

Private Placement Adoption in New York

What Is Adoption?

Adoption is a process which ends the parental rights of the parents and makes the adoptive parent the legal parent. An adoptive parent will receive a court order and the child's new birth certificate, naming the adoptive parent as the parent.

What Is a Private Placement Adoption?

There are several types of adoptions in New York. One kind is where the child is taken from the parents by child welfare. The child is put into foster care. A foster care agency is involved and, after a period of time, the child is adopted by the foster parents.

There are two types of private placement adoptions. One is where a parent surrenders his or her child, usually when the child is a baby, to a private adoption agency. The agency then finds adoptive parents and works with them to adopt the child.

The other kind of private placement adoption occurs when a parent is having problems, and grandparents, aunts or uncles, siblings or close family friends agree to take care of the children outside of the foster care system. After a while, the person caring for the child may decide to adopt the child. A private placement adoption also occurs when a parent has died and another family member chooses to adopt the child or where a step-parent chooses to adopt his or her step-child.

Who Can Adopt?

A married husband and wife couple can adopt together. An unmarried adult may adopt alone. Two unmarried people can adopt a child together as long the relationship between the child and them is a parent-child relationship. An adult married person that has a legal separation agreement with his or her spouse may adopt alone. He or she may also adopt alone if he or she has been separated for three years before filing adoption papers. A step-parent may also adopt.

Who Can Be Adopted?

Anyone can be adopted, even if the person is over 18, as long as there is a parent-child relationship between the adoptive parent and the adoptive child. If the child is 14 or older, he or she must agree to being adopted.

Where Do I File An Adoption?

An adoption can be filed in either the Surrogate's Court or Family Court where you (the adoptive parent) live.

Do the Biological Parents Need to Consent?

It depends. You always need to give notice to the biological mother of the adoption proceedings and you need her consent. You will not need her consent if she has abandoned the child for the previous six months. This means the mother has not visited or contacted the child, or hasn't given any money or bought anything, like food, diapers, toys, or clothing, for the child, even though she was able to do so. You will also not need consent if the parent has a mental illness that prevents him or her from caring for the child, or has surrendered the child to an authorized agency. Consent is not needed if the parents' rights were previously terminated.

If the biological father was married to the mother when the child was born or has shown an intent to be a father, his consent is also necessary. Again, if he has abandoned his child, the court will not require his consent. A father may show his intent to be the father of the child by giving money for the child's needs when able (before, during and after pregnancy) and either contacting and visiting the child at least monthly or regularly talking to the person who is caring for the child. If the father was prevented from contacting the child or forming a relationship with his son or daughter, the court may ask for his consent.

While you do not need the consent of a father who does not meet the description above, you may need to give him notice of the proceedings. Any man 1) whose name appears on the birth certificate or 2) who has been named the father by a court or 3) who is living with the mother and child at the time the adoption begins and is holding himself out as a father must be served with the adoption papers.

How Does a Parent Consent?

A parent consents by signing a form that is created by the court. This form must be notarized, and the parent should be given a copy of the form right after he or she signs it. After signing, a parent has 45 calendar days to take back his or her consent. A parent may also give consent in front of a judge. If a court has already terminated a parent's rights, you do not need consent.

What Other Steps Must I Take in Order to Adopt?

Adoptions require a great deal of paperwork. In addition, as part of the adoption process, a social worker must conduct a home study. The Department of Probation provides home studies free of charge, but there may be a long waiting list. Private social workers may charge from \$400-\$1,000 for a home study. In addition, each adult in the home must be fingerprinted in order to complete a criminal background check, and each fingerprinting costs \$15.

If I Was Convicted of a Crime, Can I Still Adopt?

It depends on the seriousness of the crimes you committed and how long ago the crimes happened. If you have only ever been arrested but not convicted or arrested and convicted only of misdemeanor charges, it is most likely you can still adopt a child. If you were ever in your lifetime convicted of certain felonies, such as spousal abuse, child abuse, a crime against a child or crimes of violence, such as rape, sexual assault or murder - except for physical assault or battery, you cannot adopt. If you have a felony conviction for physical assault, battery, or a drug-related offense in the past five years, you also cannot adopt. If you have a criminal history, it is best to meet with an attorney to decide whether you can still adopt a child.

How Long Does an Adoption Take?

A typical adoption may take anywhere from 6-12 months once you begin the process. It will take longer if you do not know where the parents are and need extra time to find them and then serve them with the papers. Also, there may be a backlog of cases in court and you may have to wait for a judge to hear the adoption.

How Can I Get Free Legal Help to Adopt?

If you are a grandparent or other relative wanting to adopt a child for whom you have been caring, regardless of whether you currently have a legal custody or guardianship order for that child, you can contact MFY's Pro Bono Kinship Caregiver Law Project for advice and possible free legal representation. You can speak with an attorney on Mondays and Wednesdays between 10 a.m. and 4 p.m. by calling 212-417-3850.

Other sources of assistance include www.lawhelp.org, a website that includes information on free legal services providers, Legal Information for Families Today (LIFT) at 212-343-1122 or by visiting www.liftonline.org or the New York State Kinship Navigator which offers a variety of resources to kinship caregivers at 877-4KinInfo (877-454-6463) or visit www.nysnavigator.org.