



THE BASICS

Adoption in New York State

This booklet has been put together to help you understand what adoption is. It will tell you who can be adopted. It will tell you who can adopt a child and how the adoption process works in New York.

WHAT IS ADOPTION?

Adoption is when one or two adults take another person (usually a child) to be his, her or their own child. The correct way to do this is the legal way. When you adopt a child, you have all the rights and the responsibilities of parents. The adopted child has all the same rights as if s/he had been born naturally to you.

The adopted child gets a new birth certificate. You can put a new name for the child on the new birth certificate, if you want to. The child's last name will be the same as yours.

WHO GETS ADOPTED?

- ! Most adoptions involve children under the age of 18. Sometimes, under special circumstances, adults can be adopted too.
- ! Some adoptions involve a child whose parents will not or cannot take care of the child. They give up the child so s/he can have a better life. They **voluntarily give up their parental rights**.

- ! Some adoptions involve children who have been taken from their birth parents because of abuse or neglect. The birth parents did not want to give up the child but their **parental rights were ended (terminated) by court order**. These children get adopted after having been in foster care for a period of time.
- ! Some adoptions involve children whose fathers or mothers have remarried and their child is adopted by the new husband or wife (**stepparent adoptions**). For example, when a mother gets married again after a divorce, her new husband is the child's stepfather. He may want to adopt the child. He and the mother will then be the legal parents of the child. In these cases, the other birth parent (if s/he is alive) must agree to the adoption before it can happen, unless s/he has abandoned the child (had no contact for six months or more).

HOW DO I FIND A CHILD TO ADOPT?

You can find children who have been left or neglected and who wind up in the foster care system through **government agencies**. Many of these children are not babies. Some children come in groups which include brothers and sisters, and some have medical or emotional problems. In New York City, the Administration for Children's Services (ACS) can help find foster children you can adopt.

If you are not in New York City, contact the New York State Adoption Service, Office of Children & Family Services. Contact information is shown at the end of this booklet.

In almost all of these cases, the government will pay an adopting parent a monthly amount of money (a subsidy or grant) and will provide medical coverage for the child.

You can also find adoptable children through **private adoption agencies**, registered and certified by the government. Usually, birth parents have voluntarily given up children adopted through private adoption agencies. You can find private adoption agencies by contacting the organizations listed at the end of this booklet.

You can also find children to adopt by placing **personal advertisements in newspapers and by working with private attorneys who specialize in adoptions**. But trying to locate a child to adopt through newspaper advertisements can be risky. You should discuss this method with an attorney experienced in adoption law before going ahead.

A person who is interested in adoption may want to speak with friends who have adopted, and may wish to contact his/her minister, rabbi or other religious leader.

ARE THERE DIFFERENT TYPES OF ADOPTIONS?

There are two types of adoptions in New York. Each is regulated by state law. The adoption process is closely monitored and investigated before final approval by a Judge.

! **Agency Adoptions:** These adoptions are of children who are in the custody of the state or private agencies who have a state license. These agencies get the children either voluntarily and directly from their birth parent, or through a court order when there has been some legal problem, usually involving charges of neglect or abuse.

! **Private Placement Adoptions:** These adoptions are of children who do not come into the care of the state or go to a licensed adoption agency. Usually, these adoptions start with private agreements between people. They might involve stepparents or other family members. They can also involve people who are not related, where the child is located through a newspaper advertisement or by word-of-mouth.

In a private placement adoption, the people who want to adopt must get court certification before taking the adoptive child home. If the child lives with the people who want to adopt, they must request certification when filing the adoption petition.

WHO MAY ADOPT?

- ! An adult over 18 years of age, whether married or unmarried.
- ! Married persons residing together.
- ! A married person may adopt separately if s/he is legally separated from his/her spouse or has been living separately from his/her spouse for 3 years or more.
- ! Gay men and lesbians.
- ! Same sex partners may both adopt a child as parents.
- ! An unmarried partner of the child's birth parent.

WHO MUST AGREE TO THE ADOPTION?

- ! If the parents were married and their rights have not been taken away by a court, both parents must agree to the adoption.
- ! If the parents were not married, but the father or mother had a lot of contact with the child (for example, by living with, visiting and/or supporting the child, or acting like the parent of the child), both the mother and the father must agree to the adoption.

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- ! If the child's father is not known, or is unidentified, the father's agreement to the adoption is not required.
- ! If the child's father is known, but he has not had much contact with the child, his agreement to the adoption is not required. Even so, the Judge may say he has to be told about the proposed adoption. The mother still must agree to the adoption and may have to sign a statement explaining why there has not been much contact with the father.
- ! Where a mother's or father's rights have been taken away by court order, only the person or agency legally taking care of the child must agree to the adoption.
- ! If the child is over the age of 14, the child must also agree to the adoption.

Parents agree to adoption in a formal paper called a surrender. A parent can sign a surrender either outside of court or in a courtroom in front of a Judge.

A surrender agreement is a paper signed by the birth parents releasing their child for adoption.

If a parent signs a surrender agreement outside of court, that parent has time to change his/her mind. That parent can cancel the surrender and demand to have the child returned.

If a parent signs a surrender agreement in court and in front of a Judge, the surrender immediately becomes final and the parent usually cannot change his/her mind and cancel the surrender. That parent cannot demand to have the child returned.

WHO FINALLY APPROVES AN ADOPTION?

A Judge of the Family Court or a Judge of the Surrogate's Court must approve all adoptions by signing an order of adoption.

WHAT IS AN OPEN ADOPTION?

Open adoption agreements are lawful in New York. Open adoption agreements can work as long as the adoptive parent(s) allows the birth parent(s) to stay in touch with the child.

When the birth parents and adoptive parents agree that the birth parents may stay in touch with the child, this is called an open adoption.

However, if the adoptive parent(s) refuses to let the birth parent(s) see the child, the birth parent(s) has to go to court to enforce the agreement (that is, to have a Judge require the adoptive parent(s) to let the birth parent(s) see the child). Some, but not all, courts in New York State will enforce the agreement if the adoptive parent(s) refuses to allow the birth parent(s) to see the child. In addition to proving there is an open adoption agreement, the birth parent also has to prove to the Judge that his/her continued contact with the child would be good for the child (that is, in the child's best interest).

WHERE DOES THE ADOPTION TAKE PLACE?

In New York, adoptions take place in either Surrogate's Court or Family Court in the county where the adopting parent(s) lives.

HOW MUCH DOES AN ADOPTION COST?

In **agency adoptions** of children in foster care (sometimes called subsidized adoption), all costs of the adoption, including the legal costs, are paid by the government.

In **private placement adoptions**, there may be costs to the adopting parents. The Judge has to be told about these costs. These costs might include the private adoption agency's charges, legal charges and expenses to cover the birth mother's cost of giving birth.

WHO GETS PAID FOR AN ADOPTION?

Children cannot be bought and sold. Any situation that sounds or looks like the buying and/or selling of children will be closely investigated and can end up being criminally prosecuted in New York.

DO I NEED AN ATTORNEY?

Yes. The laws are hard to understand. The rules and the amount of paperwork involved are very hard to deal with.

For the birth parent(s), making the decision to give up a child is not

easy. In private placement adoptions, the birth parent(s) will also need an attorney to make sure that proper procedures are followed. The Judge may appoint an attorney for the birth parent(s) to make sure that their rights are protected.

WHO PAYS MY ATTORNEY?

In adoptions of children in foster care, attorneys for the birth parent(s) and the adoptive parent(s) are paid for by the government.

Unless the adopting parent(s) qualifies for free legal services, in private placement adoptions and adoptions with private agencies where the children are not in foster care, the adopting parent(s) must pay their own attorney. They also may have to pay the attorney for the birth parent(s).

WHO CAN SEE THE ADOPTION RECORDS?

In New York, adoption records are sealed. This means that the record of an adoption is not open to the public, the adopted child, the adoptive parent(s) or the birth parent(s).

IF A PERSON OR A FAMILY MEMBER HAS A CRIMINAL RECORD OR A RECORD OF HAVING NEGLECTED OR ABUSED A CHILD, CAN THAT PERSON ADOPT?

It depends. Some criminal felony convictions may stop a person from adopting. Any record of child neglect or abuse will almost always stop a person from adopting.

CAN BIRTH PARENTS CHANGE THEIR MINDS LATER AND GET THE CHILD BACK?

If a court has taken away the parental rights of the birth parents and they wait too long to ask a higher court to change the ruling of the lower court, the birth parents cannot undo an adoption.

If the birth parent has an attorney and comes into court and agrees to the adoption, the birth parent cannot change his/her mind and undo the adoption.

When a birth parent signs a surrender agreement outside of court, the birth parent has only 45 days after signing that surrender to change his/her mind.

CAN I AGREE WITH ANOTHER PERSON THAT SHE WILL HAVE A CHILD FOR ME AND GIVE THAT CHILD TO ME AFTER THE BIRTH?

Parenting and birthing agreements like this (sometimes called surrogate parenting agreements) are not binding in New York. This means that a New York Court will not force a birth parent to give her child to another person just because she agreed to do so, even if the agreement is in writing.

WHO SHOULD I CONTACT IF I WANT TO ADOPT A FOSTER CHILD OR GET THE NAMES OF LEGAL ADOPTION AGENCIES WHICH WILL HELP ME FIND A CHILD I CAN ADOPT?

! Council on Adoptable Children
66 Broadway, Suite 820
New York, New York 10012
(212) 475-0222
www.coac.org

! New York State Adoption Service
Office of Children & Family Services
1-800-345-KIDS (5437)
www.ocfs.state.ny.us/adopt

BOOKLETS IN *The Basics Series*

Abuse and Neglect Cases in New York State

Adoption in New York State

Becoming a Legal Guardian in New York State

Changing Your Name and Social Security Number in New York State

Courts in New York City

Custody and Visitation in New York State

Domestic Violence Issues Faced by Immigrant Women

Getting a Divorce in New York State

Getting Child Support in New York State

Getting an Order of Protection in New York State

Getting Spousal Support in New York State

Paternity Proceedings in New York State

To obtain a copy of other booklets in this series, you may contact either:

The Brooklyn Bar Association Volunteer Lawyers Project

Telephone: 718.624.3894 E-mail: bklynvlp@aol.com

inMotion

Telephone: 718.537.7355 E-mail: inquiries@inmotiononline.org

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CITY, STATE AND NATIONAL GOVERNMENT AGENCIES

Administration for Children's Services,
Parents' & Children's Rights Unit and
Division of Legal Services

C-PLAN: Child Planning and Advocacy Now,
Public Advocate's Office

New York City Department of Health

New York State Coalition Against Domestic Violence

New York State Department of Social Services

New York State Office for the Prevention
of Domestic Violence

New York State Office of Court Administration

Social Security Administration

State of New York Unified Court System

U.S. Department of Justice,
Immigration and Naturalization Service

U.S. Department of Justice,
Violence Against Women Office

U.S. Department of State,
Office of Children's Issues

ORGANIZATIONS

Association of the Bar of the City of New York

Bronx AIDS Services Inc.

Bronx Legal Services

The Door

The Family Center

Family Violence Prevention Fund

Lambda Legal Defense and Education Fund

Law Tek Media Group, LLC

The Legal Aid Society, New York City,
Juvenile Rights and Civil Divisions

Legal Information for Families Today (LIFT)

MFY Legal Services, Inc.

New York Association for New Americans, Inc.
(NYANA)

New York County Lawyers Association

New York Legal Assistance Group

New York State Bar Association

Pace University School of Law

Safe Horizon Domestic Violence Law Project

Sanctuary for Families Center for
Battered Women's Legal Services

South Brooklyn Legal Services

Urban Justice Center

Women's Prison Association

CROSS-BOROUGH COLLABORATION

Founded in 2000, the Cross-Borough Collaboration (CBC) was established to address the severe lack of free legal assistance for indigent women in the area of family law in New York City. Hundreds of thousands of individuals are involved in Family Court proceedings in New York City each year, yet there are fewer than 75 staff attorneys dedicated to family law issues at the City's free legal services agencies. As a result, the vast majority of Family Court litigants are forced to proceed without counsel, and with little information regarding the substantive or procedural aspects of their cases. The CBC addresses the lack of services in two important ways: (1) by coordinating the efforts of The Brooklyn Bar Association Volunteer Lawyers Project (VLP) and inMotion, Inc. to organize efficient, quality pro bono assistance to indigent clients; and (2) by researching and producing extensive plain-language materials for use by women who must represent themselves in cases involving family law and related issues.

