



*Gay & Lesbian Advocates & Defenders*  
30 Winter Street, Suite 800  
Boston, MA 02108  
Phone: 617.426.1350  
Fax: 617.426.3594  
Website: [www.glad.org](http://www.glad.org)

## **Second Parent Adoptions in Massachusetts**

### **What is “second parent adoption”?**

Second parent adoption or “co-parent adoption” refers to the ability of unmarried couples to petition jointly for the adoption of their child(ren). For many gay and lesbian couples, this means that the non-biological parent of the couple’s child(ren) may now enjoy the same legal rights and responsibilities as the biological parent. In most adoptions, the biological parents must agree to terminate their parental rights in order for the adoption to go forward. In second parent adoptions, however, both the biological and non-biological parent are granted equal legal status.

### **How did second parent adoptions come about?**

GLAD represented a lesbian couple in a precedent-setting case on this issue and also authored an Amicus brief in a similar case which became the basis for the decision in Adoption of Tammy, Mass. 205 (1993). Both cases were argued before and decided by the Massachusetts Supreme Judicial Court at the same time. In September of 1993, the Supreme Judicial Court of Massachusetts ruled on both cases determining that there is nothing in the Massachusetts adoption law which prevents a non-biological parent from co-adopting her partner’s child. Because this ruling was made by Massachusetts’ highest court, the decision is binding in all counties in Massachusetts. The Vermont Supreme court also issued a similar ruling in 1993. While some second parent adoptions have been granted in some counties in other New England states, only Massachusetts and Vermont have clear case precedent dictating that second parent adoptions be granted in every county in the state as long as the adoption is in the best interests of the child. Connecticut has also approved of second parent adoptions, but through legislative, rather than judicial means.

### **What is the Process?**

While the process varies to some degree from county to county and judge to judge, in general couples can expect to follow the same procedure. You and your partner will need an attorney to assist you with the adoption process. GLAD can provide you with a referral to an attorney with experience in this area of law.

The process begins by filling an adoption petition and other paper work. A criminal background check on all adults in the household is required. The court may require a home study, a process by which your home is evaluated by a social worker to assess the suitability of your family for “the proper rearing of children.” In general, the Department of Social Services (DSS) is charged with conducting home studies. However, you may be able to pay for a private agency authorized by DSS to conduct the study. In some cases, if you obtain letters of support from your friends, family, and community members attesting that you and your partner function as a family and will make good parents, you may be able to avoid the home study altogether. Despite the unique situation of those seeking second parent adoptions, the courts often follow the procedures already in place for regular adoptions. These procedures may seem unfair and burdensome, but for now some courts deem them necessary.

Other Courts may require the appointment of a guardian *ad litem* to represent the interests of the child. You may also be required to publish notification of the adoption in the newspaper to ensure that all interested parties know about the adoption. Your attorney may file motions to have any or all of these procedures waived. Some courts will grant the waivers, while others will not. After the petition is filed and the home study is completed, there is a private hearing before the court in the judge's chambers. In general, these hearings are routine and the adoption is finalized.

### **Why is second parent adoption important?**

Until the court decision allowing second parent adoptions, the children and non-biological parent in same-sex relationships were legally vulnerable. Through second parent adoption, the non-biological parent is granted full legal rights *vis a vis* his or her child(ren). While these adoptions do not change the legal relationship between the two parents, it does provide legal recognition and protection to both parents in relationship to their child(ren). Because the child is now the legal child of the non-biological parent, the child may be entitled to benefits, such as health insurance, that were not previously accessible. Both partners have equal access to medical and school records. In addition, if the biological parent dies, the non-biological parent retains custody. If the couple should split up, both parents have the same legal rights to petition for custody and visitation of the child(ren).

### **What if our child was adopted and is not biologically related to either of us?**

If your child was adopted by one of you, you may still petition for a second parent adoption. The process is the same. If you and your partner do not yet have a child and want to adopt, you may jointly adopt through second parent adoption. There may be some complications with international adoptions, so be sure to consult an attorney.

### **What if the father/sperm donor or mother/surrogate of our child wants to stay involved in our child's life?**

In order for the adoption to be granted, the donor or father must agree to terminate all legal parental rights. If the donor is unknown or the father is unreachable, you may have to publish notification of the adoption proceedings in the local paper of his last known address. Similarly, the mother or surrogate must waive her parental rights for the adoption to be granted. While third parties must waive their legal rights in order for the adoption to be granted, there is nothing that prohibits you from involving them in your child's life. However, they will have no rights *vis a vis* the child.

### **What if my partner and I move to a state that does not grant second parent adoptions?**

Once an adoption has been finalized, other states should recognize the adoption as legally binding. In general, states must recognize the laws and legal proceedings of other states. Problems could arise, however, so contact an attorney in your new state.