

CHAPTER SIX

Adoption

EACH YEAR IN THE UNITED STATES, there are approximately 120,000 adoptions. Slightly more than half of these are **related adoptions**, meaning the person or persons adopting the child are a blood relation or stepparent of the child. The remaining adoptions are **unrelated adoptions**, meaning the person or persons adopting the child are not related to the child. In addition, between 12,000 and 15,000 children born in foreign countries are adopted by U.S. residents each year.

Related Adoptions

Related adoptions are comparatively simple, assuming that no one objects to the adoption. One of the most common types of adoptions is by a stepfather or stepmother. If the biological parent who the stepfather or stepmother will be “replacing” is living and consents, there should be no problem. If he or she does not consent, the child cannot be adopted unless a court first finds that the biological parent is unfit.

The definition of unfitness varies from state to state, but it normally includes not only parents who have been abusive, neglectful, or convicted serious crimes, but also parents who failed support their children and have regular contact with them.

If a stepparent who adopted a child and the biological parent later obtain a divorce, the divorce does not affect the adoption. The stepparent continues to have all the rights and responsibilities of a biological parent, including a right to seek custody or visitation and a duty to support the child.

Similarly, an adopted child has all the rights of a biological child, including the right to inherit. If the child's adoptive parent leaves a will providing for his or her "children" without naming the individual children, the adopted child would be treated the same as a biological child. If an adoptive parent died without leaving a will, the adoptive child would receive the same share of inheritance under state law as a biological child would receive.

Depending on the complexity of local court procedures and the willingness of court personnel to explain what needs to be done, persons seeking to arrange a related adoption may be able to handle the procedure themselves without an attorney. Adoption procedures usually involve filing a written petition requesting the adoption, notifying persons who would be affected by the adoption (including the biological parents if they are alive), and appearing in court for a hearing. If the child is above a certain age (such as twelve), the child's consent also may be necessary.

Unrelated Adoptions

Unrelated adoptions (in which the person adopting the child is not related to the child or to the child's other parent) usually require more paperwork and

more time to complete. Unrelated adoptions generally are of one of two types: an **agency adoption** or a **private adoption**.

Agency Adoptions

In agency adoptions, as the name implies, the parents work through a licensed agency. The agency often supervises the care of biological mothers who are willing to give up their children, and it assists in the placement of children after birth. Agencies screen adoptive parents--often extensively--before the adoption proceeds. Some agencies have long waiting lists of parents. Some agencies also specialize in placing children born in foreign countries.

Agencies generally are licensed and regulated by the state. An agency is more likely than persons handling private adoptions to offer counseling or support services to the adoptive family or the biological parents after completion of the adoption.

Private Adoptions

Private adoptions bypass the use of agencies, and they may help bypass the long waiting lists as well. Private adoptions are available in most states, but not all.

The process of private adoptions may begin when people who seek to adopt a child contact an attorney who specializes in adoptions. The attorney may work with physicians who are aware of women willing to give up children for adoption. Sometimes would-be parents will place ads in newspapers seeking women who are willing to place their babies for adoption. The ads might be

placed by the adoptive parents directly or the ads might be placed by their attorney.

In most states, adoptive parents are allowed to pay a biological mother's medical expenses and certain other costs during the pregnancy. But adoptive parents are not allowed to pay the biological mother specifically to give up the child. The law treats this as a "black market adoption"--the buying and selling of children--and it's a crime in every state.

Court procedures vary from state to state, but in all states court approval is necessary for both agency and private adoptions. Many states also require that the adoptive parents be approved by a social service agency.

Private adoptions are more complicated than unrelated adoptions. It is very important that proper consent be obtained from the biological parents. (That issue is discussed in the next two sections.) Assistance from an attorney in the state in which the adoption will take place is advisable.

Biological mother's consent. The biological mother must consent to the adoption or her parental rights must have been terminated for other reasons such as abuse or neglect of the child. It is common for biological mothers who are planning to give up their children to sign a consent form before the child is born. The initial consent form, however, is not binding.

The mother has the right to revoke her consent for a certain period of time after the child is born. In most states, that time period is relatively short, such as 48 to 72 hours, although some states may allow a longer period in which a mother may revoke her consent. (Legislation called the **Uniform Adoption**

Act, which may be enacted in some states, allows a biological mother eight days from birth of the child to revoke her consent.)

If a biological mother consented to adoption during the proper period of time after birth, it is much harder for her to revoke her consent. Following an after-birth consent, a biological mother generally may revoke her consent only if she can show that there was **fraud** or **duress**. Fraud could be found if the adoption agency or attorney lied to the biological mother about the consequences of what she was doing. Duress might exist if a person at the adoption agency threatened the biological mother with humiliation if she did not sign.

A biological mother's change of heart normally is not enough by itself to revoke an after-birth adoption consent. Although a mother may feel emotionally drained and under stress after birth of a child that she plans to give up for adoption, that type of stress usually is not enough to revoke an adoption unless the person or agency that obtained the mother's consent used harsh tactics to obtain her consent.

Biological father's consent. A biological father's consent also is necessary for adoption--at least if the father is known. The biological father should be notified of the birth and pending adoption so that he may consent or object. If the father is not known, the adoption may proceed without his consent (although adoptive parents can feel safer about the validity of their adoption if the biological father has been notified and agreed to it).

If a biological father is not notified, he may later contest the adoption if he acts within a certain period of time after the child's birth or adoption. (Six months is a typical time period, although the period varies between states.)

Sidebar:

BE SURE THE FATHER CONSENTS

Failure to obtain consent from the biological father has been at the center of some highly publicized adoption cases. In the Illinois case of **Baby Richard**, for example, the biological mother conceived a child out of wedlock. At the time of Baby Richard's birth, the biological mother and biological father were not living together. The mother lied to the father and told him that their child had died.

Meanwhile, the mother consented to termination of her parental rights and to adoption of the child. Later, the biological father learned the child was alive, and he sought to undo the adoption and gain custody of Baby Richard. The father filed his claim for custody fifty-seven days after Baby Richard's birth.

The case dragged through the Illinois courts for years while the child lived with his adoptive parents. When "Baby" Richard was three years old, the Illinois Supreme Court ruled that Richard must be returned to his biological father since the father never consented to the adoption and he contested the adoption within two months of Richard's birth. The Illinois Supreme Court refused to consider the quality of the child's relationship with the adoptive

parents or what was best for Richard. Instead, the court held the biological father was entitled to custody.

The court's decision caused an uproar in Illinois. The governor and many legislators objected to the decision. Although feeling some sympathy for the biological father who was deceived about the birth of his son, many people felt the rights of the child and adoptive parents should be paramount. The legislature passed a statute requiring courts to consider the best interest of a child when deciding whether to rescind an adoption. The Illinois Supreme Court refused to apply the statute to Richard's case and still ordered that Richard be returned to the biological father.

The case of Baby Richard illustrates the importance of obtaining consent of the biological father in order to help insure the adoption will not be undone. If a father who is not notified of his child's existence contests the adoption within the time period designated by state law, the adoptive parents might lose custody of the child. Many states are considering laws that would give greater protection to the adoptive parents and to adoptive children who have bonded with their adoptive parents; but in the meantime, many states place more emphasis on the rights of the biological father than the interests of the child or adoptive parents.

[End of Sidebar]

OTHER ADOPTION ISSUES

Foreign Adoptions

With the shortage of healthy, white healthy infants and the lengthy wait for adoptions through many American adoption agencies, some people look to other countries for an adoptable child. If a couple (or an individual) is seeking a child through this route, it is best to work with an agency or an attorney experienced in foreign adoptions with particular experience in the country from which the child is being sought. The adoptive parents will have to deal not only with U.S. regulations, but also with regulations of the country from which the child comes.

Depending on how the adoption is set up, the child might be adopted by the American couple in the country where the child was born and then brought to the United States, or the child might be brought to the United States with adoption proceedings taking place in an American court. Either way, entry of the child into the United States will need to be cleared by the U.S. Immigration and Naturalization Service (INS).

The INS requires that the adoptive parents have a home study by a licensed social worker and that the child receive a medical exam before being brought into the United States.

The INS also requires proof that the child is an **“orphan,”** which means that the biological parents are dead or that they voluntarily gave up the child. If such documentation cannot be obtained, the adoptive parents may find themselves stranded with the child in the child’s home country until documentation is obtained or a waiver is issued. In some countries, the persons or agencies providing children for adoption may submit forged documents in

connection with an adoption. If the INS suspects forgery, this may delay the process further.

Interracial Adoptions

Among the controversial issues in adoption law is interracial adoptions-- particularly adoption of African-American children by white parents. In 1972, a spokesperson for the Association of Black Social Workers condemned interracial adoptions as "racial genocide." The organization has continued to oppose interracial adoptions since then.

Proponents of interracial adoptions note that there are tens of thousand of black children in foster care available for adoption, but there are not enough black families available to adopt them. Proponents of interracial adoption argue that a child is better off being adopted by a family of a different race than not being adopted at all.

The trend in the law is to allow race to be a factor in adoptions, but not to allow race to completely block or indefinitely delay adoptions of children who are members of minority groups. If, for example, a black family is available to adopt a black child, the black family generally will be preferred over a white family, but if a black family were not available to adopt the child, the child should be eligible for placement with a white family.

Unconventional Families

Single parent adoptions. Single persons may adopt children, although some agencies strongly prefer to place a child with a married couple. Other agencies--particularly those dealing with children who might be hard to place--are willing to place a child with a single person. Single-parent adoptions usually are possible in private adoptions.

As with adoptions sought by a couple, a single person who seeks to adopt a child must be approved by a social service investigator and show that appropriate arrangements have been made for care of the child.

Adoption by lesbian or gay couples. Some states--including New York and California--allow gay and lesbian couples to adopt a child. Other states do not allow such adoptions or have laws that are unclear regarding whether it is permissible for two persons of the same sex to adopt a child.

Open Adoption

An **open adoption** is one in which the adoptive parents agree to let the biological mother (or biological father) have continued contact with the child after the adoption. This contact might be periodic visits or an exchange of pictures and other information between the adoptive family and the biological parent or parents. The nature of the contact often is specified in the adoption agreement. Open adoptions have become more common as more birth mothers are involved with choosing which adoptive family will receive their children (particularly through private adoptions).

Open adoptions are a relatively new phenomenon, and in many states it is not certain whether an open adoption agreement is enforceable by the birth mother (or father) in the event the adoptive parents seek to discontinue contact with the biological parents.

The uncertainty comes from the nature of traditional adoption laws. Adoption laws generally require that the parental rights of the biological parents be terminated. Termination of parental rights traditionally has meant that the biological parents have no more rights or responsibilities regarding the child. If the birth parent is seeking to maintain contact with the child, that might be viewed as an impermissible assertion of rights that no longer exist.

On the other hand, if the adoptive parents had agreed to contact with the biological parent and the adoption was contingent on such contact, the agreement might be enforceable. A biological parent should not count on such agreements being enforceable unless state law clearly says so.

Adoption Records

In most states, a court's adoption records are sealed and can be opened only by court order. Procedures and standards for opening records vary by state. Increasingly, states require that certain non-identifying information, such as the medical history of the biological family, be made available to the adoptive parents at the time of adoption.

Some states have registries where parties to the adoption can seek to contact each other. If, for example, a biological mother seeks to find out about

her child she may place her name, address, and telephone number with the registry. If the adopted child (or adoptive parent) seeks contact with the biological parents, they may place their names in the registry. If a registry official determines there is a “match” of people seeking information about each other, the registry will provide information to facilitate the contact.

Oregon has a law that allows adopted children to obtain their adoption records even if the biological parent expected their identity would not be revealed at the time the adoption took place.

Legal Action for “Wrongful Adoption”

Under the law of many states, if an adoption agency has adverse information about a child who is being considered for adoption, the agency has an obligation to pass on the information to the prospective adoptive family, particularly if the prospective adoptive family asks for such information. If the agency does not provide the information, the agency could be liable for the damages that result. A lawsuit for such damages sometimes is referred to as an action for **wrongful adoption**.

In one case, for example, an agency withheld information about the biological mother’s mental illness and institutionalization. As the child grew, the parents realized the child had a severe mental illness requiring substantial amounts of treatment. The adoptive parents were able to collect damages for the cost of treatment and for their own emotional suffering.

In states that allow adoptive parents to seek damages from agencies for a “wrongful adoption,” the law does not require that the agency guarantee the quality of a child--like a car dealer would guarantee a new car--but the law does require that if the agency knows significant adverse information about the child, the agency must share that information with the adoptive parents.

[Click here to go to Chapter 7](#)