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Co-Parent ADOPTIONS

An Overview of the Co-Parent Adoption Process

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1. INTRODUCTION

New York has permitted co-parent adoptions since 1994. Co-Parent adoptions are ones involving same-sex partners, where one partner is adopting the biological or adoptive child of his or her partner. In general terms, an adoption is 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. In the case of a co-parent adoption, however, the parental rights of the consenting biological parent remain in existence. In this respect, the law treats a co-parent adoption the same way as a stepparent adoption, where one parent adopts the child of their spouse. This Overview will discuss the co-parent adoption process, with an emphasis on the laws of New York State.

2. PRE-ADOPTION LEGAL PROCEDURE

New York law requires that all adoptive parents who have not lived with the child they are adopting for at least a year must be pre-certified as a qualified adoptive parent by a court. In New York, both Family Court and Surrogate’s Court have jurisdiction over the adoption process. An experienced adoption attorney can assist in the selection of the appropriate court, as well as provide guidance on the general procedures involved, since each court may have slightly different practices and requirements.

The first step in the precertification process is to commission a “home study” to be performed. The home study is a formal review of the co-parent’s desire and ability to become 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, may perform the home study, but the choice of who performs the study may be based on cost or local court requirements. As part of the home study, the adoptive parent 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 parent 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.

The completed home study, a petition for pre-certification and fingerprint and child abuse clearance forms are submitted to the court. The court may rarely require a personal interview with the applicant. 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 or are mentally unstable. Many prospective adoptive parents are concerned that some factor in their background, such as a criminal history, may preclude them from adopting a child. 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. FINALIZATION OF THE ADOPTION

A petition for Adoption and various other forms are eventually filed with the court. Depending upon how much time has elapsed since the precertification has been done, the court may require that a follow-up home study be performed. If no precertification was required, then a home study will be ordered by the court at this time. Once the court has approved the home study, an informal finalization hearing will take place. At this hearing, the adoptive parent, biological parent, the adoptive child and their attorney appear before the judge, and the court will issue the order of adoption. The court will also instruct the New York State Department of Health (or the appropriate office in the state of the child's birth) to issue an amended birth certificate. This certificate will show the child's new name, if the name is changing as part of the adoption, and will also show both the biological and adoptive parents as the parents of the child. The amended birth certificate is virtually identical to a standard birth certificate.

5. RIGHTS OF THE OTHER BIOLOGICAL PARENT

If the adoptive child was created through assisted fertility or artificial insemination, there is likely no other person whose consent is required for the co-parent adoption, except the partner of the adoptive parent. However, if the child was born in an earlier relationship or through surrogacy, the parental rights of the other biological parent must be addressed. Consideration of a birth parent's rights is an integral element in co-parent adoptions, and cannot be responsibly or safely overlooked. A significant number of birth parents support, or at least acquiesce to, the adoption process. New York law draws a distinction between married and unmarried birth parents; consent to the adoption is always required in the case of a married birth father, or the husband of the birth mother. An unmarried birth parent'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.

6. CONCLUSION.

Upon the finalization of the adoption, the adoptive parent has legal rights which are identical to those of the biological parent. 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 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.