

ADOPTION

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INTRODUCTION

Adoption places children who have been legally separated from their birth parents with a new family. It is a process that gives the new parents the same rights and obligations as biological parents. Adoptions are generally regulated by state law, with federal statutes and constitutional law playing a part in some areas (such as adoption subsidies, international adoptions, and the rights of the “putative” or unwed father). A final adoption takes away all parental rights of the child’s biological parents. The adopting parents have all legal duties and rights in dealing with the child.

TYPES OF ADOPTIONS

Different kinds of adoptions have different requirements under the law. Common types of adoptions include:

- 1) *Parental Placements* – birth parents place the child directly with the adoptive parents;
- 2) *Step-parent Adoptions* – A step-parent adopts the child of his or her spouse;
- 3) *Agency Placements* – Licensed public or private agencies place the child with the adoptive parents;
- 4) *International Adoptions* – Adoption of a child born in a foreign country.

WHO CAN BE ADOPTED?

A child under the age of eighteen whose biological parents have consented to the adoption or have had their rights severed by the court or, in some cases, a child whose biological parent has failed to maintain contact with the child for at least 6 months, may be adopted. In 2011, Virginia did away with its re-adoption process for validation of an international adoption. So long as the child was properly adopted in accordance with the laws of the foreign country, Virginia shall issue a new certificate of birth for that child.

WHO MAY PLACE A CHILD FOR ADOPTION?

- 1) A licensed child-placing agency;
- 2) A local board;
- 3) The child’s parent or legal guardian; or

- 4) Any agency outside of the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates.

WHAT IS THE ADOPTION PROCESS LIKE?

Adoption usually begins with the adoptive parents filing a petition with the circuit court. The circuit court will respond by entering an order referring the case to a child placing agency to conduct an investigation and prepare a report. After considering the agency report, the court will enter an *interlocutory* (temporary) *order of adoption*, declaring the child to be, for all intents and purposes, the child of the petitioner.

A six month probationary period then begins, during which time a child-placing agency will visit the home of the adoptive parents at least three times to assure that the child and adoptive parents are adjusting and functioning as a new family. After these visits, the agency will submit another report to the circuit court. After considering the report and determining that the adoption is in the best interest of the child, the circuit court enters the *final order of adoption*.

WHAT KIND OF INVESTIGATION WILL BE MADE?

The circuit court will want to be assured that the adoption is in the *best interest of the child*. In order to determine this, the investigating agency may consider the following information:

- 1) Whether the petitioner is financially able, morally suitable, in satisfactory physical and mental health, and the proper person to care for the child;
- 2) The physical and mental condition of the child;
- 3) Why the parents, if living, desire to be relieved of responsibility for the child and their attitude towards the proposed adoption;
- 4) Whether the parents have abandoned the child or are morally unfit to have custody;
- 5) The circumstances under which the child came to live in the home of the petitioner;
- 6) Whether the child is a suitable child for adoption by the petitioner; and

- 7) What fees have been paid by the petitioners to persons or agencies that have assisted in obtaining the child

WHAT DOCUMENTS WILL BE REQUIRED?

The following documents may be required to petition for adoption:

- 1) Official birth certificate of the child being adopted;
- 2) If married, marriage certificate of the adoptive parents;
- 3) Divorce decree for any prior divorce of either adoptive parent;
- 4) Divorce decree of birth parents, if divorced;
- 5) Death certificate of birth parents, if deceased.

WHAT WILL IT COST TO ADOPT A CHILD?

The cost will vary depending on whether you go through a public or private agency or obtain the child directly from the parents. It is not uncommon for international adoptions to cost as much as \$20,000. Virginia law allows fees only for the reasonable and customary services provided by a licensed or duly authorized child placement agency. Payment or reimbursement is allowed for medical expenses and insurance premiums that are directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of adoption proceedings. Customary legal fees are also allowed.

IS FINANCIAL ASSISTANCE AVAILABLE?

There are several resources that may be able to defray the cost of adoption:

Federal Adoption Assistance – Adoption assistance from the federal government under Federal Title IV-E may allow for one-time or recurring payments through state or non-profit private agencies to adoptive parents of “special needs” children under some conditions. Depending on the state, factors may include the child's age, ethnic background, membership in a sibling group, or medical, physical, or emotional condition.

State Adoption Assistance – Some states may provide medical or supplemental assistance to parents who adopt a special needs child who does not qualify for assistance under the federal Title IV-E program.

Military Adoption Reimbursement – The 1993 Defense Authorization Act authorizes military service members who adopt a child under 18 years of age to be reimbursed for qualified adoption expenses up to \$2,000 per adoptive child (up to a total of \$5,000 if more than one child is adopted) per calendar year. Expenses incurred through the adoption of a service member's children by a non-service connected step-parent *do not* qualify for reimbursement. Claim for reimbursement is made by submitting a DD Form 2675 no later than one year after the adoption is final.

OTHER SOURCES OF INFORMATION

The National Adoption Clearinghouse

www.adoption.org/adopt/national-adoption-information-clearinghouse.php

A comprehensive resource on all aspects of adoption.

U.S. Department of Health & Human Services, Child Welfare Information Gateway

www.childwelfare.gov/adoption

Offers publications and an overview of both domestic and inter-country adoption, including a fact sheet on military adoption.

U.S. Department of State

www.adoption.state.gov

Provides information about international adoptions.

Note: The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.