

WHAT IS ADOPTION?

Adoption is the legal procedure by which a child becomes, through court action, part of a family other than that of his or her birth parents. Adoption is a serious matter for all concerned. It determines the entire future of the child because it permanently severs ties with birth parents and relatives and transfers the child into a new family where he or she will remain permanently. The new family is responsible for providing the child with the care and guidance necessary in life that will determine the kind of adult he or she will become. To the birth parents, adoption usually means relinquishing the child forever without the privilege of seeing the child or being otherwise involved in the child's life. However in some types of adoptions, called open adoption, birth parents retain the right to communicate or visit the child. Additionally, the birth parents are permanently relieved of all responsibilities of the child's care and financial needs.

To the adoptive parents, adoption means providing for and undertaking the care of a child to whom they will have the same obligations to as a child naturally born to them.

Any minor (a person under 18 years) present within the state when the petition for adoption is filed may be adopted. Sibling groups may also be adopted together. An adult may also be adopted. This pamphlet deals with adoption of minors. The procedure for adults is similar but considerably simpler.

WHO MAY ADOPT A CHILD?

Adults who live and work in the state, are of good character, and have the ability to nurture and provide for a child may adopt. Single adults, as well as married couples, may adopt. A stepparent may adopt his or her spouse's children. A person may not be prohibited from adopting solely because of a physical disability unless it is determined that the disability renders the person incapable of being an effective parent. Florida law specifies that homosexuals are not eligible to adopt, but recent judicial decisions have challenged this law.

GENERAL INFORMATION ABOUT ADOPTION PROCEDURES

An adoption establishes a legal parent-child relationship between the adoptee and the adoptive parents. This legal relationship is identical to the legal biological parent-child relationship. Florida law authorizes adoptions for all persons, minors and adults. A successful adoption is a joyful moment for all the parties involved. Any individual or couple considering adoption should be aware that some adoptions develop complications and they should fully educate themselves on the potential problems and pitfalls. Florida's current adoption law balances the interests of all parties, the biological parents, the adoptee and the adoptive parents. However, the biological parent's rights are primary until that parent voluntarily surrenders their rights or fails to act to protect their rights under Florida Law. Four types of adoptions exist in Florida: The entity adoption (an agency or intermediary facilitated adoption), the step-parent adoption, the close relative and the adult adoption. Each type of adoption has unique procedure. A court presiding over any Florida Adoption must receive proof that facts exist to terminate the biological

relationship forever. A biological parent may properly execute a consent for adoption and surrender his/her rights to their child. Alternatively, a court must hear proof that the parent has abused, abandoned or neglected the child or otherwise failed to protect their parental rights under Florida law. For example, although there are exceptions, an unmarried biological father must register his paternity with Florida's Putative Father Registry; otherwise, the court will not require his consent before proceeding to complete an adoption plan. An unmarried biological father must register his paternity prior to the filing of a petition to terminate his rights or within 30 days of service of a Notice of Intended Adoption Plan. The adoption entity involved with the placement is required to serve a known and locatable unmarried biological father with a Notice of Intended Adoption plan that advises him of Florida's Putative Father Registry and the steps he must take to avoid a default and waiver of any claim of rights to the child. The adult adoption is an exception to this rule. The consent of the biological and legal parents are not required to complete such an adoption, however, the petitioner must provide notice to the biological or legal parents. A consent for adoption is only valid and binding when executed pursuant to the specific requirements of Florida Law. When a child under the age of six months is placed for adoption, the biological mother may not sign her consent for adoption until forty-eight hours after the child's birth or on her date of discharge from the hospital or birth center which ever time is earlier. In these circumstances, a birth father may sign a consent for adoption at any time after the child's birth. Additionally, a legal or biological father may sign an irrevocable Affidavit of Non-paternity at any time, before or after the child's birth, relinquishing parental rights. When a child is six months of age or older, the mother and father may sign the consent at any time and their consent is subject to a revocation period of 3 business days. In either case, once the consents are signed with witnesses and notary, and the revocation period has passed if the child is six months or older, only the court presiding over the adoption can overturn the consents upon a finding that the consents were taken by fraud or duress. After a court issues a judgment terminating the biological parent-child relationship, the time frame for completing the adoption differs. In the case of an entity adoption, the adoptive parents are not eligible to finalize their adoption until 30 days after the judgment terminating parental rights or 90 days after placement of the child in their home, whichever event occurs later. In the step-parent, close relative and adult adoption, the adoptive parents are eligible to immediately finalize their adoption. Additionally, in stepparent and close relative adoptions, the adopting parent(s) have the option of proceeding in a unified legal process in which the order finalizing the adoption also simultaneously terminates parental rights. A unified proceeding is typical for adult adoptions. When pursuing the entity adoption, prospective adoptive parents must decide whether to pursue their adoption through an agency or an attorney ("intermediary"). Prospective Adoptive Parents should only choose an adoption entity that instills in them a significant level of trust. They should fully research the entity's credentials, obtain references and recommendations and fully understand the procedures and costs. The same law applies to both the agency and the attorney/intermediary adoption. Step-parent adoptions are common when one biological parent is willing to give up their parental rights to that step-parent. After adoption, the step-parent has all rights and responsibilities of the biological parent. In step-parent adoptions, as with all other adoptions, if the child is twelve years of age or older, he or she must give his/her consent to the adoption and must be interviewed prior to signing the consent. The adoption process is complicated, thus it is very important to consult an attorney when contemplating any type of adoption. If you believe you need legal advice, call your attorney.

WHO MUST CONSENT TO THE ADOPTION?

Unless the consent is excused by the court, the proper written consent for adoption must be received from:

- a.** The birth mother;
- b.** The birth father, if:
 - 1.** The minor was conceived or born while the father was married to the mother;
 - 2.** The minor is his child by adoption;
 - 3.** The minor has been adjudicated by the court to be his child by the date a petition is filed for termination of parental rights;
 - 4.** He has filed an affidavit of paternity pursuant to s. 382.013(2)(c) by the date a petition is filed for termination of parental rights; or
 - 5.** In the case of an unmarried biological father, he has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the minor, has filed such acknowledgment with the Office of Vital Statistics of the Department of Health within the required timeframes, and has complied with the requirements of s. 63.062 (2).
- c.** The minor, if 12 years of age or older, unless the court in the best interest of the minor dispenses with the minor's consent.
- d.** Any person lawfully entitled to custody of the minor if required by the court.
- e.** The court having jurisdiction to determine custody of the minor, if the person having physical custody of the minor does not have authority to consent to the adoption.

WHAT IS THE ADOPTION PROCEDURE AFTER PLACEMENT?

After a child is placed for adoption with an adoptive family, the adoptive family will desire to have the adoption finalized. To do this, the adoptive family must file a petition for adoption with the clerk of court. This is generally filed in the county in which the termination of parental rights took place. The petition must be filed within 60 days of the termination of parental rights judgment. The matter cannot be heard for final hearing until the child has been with the adoptive family at least 90 days. The exception to this 90 day rule is for relative and step parent adoptions.

The petition for adoption is generally prepared and filed through an attorney. If the child was placed through an attorney/intermediary, generally that same attorney handles the preparation and filing of the necessary legal papers for the finalization of the adoption.

WHAT IS NECESSARY TO FINALIZE THE ADOPTION?

The adoption is “finalized” at a final hearing. The adoptive parent(s) must be present, but may be given permission to appear telephonically with a notary to identify them to the court. The favorable final report of the agency or social worker must be filed with the court. The attorney handling the adoption will prepare the necessary papers for the court’s consideration and present the necessary testimony and evidence to the court. Assuming that all requirements of the statutes and court have been met, the judge will sign a final judgment of adoption. The final judgment of adoption awards the adoptive family parental rights of the children.

WHAT ARE THE EFFECTS OF THE ADOPTION?

As a result of the final judgment of adoption being granted, the adoptive family permanently assumes all parental rights and responsibilities for the child, with the birth parents’ parental rights and responsibilities previously being terminated. The first effect of this is that the child’s name is generally changed to whatever the adoptive family desires. This is accomplished with the vital statistics office of the state in which the child was born. The paperwork for this is prepared by the attorney or agency. The original birth certificate is sealed and not readily available again to anyone. A new birth certificate is prepared which shows the adoptive parents to be the child’s natural parents and states the child’s new name. This new birth certificate is mailed to the attorney or agency and forwarded to the adoptive family.

Once the new birth certificate is received by the adoptive family, they may apply for a new Social Security number, a passport for the child, and open accounts on behalf of the child. For all legal purposes, the adopted child will be considered the natural child of the adoptive family. Further, the adopted child will be legally considered as if he/she were born into the adopted family. That child will be deemed equal with all other children that may then be or later come into the adopted family. This means that the adopted child will inherit equally to those children biologically born into family for purposes of estates and wills or divorce. It is as though the child was born into the adoptive family initially.

WHAT IS THE ADOPTION REGISTRY?

The Department of Children and Families maintains an Adoption Reunion Registry for the benefit of adopted children. At or about the time that the birth parents sign the consent for adoption, the initial election to be on the registry or not is also generally made by a signed statement. If the birth parent elects to be listed on the registry, then that parent’s identity may be released to the child after the child attains the age of 18 years. The birth parent who elects to be on the registry should keep the registry advised of name and address changes, so current information can be supplied to the child. On the other hand, if the birth parent elects not to be on the registry, no information will be given to the child by the Department of Children and

Families (DCF) after the child attains age 18. A birth parent may change his or her mind concerning the registry as time passes. A birth parent may go on or off the registry as many times as necessary until the child attains the age of 18. After the child attains the age of 18, if he or she desires to learn the identity of the birth parents, the child may inquire of the Adoption Reunion Registry. If the birth parent is listed, then that information will be given to the child. If the birth parent is not listed, it is because no authorization was given to DCF to release this information and no identifying information will be released. Unless the child makes an inquiry, no information is extended from the registry. If the birth parent is listed on the registry and the child makes an inquiry, the decision of whether or not the child desires to contact the birth parent lies with the child. Section 63.054, Florida Statutes has provided for the establishment of a Putative Father Registry in the Office of Vital Statistics (OVS), Florida Department of Health(DOH). The purpose of the registry is to permit a man alleging to be the biological father of a child to assert his parentage, independent of the mother, and preserve his rights as a parent. This registry may also expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their child. For purposes of this provision registrant means an “unmarried biological father.” The information provided is not designed to be legal advice. Questions concerning paternity, presumptions of paternity, or rights and responsibilities of a parent should be directed to an attorney. If an unmarried biological father fails to take the actions that are available to him to establish a relationship with his child, his parental interest may be lost entirely, or greatly diminished, by his failure to timely comply with the available legal steps to substantiate a parental interest.

A MAN IS PRESUMED TO BE THE BIOLOGICAL FATHER IF:

- 1) He was married to the mother at the time of the child’s birth or conception;**
- 2) The mother was not married at the time of the birth and the man acknowledged paternity at the hospital at the time of the child’s birth;**
- 3) The mother was not married at the time of the birth and the man acknowledged paternity subsequent to the birth by filing a Consenting Affidavit Acknowledging Paternity, DH 432, with the Office of Vital Statistics prior to the date that a petition for termination of parental rights is filed with the court and the record has been amended to reflect him as father; or**
- 4) Paternity has been adjudicated by a court before the date a petition for termination of parental rights is filed with the court. An unmarried biological father must contact the Office of Vital Statistics, Florida Department of Health to register his paternity. A man may register his paternity prior to the child’s birth, but no later than the date a petition to terminate his parental rights is filed with the court or 30 days after he is served with a Notice of Intended Adoption Plan. All information concerning the registry is provided in each branch office of the Department of Health as well as on the Office of Vital Statistics Web site. All father’s identified by the biological mother as a potential biological father are entitled to Notice of Adoption Plan, regardless of whether their consent is required to complete the adoption as stated above. Florida law requires that an adoption entity notify all identified and locatable biological fathers before the court can terminate the biological rights in furtherance of an adoption. The**

adoption entity complies with this provision of the law by serving a 30 day Notice of Intended Adoption Plan or securing a properly executed Affidavit of Non-Paternity or Adoption Consent. A potential biological father only has the right to notice when the biological mother identifies him by the date she signs her adoption consent.

CITIZENSHIP

Adoption of a child from another country is governed by federal law. Residents of Florida must comply with Chapter 63 home study requirements, and follow the instructions of the Bureau of Citizen Services of the Department of Homeland Security. Children adopted abroad by parents who are present at the foreign court hearing become United States citizens when they enter the United States of America. Parents who are not present at the foreign court must file formal adoption proceedings in Florida to complete their adoption and for the child to become a United States citizen.

The material in this pamphlet represents general legal advice. Since the law is continually changing, some provisions in this pamphlet may be out of date. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

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