



**VIRGINIA  
LEGAL AID  
SOCIETY**

## **ADOPTION**

Adoption is a legal process that establishes a new parent-child relationship between a child and someone who is not the child's birth parent. (Birth parents are sometimes also referred to as "natural" or "biological" parents.) It is a legal process that gives the new adoptive parent the same rights and obligations as a biological parent. Likewise, adoption gives the adopted child the same rights and relationship to the adoptive parent as if born to the adoptive parent.

Also, once a child is adopted, the duty to provide financial support for the adopted child begins. The duties, responsibilities and rights of the birth parent are completely severed after the adoption, and the birth parent is considered a "legal stranger" to the child. A step-parent who adopts his or her spouse's child may have to provide child support should the husband and wife later separate and/or divorce.

If you are interested in pursuing adoption, it is very important to speak with a lawyer who is familiar with this area of the law. He or she can fully explain the procedures, rights and obligations involved in adopting a child, which are designed to protect the rights of the natural parents and ensure that the proposed adoption is in the best interests of the child. Any deviation from the proper procedure may delay the adoption or cause serious problems in the future.

### **WHAT TYPES OF ADOPTION ARE THERE IN VIRGINIA?**

In Virginia, there are several different types of adoptions. The two most common types are private placement adoptions and step-parent adoptions. Other types of adoption include agency placements and children adopted through foster care programs. These types of adoptions have somewhat different procedures. The state agency or licensed child placement agency publishes these guidelines. There is also an adult adoption law.

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## **WHAT IS A PRIVATE PLACEMENT ADOPTION?**

In a private placement adoption, the natural parent(s) generally place the child directly with the adoptive parents of their choice. The natural parent can do this through an agency and/or directly with the parents of their choice.

## **WHAT IS A STEP-PARENT ADOPTION?**

A step-parent adoption usually occurs when natural parents have divorced or one natural parent has died and the new husband or wife seeks to adopt the step-child.

## **HOW TO BEGIN A PRIVATE PLACEMENT ADOPTION?**

Adoption usually begins with the filing of a petition in the Juvenile Court. The sole purpose of this petition is to secure the consent of the natural parent(s) or legal guardian of the child to be adopted and to appoint the prospective parents as new guardians of the child. The actual petition for adoption is then filed in the Circuit Court. The Circuit Court judge will then enter an interlocutory order, which declares that, subject to at least six months' probation, the child will be the child of the petitioning parent. (*Interlocutory refers to something which is temporary or not final, usually an order or decree made provisionally pending a final determination. Interlocutory orders are generally unable to be appealed until a final decision has been rendered in the matter.*) This order generally directs a licensed child placing agency, the local Board of Public Welfare, or the Department of Social Services to investigate and report on the proposed adoptive placement. During the next six months, agency personnel will visit the adoptive home several times to ensure that the child and new parents are adjusting and functioning as a new family. After all of the visits have been completed and after at least six months have passed since the entry of the interlocutory order, the investigative agency will issue its recommendation. If the recommendation is positive, the Circuit Court will then enter a final order of adoption.

## **HOW TO BEGIN A STEP-PARENT ADOPTION?**

A step-parent adoption can be reasonably simple if the noncustodial parent (the birth parent without custody) consents in writing, is unknown, or is deceased. If the noncustodial parent does not consent in writing to the adoption, then the adoption process becomes complicated and will involve the termination of the noncustodial parent's parental rights. Termination of parental rights involves a completely separate court procedure and must be completed before the adoption process can begin.

The step-parent files a petition to adopt the child and the natural parent who is married to the step-parent consents to the proposed adoption by filing a written statement of consent under oath. The circumstances under which the child came to live in the adoptive home

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determine the appropriate procedures to be followed. In many cases, the probationary period and investigative reports mentioned above may not be required.

## **HOW TO BEGIN AN AGENCY ADOPTION?**

Adoptions conducted through licensed child-placement agencies or governmental agencies have somewhat different procedures. The state agency or licensed child-placement agency publishes these guidelines.

## **WHAT ARE THE LEGAL EFFECTS OF AN ADOPTION?**

A final order of adoption terminates all legal rights and obligations of the birth parent with respect to the child, including the right to petition any court for custody or visitation with the child or obligations to pay future child support. This does not mean that all obligations to pay back child support are eliminated.

The new adoptive parent is considered the child's parent and, as such, has all the legal and financial rights and obligations of any natural parent.

Adoption does not necessarily sever the rights of the adopted child to inherit from the birth parent if the birth parent dies with an estate but without a will. If you need more assistance with that matter—your child being able to inherit from a deceased birth parent's estate—you will need to consult a private attorney.

After the final order for adoption is granted, there is a six month follow up period during which the final order may be appealed or, in rare cases, otherwise challenged by anybody with standing to do so.

## **FREQUENTLY ASKED QUESTIONS:**

**I adopted my former wife's son when I was married to her. The boy now lives with his mother. Do I have to pay child support to my former wife for the boy?**

Yes. Once a child is adopted, the duty to provide financial support for the adopted child begins. A stepparent who adopts his or her spouse's child may have to provide child support should the stepparent and spouse later separate and/or divorce.

**My husband legally adopted my son, who was born out of wedlock with a different man as his natural father. The natural father agreed to the adoption. He now wants to visit with the child. Do I have to let him see the child?**

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No. The duties, responsibilities, and rights of the birth parents are terminated after the adoption, and the birth parents are considered “legal strangers” to the child. Adoption terminates all legal rights and obligations of the biological parent with respect to the child, including the right to petition any court for custody or visitation with the child, or obligations to pay future child support. This does not mean that all obligations to pay back child support is eliminated. If back child support is owed, the natural father will still have to pay the benefits and will be subject to collection procedures by the Department of Child Support Enforcement (DCSE).

**I have a child by someone to whom I have never been married. The father has never wanted to be involved with the child. I am getting married soon and my new husband wants to adopt the child. Can he do so and can I do this without the real father interfering with the process? I’m afraid that if I tell him about the adoption, he will cause trouble.**

In Virginia, if the identity of the biological father is known it must be divulged in the adoption proceeding. The biological father must be given notice of the proceedings and be served with notice through the court system. If he is not given notice, the adoption could be challenged, and possibly overturned at a future date. If he does not want to be involved, he can sign a waiver to future proceedings after being notified. If the natural father is out of state and you are not able to obtain the usual personal service, there are other procedures in place that you may need to follow. You should consult with a private attorney for more information and advice.

**I’m not married, but I’m about to give birth and will give my child up for adoption. Can I retain some visitation privileges?**

Generally you cannot. Adoption begins with the termination of the natural parent’s rights which severs any legal ties with the child. Most people hold that the confusion to the child and possible conflicts between the natural and adoptive parents are harmful to the child. A possible solution would be a “parental placement adoption” where the adoptive parents may voluntarily agree to some manner of visitation. The law allows the parties to determine between themselves how “open” or “closed” the placement will be.

**I am the birth mother of a child that I recently gave up for adoption. I have changed my mind. Can I withdraw my consent to the adoption?**

There are limited situations in which you can withdraw your consent to an adoption. If there is not yet a final order of adoption entered by the court, then you can withdraw your consent if you can prove there was fraud or duress in getting your consent. You can also withdraw your consent prior to a final order if there is agreement among the birth parents and the people who planned to adopt, or the child placement agency, if there was one involved.

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In some cases, the adoption process is started with an entrustment agreement, in which the birth parents voluntarily give up their parental rights and agree that the child can be adopted by someone else. Such agreements can be revoked by either of the birth parents until the child is 10 days old and 7 days have passed since the agreement was signed. Also, an entrustment agreement can be revoked if the child has not yet been placed with the adoptive parents.

### **Does Virginia allow a single person to adopt a child? Do I have a chance?**

Virginia law allows any “natural” person to apply for adoption. It does not discriminate between married couples or single persons, nor between male or female persons or same sex relationships. Under proper circumstances anyone has the chance to adopt if the court finds it is in the best interests of the child to be placed with that individual.

### **I live in Virginia and would like to adopt my relative’s baby, but the child lives in another state? In what state should I file for adoption?**

You should file in Virginia. State law says that the petition for adoption is filed where the petitioner resides. There may be some communication between the Virginia court and the courts or agencies of the state where the child is located, in order to do any studies or investigations that the court may order.

### **If I become a foster parent, are my chances of adopting better?**

They sometimes are. When a child has been in placement with a foster care family for eighteen months and the parental rights of the natural parents have been terminated, the law favors the petition of foster parents if they choose to pursue adoption. While the court may order a home study, it can shorten the procedure by waiving (dispensing with) the home visitation study, an interlocutory order, and the probation period. If the child has been in placement for twelve months, the court can begin the termination of parental rights and begin the adoption process.

### **Can adoptions in Virginia be undone after the court has already given an order of adoption?**

Generally, they cannot be undone just because the parties change their minds and, for example, want their child back. There must be very compelling reasons for reversing an adoption that is already done; it is a very difficult thing to do. Because finality is considered a necessity in an adoption, for both the parent and the child, the courts are not likely to undo an adoption. A party may appeal an order of adoption if they believe it was improperly obtained, but the standards for doing so are very strict. An order for adoption may also be challenged by what is called “collateral attack,” which means a challenge in

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some way other than a direct appeal, within six months of when it was entered. Any challenge to an order of adoption requires a high degree of knowledge of law and legal procedure, and thus an attorney should be consulted.

**My girlfriend tells me that as soon as she gives birth to our child, she will give the child up for adoption. She can surrender her parental rights. But don't I have some say about this?**

Yes. You can initiate a paternity proceeding in the Juvenile & Domestic Relations Court and establish that you are the natural father. As the natural father you can intervene and attempt to obtain custody for yourself. The court should look favorably on your petition for custody as there is a presumption in your favor as the natural parent.

**I am a 20-year old adoptee and want to learn the identity of my biological parents. Is that possible in Virginia? What is the procedure?**

Once the adopted party has reached the age of eighteen, he/she may apply to the Commissioner of Social Services for this information, who must direct the agency that did the placement to try to locate the birth family and advise them of the application.

The agency submits its findings to the commissioner, including an analysis of the effects of the disclosure, and comments from the birth parents and the adopted party. The commissioner then makes a decision whether to reveal the information.

If the commissioner denies the application you may petition the circuit court for an order compelling the disclosure. The circuit court must make its decision based on the same factors as the commissioner. If your adoption was a parental placement adoption after July 1, 1994, the law allows you to have access to the entire file.

**Our adopted child has developed a very serious health problem. The doctor tells us it is critical to our daughter's physical and mental well-being that we find the medical history of the biological parents, but the adoption records are sealed. Will it be difficult to have the records opened to learn their identities?**

Virginia law provides for disclosure of medical, psychological, or genetic information to the adopted person over eighteen, or the adoptive parents, if a physician or health care provider submits a written statement indicating that it is critical that such information be disclosed and the reasons why it is necessary.

**I think that I may have fathered a child but paternity has not been established because the child has not been born yet. The mother of the child wants to put the child up for adoption. How can I be notified if she puts the child up for adoption?**

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The Virginia Department of Social Services maintains the Putative Father Registry. The purpose of the registry is to protect the rights of the person who claims to be the father (called the “putative father”) and wants to be notified of a proceeding for adoption or the termination of parental rights regarding a child he may have fathered.

You are considered a “putative father” if:

- you are not married to the child’s mother; or
- a court has not determined that you are the child’s father; or
- you have not signed a written agreement acknowledging you are the child’s father; or
- you have not adopted the child.

A putative father who fails to register waives the following rights concerning a child he may have fathered:

- to be notified regarding termination of parental rights procedures; or
- to be notified of adoption proceedings; or
- to consent to an adoption.

To register as a putative father, contact the local Department of Social Services. Timely registration entitles you to notification of termination of parental rights or adoption proceedings for a child you may have fathered. Registration may be used to help establish paternity, but does not start the legal process to establish paternity or custody. Putative fathers can register before the birth of a child, within 10 days of the birth of the child, within 10 days from the mailing of notice to register, or within 10 days of discovery of fraud by the birth mother.

If the birth mother signed an entrustment agreement giving up her parental rights and agreeing the child can be adopted, but you did not sign that agreement, then you have 15 days to object to it after you get notice.

**After an adoption, is it possible to have contact or disclosure of information among the birth parents, the adopted child, and the adoptive parents?**

Adoption records are very confidential. They are not public record, as are most cases filed in court. And although an adoption terminates the legal relationship between the birth parents and the child, the law does provide some very limited opportunities for contact and disclosure of information among the birth parents, the adopted child, and the adoptive parents. This is controlled either by the court or by the Virginia Department of Social Services.

One way to allow for contact after the adoption is for the birth parents and the adopting parents to enter into an agreement before the adoption is finalized by the court, and ask that the court approve the agreement as part of the final adoption order. This agreement may include: provisions for contact and communication between the child, the birth

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parents, and the adoptive parents; sharing of information about the child, including education, health, and welfare; and sharing of photographs of the child.

The agreement is not effective, and thus can't be enforced, unless it is submitted along with the petition for adoption **and** is approved by the court as part of the final adoption order.

Before approving the agreement, the court must find that: it is in the child's best interests; the birth parents and the adoptive parents have all consented; the guardian ad litem and the agency sponsoring the adoption (or the agency that did the investigation and prepared the adoption report) have recommended that the agreement be approved as in the best interests of the child; and where the child to be adopted is 14 years of age or older, consent has been obtained from that child.

Even if there was no agreement as described above, the law allows for disclosure and exchange of information in other ways, as follows:

The **adopted person**, after reaching the age of 18, has a right to request and receive non-identifying background information about themselves and their birth family from the adoption record. If an **adopted person** of the age of 18 or older wants to obtain identifying information from the adoption file, such as names and addresses, then they need to take extra steps; they do not have an absolute right to such information, but may seek approval for access to it. The first step would be to apply to the Commissioner of the Department of Social Services. The Commissioner asks the agency that investigated the adoption at the beginning to attempt to locate the birth family and to advise them that the adopted person is seeking the information. The agency then reports back to the Commissioner on the results of that attempt, including the possible effects of any disclosure on the adopted person, the adoptive parents, and the birth family. The Commissioner will consider that report, along with any written comments from the adopted person and the birth family, and will make a decision on whether there is good cause justifying the release of the information. "Good cause" is broadly defined as "compelling and necessitous need." If the Commissioner denies the adopted person's request for disclosure of identifying information, the adopted person may petition the Circuit Court for an order to disclose it.

The **birth family** (birth parents and adult birth siblings) can send letters to the Virginia Department of Social Services to be included in the adoption record. If there was an agency involved in the adoption, such letters may also be sent to that agency for inclusion in their files. For adoptions finalized on or after **July 1, 1994**, where the adopted person is now **21 years of age or older**, a member of the birth family may apply to the Commissioner of DSS for disclosure of identifying information from the adoption record. The process is basically the same as that described in the paragraph above.

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The **adoptive parents** may likewise apply for disclosure of identifying information from the adoption record if the adoption was finalized on or after **July 1, 1994**, and the adopted person is **under 18** years of age at the time disclosure is sought. The process is also the same as above.

The law also allows for disclosure of critical **medical, psychological, or genetic information** to others involved in the adoption. An adopted person who is now 18 years of age or older, or the adoptive parents, may ask the agency that made the initial investigation to tell the birth family about such information. A member of the birth family may also ask the agency to give such information to an adopted person who is 18 or older, or to the adoptive parents. The person requesting that this information be sent must obtain a written statement from a physician or licensed mental health provider that says it is critical that it be sent, with the reasons clearly stated.

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*Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.*

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