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Governor

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Commissioner

Informational Letter

Transmittal:	11-OCFS-INF-01
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	January 11, 2011
Subject:	Adoption by Two Unmarried Adult Intimate Partners
Suggested Distribution:	Directors of Services Adoption Family Home Finders/Trainers Adoption Supervisors Foster Care Supervisors
Contact Person(s):	Any questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services: Buffalo Regional Office- Dana Whitcomb (716) 847-3145 Dana.Whitcomb@ocfs.state.ny.us Rochester Regional Office - Karen Buck (585) 238-8200 Karen.Buck@ocfs.state.ny.us Syracuse Regional Office- Jack Klump (315) 423-1200 Jack.Klump@ocfs.state.ny.us Albany Regional Office- Kerri Barber (518) 486-7078 Kerri.Barber@ocfs.state.ny.us Spring Valley Regional Office- Patricia Sheehy (845) 708-2499 Patricia.Sheehy@ocfs.state.ny.us New York City Regional Office- Patricia Beresford (212) 383-1788 Patricia.Beresford@ocfs.state.ny.us Native American Services- Kim Thomas (716) 847-3123 Kim.Thomas@ocfs.state.ny.us New York State Adoption Services- Brenda Rivera (518) 474-9406 Brenda.Rivera@ocfs.state.ny.us
Attachments:	Governor's Approval Message –Chapter 509 of the Laws of 2010
Attachment Available Online:	N/A

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 421.1 (a)	§ 110(1) DRL		

I. Purpose

The purpose of this Informational Letter (INF) is to provide information to local departments of social services (LDSS) and voluntary authorized agencies regarding Chapter 509 of the Laws of 2010, which, consistent with current case law, amended section 110 of the Domestic Relations Law (DRL) in relation to expressly authorizing two unmarried adult intimate partners to adopt a child together. This law went into effect on September 17, 2010, and also substitutes the gender-neutral terms “married couple” and “spouse” in the adoption statute for “husband and wife,” clarifying that all married couples may adopt a child together.

II. Background

Prior to the enactment of Chapter 509 of the Laws of 2010, section 110 of the DRL referenced that: “an adult unmarried person or an adult husband and his wife together may adopt another person.” Over the years, this section of law has been the subject of several court decisions interpreting who may adopt.

In 1995, the New York State Court of Appeals ruled in *Matter of Jacob* and *Matter of Dana* 86 N.Y.2d 651, 636 N.Y.S.2d 716 (1995) that the unmarried partner of a child’s biological mother, whether heterosexual or homosexual, who is raising the child together with the child’s biological parent, has standing to become the child’s second parent through adoption. The Court held that neither the statutory reference to a husband and wife adopting “together” nor the sexual orientation of the couple precluded such adoption.

Following the Court of Appeals decision, other courts in New York State have held that two unmarried persons together could adopt a child even if neither were the biological parent of the child in question. The court in *In re Adoption of Carolyn B.* 6A.D.3d 67, 774 N.Y.S.2d 227 (2004) held that a joint adoption by two unmarried female partners who had established a family unit was in the best interests of the child, thereby promoting fairness and equal treatment to families that are ready, willing and able to provide a child with a loving permanent home. The court in *In re Adoption of Emilio R.* 293 A.D.2d 27, 742 N.Y.S.2d 22 (2002) issued a similar decision in regard to an unmarried heterosexual couple who sought to adopt the foster child for whom they had cared for for several years.

Chapter 509 of the Laws of 2010 codifies those court decisions that authorize unmarried persons to adopt a child together, even when neither is the biological parent of the child. The chapter does not, in any way, limit or restrict the rights of unmarried persons to adopt together, as such rights already exist under current law. It is intended to support fairness and equal treatment of families that are ready, willing and able to provide a child with a loving home. Chapter 509 of the Laws of 2010 does not change or alter the standards currently in place for the approval of an individual as an adoptive parent or the eligibility requirements for adoption subsidies. A copy of the Governor's approval message of Chapter 509 of the Laws of 2010 is attached to this release.

The chapter amended the DRL to add that in addition to an unmarried person and a married couple, "any two unmarried adult intimate partners together" may adopt another person. For the purpose of an authorized agency determining whether an intimate relationship exists, the factors an agency should consider include, but are not limited to: the nature or type of the relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts should be considered to be an intimate relationship.

In addition, this amendment to the DRL replaces references to "husband and wife" with the gender-neutral term "married couple." This measure will help promote that all married couples, regardless of their sexual orientation, have equal rights to adopt a child together.

No changes in OCFS forms will be necessary as a result of Chapter 509 because, in 2006, OCFS adoption-related forms were amended to reflect gender neutrality.

III. Program Implications

This amendment to the DRL clarifies and supports the current case law that unmarried adult intimate partners may adopt a child together in New York State.

/s/ Nancy Martinez

Issued By:

Name: Nancy Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development

APPROVAL MESSAGE:

APPROVAL MEMORANDUM - No. 25 Chapter 509
MEMORANDUM filed with Senate Bill Number 1523-A, entitled:

"AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child"

APPROVED

This bill would amend Domestic Relations Law Section 110 to add to the delineated list of those who may adopt a child, an unmarried couple comprised of adult "intimate partners." In adding this language, the bill would make absolutely clear a principle that has already been established by the courts, see *In re Adoption of Carolyn B.*, 774 N.Y.S.2d 227 (4th Dep't 2004) and that ensures fairness and equal treatment to families that are ready, willing and able to provide a child with a loving home. This includes same-sex couples, regardless of whether they are married. Moreover, since the statute is permissive, it would allow for such adoptions without compelling any agency to alter its present policies. It is a wise, just and compassionate measure that expands the rights of New Yorkers, without in any way treading on the views of any citizen or organization.

There are two aspects of this legislation that I believe warrant my comment, so as to make clear my understanding of this bill as I sign it into law. First, the term "intimate partners," although at the heart of the bill, is not defined in it. That should not, however, create any confusion. The term is defined elsewhere in New York law, see Section 530.11(e), and I believe such definitions contained in other titles provide adequate specificity as to the term's meaning, and would be looked to by agencies and courts in determining the appropriate construction of this law.

Second, I note that this amendment at least clarifies, and at most expands, existing law. It does not in any way limit or restrict it. Therefore, to the extent the law prior to this bill has been, or may be, read to permit any particular individual or individuals to adopt, including individuals who are neither married nor "intimate partners," there is nothing in this bill that would disturb such a reading.

In sum, this bill will enhance the rights of New Yorkers longing to be parents. As such, it is a welcome addition to New York law.

The bill is approved.

(signed) DAVID A. PATERSON
