

LGBT LEGAL READINESS CHECKLIST

*Prepared by NicholsonPham as a tool for security, mobility and resilience and not as legal advice.
Speak to an attorney if you have specific questions. (Adapted from Bill Singer)*

ACTIONS TO CONSIDER EMINENTLY

- ☐ 1. Every adult, regardless of marital or parental status, should have completed wills and powers of attorney. If you have minor children, you particularly need wills. Minors even when they are your heirs at law cannot inherit outright from you before they are eighteen (18). Failure to plan could mean part or all your assets are held in trust by a court and inaccessible to your child.

- **Last Will and Testament**
- **Durable Power of Attorney** (for financial and legal matters)
- **Health Care Power of Attorney w/Advance Directive** (and gender expansive directive as needed).

- ☐ 2. Have legal documentation confirming family relationships and parentage **for parents who are not genetically related to their child**. This includes a **judicial order** determining parentage (i.e. adoption decree or order of parentage) which will be recognized under the “full faith and credit” clause of the U.S. Constitution.

A birth certificate alone is not sufficient proof of parentage. In North Carolina a birth certificate is a rebuttable presumption of parentage and can be rebutted by a DNA test showing you are not genetically related.

- ☐ 3. **Align your gender marker.** In NC you can align gender markers across all documents currently including your REAL ID and NC birth certificate.

However, since the NC House overrode Governor Stein’s veto on HB805, we believe those documents will only be alignable until December 1, 2025. HB 805 defines gender as binary and as assigned at birth. HB 805 becomes effective December 1 of this year.

If you were born in a state that requires an order to change your gender marker, NP has been able to acquire North Carolina orders declaring gender, which have been effective in other states. We believe we will no longer be able to do this after December 1, 2025.

ACTIONS TO CONSIDER MOVING FORWARD

TRAVEL & IDENTIFICATION

- ☐ 1. Get a REAL ID.
 - ☐ 2. Keep your passport current. What is most important is that your passport be current and your passport photo matches your presentation. The process for aligning gender on your passport was streamlined while Obama was president and under Trump 2.0 they stopped aligning gender earlier this year. However, we are currently in a window where you are able to align the gender marker on your passport based on the recent decision in *Orr v. Trump*. **Note that your decision to align or not should be based on your own risk analysis for you and your family. The government has admitted in court documents that they are keeping track of changes ostensibly for the purposes of reversing changes at a later date when permitted to do so by a court.**
 - ☐ 3. Consider getting a passport card, which functions as a wallet-sized national ID. It can be used for domestic travel as an alternative to a Real ID, but it is not valid for international travel.
 - ☐ 4. If eligible, apply for a heritage passport from another country. Having multiple passports can be useful in times of crisis.
 - ☐ 5. Frequent international traveler? Consider enrolling in Global Entry (often called Global ID). It allows expedited entry into the U.S. by bypassing long lines and face-to-face interviews with immigration officers. Global Entry card can be used in lieu of Real ID.
-  **Note:** An in-person interview is required for Global Entry. Individuals who have changed their gender marker on a passport may face complications, including the possibility of passport confiscation.
- ☐ 6. **Papers matter again.** Until the Internet became available, clients carried paper documents. With marriage equality and digital storage, storing documents on a device superseded carrying papers. **That has changed. Carry physical copies.**

Presenting digital copies on your phone to authorities or hospital staff can expose to scrutiny all your personal information and anything stored on the device.

Carry copies of the following documents with you in paper form:

- Marriage license
- Adoption orders
- Name change orders
- Health care proxies
- Consular Report of Birth Abroad
- Citizenship Documents
- Green Card

Store copies of vital documents off-site (e.g., cloud storage, safe deposit box) It will be easier to recover from emergencies such as losing a passport while abroad or losing documents in a house fire, if you present a copy of the document. If you're a client, we may already have copies of your important records.

- ☐ 7. If transgender or gender non-binary, avoid travel to states like Florida or Texas.
- ☐ 8. If transgender or traveling with a trans child:
 - Prepare for scrutiny at airport security
 - Carry a **letter from a medical provider** for medications or medical equipment
 - Have your name aligned on identification documents, have gender marker aligned, if possible. If incongruence, determine how you will respond if questioned so you can act calmly.

INTERNATIONAL CONSIDERATIONS

SHORT TERM

- ☐ 1. For purposes of vacation and short-term business travel, immigration officers in foreign countries are currently satisfied with US documents.
- ☐ 2. Expect questions if traveling with underage children as immigration officials are sensitive to international kidnapping and child trafficking; do not presume it is homophobic.

LONG TERM

- ☐ 1. Consider getting key documents apostilled. An apostille is a certification (under the Hague Convention) that verifies the authenticity of public documents for use in foreign countries. Documents that may require an apostille include:
 - Birth certificates
 - Court orders
 - Vital records
 - Educational diplomas
 - Other official documents

Apostilles are available through the [NC Secretary of State](#) (state documents) [U.S. Department of State](#) (federal documents)

If you are considering immigration, you will need apostilles on documents.

☐ 2. Opening **offshore accounts**:

- If you are considering relocating, opening a bank account abroad (with a small amount) can ease transition. You may need to be in that country to open an account.
- If total exceeds **\$10,000 on any single day** of the year, **strict U.S. reporting laws** apply.
- Some global banks/fintech solutions covering many countries include HSBC, Citibank and Wise (fintech), Revolut (fintech)

MARRIAGE

- ☐ 1. There is no immediate threat to Obergefell, the 2015 Supreme Court marriage equality decision. Even were that ruling overturned, states control marriage laws and you will still be able to get married in many states.
 - 2022 Congress passed The Respect of Marriage Act which requires federal government and other states to recognize valid marriages from other states.
- ☐ 2. If unmarried, should you marry? For each couple, that is an individual, fact and feelings based decision. There are considerations including tax issues, parentage, inheritance and estate planning, and citizenship.
- ☐ 3. Consider entering into a pre-nuptial agreement.

PREPARE AND REMAIN READY. BE RESILIENT.

- ✓ Plan ahead
- ✓ Protect your identity
- ✓ Safeguard your documents
- ✓ Build financial flexibility