



WHAT YOU
NEED TO
KNOW
ABOUT...

ADOPTION



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Toby Solomon, a family law practitioner specializing in family law, provided the legal information contained in this brochure. The New Jersey State Bar Foundation thanks Ms. Solomon for her time and diligence in the production of *What You Need to Know About Adoption*.

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WHAT YOU NEED TO KNOW ABOUT ADOPTION

What is adoption?

Adoption is a legal action that terminates all rights, duties, privileges and relationships between the child and his or her birth mother and/or birth father and any person who has become the child's legal parent. Adoptions in New Jersey are governed by the statutes found at N.J.S.A. 9:3-38 *et seq.* A finalized adoption establishes the same relationship between the child and the adoptive parent or parents that would exist if the child had been born to them, including the right of inheritance. Although some states permit "open adoptions," birth parents give up all rights to their child under adoptions granted in New Jersey.

What is an open adoption?

An open adoption is when the birth parents continue to have some contact with the child after the adoption. This contact can be as minor as a simple letter or card on the child's birthday, or as intimate as visitation. While open adoption is a legal option in some states, it is not legally enforceable in New Jersey. In other words, while adoptive parents may agree to permit some form of contact between the child and the birth parents, they are not legally bound by these promises, even if they are made in writing.

Must an adoptee be a minor?

No, but an adult adoption has different parameters and is governed by a different statutory law, found at N.J.S.A. 2A:22-1 *et seq.*



In a private adoption there is direct contact between both sets of parents, and they often meet before the child's birth or attend the birth at the hospital.

How does one go about adopting a minor?

Adoption is actually a three-part process. The first part is non-legal, and involves identifying the birth parents. The second and third steps are legal processes. Step two involves the birth parent(s) surrendering their rights to the child to a licensed adoption agency or before the court, or having their rights terminated by the court. The third step is the legal process of incorporating the child into the adoptive family.

How does one go about identifying birth parents?

There are several basic ways to identify prospective birth parents in the adoption process: through an adoption agency; through private placement resulting from networking with friends, family, clergy members or doctors; or through the New Jersey Division of Youth and Family Services' foster care system.

What is an adoption agency?

In New Jersey, an adoption agency is a facility that is licensed by the state to prepare evaluations of possible adoptive parents' homes (called home study reports), place children for adoption and perform several evaluations of the home environment following an adoption. While these agencies can walk both parties through the adoption process, an adoption attorney can finalize an agency placement with the court.

What is a foreign adoption?

A foreign adoption is where the child from a country other than the United States is adopted by a U.S. citizen. When it comes to foreign adoptions, the laws and procedures vary depending on the country; therefore, it is best for adoptive parents to use the services of an adoption agency with experience placing children from the country from which they wish to adopt.

What is a private placement adoption?

A private placement adoption is one in which the birth parents and the adoptive parents were united by means other than an adoption agency, such as through networking with family, friends, members of the clergy and doctors. In a private adoption there is direct contact between both sets of parents, and they often meet before the child's birth or attend the birth at the hospital. A private adoption can be handled by an adoption attorney.

What are the steps an adopting parent and a birth parent take in a typical American adoption?

In a private placement, the first step for adoptive parents is to prepare a letter to potential birth parents, which includes background information about themselves and their lives, as well as photos of their home, family, friends, activities such as vacations and holidays, etc. Adoptive parents then begin the search to identify birth parents who are interested in placing their child for adoption. This is typically done through networking, an adoption agency or an adoption attorney. The adoptive parents must have a current home study, which is prepared by a licensed agency.

The legal process begins once the adoptive parents have identified a birth parent. Generally, medical records of the birth parents will be provided to the adoptive parents through the adoption agency or through their attorney. In a private placement, they may or may not visit the intended birth parents prior to the birth of the infant. This often depends upon whether such a meeting is requested by the birth parents.

If it is an interstate adoption (where the birth parent(s) live in one state and the adoptive parent(s) live in another), the adoptive parents will have to comply with the Interstate Compact on the Placement of Children (ICPC) for both the sending state (the state where the child is born) and the

The legal process begins once the adoptive parents have identified a birth parent.



receiving state (the state of residence for the adoptive parents). Once the baby is born, the adoptive parents will travel to the sending state to pick up the child. If permitted by hospital policy, the adoptive parents may be at the hospital for the birth of the child.

The adoptive parents must wait for approval from the sending state's ICPC before leaving that state with the infant, and cannot return to the



receiving state with the infant until they have approval of the adoption from the ICPC of the receiving state. Various documents are required by both the sending state and the receiving state in order for approval to be granted.

Once the infant is in the home of the adoptive parents, a "complaint for adoption" must be filed within 45 days. Within 90 to 120 days of the child entering the home, the court will schedule a preliminary hearing. Notice of the adoption must be served upon the birth parents in accordance with the statute if they have not legally surrendered their parental rights, or their rights have not yet been terminated by the court in the sending state. At the time of the preliminary hearing, the birth parents' parental rights will be terminated if they

have not notified the court of their objection to the adoption after being given proper notice. A final hearing will take place six months later, and most courts in New Jersey do not require an appearance at that time.

What is step-parent adoption?

In a step-parent adoption, one parent is the birth parent or adoptive parent and his or her spouse is petitioning to adopt the child.

What are the laws in New Jersey concerning single-parent adoption?

A single parent may adopt under the same laws as a married couple.

What are the laws in New Jersey concerning same-sex couples adopting?

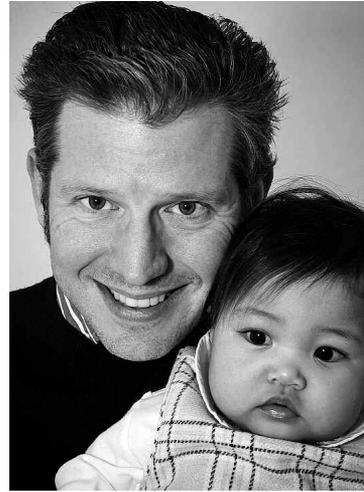
Same-sex couples may adopt, just as heterosexual couples may adopt. At this point in time, the law has not been tested in court to determine if any special rules may apply to these adoptions, such as requirements that adopting couples be registered domestic partners or united through civil unions.

Do you need a lawyer to handle an adoption?

Although it is not mandatory that an adoptive parent have a lawyer, there are many pitfalls that can take place during the process. Experienced legal counsel can guide adoptive parents through the process in order to prevent and/or minimize potential problems.

Is the birth father's consent to the adoption necessary?

In New Jersey, the birth mother does not have to name the birth father, but if the father is named efforts must be made to locate him and obtain his consent to the adoption. Under the statute, if the



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birth father is located, in order to contest the adoption he must come forward within 120 days of filing for adoption or prior to the preliminary hearing, whichever comes first.

If the identity of the father cannot be determined, or if the birth mother is unable or refuses to identify the father, and the court is unable, from available information, to identify him, notification of the father is waived by the court. If the birth father cannot be found, it is considered an “at risk” adoption because he may appear and contest the adoption up until the completion of the preliminary hearing.

What happens in the case of a missing parent?

Under the law, a diligent search must be conducted to locate the missing birth parent, including writing to state agencies using the parent’s name and last known or suspected address. The agencies that must be contacted include the local post office, the motor vehicles division, the county welfare agency, the municipal and state police, the county probation office, the department of corrections, and any other social service and law enforcement agencies that may have had contact with the individual. Failure to receive a response to these inquiries within 45 days is considered a negative response.

What if the child is the result of rape or incest?

The requirements are the same if the child was conceived as a result of rape or incest.

What rights does a father have to his child if he finds out about the child after the adoption?

None, unless the birth mother committed fraud by claiming not to know who the father was or intentionally identifying someone else as the birth father. Under New Jersey law, the birth father has 120 days from the birth of the child, or anytime

prior to completion of the preliminary hearing for the adoption, to come forward. In New Jersey, having had intercourse is considered sufficient notice that a man may be a parent under the law.

Can a birth parent or adoptive parent change his or her mind after an adoption?

If the adoption has been finalized by the court, and/or if the birth parents surrender their parental rights or their rights have already been terminated by a court prior to the finalization of the adoption, it is of no legal consequence that the birth parents or the adoptive parents change their minds, unless there was fraud. Once finalized, the adoptive parents have the same rights as any parent to their child.



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Is a child's consent (in the case of an older child) necessary in an adoption?

If the child to be adopted is 10 years of age or older, he or she will be required to appear at the final adoption hearing, unless the court waives the

requirement. The child's wishes concerning the adoption will be considered if he or she is intellectually capable of expressing a preference regarding the adoption.

Once an adoption is finalized what happens to the adoption records?

In New Jersey, all records relating to adoption proceedings, including the complaint, judgment and all petitions, affidavits, testimony, reports, briefs, orders and other relevant documents, are sealed by the court clerk, and may not be opened to inspection or copying without a court order, which almost never occurs. In some cases the court may choose to provide an adopted child with medical information without releasing information about the birth parents. The New Jersey Legislature has been considering legislation for several decades that would open adoption records.

About the New Jersey State Bar Foundation

The New Jersey State Bar Foundation, founded in 1958, is the educational and philanthropic arm of the New Jersey State Bar Association. The Foundation is committed to providing free legal education programming for the public. Programs provided by the Foundation include seminars on such topics as wills, divorce, taxes, retirement planning, disability law and health issues; mock trial programs for students in grades K to 12; and training sessions for teachers on the topics of conflict resolution, peer mediation and teasing and bullying prevention. Publications geared for the public include *Law Points for Senior Citizens* (second edition), *Consumer's Guide to New Jersey Law*, *Legal Consequences of Substance Abuse*, *AIDS and the Law in New Jersey* (second edition), *Disability Law: A Legal Primer* (fifth edition), *Domestic Violence: The Law and You* (second edition), *A Basic Guide to Personal Bankruptcy* and *Residential Construction and Renovation: A Legal Guide for New Jersey Homeowners* (second edition). School-based publications available through the Bar Foundation include *Bill of Rights Bulletin*, *Constitutionally New Jersey*, *Historical Documents of New Jersey and the United States*, *What You Need to Know About Plagiarism*, *The Legal Eagle*, *Respect*, a newsletter about tolerance and diversity, and *Students' Rights Handbook* (third edition), which is cosponsored with the ACLU-NJ. Some publications are available in Spanish and all are available in alternative formats for the visually impaired. For more information or copies of program materials, visit the New Jersey State Bar Foundation online at www.njsbf.org or call 1-800 FREE LAW.



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