

ADOPTION IN NEW YORK

placement adoption, one may pay only for reasonable legal fees, medical expenses, and other reasonable expenses related to the birth and pregnancy. Such other expenses can only be paid for a period of two months preceding the birth of the child, and one month following the birth. Any other payments which are made without Court approval may be viewed as payments made in violation of the law.

- Each Court may establish certain regulations to implement the specific adoption laws of New York State. In pursuing adoption, you should seek the advice of an attorney familiar with the adoption laws and of the Court's requirements in your county of residence.
- A petition to adopt (or a petition for guardianship) must be filed on behalf of the adopting persons within 10 days of taking custody of the child.
- Adoption Agencies, licensed outside of New York State must obtain approval from New York before placing children with people in New York for the purpose of adoption. Such agencies may not charge fees in violation of N.Y.S. laws.
- Surrogate Parenting contracts are void and unenforceable.
- If adopting a child from out of state, one must obtain approval from the Interstate Compact Office of New York before they may bring the child into New York State.

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. At that point, 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. The original birth certificate will be sealed.

Confidentiality of the adoption process

Although it is common today for adopted

children to know of their adoption, the records relating to adoption are sealed by the Court. The adoption file and the information contained in it can only be opened to appropriate parties upon application to the Court and a showing to the Court of good cause. Mere curiosity is not deemed "good cause." The need for essential medical data may be deemed good cause.

New York presently has an Adoption Registry under the jurisdiction of the State Department of Health. An adopted child, upon attaining the age of 18 can obtain background (non-identifying information) in relation to his or her birth parents. A birth parent may also approach the registry if there is a desire to have contact with the adoptive child. If the adopted child has also so registered the Department of Social Services will try to assist in having the parties meet.

Conclusion

The process of adoption should be a pleasurable experience. Needless to say, it is sometimes accompanied by degrees of anxiety coupled with prior frustration. However, those seeking to adopt should do so without feelings of desperation and should adhere, strictly, to these reasonable legal requirements of the State.

Adoption is a personal choice. It is not the "second best" way to have a family; it is an alternate way to have a family.

This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. Produced by the New York State Bar Association Committee on Public Relations in cooperation with the Family Law Section.



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Introduction

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

New York is a progressive and reasonable State in relation to 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.

It is expected that those seeking to adopt will strictly adhere to those legal paths open to them so that they may find a child for adoption in a safe way.

What is adoption?

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

While a minor or adult may be adopted, this pamphlet deals essentially with the adoption of minors (persons under 18 years).

What are some of the myths relating to adoption?

Many people seeking to adopt a newborn child mistakenly think that as a result of abortion and the prevailing mores of society, there are few, if any, healthy newborns placed for adoption. Another myth is that you must pay large sums of money to secure an adoption, or that you must wait for many years. The fact is that as a result of out of wedlock pregnancy children and newborns of all races are being placed for adoption.

The experience of attorneys engaged in the practice of adoption law reveals that persons seeking to adopt can be successful within one year and 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.

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What are the different types of adoption?

1. Agency Adoption. Where the placement of a child is made through an Agency organized under the laws of this State authorized by law to receive children for the purpose of adoption.
2. Private-Placement Adoption (sometimes referred to as independent adoption). Any adoption other than an agency placement is a private placement adoption.
3. Step-Parent Adoption. An adoption in which one spouse, in a remarriage, adopts the child or children of the other.
4. International Adoption. The adoption by New York residents of children born and living in a foreign country.

Who may adopt?

- An unmarried adult or an adult wife and husband together may adopt another person.
- An adult married person who is legally separated may alone adopt another person. This doesn't 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 for adoption. If the child is eligible for adoption, the agency is to 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.

Who must consent to the adoption?

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

1. The adoptive child, if over the age of 14;
2. Both parents, or the surviving parent, whether adult or minor, of a child conceived or born in wedlock.
3. The mother, whether adult or minor, of a child born out of wedlock;

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4. The natural father of a child born out of wedlock where certain legal criteria have been met, regarding his relationship to the child and /or the natural 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 a failure for a period of six months to visit the child, or communicate with the child or those persons having legal custody of the child, although able to do so.)

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. Although the birth parent's rights may be terminated within 45 days of the written "consent," the law requires the passage of three months, after which the adoption can be finalized. The three months can be shortened by the court if necessity is established.
4. In a private placement adoption the birth parent initially signs an out of court consent. This consent becomes irrevocable 45 days after it is signed. If the birth parent consents to the adoption before a judge 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 determination as to the custody 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 adopting couple, or be returned to the birth parent, or make any other custodial order it deems in the best interests of the child.
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