



VIRGINIA LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families
living in Virginia

October 2017

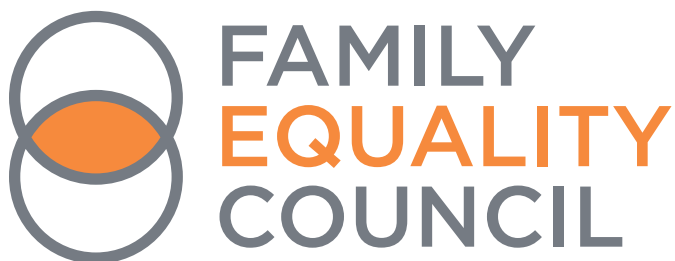


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INTRODUCTION

This guide was drafted by Family Equality Council, in collaboration with Equality Virginia. It addresses many of the legal rights and issues that affect LGBTQ families currently living in Virginia. 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. Virginia has very few laws in place to protect LGBTQ families from discrimination and equal access to education, employment, housing, healthcare, and public accommodations. In this type of environment, it is important to understand what the law is in each area and how best to 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 Virginia. 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

In 2004, the Virginia legislature enacted the Affirmation of Marriage Act, which prohibited civil unions in Virginia and stated that a civil union entered into in another state was void in Virginia.¹ In 2006, Virginia voters approved an amendment to the Virginia Constitution that defined marriage as a union solely between one man and one woman.²

In 2013, after the United States Supreme Court struck down Section 3 of the Defense of Marriage Act (DOMA), which barred same-sex couples from being recognized as spouses under federal law,³ a U.S. District Court judge in Virginia ruled that the marriage amendment in Virginia's Constitution, as well as the Affirmation of Marriage Act to the extent that it prohibited a person from marrying a person of the same gender, violated the U.S. Constitution.⁴ A federal appeals court affirmed this decision in July 2014,⁵ and the U.S. Supreme Court denied review of the case.⁶ As such, the Commonwealth of Virginia began issuing marriage licenses to

same-sex couples on October 6, 2014.⁷ Civil unions are still not recognized in Virginia, however.

Nationwide recognition of marriages of same-sex couples came in June 2015 with the U.S. Supreme Court's ruling in *Obergefell v. Hodges*.⁸ *Obergefell* not only requires all states in the U.S. to issue marriage licenses to same-sex couples, but also requires them to recognize marriage licenses issued in another state.⁹

Although Virginia's constitutional and statutory language prohibiting marriage equality are void and unenforceable, the laws remain in the Virginia Constitution and the Virginia State Code. Legislative efforts to remove the language have failed for the past three years.¹⁰

In 2016 and 2017, the Virginia legislature attempted to pass laws stating that no person could be required to participate in the solemnization of any marriage or subject to any penalty by the Commonwealth "solely on account of such person's belief, speech, or action in

1 H.B. 751 (2004)(enacted); Va. Code § 20-45.3.

2 [Ballot Question 1 \(voted on Nov 7, 2006\)](#); Virginia Constitution, Article I §15-A; Va. Code § 20-45.2.

3 *United States v. Windsor*, 133 S.Ct 2675 (2013).

4 *Bostic v. Rainey*, 970 F. Supp. 2d 456 (E.D. Va 2014).

5 *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014).

6 *Schaefer v. Bostic*, 135 S.Ct. 308 (2014).

7 Commonwealth of Virginia, Office of the Attorney General, Statement of Attorney General Mark Herring on Marriage Equality in Virginia (October 6, 2014): <https://www.oag.state.va.us/index.php/media-center/news-releases/341-october-6-statement-of-attorney-general-herring-on-marriage-equality-in-virginia>.

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

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

10 H.B. 538 (2017); S.B. 2 (2017); H.B 5 (2016); S.B. 10(2016); S.B. 214 (2015); S.B. 682 (2015).

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accordance with a sincerely held religious belief or moral conviction that marriage is or should be recognized as the union of one man and one woman."¹¹ Although the Governor of Virginia vetoed both laws, ministers have the right to refuse to marry a couple based on their religious beliefs under the state Religious Freedom Restoration Act.¹²

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

As discussed above, in 2013, the U.S. Supreme Court, in *United States v. Windsor*, found Section 3 of DOMA unconstitutional, overturning the law that denied federal marriage benefits to married same-sex couples. This case laid the foundation for marriage equality nationwide, which was won two years later.

In 2015, the Supreme Court found in *Obergefell v. Hodges* that same-sex couples have a fundamental right to marry under the Constitution, mandating that same-sex couples be permitted to marry and have their marriages recognized throughout the U.S.¹³ Following *Obergefell*, all federal marriage benefits have been extended to married same-sex couples nationwide. Such benefits include, but are not limited to, Social Security and Veterans Administration benefits, all federal tax benefits, health insurance and retirement benefits for same-sex spouses of all federal employees, and spousal benefits for same-sex spouses of military service members.

¹¹ H.B. 2025 (2017); S.B. 41 (2016).

¹² Va. Code § 57-2.02.

¹³ *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

IMPORTANT:

Because marriages of same-sex couples are now recognized nationwide, married couples living in Virginia should be able to access all federal benefits that are attendant to marriage. 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.

For more information on how to access federal marriage benefits please see the post-*Obergefell* Fact sheets at:

<https://marriageequalityfacts.org>





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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 there is much progress to be made in Virginia with regard to parental recognition for LGBTQ individuals and couples, there are some state rules and statutes in place that recognize and reflect the evolving landscape of the modern family make-up.

All same-sex couples raising LGBTQ children should keep copies of the following documents easily accessible:

- Adoption or Order of Parentage decree
- Birth certificate
- Guardianship or Custody Order or agreement
- Co-parenting agreement
- Marriage License
- Medical Powers of Attorney

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 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 or through private adoption, it is critical that you hire a Virginia adoption attorney who has experience working with LGBTQ people and couples. It is not enough to simply hire an experienced family law attorney. There are issues unique to LGBTQ families 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 Family Equality Council (www.familyequality.org), and we will do our best to help you find one.

ADOPTION

Under Virginia law, any single unmarried adult or married couple who resides in Virginia may petition to adopt.¹⁴ Nothing in Virginia law or regulations explicitly prohibits LGBTQ individuals or couples from adopting, but there also is no explicit statutory protection against discrimination. In 2012, the Virginia state legislature passed a so-called “conscience clause” law, providing that “no private child-placing agency shall be required to perform, assist, counsel, recommend, consent to, refer, or participate in any placement of a child for foster care or adoption when the proposed placement would violate the agency's written religious or moral convictions or policies.”¹⁵ In effect, the law permits private child-placement agencies to discriminate against LGBTQ prospective foster and adoptive parents and youth in their care based on any written “moral” or religious policies or beliefs of the agency. For this and other reasons, it is advisable to contact an adoption attorney experienced in LGBTQ family law in Virginia and to engage with foster and adoption agencies who are welcoming and affirming to LGBTQ people and couples.

Joint Adoption

As a general matter, a married individual must petition to adopt jointly with their spouse.¹⁶ After marriage equality was recognized in Virginia in 2014, the Virginia Department of Social Services released

¹⁴ Va. Code § 63.2-1201; Va. Code § 63.2-1225.

¹⁵ Va. Code § 63.2-1709.3.

¹⁶ Va. Code § 63.2-1201.

a bulletin informing local social services divisions that married couples of the same gender can legally adopt jointly and that “any married couple is a married couple for purposes of adoptive placements.”¹⁷ Moreover, since marriage equality is recognized nationwide, same-sex spouses must be permitted to adopt under the same terms and conditions as different-sex married couples.

Virginia law by statute at present does not permit unmarried couples to petition to adopt jointly, whether same-sex or different-sex.

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, and the child is entitled to the benefits of two legal parents. Virginia law does not currently allow unmarried couples to obtain a second-parent adoption in Virginia.¹⁸ However, validly-granted second-parent adoptions issued in other states should be recognized in Virginia.¹⁹

¹⁷ Virginia Department of Social Services Bulletin re Impact of Same-Sex Court Ruling on Adoption and Foster Care (October 10, 2014), <https://governor.virginia.gov/newsroom/newsarticle?articleId=6827> (last visited Sept 26, 2017).

¹⁸ Va. Code § 63.2-1241.

¹⁹ *V.L. v E.L.*, 136 S.Ct. 1017 (2016).

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An adoption decree is the single best irrefutable and undeniable proof of parentage. We strongly recommend that same-sex couples with children ALWAYS get an adoption decree that recognizes both parents as legal parents, even if you are married and appear on the birth certificate.

Stepparent Adoption

Married same-sex couples can ensure that both parents are legally recognized by obtaining an adoption decree through the stepparent adoption procedure. Note however that the statute itself does not use the term “stepparent” at all. Stepparent adoption is the adoption of a child by the spouse of the child's legal parent.²⁰ A child can be adopted by a stepparent so long as the child only has one legal parent. This can apply to LGBTQ couples in two scenarios. First, if a married couple plans the pregnancy and conceives the child through the use of assisted reproductive technology, such as sperm, egg, or embryo donation (see assisted reproductive technology section below), the biological parent may be considered to be the sole legal parent. While married spouses should be entitled to a parental presumption regardless of gender (see parental presumption section below), it is strongly advised that the other spouse obtain an adoption decree recognizing them as a legal parent. This can be done through the stepparent adoption procedure, and ensures that both parents are considered the legal parents. The second scenario arises if one of the spouses already has a child when the couple is married and is

that parent is the child's only legal parent. In this scenario, after the couple marries, the spouse of the legal parent may adopt the child as a stepparent and share equally in the rights and responsibilities of raising the child.

In Virginia, individuals petitioning to adopt as a stepparent must petition jointly with the spouse who is the legal parent to indicate the spouse's consent.²¹ Since the recognition of marriage equality, a spouse of the same gender as the legal parent should be entitled to adopt under this provision just as a spouse of a different gender would. However, as stated above, there are no explicit statutory protections in Virginia preventing discrimination. As such, consultation with a Virginia attorney experienced in working with LGBTQ families is highly encouraged when proceeding with a stepparent adoption. While typically most same-sex married couples can do a stepparent adoption without any issue, there are still some jurisdictions and/or judges that will not proceed directly to a final order but instead will require a “report of investigation” by the local department of social services which requires a background investigation and at least one visit to the adoptive parents' household. Also, while there is

²⁰ Va. Code § 63.2-1241.

²¹ Va. Code § 63.2-1241.

nothing in the statute that requires that a hearing take place, a very small number of courts will mandate a hearing.

Parental Presumption

Parental presumption is the idea that, when a married woman gives birth, her spouse is the other legal parent. State laws pertaining to parental presumption vary throughout the U.S., but historically they applied exclusively to different-sex spouses and many were written with gendered language. However, with nationwide marriage equality, parental presumption laws should be applied equally to married same-sex couples.

In Virginia, a marriage creates a presumption of paternity. Using gender-specific terminology, the Virginia law provides that a man is presumed to be the father of a child if he and the mother of the child were married in the ten months preceding the birth of the child.²² Since the recognition of marriage equality nationwide, the statute has not been updated and there are no court decisions in Virginia specifically interpreting that provision. While Virginia's parental presumption should apply equally to all married couples, the best way for a same-sex couple to ensure that both parents' rights will be legally recognized and respected throughout the U.S. is to obtain an adoption decree or Order of Parentage or Order of Parentage with stepparent adoption.

22 Va. Code § 63.2-1202.

SURROGACY, ASSISTED REPRODUCTION AND ARTIFICIAL INSEMINATION

Assisted reproductive technology (ART) is the use of medical technology to assist with pregnancy or childbirth and includes methods such as in vitro fertilization or use of an egg donor, sperm donor, embryo donor, and/or a surrogate carrier. Assisted conception is governed by state laws in Virginia, although the laws have not been updated since the recognition of marriage equality.²³

Virginia law defines "assisted conception" as "a pregnancy resulting from any intervening medical technology, whether in vivo or in vitro." The statute governs ART including, but not limited to, artificial insemination by donor, in vitro fertilization, and embryo transfer.²⁴ The statute is specific to married intended parents and uses gender-specific terminology, but with the recognition of marriage equality, it should apply equally to all married couples, regardless of gender.

Virginia's statute on the "Status of Children of Assisted Conception" expressly defines a "donor" as "an individual, other than a surrogate, who contributes the sperm or egg used in assisted conception"²⁵ and further states that a "donor is not the parent of a child conceived through assisted conception, unless the donor is the husband of the

23 Va. Code §§ 20-156 *et seq.*

24 Va. Code § 20-156.

25 Va. Code §20-156.

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gestational mother.”²⁶ However, it is essential that anyone using donor sperm or a donor egg have a very clear donor agreement or release in order to properly extinguish any parental rights of the donor. It also is critical that the parties use an “intervening medical technology” and if a single female or same-sex female couple are using an insemination kit purchased at a drug store they clarify in the donor agreement that they consider that to be an “intervening medical technology.” One circuit court in Roanoke in the case of *Bruce v. Boardwine*, 88 Va. Cir. 218 (Roanoke City, May 6, 2014), affirmed on appeal, 64 Va. App. 623, 770 S.E.2d 774 (2015), ruled that the use of a “turkey baster” did not constitute an intervening medical technology. The case was upheld on appeal by the Virginia Court of Appeals. Notably, the parties in that case also did not have a donor agreement in place.

It is equally important for an individual who contributes a gamete (egg or sperm) with the intention of being a parent and not a donor (such as when one lesbian partner contributes her egg to her partner to carry or when an unmarried male contributes his sperm to be combined with donor egg and carried via a gestational carrier) to execute a “non-donor agreement.” This ensures that the parties’ intent is clear that the person intends to be a parent and not merely a donor.

For same-sex female couples using donor sperm, the Virginia Department of Vital Records issued a form after October 2014 that can be signed upon birth placing

²⁶ Va. Code §20-158(A)(3).

both mothers on the birth certificate. However, this form has no foundation clearly set out in case law or statute (although the form refers to Virginia Code section 32.1-261(A)(2) addressing issuance of a new birth certificate upon proof of legitimization, Virginia’s Constitution Article I, Section 15-A on Marriage still says marriage is only as between a man and a woman). Accordingly, it is strongly recommended that the couple also do a stepparent adoption to secure the child’s legal parentage by court order. Parties should not rely solely on the issuance of a birth certificate, as it is an administrative document and can be challenged.

While Virginia law also permits surrogacy (the use of a surrogate to carry and deliver a child for intended parent(s)), it states that a “gestational mother” (surrogate) is presumed to be the child’s mother, and her spouse, if any, is presumed to be the father.²⁷ To remove that presumption and establish intended parents’ legal rights as parents, the intended parents must either: (1) enter into a court-approved written surrogacy contract prior to the pregnancy, which is a cumbersome and expensive process that requires home studies and legal fees before a pregnancy can be attempted, and return to court for a second court order after the birth (a process that is rarely ever used);²⁸ or (2) enter into a surrogacy contract that is not court-approved, and use a post-birth administrative process in which the intended parents and spouse of the gestational carrier sign the birth certificate

²⁷ Va. Code § 20-158.

²⁸ Va. Code § 20-160.

amendment paperwork immediately after birth and the gestational carrier signs three days after birth.²⁹ However, because the statute on the Status of Children of Assisted Conception still refers to intended parents as a married man and a woman, it is essential for same-sex couples using a gestational carrier to obtain an Order of Parentage for the genetic parent and a stepparent adoption for the spouse/non-biological parent so that both parents are recognized as legal parents (via court order) and are listed on the birth certificate. Relying on the administrative process alone to obtain a birth certificate with both parents' names is not enough, especially given that the statute has not been updated to expressly include same-sex couples. Consultation with a Virginia attorney who specializes in surrogacy law and LGBTQ issues is essential.

While Virginia's surrogacy statute does not contemplate a single intended parent using a gestational carrier, there is no law prohibiting a single person from doing so. Such arrangements are done as non-court approved contracts outside of Virginia's surrogacy statute. In such instances, so long as the single parent is the genetic parent, then he or she must use Virginia's parentage statutes³⁰ to obtain a court order declaring the single parent as the sole parent and declaring that the gestational carrier (and her spouse if applicable) are not the parents. Then a birth certificate naming only the single genetic parent is issued based on an order of parentage.

²⁹ Va. Code § 20-162.

³⁰ Va. Code § 20-49.1 *et seq.*

The Virginia assisted conception statute is very complex and must be interpreted in conjunction with Virginia's parentage and birth certificate issuance statutes. This area of law is evolving in Virginia and across the U.S. Therefore, it is imperative that any individual or couple who is considering assisted conception consult with a Virginia attorney who is well-versed in ART law, experienced in working with LGBTQ individuals, same-sex couples, and surrogacy programs, and knowledgeable about the process for establishing the parental rights of the intended parent(s).

An adoption decree is irrefutable proof of parentage and is valid throughout the country. As such, regardless of whether a surrogacy agreement is in place and the name(s) of the intended parent(s) appear on the birth certificate, it is strongly recommended to consult with an attorney about also petitioning for an adoption decree for a child conceived through ART.

BIRTH CERTIFICATES

Virginia law uses gendered language for the purposes of the birth certificate, but, after marriage equality was recognized in Virginia in 2014, the Virginia Department of Health issued a letter informing hospitals that, when there are two female spouses in a marriage, both spouses can be listed on a birth certificate when one is the gestational mother.³¹ The letter did not specify the

³¹ Commonwealth of Virginia, Department of Health, Letter from Director Rainey (Jan 22, 2015), <https://acluva.org/sites/default/files/wp-content/uploads/2015/02/RaineyLettertoHospitals20150122.pdf>

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procedure for two male spouses. In June 2017, the U.S. Supreme Court held that states cannot discriminate against same-sex couples when listing both spouses on a birth certificate. In *Pavan v. Smith*, the U.S. Supreme Court expressly reiterated that equal access to birth certificates is one of the many “rights, benefits, and responsibilities” associated with civil marriage.³² Accordingly, states cannot discriminate against same-sex spouses with regard to the naming of each spouse on a child's birth certificate, and same-sex parents in Virginia are entitled to the same parental presumption enjoyed by different-sex parents.

As 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 petition for an adoption decree as soon as possible, to ensure that both parents are legally recognized.

New birth certificates must be issued following an adoption, so a same-sex parent who is not already listed on the birth certificate should be listed after completing an adoption of a child.³³

To update a child's birth certificate, send a request to the Virginia Office of Vital Records. Details on how to do so are available at: <http://www.vdh.virginia.gov/vital-records>

APPLYING FOR A SOCIAL SECURITY NUMBER AND CARD FOR A CHILD

To apply for a Social Security Number and Card for a child, the Social Security Administration (SSA) requires a number of different documents, personal information about the parent applying for the Card or Number, the child, and any other legal parent to the child, and a completed SS-5 application form.

These documents may be submitted to the SSA via letter or in person at a local SSA office, which can be found through this link <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, visit the SSA website at <https://www.ssa.gov/ssnumber>, or call the SSA at 1-800-722-1213 or 1-800-325-0778. If difficulties arise, please contact Family Equality Council.

³² *Pavan v. Smith*, No. 16-992 (June 2017).

³³ 12 Va. Admin. Code § 5-550-280.

APPLYING FOR A PASSPORT FOR A CHILD

To apply for a passport for a child, the State Department requires documentary evidence, a completed DS-11 form, a photograph of the child, and personal information about the parent applying for the passport, the child, and the child's other legal parent, if any. These documents must be submitted to the State Department in person at the nearest accepted facility or regional passport agency, listed here: <https://iafdb.travel.state.gov>

The required materials are listed here: <http://travel.state.gov/content/passports/english/passports/under-16.html>

Two same-sex parents may be listed on the application for a child's passport. 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.

Questions about the application process and acceptable materials can be directed to the National Passport Information Center at 1-877-487-2778. The State Department website also provides helpful information at <http://travel.state.gov>.

Family Equality Council also maintains an FAQ on applying for a child's passport, available at this link http://www.familyequality.org/get_informed/advocacy/know_your_rights/passport_faq, or contact Family Equality Council for assistance if problems arise in obtaining the passport.

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NONDISCRIMINATION PROTECTIONS

There are currently no federal laws that explicitly prohibit discrimination of 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 their families remain vulnerable under the law.

Unfortunately, Virginia state law offers no explicit protections against discrimination based on sexual orientation or gender identity discrimination in these areas. Some localities have adopted Human Rights Codes that include protections from discrimination on the basis of sexual orientation and/or gender identity. These localities include some of the more populated cities and counties in Virginia, such as Alexandria,³⁴ Charlottesville,³⁵ and Arlington County.³⁶ Accordingly, LGBTQ individuals in these counties who are discriminated against in employment, housing, public accommodations, or education may file a complaint with the locality's Human Rights Commission.

³⁴ City of Alexandria Code of Ordinances, Title 12, Chapter 4.

³⁵ City of Charlottesville Code of Ordinances, Chapter 2, Article XV.

³⁶ Arlington County Code, Chapter 31, Human Rights.

EMPLOYMENT

State Law

Even with the arrival of nationwide marriage equality, LGBTQ people are at risk of being outed at work by simply filing an amended W-4, leading to discrimination in the workplace or even the loss of a job. Unfortunately, the Commonwealth of Virginia offers no state law prohibiting employers from discriminating against an employee on the basis of sexual orientation and gender identity. In the absence of statutory protection, the first executive order signed by Virginia Governor Terry McAuliffe when he began his term in 2014 prohibits discrimination against state employees on the basis of sexual orientation and gender identity.³⁷ Thus, LGBTQ employees of the state may report allegations of sexual orientation- and gender identity-based discrimination to the Office of Equal Employment Opportunity in Virginia's Department of Human Resource Management. The complaint must be filed within 180 days of the last alleged discriminatory act, and the complaint form and contact information to submit the form are available at this website <http://www.dhrm.virginia.gov/equal-employment-opportunity/complaintofdiscrimination>.

Virginians who work for companies that contract or subcontract with the

³⁷ Commonwealth of Virginia, Office of the Governor, Executive Order Number One (2014), Equal Opportunity (Jan 11, 2014).

Commonwealth's Executive Branch receive protection against discrimination based on sexual orientation and gender identity under a 2017 Executive Order signed by Governor McAuliffe. The Order states that, in contracts valued over \$10,000, all Virginia Executive Branch entities must include a prohibition against discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status in the contractor's employment and subcontracting practices and its delivery of goods and services.³⁸

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 by some courts to provide employment protections for LGBTQ people. 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

³⁸ Commonwealth of Virginia, Office of the Governor, Executive Order Number Sixty-One (2017), Executive Action to Ensure Equal Opportunity and Access for All Virginians in State Contracting and Public Services (Jan 5, 2017).

sex.³⁹ In *Veretto v. US Postal Service*⁴⁰ and *Castello v. US Postal Service*,⁴¹ the EEOC held that employment discrimination on the basis of sexual orientation violated prohibitions of sex-based discrimination because it constituted discrimination based on sex-stereotypes. In 2015, the EEOC strengthened the protections for those who may face discrimination on the basis of sexual orientation by ruling in *Complainant v. Foxx*⁴² that claims of discrimination based on sexual orientation inherently amount to claims of sex discrimination and are therefore actionable under Title VII.⁴³ These EEOC decisions, while not binding to courts, reflected the EEOC's view 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. In 2017, in *Hively v. Ivy Tech Comm. College*, a federal appellate court issued a binding decision citing with approval the EEOC's conclusions in *Complainant v. Foxx*, thus providing strong legal precedent for reading Title VII as including LGBTQ employees as a protected class.⁴⁴

Victims of discrimination on any protected basis, including sexual orientation and gender identity, must file a Charge of Discrimination with a local EEOC office

³⁹ No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012).

⁴⁰ No. 0120110873 (E.E.O.C. Jul. 1, 2011).

⁴¹ No. 0120111795 (E.E.O.C. Dec. 20, 2011).

⁴² *Complainant v. Foxx*, No. 0120133080, 2015 WL 4397641 (E.E.O.C. July 15, 2015).

⁴³ No. 0120133080, 2015 WL 4397641 (E.E.O.C. July 16, 2015).

⁴⁴ *Hively v. Ivy Tech Comm. College*, 853 F.3d 339 (7th Cir. 2017).

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prior to filing a lawsuit in court alleging discrimination. The EEOC offices serving Virginia can be found at <https://www.eeoc.gov/field>.

Generally, the Charge of Discrimination must be filed within 180 days of each instance of discriminatory treatment. To file a complaint based on sexual orientation or gender identity, the complainant must list the basis for the claim as discrimination on the basis of “sex,” as this is the existing basis that the EEOC and some courts have linked to sexual orientation and gender identity. More about the EEOC process and a claimant's rights and responsibilities after filing a claim with the EEOC is available at this website: <http://www.eeoc.gov/employees/charge.cfm>. Federal employees and job applicants are subject to a different timeline for making a claim (typically 45 days) and procedures for filing, which are available here: http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm

Virginians 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 that prohibits federal contractors from discriminating against current or prospective employees on the basis of sexual orientation or gender identity.⁴⁵

⁴⁵ Executive Order 13672 (July 21, 2014). On January 31, 2017, President Trump issued a statement that this Executive Order will remain intact during his presidency. <https://www.whitehouse.gov/the-press-office/2017/01/31/president-donald-j-trump-will-continue-enforce-executive-order>.

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. LGBTQ individuals who have been the victim of discrimination by an employer that contracts with the federal government, can file a complaint through the U.S. Department of Labor Office of Federal Contract Compliance Programs. Information about the complaint process is available here: <http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm>

Company Policies

Many employers, especially those that operate in multiple states, have enacted their own internal non-discrimination policies that prohibit discrimination against LGBTQ employees. While these policies may not be legally binding, they can often give an employee some recourse where there would otherwise be none. A company's non-discrimination policy should be available in the company's employee handbook or through the human resources department, and it is always important to be familiar with it and understand the rights and protections it affords.

Any person who has been or may have been the victim of sexual orientation- or gender identity-based discrimination in the workplace should contact an attorney familiar with LGBTQ employment law.

HOUSING

State Law

Virginia state law offers no protection against discrimination on the basis of sexual orientation or gender identity in housing or financial assistance. Virginia's Fair Housing Law provides for "fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, or handicap."⁴⁶ Sexual orientation and gender identity are not listed as protected classes of people, so Virginia's fair housing provisions do not explicitly extend to the LGBTQ community in Virginia. As mentioned previously, some localities have passed human rights ordinances that prohibit discrimination in housing on the basis of sexual orientation and/or gender identity, so LGBTQ individuals discriminated against in those localities may seek recourse through their local Human Rights Commission.

Federal Law

The federal Fair Housing Act, which was enacted as Title VIII of the Civil Rights Act of 1968 and is enforced by the Department of Housing and Urban Development (HUD), does not explicitly prohibit discrimination against LGBTQ people and their 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

⁴⁶ Va. Code § 36-96.1.

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.⁴⁷ 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 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, and is barred from using such criteria in assessing an application. 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 discrimination complaints by telephone at 1-800- 955-2232, by mail, or online http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination. The HUD field offices in Washington DC and Richmond service Virginians. Contact information is available at: <https://www.hud.gov/states/virginia/offices>. To learn more about filing a complaint, as well as the process for filing a lawsuit, please read this page: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/complaint-process

⁴⁷ Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, Final Rule (2012); 24 CFR § 5.106.

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PUBLIC ACCOMMODATIONS

State Law

Virginia law offers no explicit protection for LGBTQ people in public accommodations. Public accommodations are generally defined as entities, both public and private, that are open to or offer services for the general public. Examples include retail stores, hotels, restaurants, educational institutions, hospitals, public parks, libraries, and recreational facilities, but private clubs and religious institutions are generally exempt from this definition.

The Virginia Human Rights Act (VHRA) prohibits "unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability, in places of public accommodation, including educational institutions and in real estate transactions."⁴⁸ The VHRA does not list sexual orientation or gender identity as protected classes of people. However, in May 2016, the Attorney General of Virginia issued an advisory opinion interpreting the VHRA, concluding that there is a "strong argument" that sexual orientation and gender identity discrimination constitute discrimination "based on" sex.⁴⁹ The Supreme Court of Virginia has not considered the issue, however, and the Virginia Attorney General's advisory opinion is not binding on Virginia courts.

48 Va. Code § 2.2-3900.

49 VA Attorney General Advisory Op. No 15-070 (May 10, 2016), https://www.oag.state.va.us/files/Opinions/2016/15-070Messrs_GarrettPlumLaRock.pdf.

Additionally, in 2017, the Governor of Virginia issued an Executive Order prohibiting state Executive Branch employees from discriminating on the basis of sexual orientation and gender identity in the provision of public services.⁵⁰ This encompasses all state employees offering services to the general public at entities such as educational institutions, museums, the department of motor vehicles, and any state government building.

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 law provides express protections based on 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.⁵¹ 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.

50 Commonwealth of Virginia, Office of the Governor, Executive Order Number Sixty-One (2017), Executive Action to Ensure Equal Opportunity and Access for All Virginians in State Contracting and Public Services (Jan 5, 2017).

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

SCHOOL POLICIES AND ANTI-BULLYING

STATE LAW

As with employment, housing, and public accommodations, the Commonwealth of Virginia offers no state-level protections against discrimination on the basis of sexual orientation and gender identity for LGBTQ students and employees in the public education system. Without explicit statutory language or authoritative decisions from the state or appellate courts in Virginia, LGBTQ students and public school employees remain vulnerable to discriminatory actions.

With the absence of state-level protection, some school boards and localities have passed non-discrimination ordinances that protect LGBTQ students and employees from discrimination in education based on sexual orientation and gender identity. Currently, these protections cover over 25% of public school students and employees, despite the lack of state-level protections.⁵²

All school districts in Virginia are required to implement policies and procedures that prohibit bullying, but there are no specific provisions regarding bullying of LGBTQ students and families.⁵³ Bullying in Virginia is defined as "any aggressive and unwanted behavior that is intended to harm, intimidate, or humiliate the victim; involves

a real or perceived power imbalance between the aggressor or aggressors and victim; and is repeated over time or causes severe emotional trauma," and the statute specifically includes cyber-bullying.⁵⁴



Ultimately, because school district policies are determined at the local level, there can be wide variations on the degree to which a school district is proactive and protective of LGBTQ students, families, and employees. It is important to be familiar with your school district's policies protecting LGBTQ individuals and to reach out to your school board with questions or concerns.

⁵² <http://www.equalityvirginia.org/checklist/inclusive-schools>

⁵³ H.B. 1871 (2013); Va. Code §§ 22.1-291.4, 22.1-279.6.

⁵⁴ Va. Code § 22.1-276.01.

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www.equalityvirginia.org

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FEDERAL LAW

Federal law, specifically Title IX of the United States Education Amendments of 1972, also provides 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, 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,⁵⁵ meaning the student faces discrimination for not subscribing to the stereotypical notions of femininity or masculinity. In past policy statements, the Department of Education (DOE) included transgender students in those classes protected by Title IX, and lesbian, gay, and bisexual students have successfully filed claims of discrimination under Title IX. In a May 2016 statement, the DOE and Department of Justice (DOJ) explained that 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.⁵⁶

However, in February 2017, under the Trump Administration, the DOE and DOJ rescinded this guidance.⁵⁷ Despite the DOE and DOJ's withdrawal of the guidance, the underlining law that the guidance interpreted remains. Since then, the U.S. Court of Appeals for the Seventh Circuit unanimously held that transgender students are protected from discrimination under Title IX and the Equal Protection Clause of the U.S. Constitution.⁵⁸

The DOE's Office for Civil Rights (OCR) investigates claims of discrimination on the basis of race, sex, national origin, sex, and disability in programs or activities that receive funding from the DOE (such as public elementary or secondary schools, vocational schools, colleges and universities, museums, libraries, and public after-school programming). To open an OCR investigation, an individual must file a complaint on behalf of himself or herself, a group, or another person facing discrimination within 180 days of the last instance of discrimination. Since Title IX does not list sexual orientation or gender identity as separate bases for a claim, the complaint must indicate "sex" as a basis for the claim.

More details on drafting a complaint, as well as an electronic complaint form, are available on the OCR website, located here: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

⁵⁵ *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151 (C.D. Cal. 2015).

⁵⁶ United States Dept. of Education Office for Civil Rights, *Dear Colleague Letter on Transgender Students* (May 2016).

⁵⁷ United States Dept. of Education Office for Civil Rights, *Dear Colleague Letter on Title IX* (Feb 2017): <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.docx>.

⁵⁸ *Whitaker v. Kenosha Unified School District*, No. 16-3522 (7th Cir. 2017).

HEALTHCARE

The Commonwealth of Virginia offers no protections against discrimination in healthcare and health insurance on the basis of sexual orientation or gender identity. Transition-related services are specifically excluded from the healthcare benefits for state employees.⁵⁹

FEDERAL LAW

Each year, the federal government opens enrollment for individual and family healthcare coverage under the Affordable Care Act (ACA). Historically, enrollment for the following year opened in November and closed mid-February of the following year; however, in 2017 the open enrollment period is much shorter – from November 1st to December 15th – although individuals who experience a major life change, such as moving, getting married, or having a baby, may qualify to enroll in one of the ACA's Special Enrollment Periods during another part of the year. For detailed information about plans, Special Enrollment Periods, or to find out where and how to enroll, go to www.healthcare.gov and select a state of residence.

Under the ACA, insurers and marketplace navigators – the people whose job it is to help individuals select an insurance

59 Commonwealth of Virginia, Department of Human Resources, Member Handbook (July 2016), <http://www.dhrm.virginia.gov/docs/default-source/benefitsdocuments/ohb/handbooks/covacarememberhandbook2016.pdf?sfvrsn=2>.

plan that best matches their needs – are prohibited from discriminating against consumers based on their sexual orientation or gender identity, or on the sexual orientation or gender identity of a family member.

In addition, the ACA prohibits denial of coverage for an individual or family member because of a pre-existing condition. This includes a current illness or a 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 categorically denying coverage for transition-related care, nor can they refuse to cover transition-related care if they cover that same treatment for other people. While insurers are not required to cover these treatments, they may offer plans that do so; any person seeking coverage of transition-related care should speak with a navigator and investigate plans thoroughly to find the best option. 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.

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Section 1557 of the ACA prohibits discrimination based on sex in all health programs and activities receiving federal financial assistance.⁶⁰ The final agency rule implementing Section 1557 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 consistent with their gender identity.⁶¹ The final rule also prohibits discrimination based on sex stereotyping, providing potential protections to lesbian, gay, and bisexual people.⁶²

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

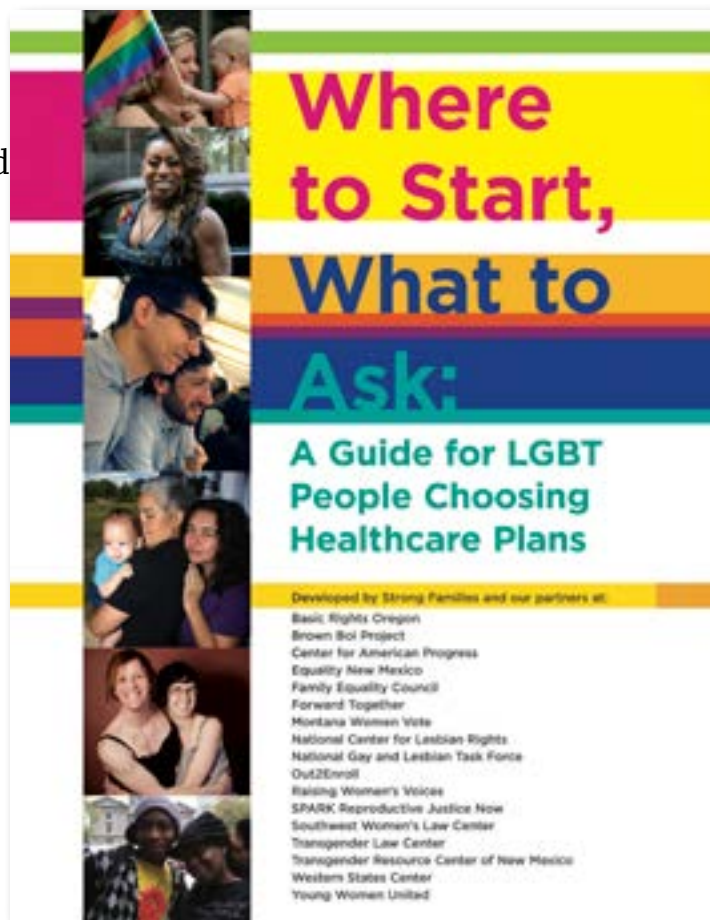
For more information on how the Affordable Care Act and the insurance marketplaces benefit LGBTQ-headed families, this is a helpful resource developed by multiple LGBTQ advocacy

60 42 U.S.C § 18116.

61 45 CFR 92 (2016); 81 FR 31375 (2016). In *Franciscan Alliance v. Burwell*, Case No. 7:16-cv-00108-O (N.D. Texas 2016), a district court judge issued an injunction against enforcing this rule, but an appeal is pending.

62 45 CFR 92 (2016); 81 FR 31375 (2016).

organizations: [Where to Start, What to Ask: A Guide for LGBTQ People Choosing Health Care Plans](#).



FAMILY AND/OR PARENTING LEAVE

Virginia does not have a state family or medical leave law requiring employers to provide paid family leave. Virginia employees are entitled to the rights of the federal Family Medical and Leave Act (FMLA). The 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 workweeks 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;
- the care of 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;
- 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 workweeks in the current or preceding calendar year.

And, it 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. The text of the Department of Labor's clarification is available at: http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm.

In 2014, following the *Windsor* decision and the repeal of the DOMA, 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.

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CHANGES OF NAME AND GENDER

A transgender individual may change their name and gender marker by obtaining a court-ordered name and gender change. To do so, an applicant must submit a notarized Application for Change of Name along with a notarized Petition for Change of Sex which Petition should include a letter from a licensed medical provider stating that sex has been changed by medical procedure. The law in Virginia does not specify what constitutes a "medical procedure," so the applicant and medical provider should make that determination.⁶³ The applicant must file the documents at the local County or City Circuit Courthouse, which are listed here: <http://www.courts.state.va.us/courts/circuit.html>. Virginia law does not require notice or publication of a petition for name change, as some states do.⁶⁴ However, some courts may require applicants to serve their Petition for Change of Sex on the State Registrar of Vital Records, and may require a hearing after the State Registrar of Vital Records has filed its Answer to the Petition stating whether or not they have any objections. Applicants can contact their local court to find out the specific requirements before filing their documentation.

Transgender individuals may request an amended birth certificate to reflect their true sex and name but must submit certified copies of the court-ordered name change and the court-ordered gender change.⁶⁵

Virginia 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.⁶⁶

Forms to petition the court for a name or gender change can be downloaded here:

Name change: <http://www.courts.state.va.us/forms/circuit/cc1411.pdf>

Gender marker change: <http://www.courts.state.va.us/forms/circuit/cc1451.pdf>

Note: Some jurisdictions have local versions of these forms that they require applicants to use. Applicants should check the website for their local civil circuit court, or call the clerk of court for specific instructions. Unfortunately, the process often still requires consulting with or hiring an attorney to assist.

⁶³ National Center for Transgender Equality, ID Documents Center - Virginia, last updated June 5, 2017, <http://www.transequality.org/documents/state/virginia>.

⁶⁴ Va. Code § 8.01-217.

⁶⁵ Va. Code § 32.1-269.

⁶⁶ National Center for Transgender Equality, ID Documents Center - Virginia, last updated June 5, 2017, <http://www.transequality.org/documents/state/virginia>.

HATE CRIMES PROTECTIONS

Virginia law does not include protections for LGBTQ people who are targeted by hate crimes. In Virginia, the law increases penalties for criminal acts against persons or property with the intent of instilling fear or intimidation against the victim on the basis of race, religion, and national origin.⁶⁷ In some circumstances, however, threats, harassment, or discriminatory language may be actionable in civil court under Virginia’s insulting words statute, which provides that “All words shall be actionable which from their usual construction and common acceptance are construed as insults and tend to violence and breach of the peace.”⁶⁸

The federal government offers some protection, however. In 2009, Congress enacted the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expands federal hate crimes to LGBTQ people.⁶⁹ 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. Victims of a hate crime should report the crime both to the local authorities and to the FBI. The FBI maintains three field offices in Virginia, which may be found through the following webpage: <https://www.fbi.gov/contact-us/field-offices>.



⁶⁷ Va. Code §§ 18.2-57, 18.2-121, 52-8.5.

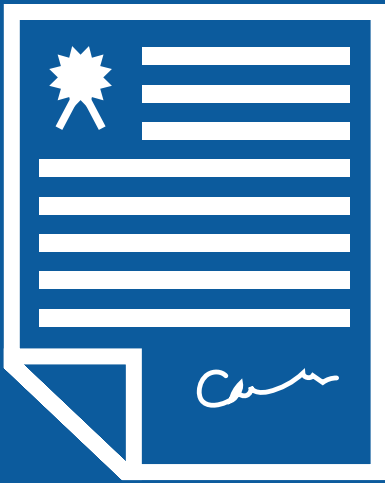
⁶⁸ Va. Code §8.01-45.

⁶⁹ 18 U.S.C. § 249.

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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.
- ✓ Keep several signed original copies of the forms.
- ✓ 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 an extra copy of your forms somewhere easy for a close friend or family member to find.
- ✓ 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 as well as who should be a trustee to oversee any funds meant to support the minor children. If both parents are not legally recognized as such, and the legal parent dies, a judge will decide who the guardian will be. A legally recognized parent naming the other parent in a Will expresses their wishes and increases the likelihood that a judge will respect those wishes about who should raise the children after the death of the legally recognized parent.

A Will does not affect beneficiaries that have been designated on bank accounts, insurance policies, or retirement accounts. The company that holds those funds will disburse them to the designated beneficiary. It is important to keep such designations up-to-date.

More information is available from the Virginia State Bar Association at:
<http://www.vsb.org/site/publications/wills-in-virginia>

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ADVANCE DIRECTIVE FOR HEALTHCARE

An Advance Directive for Healthcare allows Virginians 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. More information on Advance Directives in Virginia is available at: <https://www.vda.virginia.gov/advmedir.asp>.

GENERAL POWER OF ATTORNEY

It is important that partners consider providing each other with the power to handle personal finances and other affairs on their behalf through a “general power of attorney” in the event that a partner becomes unable to manage his/her own finances and other affairs due to sickness or incapacitation. We recommend consulting a Virginia attorney in drafting this document.

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 division of those things in the event the couple separates. This document is especially important for couples who are not married.

CO-PARENTING AGREEMENT

A Co-Parenting agreement is a document that expresses a couple's understanding of the manner in which 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 and Partnership agreements are not "standard" and will require the advice of an LGBTQ aware attorney licensed in Virginia (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 in the case of death, dissolution of the relationship, or other event causing separation.

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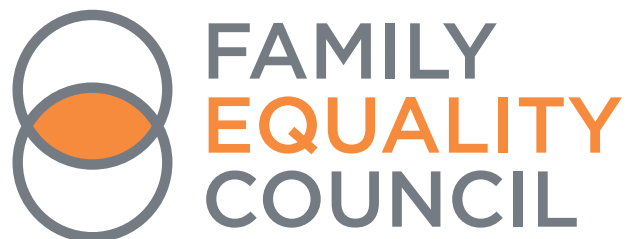
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