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Adoption in New York



NEW YORK STATE BAR ASSOCIATION

Introduction

This pamphlet has been prepared to explain some of the basic adoption laws and procedures in the State of New York.

New York is a progressive and reasonable State in its views and laws on adoption. The laws are in place to protect the rights of all parties involved in the adoption process, with great emphasis placed upon the best interests of the child.

The law expects that those seeking to adopt will strictly adhere to the legal paths open to them so that the adoption is conducted in a manner which is safe, ethical, legal and in the best interests of the child.

What is adoption?

Adoption is a legal proceeding where one person (or persons) takes another into the relationship of parent and child and acquires the rights and incurs the responsibilities of a parent to the adopted person.

While both a minor or adult may be adopted, this pamphlet deals primarily with the adoption of children (persons under 18 years). This pamphlet also only concerns domestic adoptions. International adoptions have many additional rules and procedures, and are not covered in this pamphlet.

What are some of the myths relating to adoption?

Many people seeking to adopt a child mistakenly think that there are few healthy newborns placed for adoption as a result of abortion and the prevailing mores of society. Another myth is that adoptive parents must pay large sums of money for the adoption, or that the process takes many years. Although statistics may be hard to come by, the truth is that many children and newborns of all races are placed for adoption every year.

It is the experience of many adoption attorneys that successful adoptions can be accomplished within one year. Prospective adoptive parents should also be aware that the payment of large sums of money is not only unnecessary but may also be in violation of law and thus create an illegal placement.

What are the different types of adoption?

1. Agency Adoption. The placement of a child through an adoption agency licensed by the State of New York.
2. Private-Placement Adoption (sometimes referred to as independent adoption). Any domestic adoption, other than an agency placement, is a private placement adoption (including adult, co-parent and step-parent adoptions).

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3. Stepparent Adoption. An adoption in which one spouse, in a remarriage, or a partner, if unmarried, adopts the child of the other. This is sometimes also called a co-parent adoption.
4. International Adoption. The adoption by New York residents of children born and living in a foreign country.

Who may adopt?

- An adult unmarried person, an adult married couple together, or any two unmarried adult intimate partners together may adopt another person, subject to the requirement of being certified by a New York Court as a qualified adoptive parent (in a private adoption).
- An adult or minor husband and his adult or minor wife together may adopt a child of either of them born in or out of wedlock, subject to the consent or termination of the rights of the other biological parent.
- Any two adult intimate partners (heterosexual or same-sex couples) together may adopt another person.
- An adult married person who is legally separated may alone adopt another person. This does not create any obligation on the nonadopting (separated) spouse.
- A foster parent who has cared for a child continuously for a period of 12 months or more may apply to the authorized agency to adopt the child. If the child is eligible for adoption, the agency must give preference and first consideration to the foster parent's application. The final decision, as in all adoption applications, is the sole discretion of the Court.
- The unmarried partner of a child's biological or adoptive parent, whether heterosexual or homosexual, has standing to adopt where both individuals are formally raising the child together as one family.
- An adult or minor married couple together may adopt a child of either of them born in or out of wedlock and an adult or minor spouse may adopt the child of the other spouse. Subject to the circumstances of the situation, the adoption may depend upon the consent or termination of the rights of the other biological parent.

Who must consent to the adoption?

Unless the consent of a necessary party is excused by the Court, consent of the following is required to adopt a minor:

1. The adoptive child, if over the age of 14;
2. Both parents, or the surviving parent (even if the parent is a minor) of a child conceived or born in wedlock;
3. The mother, whether adult or minor, of a child born out of wedlock;
4. The biological father of a child born out of wedlock where certain legal criteria have been met, regarding his relationship to the child and/or the biological mother;

5. Any person or authorized agency having lawful custody of the adoptive child.

(Note: Under certain circumstances, subject to the Court's determination, the consent of a parent may not be required where he or she indicates an intent to forego his or her parental or custodial rights and obligations. This may be shown by, among other factors, a failure for a period of at least six months to visit or communicate with the child or those persons having legal custody of the child, although able to do so, and failing to support the child.)

What are some general provisions relating to adoption?

1. The proceeding to adopt is instituted in either the Family Court or Surrogate Court located in the county where the adoptive parents reside.
2. People seeking to adopt children through private placement are required to obtain certification by the appropriate court as qualified adoptive parents prior to taking custody of a child.
3. In a private-placement adoption the birth parent initially signs an out-of-court consent, which becomes irrevocable 45 days after it is signed. If the birth parent consents to the adoption in a court having jurisdiction over adoptions in New York (or any other state), the consent becomes irrevocable immediately at that time (even if less than 45 days have elapsed). If a birth parent seeks to revoke consent before it becomes legally irrevocable, the Court will make a custody determination based upon what it determines to be in the best interests of the child. Accordingly, the Court can order that the child remain with the adoptive couple, be returned to the birth parent or make any other custodial order it deems in the best interests of the child.
4. Although the birth parents' rights may be terminated within 45 days of the written "consent," the law requires the passage of three months before the adoption can be finalized. The three months can be shortened at the discretion of the Court.
5. Except for payments made to an approved New York State adoption agency, no payments may be made for the placement of a child. In a private adoption, one may pay only for reasonable legal fees, medical expenses, and other reasonable pregnancy and birth-related expenses. These other expenses can only be paid for a period of two months before the birth of the child and one month following the birth. Any other payments that are made without Court approval may be viewed as payments made in violation of the law.
6. Each Court may establish certain regulations to implement the specific adoption laws of New York

State. In pursuing adoption, adoptive parents should seek the advice of an attorney familiar with the adoption laws and the Court's requirements in your county of residence.

7. A petition to adopt (or a petition for guardianship) must be filed within five days of taking custody of the child.
8. Adoption agencies licensed or operating outside of New York State must obtain approval from New York before placing children with New York adoptive parents, if they are charging any fees for the placement, and may not charge fees which violate New York State laws.
9. Surrogate parenting contracts are void and unenforceable in New York, and surrogates and gestational carriers may not be paid for their services. They may receive the same financial assistance as birth mothers in private adoptions, however.
10. If adopting a child from out of state, adoptive parents must obtain approval from the Interstate Compact Office of New York before they may bring the child into New York State.
11. Post-Adoption Contact Agreements are enforceable in New York. These agreements, which usually concern communication or contact between the birth parents, the adoptive parents, the adopted child, biological siblings or half-siblings of the adopted child, can only be enforced if approved by the Court finalizing the adoption.

Did you know that an adult married person who is legally separated may alone adopt another person?

What is the legal effect of adoption?

When the judge signs the Order of Adoption, the relation of "parent and child" becomes final and irrevocable, and all the rights, duties and other legal obligations of parent and child are established. A new birth certificate will be issued showing the adopting persons as the parents of the child, and the original birth certificate and all Court paperwork will be sealed.

Pre-adoption information

The New York State Department of Health maintains an Adoption Information Registry for adoptees, birth parents of adoptees or biological siblings of adoptees who wish to learn more about their birth family.

Effective January 2020, adoptees have the right to access their pre-adoption birth certificates when they turn 18 years old. The following individuals are entitled to pre-adoption birth certificates. An adoptee who is 18 years of age or older; direct line descendants of a deceased adoptee; the lawful representative of the adopted person; the lawful representative of a deceased adopted person's direct line descendant (Public Health Law § 4138-e).

Prior to attaining the age of 18, the adopted child may request and receive only non-identifying information relating to the birth parent(s) if an adoptive parent signs the application. For more information, visit the New York State Department of Health website, <http://www.health.ny.gov>.

Conclusion

While the process of adoption is both legal and emotional, every adoption should be conducted with the highest moral and ethical standards.

Adoption is a personal choice, but one which is very viable and should not be viewed as a second best way of having a family, but rather as a positive alternative way to becoming parents. The decision to adopt may have been preceded by periods of frustration and may be accompanied by degrees of loss and anxiety. Many couples, prior to entering upon the road to adoption, undergo medical treatment in an effort to conceive. However, those seeking to adopt should go forward without feelings of desperation or the expectation of instant gratification. It is essential that every adoption comply with to the legal regulations of New York State.

This pamphlet, which is based on New York law, is intended to inform, not to advise, and does not provide specific legal advice or guidance. No one should attempt to interpret or apply any law without the aid of an attorney. Produced by the New York State Bar Association in cooperation with the Adoption Subcommittee of the Family Law Section.



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