

# MICHIGAN LEGAL HELP

Helping Michigan residents solve their legal problems

## Separation and Divorce: An Overview for Same-sex Families

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In June 2015, the United States Supreme Court decided that same-sex couples in all states have the right to marry. All states must also recognize marriages legally performed somewhere else. For example, if you were married on or after June 26, 2015, every state in the U.S. will recognize your marriage as valid. The same is true if you were married before that date in a state where it was legal. In Michigan, marriages performed on March 21 and 22, 2014 are also recognized. You may have a valid marriage that does not fit one of the examples above. Talk to a lawyer if you are not sure if your marriage is valid. Use the [Guide to Legal Help](#) to find lawyers and legal services in your area.

If your marriage is ending now, you will deal with issues like dividing property and debt in your divorce. If you have children together, your divorce will also cover custody, parenting time, and child support.

If you were not married and your relationship is ending, you may be able to resolve these matters through mediation. If you were able to get a second parent adoption in Michigan or another state, you can resolve custody, parenting time, and child support in court.

### Protection from Abuse [top](#)

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Domestic violence can occur between same-sex spouses and may be a part of your divorce or separation. The same protections are available to all families, and the same rules apply to all parties. If you need protection from abuse, read [I Need a Personal Protection Order – Domestic Relationship](#).

## Separation (Unmarried Couples) [top](#)

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If you and your partner are not married, you don't need to use a legal process to end your relationship. If there are issues you don't agree on, such as property division or child custody, you can go to mediation. To learn more, read [Mediation and Other Forms of Settlement](#).

If you and your partner have a child together and your partner is the only legal parent, consider talking to a lawyer.

To learn how parental rights are established, read [Growing Your Family: an Overview for Same-sex Parents](#).

## Divorce [top](#)

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To learn about divorce, see the [I Need a Divorce and I Have Children](#) toolkit or the [I Need a Divorce and I Do Not Have Minor Children](#) toolkit. Two issues that may arise in a divorce between same-sex spouses are addressed below.

You can start your divorce by using our [Do-It-Yourself Divorce](#) tool to prepare the forms you will need.

## Property Division

Marital property and marital debt are those that you and your spouse took on during your marriage. In general, marital property and debt are counted as of the date of the marriage. If you and your spouse were long-term partners before you were able to get married, a lawyer may be able to help you convince the judge to divide certain property you got before the marriage.

If you have significant property or debt to divide, you may also want to talk to a lawyer. Use the [Guide to Legal Help](#) to look for legal help in your area. To learn more about property division, read [Divorce Basics: Dividing Your Property and Debt](#).

Instead of the judge deciding how to divide your property, you can try to reach an agreement in mediation. To learn more, read [Mediation and Other Forms of Settlement](#).

## Parental Rights

Sometimes parentage is a legal issue in a divorce with children. If your parental rights are not secure, you may not be able to have custody or parenting time. Read below to find out whether your parental rights are secure. If they are not, it is important to talk to a lawyer. You may still be able to get the judge to recognize a legal relationship between you and your child through a legal theory called the equitable parent doctrine.

## Child Conceived Using Sperm Donor (Child Born During Marriage)

In a same-sex marriage where one spouse conceived with the help of an anonymous sperm donor and the child was born **during the marriage**, both spouses are legal parents. If the non-biological parent took the extra step of getting a stepparent adoption, then their parental rights are secure.

A stepparent adoption in this situation is sometimes called a “confirmatory adoption.” This term shows that the adopting parent is the child’s full legal parent through marriage, and the adoption simply confirms their rights.

If the non-biological mother did not get a stepparent adoption, they are still a legal parent. However, there is a risk that the biological mother could claim she intended to be the sole legal parent. If you are the non-biological mother in this situation, you may be able to rely on certain legal doctrines to support your parental status in court. One example is the equitable parent doctrine. Read more below.

A married couple who uses a known sperm donor, instead of an anonymous donor through a sperm bank, could face another problem. A known donor could try to establish paternity, custody, and parenting time rights. The legal parents may need help enforcing the donor contract, if there is one. Use the [Guide to Legal Help](#) to find lawyers and legal services in your area.

## Child Conceived Using Sperm Donor (Child Born Before Marriage)

If a female married couple had a child with the help of a sperm donor **before they were able to get married**, they may have established the parental rights of the non-biological mother through a second parent adoption. Or, after they got married, they may have gotten a stepparent adoption to establish her rights. In either case, parental rights are secure.

If there was no second parent or stepparent adoption, the non-biological mother does not have parental rights to the child. If you are in this situation and you are getting divorced, you may be able to reach an agreement about custody and parenting time through mediation.

## Child Born to Surrogate Mother

If a couple used a [surrogate](#) to have a child during their marriage, the non-biological parent(s) may have completed an adoption to become a legal parent. Adoption secures a non-biological father’s parental rights.

Before the adoption, the surrogate should have given up their parental rights. If the surrogate was married, their spouse’s parental rights also should have been terminated. Use the [Guide to Legal](#)

**Help** to find lawyers and legal services in your area. To learn more about this topic, read **Growing Your Family: an Overview for Same-Sex Parents**.

## **Adoption of Child Biologically Unrelated to Both Spouses**

If you and your spouse jointly adopted a child during your marriage, parentage will not be an issue in your divorce.

If one person did a single-parent adoption before the marriage, the spouse would have had to get a stepparent adoption after the marriage to establish parental rights. If the spouse did not adopt, they do not have legal parental rights. If you are in this situation and are getting a divorce, you may want to see if you can reach an agreement about custody and parenting time through mediation.

## **The Equitable Parent Doctrine**

The equitable parent doctrine is a legal theory that can be used in some cases where the non-biological parent did not secure their parental rights through adoption. A judge can determine that a spouse who is not the biological parent of a child born during a marriage is an equitable parent. An equitable parent is a legal parent with the same rights and responsibilities as the biological parent. The following must be true for the spouse to be an equitable parent:

- The spouse and the child acknowledge a parent-child relationship, or the other parent has helped foster that relationship;
- The spouse wants to have parental rights;
- The spouse is willing to take on the responsibility of paying child support.

The spouse may or may not be required to pay child support. Child support is based on many factors, including parenting time and each parent's income. To learn more about child support, read **Child Support in a Nutshell**.

Michigan Legal Help can't help you ask the judge for parental rights under this doctrine. If you are getting a divorce and your parental rights are not secure, talk to a lawyer. Use the **Guide to Legal Help** to look for legal help in your area. You may also want to consider if mediation is right for you. To learn more, read **Mediation and Other Forms of Settlement**.

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