

ADOPTION

This guide is meant to be used by lawyers who assist clients in adoptions at no charge or at a reduced fee. Persons who wish to represent themselves will find that adoption proceedings are complicated and that they probably will need at least limited representation by a lawyer. See our separate booklet regarding how limited representation works.

May a minor mother or father place a child for adoption?

Yes, but the Court has the authority to appoint a guardian to represent the minor parent's interest in the adoption proceedings.

Who may adopt?

- Any person over the age of 18 years
- A single person
- A married couple if both the husband and wife agree upon the adoption
- Birth parents whose rights have previously been terminated
- Persons who are not U.S. citizens

Who may be adopted?

Any child or adult may be adopted regardless of place of birth, citizenship, or place of residence. The child does not have to live in Tennessee. However, special rules apply to children being brought into Tennessee from another state or country for the purpose of being adopted.

What if the mother does not know who the biological father is?

If multiple individuals are identified as potential birth fathers, it will be necessary to terminate the rights of each potential birth father or seek paternity testing to identify him. In addition, prior to the filing of any Petition for Adoption, the prospective adoptive parents must file notice with the Putative Father Registry. Any birth father listed with a claim to paternity will be notified. If no reliable information is available concerning the identity of the birth father, notice must be published in a newspaper of general circulation directed to the unknown birth father concerning the potential adoption.

When may a petition for adoption be filed?

The adoptive parents must either have custody of the child or must demonstrate to the Court that they have the right to receive custody of the child they are seeking to adopt. They must have lived in or maintained a regular residence in Tennessee for at least six months prior to filing the petition unless:

- one of the adoptive parent's is related to the child (and then they have to be actual residents of Tennessee at the time of filing the Petition) or

- the adoptive parent is in the military and stationed outside of Tennessee (and then he or she must have lived in or maintained a regular place of abode in Tennessee for six consecutive months prior to entering the military).

What are the types of adoption?

- **Adoption by a Relative.** One of the prospective adoptive parents must a stepparent, a sister or brother (including a half brother or sister), grandparent, great-grandparent, an aunt or uncle, great-aunt, great-uncle, or first cousin.
- **Adoption by a Stepparent.** The biological parent married to the stepparent joins in the petition for the purposes of consenting to the adoption. The rights of the other biological parent must either be terminated or that parent must consent to the adoption.
- **Adoptions Involving a Licensed Child Placement Agency.** A licensed adoption agency makes the arrangements between the biological parents of the child and the adoptive parents. If the biological parents of the child have already surrendered their parental rights or had them terminated, the agency must consent to the adoption.
- **Adoptions Involving the Department of Children's Services.** The State of Tennessee has legal custody of the child usually due to the child having been removed from the home of the biological parents and the attempts by the Department of Children's Services to reunify the child with the parents have failed. The child has usually lived with foster parents prior to the termination of the biological parents' rights.
- **Adoption by Legal Guardians.** This occurs when the adoptive parents have already been given custody or guardianship of a child through a court proceeding. If the biological parents' rights have not been surrendered or terminated, that must occur first or they must consent to the adoption.
- **Adult Adoptions.** The parental rights of the birth parents will be terminated upon granting of the adoption. An adult adoption requires only the consent of the adoptive parents and the adult to be adopted. The birth parents must be given notice unless they are deceased.
- **International Adoptions.** They occur after the adoptive parents receive custody or guardianship of the child in the foreign country but do not complete the adoption there.
- **International Re-Adoptions.** A re-adoption in the U.S. must take place to make a child a U.S. citizen.
- **Independent Adoptions.** These are all other types of adoptions. The parental rights of the biological parents must be surrendered or terminated or consent given by them for adoption to occur.

How and where is a Petition for Adoption filed?

The Petition for Adoption must be signed, verified, and filed in either Circuit, Chancery, or Juvenile Courts. Petitions may be filed in the county where the adoptive parents reside; where the child resides; where the child resided when he or she was placed in the custody of a public or private agency; where the child became the subject of a guardianship; or where the agency is located that has custody of the child.

What are the requirements for adoption?

- **Home Study.** Adoptive parents are required to have a home study conducted by a licensed child-placing agency, a licensed clinical social worker, or the Department of Children's Services. The home study can be waived by the Court for relative and stepparent adoptions unless the child is surrendered by the biological parents to the adoptive parents.
- **Termination of Parental Rights.** The parental rights of all biological parents and putative fathers must be terminated before an adoption may take place. The termination can be done in a separate proceeding or as part of the adoption proceedings. If a separate proceeding is commenced, a Petition to Terminate Parental Rights and an Order Terminating Parental or Guardianship Rights must be used.
- **Petition for Adoption.** It provides notice to all interested parties such as putative fathers; biological parents whose rights have not been previously terminated or surrendered; persons who have custody or visitation rights with the child; and agencies with custody of the child. Numerous documents are usually filed with the Petition as exhibits. A checklist of them is attached to the Petition we offer.
- **Order of Guardianship.** If the adoptive parents do not already have custody of the child, the Court may issue an Order of Guardianship pending the final adoption once the adoptive parents file the preliminary home study with the Court. The guardianship order can be waived by the Court for adoptions by relatives and stepparents.
- **Six-Month Waiting Period.** It begins on the date the Petition for Adoption is filed, but it can be waived by the Court for relative and stepparent adoptions, or in other adoptions if the child has been in the physical custody and home of the adoptive parents for more than six months at the filing of the Petition.
- **Examination of the Putative Father Registry.** It must be checked within 10 days of filing the Petition for Adoption to determine whether or not a putative father has registered and is entitled to notice of the proceedings. The response from the Registry must be filed with the Court.
- **Order of Reference.** It will be issued by the Court referring the case to a licensed agency or the Department of Children's Services for investigation, supervision and a recommendation. The agency or DCS will submit a preliminary report, supplemental reports, and a final report to the Court regarding the suitability of the adoptive family to

adopt the child and the child's suitability to be adopted. The Order of Reference and all reports can be waived for relative and stepparent adoptions.

- **Disclosure of Fees and Expenses.** All parties must disclose to the Court whether they have paid or promised to pay any money, fees, contributions or other remuneration or thing of value in connection with the birth, placement or the adoption of the child, and if so, to whom, the specific amount and the specific purpose for which these payments were paid or promised. Payments to anyone other than a licensed child placing agency are limited to the following: birth-related medical expenses, reasonable counseling fees, reasonable legal services related to adoption of the child, reasonable and actual expenses for the birth mother's housing, maternity clothes, child's clothing, food and transportation. The payment of these fees and expenses may not be made more than 90 days prior to the birth of the child or 45 days after birth or surrender of the child.
- **Consent of Child 14 Years or Older.** The consent must be in writing and filed with the Court with the Petition. At the hearing the child must meet privately with the Judge to give his or her consent.
- **Compliance with the Indian Child Welfare Act.** The Petition to Adopt must state whether the child is subject to the Indian Child Welfare Act.

How are parental rights terminated?

Termination can be either voluntary or involuntary. Voluntary terminations include:

- **Surrender to the Adoptive Parents.** It takes place in a private place before a judge of a Chancery Court, Circuit Court, or Juvenile Court, or a Juvenile Court referee. Surrender cannot occur before the fourth day following the birth of the child. So as to prevent the birth parent from surrendering the child under duress, only the judge, the birth parent and the birth parent's attorney are initially present. In order to signify their acceptance of the child, the adoptive parents or agency representative appear before the judge after the birth parent has signed the surrender form. The preliminary home study of the adoptive parents must be provided to the judge. Following a surrender, the birth parents have ten calendar days to revoke the surrender.
- **Parental Consent.** It cannot occur before the fourth day following the birth of the child. Parental consents are revocable until confirmed by appearing before the Court where the Petition is filed and signing the appropriate revocation form. Parental consent is different for adoptions by a relative or stepparent than it is for other adoptions. In adoptions other than those involving relatives or stepparents, there is a confirmation hearing, and the consenting parent must attend. Forms must be completed at the hearing which are similar to those used with a surrender. In adoptions by a relative or stepparent, there is no confirmation hearing. In adoptions by a relative or stepparent, there is no requirement of a court report or home study as there is in other adoptions.

- **Waiver of Interest and Notice by Father.** Any father who is not married to the birth mother and has not signed a voluntary acknowledgement of paternity may sign a form so as not to be listed on the birth certificate as the child's father. The waiver of interest must be signed under oath by the possible father and can be signed either before or after the birth of the child. While the waiver may not be revoked, the birth father's rights are not terminated until the entry of the Final Decree of Adoption. Until his rights are terminated he is still obligated to support the child.

Involuntary terminations of a birth father's rights requires a legal proceeding and a judicial determination that grounds for termination exist and that termination is in the best interests of the child. The prospective adoptive parents must file a Petition to Terminate Parental Rights or make a request for termination in the Petition for Adoption. The Petition is served upon the birth father. The possible grounds for termination include, among other things, abandonment, severe child abuse, incarceration for two years or more for conduct against the child who is the subject of the petition or a sibling, incarceration of the birth father for ten years or more and the child is under the age of eight at the time of sentencing, conviction of killing the child's other parent or guardian, and mental impairment rendering a person incapable of caring for a child.

What forms are used in the adoption process?

Non-Mandatory Forms. There are no forms required by the courts or any department of Tennessee government instead of the ones we offer. Rather, our forms (and those from other sources) are to be used in company with those required by the Department of Children's Services and discussed below. The ones we offer are:

- **Petition for Adoption.**
- **Petition to Terminate Parental Rights**
- **Motion for Preliminary Order**
- **Preliminary Order**
- **Waiver of Interest and Notice by Father**
- **Order Terminating Parental or Guardianship Rights**
- **Final Order of Adoption.**

Mandatory Forms. In Chapter 0250-7-13 of the Tennessee Regulations, the Department of Children's Services has provided forms (of which the italicized ones are the most frequently used) that are required:

- *for use in obtaining medical social/histories of children being surrendered;*

- *for surrenders of children for adoption in Tennessee Courts or in another State or Territory or a foreign country or by an inmate of State or Federal correctional facility;*
- *for the use of parental consents to the adoption of children utilized in adoption petitions in Tennessee;*
- for revocation of surrenders and parental consents;
- for vetoes of contact in the future by the adopted person with the surrendering person or others;
- *for payment and fee disclosure requirements;*
- for certification of social and legal counseling which may be requested by the surrendering or consenting parent or legal guardian;
- for consents for adoption by minors 14 years of age and by guardians ad litem of such minors and disabled adults; and
- for releases of information for updated medical information.

Copies of the mandatory forms may be obtained from the clerks of Circuit, Chancery, and Juvenile Courts; from the local county office of the Department of Children's Services; and the Central Office Adoption Services office in the Cordell Hull Building, 8th Floor, 436 6th Avenue North, Nashville, TN. 37243-1290, (615) 532-5637. Copies are usually available also from licensed child-placing agencies in Tennessee.

What are the rights and obligations of birth and adoptive parents?

Birth parents are entitled to legal representation during the process of terminating their parental rights and placing their child for adoption. The adoptive parents are obligated to pay for the representation if requested by the birth parents.

Birth parents are entitled to social or psychological counseling during the process of terminating their parental rights and placing their child for adoption. The adoptive parents are obligated to pay for this counseling if requested by the birth parents.

Birth parents should, and in most cases are required to, fill out a social and medical history record giving information about themselves and information about their families. This information is passed on, anonymously, to the adoptive family to give them a history of the child for future use.

Adoptive parents can, and are often required, to pay for qualified expenses on behalf of the birth parents. Qualified expenses which can be paid for the birth parents include:

- Medical expenses related to the birth of the child
- Legal expenses related to the adoption

- Social or psychological counseling expenses related to the adoption (limited to a total of one year)
- Reasonable and actual living expenses for housing, food, maternity clothes, the child's clothing, utilities and transportation for a period not to exceed 90 days prior to or 45 days following the birth or surrender of the child or parental consent to the adoption.

Agreements regarding future contact between the birth parents and the child are not legally enforceable.

What are the rights and obligations of putative fathers?

To ensure the receipt of notice of a lawsuit to terminate the putative father's parental rights and/or for the adoption of the child, the putative father must register with the Putative Father Registry prior to the birth of the child or within 30 days following the birth. It is also the putative father's responsibility to update the Registry of any change of his address or phone number.

If a putative father has not registered with the Putative Father Registry but otherwise receives notice of pending proceedings for termination of his parental rights or for the adoption of the child, he has 30 days from receipt of notice to file a lawsuit to establish his parentage or to intervene in the proceedings.

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