

# Frequently Asked Questions About Adoption in Nebraska

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**WARNING: Adoption is a serious legal proceeding that involves the termination of the legal parental rights of birth parents and the assumption of legal parental responsibilities by the adoptive parents. Individuals who are contemplating an adoption should consult legal and child welfare professionals before proceeding. The information contained in this document is only a general summary of Nebraska adoption policies and procedures. It is not intended to substitute for legal advice about any particular individual or situation.**

## **BIRTH MOTHER RELATED**

- 1. When can the mother of the baby start the adoption process?**
  - The NE law is silent on this. By practice, she can begin the adoption process anytime during the pregnancy or anytime after the baby is born.
- 2. Can the birth mother choose the adoptive parents?**
  - The birthmother can choose the adoptive parents who are required to complete a pre-placement adoptive home study before the child can be placed with them for adoption. The adoptive home study must be approved. PRS-Neb 43-107.
- 3. Can the birth mother see and hold the baby after the birth?**
  - The NE law is silent on this. Best practice encourages the birthmother to spend time with the baby after the birth and prior to adoptive placement. The birthmother retains legal rights to the baby until she signs relinquishment documents.
- 4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?**
  - The NE law is silent on this. Pregnancy related expenses actually incurred may be paid by the adoptive parents. Licensed child placing agencies in NE do not pay for birthmother pregnancy related expenses actually incurred to eliminate potential coercion or feelings of obligation to place the baby for adoption.
  - The birth family is not expected to repay any expenses paid by the adoptive family if they choose to parent their child.
- 5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?**
  - Yes. The Nebraska Supreme Court has ruled that a mother can make decisions for her child no matter what her age.

- 6. When does the birth mother actually sign the legal documents required for the adoption?**
  - A birth mother may sign a relinquishment for adoption after 48 hours after the birth of the child. It is typical to wait until after the 5 day period that a possible birth father can file a claim to paternity for the birth mother to sign relinquishment documents in order to determine whether the father may choose to claim paternity and obtain custody as provided through NE law. PRS-Neb 43-104.
  
- 7. Can the birth mother change her mind before signing the legal consents to the adoption?**
  - Yes, nothing is legal until the relinquishment is signed.
  
- 8. Can the birth mother change her mind after signing the legal consents to the adoption?**
  - If the birth mother has relinquished her child to a licensed agency, then her relinquishment cannot be withdrawn.
  - In a private adoption, a birth mother who relinquishes her rights to a child by a valid written instrument gives up all rights to the child at the time of the relinquishment. A valid relinquishment is irrevocable. The birth mother retains only the right to commence an action seeking the return of the child and the right to be considered as a prospective parent if the best interests of the child so dictate. The birthmother's rights are no longer superior to those of the prospective adoptive family. The child remains with the adoptive parents during the court proceedings. (Relinquishment is not valid if procured by threats, coercion, fraud, or duress. A birth mother challenging the validity of her relinquishment bears the burden of proving that the relinquishment was not valid.)
  
- 9. Can the birth mother communicate with the adoptive parents and child after the adoption?**
  - If the child is a ward of the state, then the birth parent(s) and the adoptive parent(s) can enter into a legally-binding open adoption, specifying what communication and contact may take place after the adoption is finalized. In agency and private adoptions, NE law is silent on this. Most agency adoptions involve open adoption where information and direct contact are shared. Adoptive parent(s) can change their minds at any time and are not bound by any agreement they have with the birthparents.
  
- 10. Can a birth mother anonymously surrender a newborn child?**
  - Yes - Section 1. No person shall be prosecuted for any crime based solely upon the act of leaving a child, under the age of 30 days old in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child. LB 157

- 11. What happens if the birth parents do not agree that adoption should be the plan?**
- If the birth father does not agree, NE law gives him up to five days after notification or birth, whichever is later, to file and claim to paternity with the NE Dept. of Human Services registry. He then has 30 days to file a petition with in the county court in the county in which the child was born for an adjudication of the claim of paternity and right to custody. If such a petition is not filed within 30 days after filing the notice, the father's consent to adoption shall not be required and any alleged parental rights of the father shall not be recognized there after in any court. If the father does not file a notice to claim paternity after 5 days after notification and/or birth, he has no further parental rights. PRS-Neb 43-104.

## **BIRTH FATHER RELATED**

- 1. Does the father of the baby have to be notified of the birth and the mother's adoption plan?**
- Yes, NE laws require that any possible biological father be notified and informed of his rights and responsibilities. If the father was not notified, the court may appoint a guardian ad litem to notify him of his rights and responsibilities and received notice of any and all hearings. Exceptions to notification exist when there is clear evidence that notice would be likely to threaten the safety of the birthmother or the child or conception was the result of sexual assault or incest. PRS-Neb 43-104.12
- 2. How is the father of the baby notified of the mother's adoption plan?**
- The agency worker or attorney is mandated to use due diligence in notifying the father or possible fathers of their rights by use of receipt of formal notification given in person or through registered mail or publication in a newspaper of general circulation. PRS-Neb 43-104.12
- 3. Can the father of the baby choose the adoptive parents?**
- Birth fathers are encouraged to participate in adoption planning including the selection of the adoptive parents. Exceptions in NE law include situations of sexual assault, incest and potential safety risks to the mother and/or child. PRS-Neb 43-107
- 4. What happens if the biological father of the baby is not the baby's legal father?**
- NE law is silent on this issue. There is a legal necessity to identify the father of children born out of wedlock, or whose biological father may be some one other than the mother's husband. Once identified that father is entitled to notice, as described above. In practice, both the "legal" father and the biological father should be notified. PRS-Neb 43-104.09

- 5. What happens if the husband (legal father) is not the biological father?**
- The legal father, whether or not he is the birth father, must be notified as described above. Legal fathers may deny paternity and waive rights or sign a relinquishment for adoption.
- 6. What happens if the mother does not know who the biological father is?**
- When the child becomes available for adoption, the worker will present the mother with an “Affidavit of Identification of Father by Biological Mother” and ask her to complete it with information about the father or possible fathers. The worker is mandated to use due diligence in notifying the father or possible fathers of their rights by us of receipt of formal notification, registered mail or publication in a newspaper. The notice will be sent to:
    - Any man adjudicated by a court in the state of Nebraska, another state or territory to be the father.
    - Any man who filed a paternity claim for notification purposes with Vital Statistics.
    - Any man who filed a notice to claim paternity and claim custody with the father’s registry at Vital Statistics.
    - Any man recorded on the child’s birth certificate as the child’s father.
    - Any man who might be the biological father who has openly lived with the child’s mother within twelve months of the child’s birth.
    - Any man who has been identified as the biological father by the child’s mother.
    - Any man who was married to the child’s mother within six months prior to the birth of the child and prior to execution of the relinquishment.
    - Any man who the agency may have reason to believe may be the biological father of the child. PRS-Neb 43-104.12
- 7. What happens if the mother refuses to give the name of the biological father?**
- Prior to signing relinquishment papers, the mother is required to complete and sign an affidavit requiring that she provide as much information as she has about the identity of the father. She must swear under oath that the affidavit is complete and accurate. Penalties of perjury apply to false affidavits. The affidavit is presented to the court for finalization. PRS-Neb 43-104.09
- 8. Can the biological father of the baby give notice that he intends to parent the baby before the baby is born?**
- Yes, the birthfather can give notice that he intends to parent the baby prior to the birth by filing a notice of intent to claim paternity with the Birth Father Registry maintained by the NE Dept of Health and Human Service, Vital Records. PRS-Neb 43-104

- 9. Can the birth father change his mind before signing the legal consents to the adoption?**
- Yes, nothing is legal until the relinquishment is signed.
- 10. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?**
- Yes, the law is the same as it is for the mother.
- 11. Can the birth father change his mind after signing the legal consents to the adoption?**
- A named biological father's relinquishment and consent is irrevocable on signing. Such relinquishment and consent can only be challenged on the basis of fraud or duress up to six months after signing. After executing a valid relinquishment, a birthfather retains only the right to commence an action seeking the return of the child and the right to be considered as a prospective parent if the best interests of the child so dictate. A birthfather's rights are no longer superior to those of the prospective adoptive family. The child remains with the adoptive parents during the court proceedings. PRS-Neb 43-104.11
- 12. Can a birth father anonymously surrender a newborn child?**
- Yes - Section 1. No person shall be prosecuted for any crime based solely upon the act of leaving a child in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child. LB 157
- 13. What happens if the birth parents do not agree that adoption should be the plan?**
- If the birth father does not agree, NE law gives him up to five days after notification or birth, whichever is later, to file and claim to paternity with the NE Dept. of Human Services registry. He then has 30 days to file a petition with in the county court in the county in which the child was born for an adjudication of the claim of paternity and right to custody. If such a petition is not filed within 30 days after filing the notice, the father's consent to adoption shall not be required and any alleged parental rights of the father shall not be recognized there after in any court. If the father does not file a notice to claim paternity after 5 days after notification and/or birth, he has no further parental rights. PRS-Neb 43-104.

## **ADOPTIVE PARENT RELATED**

- 1. Who can be an adoptive parent and who selects them?**
- A person either married or single, who has been assessed and approved through a pre-placement adoptive home study or, in specific situations, a post-placement home study by a licensed adoption agency. No person having a

husband or wife may adopt a minor child unless the husband or wife joins in the petition for adoption.

**2. What information about the birth parents and the child must be provided to the adoptive parents?**

- A child placement agency must provide the adopting parents the available medical history of the person placed for adoption and of the biological parents. The medical history of the adoptee must be provided to the court upon the filing of the petition for adoption, except in the case of a stepparent adoption when filing of the medical history is in the judge's discretion. PRS-Neb 43-128

**3. What procedures are followed to ensure that adoptive parents are fit to adopt a child?**

- NE law requires that NE Dept. of Health and Human Services or an agency licensed to place for adoption complete a home study of the prospective adoptive parents. This is completed before a child is placed in the home for adoption. Specific exceptions to the pre-placement requirement are made through a court order for situations such as when a child has been living with relatives for a period of time. The home study report must be within one year of the placement and must contain reflect family members' backgrounds, education, income, three personal references, and employment reference to demonstrate the adoptive parent(s) are physically, mentally, and financially stable to be parents. Completed background checks are obtained for HHS Central Registry of Abuse and Neglect, HHS Adult Protective Services Central Registry, State Patrol Central Registry of Sex Offenders and State Patrol/FBI background check. PRS-Neb 43-107

**4. Can the potential adoptive parents have the child placed with them prior to the actual court procedures?**

- Yes; the child must have resided with the adoptive parents for at least six months before a court hearing to finalize the adoption. PRS-Neb 43-109

**5. Can the adoptive parents prohibit the birth parents from communicating with the child after the adoption?**

- In a legally-binding open adoption as permitted through NE statutes for ward of the state, the adoptive parents would have to comply with the terms of the adoption regarding communication and contact between the birth parent(s) and the adoptive parents. As the legal parents the adoptive parents would have the same rights as any other parent in controlling other adults communication with their children. In private placements open adoption relationships are ethical and moral agreement but not bound by law.

- 6. Under what circumstances can an adopted child communicate with the birth parents?**
  - See above regarding legally binding open adoptions. If the adopted individual is a child, NE law is silent on this. If the adopted person is an adult, NE laws 43-130 through 43-146 details the circumstances under which information may be shared.
- 7. What information must the birth parents provide to the adoptive parents?**
  - The birth parents must complete an “Adoption Medical History Form” on health of the birth family and give a copy to the court at the time of finalization of the adoption. It has information about the health of the birth parents and extended family. PRS-Neb 104
- 8. Who supervises the adoptive placement and for how long?**
  - The law is silent on this point. In practice, the situation is as follows:
    - All Nebraska licensed child-placing agencies require at least two supervised post-placement visits.
- 9. When is the adoption final?**
  - When the judge signs the decree of adoption.

## **COURT SPECIFIC PROCEDURES**

- 1. Who initiates the adoption process?**
  - The prospective adoptive parents do so through their attorney.
- 2. When are the legal adoption papers filed with the court?**
  - The child must reside with the adoptive parents six months before the finalization hearing on the adoption. The petition is filed and then the hearing is set for four to six weeks from that date. So the papers are usually filed around 5 to 6 months after the child has resided with the adoptive parents.
- 3. When do the birth parents actually sign the legal documents for adoption?**
  - Birth parents can sign relinquishments 48 hours after the birth of the baby. Best practice recommends that when the birthfather does not sign relinquishments, the birth mother wait until after it is determined whether the birth father files a claim to paternity (5 business days after birth of notification) before signing relinquishments.
- 4. What happens if the birth parents do not agree on the adoption plan?**
  - An adoption cannot be finalized without the consent of the parents, unless their rights have been terminated by a court.

**5. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?**

- No, unless the parent's rights have been terminated by a court action or the birth father did not file a timely notice of intent to claim paternity and obtain custody. In an infant adoption the birth mother must consent to the adoption; however, if the birth father does not consent he must file a claim to paternity and petition for a court hearing within 30 days as outlined in NE law.

**MISCELLANEOUS QUESTIONS**

**1. What is the process for accessing adoption files, including identifying information?**

- Before placing a child for adoption, the department, agency or court must provide the prospective adoptive parents with a written document containing all non-identifying information that is not confidential under state or Federal law and that is reasonably obtainable.
- Once the adoption is finalized, the adoptive parents have full rights in decision making for that child, regardless of what may have been discussed or agreed upon prior to the adoption.
- If the adoptee is a minor, the decision would be made by the adoptive parents. As an adult adoptee, the individual may seek out their birth parents via the Central Adoption Registry and the birth parents have provided releases to provide identifying information.
- The attorney/agency worker must make reasonable efforts to obtain non-identifying information which includes: health and genetic family history, any medical, psychological or psychiatric evaluations available at the time of the adoption.

**2. What is considered a kinship adoption? How is kinship adoption handled? Are home studies necessary? Who can conduct them? Is there a fee?**

- In Nebraska, relative means an individual related to the child within the fifth degree by marriage, blood, or adoption.
- Kinship or relative adoptions are a permanent and legal arrangement that is intended to last forever, like all other adoptions.
  - Relative or Kinship through Court
    - Birth parents choose adoptive family
    - Court conducts relative home study

**3. Are contracts or binding agreements between birth and adoptive families regarding openness allowed?**

- In Nebraska, any ancillary agreements, such as an openness plan or an openness agreement are **NOT** legally binding.
- Most agencies will prepare a written agreement and the parties will sign the agreement, but that is to use a guide should there be disagreements in later years about the level of openness.
- Birth parents are advised by the agencies, and also are told by the Court, that any agreements are not legally binding. Many judges expound upon this further in the hearings, to clearly tell the birth parents that any agreements they may have signed with the adoptive family are not legally enforceable.
- Adoptive parents are also told by the agencies that the agreements are not legally binding, but are "good faith" agreements.

Upon release of parental rights or upon consent to adoption by the birth parents, the parental rights of the birth parents are terminated, which then ends any legal rights of the birth parents to the child, including the right to visitation. The legal rights are then vested with the adoptive parents, including the right to determine who has access to their child.