

# ADOPTIONS

## An Overview of Domestic and International Adoption Procedures

### 1. INTRODUCTION

An adoption is technically a legal proceeding which creates a “parent-child” relationship between a child and the adoptive parents, and terminates the parent-child relationship between the child and the birth parents. Practically speaking, an adoption is the creation of a family, and the realization of the dreams of the adoptive parents. With respect to the birth mother, the adoption will likely be an event of enormous emotional challenge. There is probably no other area of the law which is as emotionally charged as the area of adoptions, and there is no other area where the results of a legal misstep can have such devastating effects. An experienced adoption attorney can assist the adoptive parents in planning the best strategies, and offer advice on avoiding potential problem areas. This Overview will discuss the adoption process with an emphasis on the laws of New York State.

### 2. CHOICES

There are three principal avenues through which individuals and couples are able to adopt in the United States: private domestic adoption, agency adoption, and international adoption. One of the most difficult decisions each participant in the adoption process has to make is the choice of which avenue to pursue. For example, the birth parents will be deciding whether to work through an adoption agency or to pursue a private adoption. The adoptive parents will be making the same selection of overall direction, and will then be faced with several other choices. They must select the agency with whom to work, whether to advertise to locate an adoptable infant, the country on which to concentrate, or whether to explore alternatives such as surrogate parenting, among many other options. None of these choices is easy, nor is there any “best” method to employ. Prospective adoptive parents can find some comfort, however, in knowing that any of the methods eventually work. Each adoptive parent will find his or her own “best” method, which should be the one which meets their particular needs and with which they are most comfortable.

### 3. PRE-ADOPTION LEGAL PROCEDURE

Regardless of which method an adoptive parent chooses to pursue, the law in the State of New York requires that certain procedures must be followed before a child can be placed with that parent. All of the legal and procedural steps must be followed explicitly. Failure to comply with even the most apparently inconsequential detail may result, at best, in a painful delay before the adoptive parents can take custody of the child or, at worst, the removal of the child from the custody of the adoptive parents.

New York law requires that all adoptive couples pursuing a private adoption or not working with an agency licensed by the State of New York be “pre-certified” by a court. In New York, both Family Court and Surrogate’s Court have jurisdiction over the adoption process. An attorney can assist in the selection of the appropriate court, as well as provide guidance on the general procedures involved, since each court, and even each judge, may have slightly different practices and requirements.

a. Home Study. The first step in the legal process for any type of adoption is to commission a “home study” to be performed. The home study is a formal review of the applicant’s desire and ability to be an adoptive parent. It reviews such factors as the applicant’s willingness to be an adoptive parent, the home environment, and the applicant’s social and economic background. Public and private agencies, as well as private social workers, are empowered to perform the home study. The choice of who performs the study may be based on cost, local court requirements or the ultimate goal of the adoption. Many foreign countries will accept home studies performed only by licensed agencies. As part of the home study, the adoptive parents will be required to provide references, health data, and information on their financial ability to raise a child. The home study process is also an educational one, since the adoptive parents will learn about the differences between being a biological and an adoptive parent, as well as various adoption-related issues which may arise for them and their child.

b. Pre-certification. The completed home study, a petition for pre-certification and fingerprint forms (to discover whether the applicant has a criminal record) are submitted to the court. The State of New York will also be asked to provide information about whether the adoptive parents have any records or reports relating to child abuse or mistreatment. The court may require a personal interview with the applicants. This interview, as with much of the pre-certification process, is generally informal. The process is designed to weed out, to the extent possible, parents who are obviously unsuitable, such as those who have criminal records for child abuse or mistreatment, are mentally unstable, or the like. Many prospective adoptive parents are concerned that some factor in their background may preclude them from adopting a child, such as a criminal history. These concerns should be discussed with their attorney and the social worker performing the home study, who can help evaluate how to best present the petition.

### 4. PRIVATE ADOPTION

The most common form of adoption in the United States is referred to as “private” or “independent” adoption. This type of adoption allows the birth parents and the adoptive parents to plan an adoption which best suits the needs of everyone involved. The families can choose to have as much or as little contact with each other as they find comfortable, and the options vary considerably. There is also the traditional “closed” adoption, in which there is no direct contact between the adoptive parents and birth parents, and perhaps an exchange of minimal information. The current trend is towards more “open” adoptions, which may involve one or more meetings before or after the birth of the child, an agreement to exchange information about the child after placement, visitation in the hospital following the birth, participation by the adoptive parents in the birthing process, or other arrangements acceptable to the people involved.

Private adoptions allow the families to structure these arrangements in the manner which is most practical and comfortable. The keys to successful private adoptions involve mutual agreement on the plan, and the good faith of the parties in implementing the plan.

In a private adoption, the adoptive parents actively seek out a birth mother who is willing to place her child with them. The search may take many forms: advertisements in newspapers, letters to doctors and other health-care professionals, and networking with family and friends. Once again, one of the most difficult choices will be which avenue to pursue. Some adoptive parents are reluctant to advertise, while others are restricted to a limited advertising budget. As with all other facets of the adoption process, careful planning and obtaining reliable advice can be invaluable.

Once an adoptive parent has located a child available for adoption, certain steps must be followed to ensure that the process is as smooth and uncomplicated as possible. New York prohibits the birth mother and the adoptive parents from being represented by the same attorney. The adoptive parents and the birth parents usually have their own attorneys. The attorneys will work together to anticipate complex questions, such as (i) what happens if the baby is not born healthy, or (ii) whether payments made to the birth mother be recovered if she declines to complete her adoption plan.

(a). Confidentiality and Open Adoption. It is important at this stage, and throughout the adoption process, that all of the parties' needs for confidentiality and privacy be respected, while simultaneously recognizing the birth parents' need for some degree for openness (not to mention the frequent benefits for the child and the adoptive parents as well). An increasingly popular form of private adoption involves some degree of openness and communication between the birth mother and the adoptive parents. This contact may be as little as a few telephone calls or a brief meeting, or as much as the presence of the adoptive parents in the delivery room at the birth of the child. The adoptive parents may feel comfortable in working directly with the birth mother, or they may prefer that all discussions take place through their respective attorneys. The attorneys should help the parties resolve any differences, and suggest creative solutions which will further the process. The bottom line, for all of the parties, is to trust their instincts and go along with an arrangement which is comfortable and practical for all concerned.

(b). Payment of Expenses. The birth mother may request, either directly or through her attorney, that the adoptive parents pay for many of her expenses leading up to the birth of the child. New York is very strict about what expenses may be legally reimbursed to the birth mother, and limits payments to three general categories: unreimbursed medical expenses of the mother and child, reasonable rent and related living expenses, transportation expenses, and legal fees. Once again, it is recommended that the attorneys handle these details to ensure that the adoption is not threatened by a well-intended but illegal payment to the birth parents. Care should be taken to ensure that no impermissible payments are made - this is an important factor in the court's review of the adoption, and an impermissible payment may threaten the adoption and result in the child being removed from the adoptive home. In a private domestic adoption, the costs usually range from \$5,000 to \$10,000, exclusive of expenses for advertising or agency fees. The Adoption Tax credit may enable the adoptive parents to receive a credit of up to \$12,150.00, depending upon their family income.

(c). Rights of the Birth Father. Consideration of the birth father's rights is an integral element in private adoptions, and cannot be responsibly or safely overlooked. A significant number of birth fathers support, or at least acquiesce to, the adoption process. New York law draws a distinction between married and unmarried birth fathers. Consent to the adoption is always required in the case of a married birth father, or the husband of the birth mother, when another individual is the biological father. The unmarried birth father's rights, however, must be promptly asserted if they are to have any legal significance. The unwed father's protected interest requires both a biological connection and an assertion of full parental responsibility; in other words, he must both be a father and behave like one.

## 5. AGENCY ADOPTION

There are literally hundreds of adoption agencies in the United States which can place children for adoption. Some agencies specialize in domestic adoptions, adoptions for children who are "hard to place" (ie: those suffering from a handicap or are beyond infancy), and international adoptions. Placements made through social services agencies are usually free from fees to the adoptive parents. In addition, placements of handicapped or hard-to-place children may include subsidies and other financial incentives. The legal procedure in agency adoptions is similar to private adoptions. While agencies are able to place the most sought after newborn babies, their waiting lists are often many years long. It is very common for adoptive couples to utilize an agency for the home study and other assistance, but to pursue a private adoption. In an adoption from a public agency, like a county Department of Social Services, special rules for home studies and training may apply, which are different from the procedures in a private adoption.

## 6. INTERNATIONAL ADOPTION

International adoptions have become increasingly popular in the last decade. Almost every non-Western country has some procedure for permitting infants to be adopted by parents in the United States. Again, the choice of which country or countries on which to direct the search can be the most difficult choice an adoptive parent has to make.

The choice is often made easier by the fact that many countries, and agencies in the United States, have stringent criteria for adoptive parents which may appear arbitrary. These countries or agencies may require that only married couples may adopt, the adoptive couple must be married for a designated period of time, not be overweight, be practicing members of a particular religious organization, and the like. Some agencies and countries prevent adoptions by Gay and Lesbian adoptive parents. While these requirements may appear daunting at first, many new international adoption resources have come into being over the last several years, and the opportunities for international adoptions are undergoing continual expansion. The waiting period can range anywhere from several months to a year and a half, depending upon the country of choice. Indeed, an international adoption may present the greatest likelihood for success for older couples and those adoptive parents with unconventional lifestyles.

In addition to complying with the laws of their home state, such as the pre-certification requirements, the adoptive parents must comply with requirements imposed by the individual country and the United States Bureau of Citizenship and Immigration Services. Once again, it is extremely important that these requirements be followed to the letter. Parenthetically, at least one of the adoptive parents must be a citizen of the United States in order to adopt from abroad.

Many international adoptions are "finalized" in the country of the child's birth, which is to say that the child is officially adopted abroad. Although some parents elect not to re-adopt the child in the United States, many attorneys and adoption professionals advise in favor of the re-adoption, since it will eliminate any uncertainties or questions concerning the validity of the international adoption, and enable a birth certificate, in the child's new name, to be issued in the new state of residence. A new New York law allows the legal recognition of a foreign adoption decree and issuance of a NY birth certificate without the need for a formal readoption process.

International adoptions are generally more expensive than domestic private adoptions. Adoptive parents frequently must travel to the birth country to complete the adoption process, and this is a wonderful opportunity to learn about the culture of the child's birthplace. The cost of an international adoption would likely fall into the range of \$15,000 to \$30,000.

## 7. INTERSTATE COMPACT

If the child has been born in a different state than where the adoptive parents live, the adoptive parents must comply with the requirements of the Interstate Compact on the Placement of Children ("ICPC"), the purpose of which is to make certain the adoption complies with the laws of both the state of birth and New York. While compliance involves only the processing of various forms between the "sending" and "receiving" states, the child cannot be brought into New York until the process is complete. This process usually takes from ten to fourteen days to complete.

The ICPC requirements in most states can be satisfied by providing background information on the birth parents, medical records for the child, the homestudy of the adoptive parents, and either consents to the adoption by the birth parents or court orders terminating those parental rights. Although the laws of each state must be examined to be sure that they are not contradictory to New York's laws, it is usually possible to make accommodations to satisfy the requirements of each state. It is important to note, however, that there are a few states which do not permit adoptions to be arranged by persons other than licensed adoption agencies. Careful planning by the adoptive parents, working together with their attorney, can help to avoid complications arising.

## 8. FINALIZATION OF THE ADOPTION

After the adoptive parents have had custody of the child in New York for at least three months, the baby can be formally adopted. A follow-up home study will be performed to attest to the integration of the baby into its adoptive home. Once again, various legal documents will be filed with the court, and an informal hearing may be held. After the court has issued its final order of adoption, the New York State Department of Health will issue an amended birth certificate. This certificate will show the child's name, as given by the adoptive parents, and will also show the adoptive parents as the mother and father of the child. The amended birth certificate is virtually identical to a standard birth certificate.

## 9. CONCLUSION.

The goal of all parties in the adoption process should be to ensure that the best interests of the child are protected. Indeed, every adoption should pass the most stringent ethical and moral tests. The adoptive parents' decisions about which adoption steps to take, and how to take them, are some of the most difficult choices any person or couple can ever make, but the warmth and joy experienced by adoptive parents is incomparable.

The information presented above is intended to provide a general overview of the adoption process in New York. It is not intended to be a comprehensive summary of the law, and individual circumstances may differ.