. of Education Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

<sup>53</sup> United States Dept. of Education Office for Civil Rights, Dear Colleague Letter on Transgender Students, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

or gender identity discrimination in a program or activity that receives funding from the Department of Education (such as a public school, a publicly-run sports team or program, public afterschool programming, etc.), you can file a complaint with the New Mexico Public Education Department or the Department of Education Office of Civil Rights (OCR) located in Denver, CO (tel. 303-844-5695).

You must file within 180 days of the last instance of discrimination, and you may file a complaint on behalf of yourself, a group, or another person facing discrimination. Since Title IX does not explicitly cover sexual orientation or gender identity, your complaint must list "sex" as the basis (or one of the bases) of your claim.

You can find more details on drafting a complaint, as well as an electronic complaint form, at the OCR website, located here:

<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

## FEDERAL LAW

Each year, the federal government opens enrollment for individual and family healthcare coverage under the Affordable Care Act (ACA). Typically, enrollment for the following year opens in November and closes mid-February of the following year – although you may be able to enroll for a given year at another time if you experience a big life change, such as moving, getting married, or having a baby, which may qualify you to enroll in one of the ACA’s Special Enrollment Periods. For detailed information about plans, Special Enrollment Periods, or to find out where and how to enroll, go to this site ([www.healthcare.gov](http://www.healthcare.gov)) and select your state of residence.

Under the ACA, insurers and marketplace navigators – the people whose job it is to help you select an insurance plan that best matches the needs of you and your family – are prohibited from discriminating against consumers based on their sexual orientation or gender identity, or the sexual orientation or gender identity of a family member

Under the ACA, no individual or family may be denied coverage because of a pre-existing condition. This includes a current or history of chronic illness or disease, HIV status, receiving or having received transgender-related care, or a prior pregnancy. However, it is important to note that, despite the fact that the ACA prohibits

insurance providers from discriminating against individuals and families by denying them the ability to obtain healthcare coverage, the ACA does not mandate that insurance plans offer coverage that is inclusive of the many needs of LGBTQ individuals and families. For example, the ACA does not require insurers to cover transgender-related care, or treatment for HIV and AIDS. However, insurers are prohibited from automatically denying coverage for transition-related care, nor can they refuse to cover transition related care if they cover that same treatment for other people. Further, definitions of “family” may be too narrow to include many dependents in an LGBTQ family structure, given the myriad LGBTQ family structures that exist. While insurers are not required to cover these treatments, they may offer plans that do so; we encourage you to speak with a navigator and investigate plans thoroughly to find the option that works best for you and your family.

The ACA prohibits discrimination based on sex in all health programs and activities receiving Federal financial assistance.<sup>54</sup> It prohibits discrimination based upon gender identity, requiring that any healthcare provider receiving federal funding, i.e. Medicaid or Medicare, any health program administered by the federal government, and any health insurance marketplace, must treat individuals in a manner consistent with their gender identity.<sup>55</sup> It

<sup>54</sup> <http://www.hhs.gov/sites/default/files/1557-summary-508.pdf>

<sup>55</sup> *Supra.*

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

also clearly prohibits discrimination based on sex stereotyping, providing substantial protections to lesbian, gay, and bisexual people.<sup>56</sup>

Anyone who has experienced discrimination on the basis of their sexual orientation or gender identity should immediately file a complaint with the United States Department of Health and Human Services Office for Civil Rights. You can find more details on drafting a complaint, as well as an electronic complaint form, at the HHS website: <http://www.hhs.gov/civil-rights/filing-a-complaint/index.html>

For more information on how the Affordable Care Act and the insurance

<sup>56</sup> <http://www.hhs.gov/sites/default/files/1557-summary-508.pdf>

marketplaces benefit LGBTQ-headed families, see Family Equality Council's resource guide *The Affordable Care Act and LGBT Families: Everything You Need to Know*:

[http://www.familyequality.org/get\\_informed/advocacy/know\\_your\\_rights/affordable\\_care\\_act\\_guide/](http://www.familyequality.org/get_informed/advocacy/know_your_rights/affordable_care_act_guide/)

You can also access additional LGBTQ-specific guidance and plan information at *Where to Start, What to Ask: A Guide for LGBT People Choosing Health Care Plans*: <http://www.familyequality.org/asset/70kgjf/Where-to-start-what-to-ask.pdf>

The healthcare advocacy organization Out2Enroll also offers many valuable resources:

<http://www.out2enroll.org>



# FAMILY AND/OR PARENTING LEAVE

New Mexico does not require employers to provide paid family leave. However, the federal Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Eligible employees are entitled to up to 12 unpaid work weeks of leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

FMLA applies to all public agencies (state, local, and federal) and all local education agencies (schools). The FMLA also applies to private sector employees who employ 50 or more employees for more than 20 work weeks in the current or preceding calendar year.

The Act also entitles eligible employees to 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or

illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

In 2010, the Department of Labor issued a clarification of the definition of "son or daughter" to include a child for whom a person provides a certain amount of day-to-day care or financial support, regardless of whether or not there is a legal or biological relationship. This clarification ensures the ability of a same-sex parent and/or partner has the ability to take time off from work to care for their child without fear of losing their job. You can read the text of the Department of Labor's clarification here:

[http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010\\_3.htm](http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm)

In 2014, following the *Windsor* decision and the repeal of the Defense of Marriage Act, the FMLA's benefits were extended to married same-sex couples. Because of this, married same-sex couples became entitled to take time off to care for their spouses. This was solidified further in 2015 when the definition of "spouse" in the FMLA was expanded to include all employees in a same-sex marriage regardless of whether their state of residence recognized their marriage. Finally, the *Obergefell* decision led to all federal marriage benefits being extended to all same-sex couples across the country.

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

**NEW MEXICO LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

# CHANGES OF NAME AND GENDER

Transgender individuals may request an amended birth certificate to reflect their true sex and name but only may do so by providing a certified copy of a court order changing their name and a statement signed under penalty of perjury by the head of an institution or from the attending physician indicating that the individual's sex has been changed by surgical procedure.<sup>57</sup>

An applicant for a legal name change must submit a petition to the court. New Mexico does require publication of the name change at least once per week for two consecutive weeks, but this period may be

<sup>57</sup> N.M. Stat. Ann. § 24-14-25 (2016).

waived if the court finds that publication of the petition will jeopardize the applicant's personal safety.<sup>58</sup>

New Mexico will update names and gender markers on driver's licenses when provided with a court order certifying the name change and/or a form signed by a licensed provider certifying the applicant's gender identity.<sup>59</sup>

<sup>58</sup> §§ 40-8-1 - 40-8-3.

<sup>59</sup> National Center for Transgender Equality, ID Documents Center - New Mexico, last updated, July 20, 2016, <http://www.transequality.org/documents/state/new-mexico>



# HATE CRIMES PROTECTIONS

New Mexico state law defines a crime motivated by homophobia or transphobia as a hate crime, explicitly identifying sexual orientation and gender identity within the hate crimes statute.<sup>60</sup> The New Mexico Hate Crimes Statute provides for an increase in penalties for those defendants where there is a separate finding of fact that the crime committed was motivated by hate based upon the victim's "actual or perceived race, religion, color, national origin, ancestry, age, disability, gender, sexual orientation, or gender identity."<sup>61</sup>

Additionally, in 2009, Congress enacted the

<sup>60</sup> N.M. Stat. Ann. § 31-18B-3 (2016).

<sup>61</sup> Id.

Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expands federal hate crimes to LGBT people. The law allows Federal law enforcement agencies, such as the FBI, to investigate and prosecute hate crimes against LGBTQ individuals when local or state authorities fail to act. If you or your family has been the victim of a hate crime, you should report the crime both to the local authorities and the FBI. The FBI maintains field offices in Albuquerque, New Mexico:

## **FBI Albuquerque Field Office**

4200 Luecking Park Ave NE  
Albuquerque, NM 87107

[albuquerque.fbi.gov](http://albuquerque.fbi.gov)

(505) 889-1300

# FAMILY SAFETY AND GUN LAWS

The authors believe that gun laws and the enforcement thereof are vital issues to the welfare and safety of our families. As such, we include this summary of New Mexico's gun laws for your information.

According to the Centers for Disease Control and Prevention, New Mexico had the 7th highest ranking in the nation of per capita deaths by firearm in the most recently reported year, 2014.<sup>62</sup>

The police power of municipalities and counties in New Mexico is limited in the

<sup>62</sup> <http://www.cdc.gov/nchs/pressroom/sosmap/firearm.htm>

area of firearms regulation. The following sentence was added to Article II, § 6 of the Constitution of New Mexico in 1986: "No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms."<sup>63</sup>

New Mexico has fairly basic concealed firearms regulations and is an "open-carry" state, meaning that the state does not prohibit the open carrying of firearms in public.

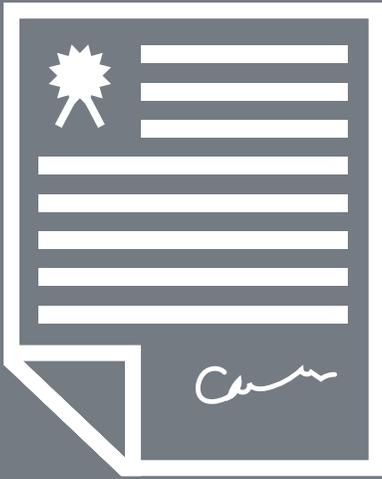
<sup>63</sup> <http://smartgunlaws.org/local-authority-to-regulate-firearms-in-new-mexico/>

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

## **NEW MEXICO LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families



## TIPS FOR LEGAL DOCUMENTS

- ✓ Always have copies of these forms with you, we recommend carrying electronic copies on a thumb drive attached to your keychain or available on your phone, through email or in the cloud.
- ✓ Keep several signed original copies of the forms, except for your Will (which you may keep copies of, but the original must be kept in a safe place, known to your executor).
- ✓ Write with a blue pen when completing or signing forms so health care providers don't question whether the document is an original.
- ✓ Always have original copies with you when you travel out of state.
- ✓ Keep copies online on a secure server.

# RECOMMENDED LEGAL DOCUMENTS FOR SAME-SEX COUPLES

## LAST WILL AND TESTAMENT

A Will is a legal document by which a person directs how real estate and personal property will be distributed upon death. Unmarried same-sex couples must have Wills in which their partners are designated beneficiaries, so that the partner will be able to inherit any of the deceased partner's property. Even if married, it is best to have a Will. In addition to deciding property distribution, a Will also provides the opportunity to designate who should become guardian to any minor children. If you are not both legal parents, and the legal parent dies, a judge will decide who the guardian will be. Naming your partner in your Will expresses your wishes and increases the likelihood that a judge will respect those wishes about who should raise your children after your death.

A Will does not affect beneficiaries you have designated on bank accounts, insurance policies, or retirement accounts. The company that holds those funds will disburse them to your designated beneficiary. You should make sure such designations are up-to-date.

More information is available from the State Bar of New Mexico, at:  
<http://www.nmbar.org/NmbarDocs/forPublic/LREP/2014SeniorHandbook.pdf>

## ADVANCE DIRECTIVE FOR HEALTHCARE

An Advance Directive for Healthcare allows New Mexicans to direct whom they want to make medical decisions for them, as well as providing for end-of-life choices in the event they are unable to express that intent at the time that care is required. You can find more information and guidance on drafting an Advance Directive for Healthcare specifically for the State of New Mexico at:

<http://www.nmbar.org/NmbarDocs/forPublic/LREP/SrSuppAHCD.pdf>

## FINANCIAL POWER OF ATTORNEY

It is important that partners consider providing each other with the power to handle personal finances on their behalf through a “financial power of attorney” in the event that a partner becomes unable to manage his/her own finances due to sickness, disability, etc.

**We recommend consulting a New Mexico attorney in drafting this document.**

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.eqnm.org](http://www.eqnm.org)

NEW MEXICO LGBTQ FAMILY LAW

A Resource Guide for  
LGBTQ-Headed Families

## DOMESTIC PARTNERSHIP AGREEMENT

A Domestic Partnership Agreement expresses a couple's understanding as to how they will share income, expenses, assets, and liabilities. It also discusses a plan for how those things will be divided in the event the couple separates. This document is especially important for unmarried couples.

## PRE- OR POST-NUPTIAL AGREEMENT

Many same-sex couples are marrying after being in long-term relationships. While they were in those relationships, they may have acquired property, assets, and debts together. They may have children of previous marriages or assets they inherited. Because New Mexico is a community property state, those assets and debts will not be considered property of both parties if they divorce or die. It is imperative, therefore, for couples to draft an agreement prior (or after) marriage to set forth how those items will be treated upon death or divorce. If same-sex couples do not do so they run the risk of having the laws of the state determine who gets their property upon death or divorce, instead of the individuals they wish to receive those items.

## CO-PARENTING AGREEMENT

An Co-Parenting Agreement expresses a couple's understanding of how they will raise children and what each parent's rights and obligations are with respect to each child while they are together and in the event that the parents separate.

Although the Co-parenting, Pre- or Post-Nuptial agreements and Partnership agreements are not "standard" and will require the advice of an LGBTQ aware attorney licensed in New Mexico (and could still prove to be not legally binding) they are often useful to have. These documents can establish clear understanding between the parties and can provide clarification about the intent and wishes of all involved. They may be useful, at some future time, should an issue ever come before a court/judge in the case of death or dissolution of the relationship, etc.

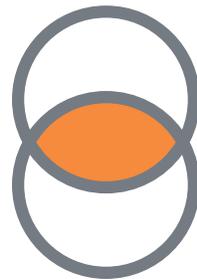
This Resource Guide was prepared and distributed by:

**Amber Royster**

Executive Director  
Equality New Mexico  
[amber@eqnm.org](mailto:amber@eqnm.org)  
[www.eqnm.org](http://www.eqnm.org)

**Denise Brogan-Kator**

Director of State Policy  
Family Equality Council  
[denisebk@familyequality.org](mailto:denisebk@familyequality.org)  
[www.familyequality.org](http://www.familyequality.org)



FAMILY  
EQUALITY  
COUNCIL