

Frequently Asked Questions About Adoption in New Jersey

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 New Jersey 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 mother of the child can begin option counseling and adoption-specific counseling as soon as she finds out she is pregnant.
 - Title 9:3-41 (e) Consent may be executed only after 72 hours after the child's birth.

- 2. Can the birth mother choose the adoptive parents?**
 - Not addressed by statute, but is common practice.

- 3. Can the birth mother see and hold the baby after the birth?**
 - Yes.

- 4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?**
 - Title 9:3-39.1 (e) – Birth Parent expenses allowed include (1) the birth of the child; (2) the placement for adoption of the child with the prospective parent, (3); Medical or hospital care received by the mother or the child during the mothers pre-and post natal period; and services related to the adoption or to the placement for adoption, including legal services, which were rendered or are to be rendered to or for the benefit of the prospective parent, either parent of the child or any other person or agency.
 - Title 9:3-39.1 (e) – Birth parent expenses not allowed are payments for expenses beyond 4 weeks after the termination of the pregnancy, by birth or otherwise.
 - Title 9: 3-39.1 (a), (c), (d) – Only an approved agency or person may offer to place or materially assist in the placement of a child for adoption. The decision to place a child for adoption cannot be contingent upon payment of expenses. Payments made are non-refundable.

- Title 9:3-48. In a non-agency adoption, all expenses and fees for the investigation and any counseling provided shall be the responsibility of the adopting parent. The costs of all proceedings shall be borne by the petitioner.
- 5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?**
- In New Jersey a minor may consent to place their child for adoption.
 - Title 9:3-41: In New Jersey the parent or guardian of the child, and any agency, which has obtained the authority to place the child for adoption must consent to an adoption.
 - Title 9:3-45: Consent is not needed if the parent has executed a valid surrender, has had their parental rights terminated, had had the child made available for adoption, has failed to contact or support the child, has not acknowledged paternity, is a father whose whereabouts are unknown, or does not file written objections to an adoption within 20 days after notice given.
- 6. When does the birth mother actually sign the legal documents required for the adoption?**
- Title 9:3-41 (e): Consent may be executed only after 72 hours after the child's birth. Any alleged father or legal father may sign only after 72 hours after the child's birth. The denial of paternity by an alleged father, at any time including prior to the birth of the child, shall be deemed a surrender for purposes of allowing the child to be adopted.
- 7. Can the birth mother change her mind before signing the legal consents to the adoption?**
- Yes.
- 8. Can the birth mother change her mind after signing the legal consents to the adoption?**
- Title 9:3-41 (e): Not if the surrender was executed according to provisions. A surrender to an agency is valid, binding, and irrevocable, and constitutes a termination of parental rights. At the discretion of the courts, consent may be set aside when it is proven that an agency has engaged in an activity that is fraudulent, caused duress, or if they misrepresented themselves.
- 9. Can the birth mother communicate with the adoptive parents and child after the adoption?**

- A cooperative adoption agreement is not addressed in New Jersey Statutes. It is not permitted by statute nor forbidden. Any arrangement by the parties would be subject to the adoptive parents' wishes.

10. Can a birth mother anonymously surrender a newborn child?

- Title 30: 4C-15.7: Yes. New Jersey has a Safe Haven Infant Protection Law, which was instituted in 2000. The infant must be 30 days or less, and may be relinquished by a parent or any person. The parent is not required to provide identifying or medical information. Relinquishment to a hospital emergency room or police department is an affirmative defense to prosecution for abandonment. The division is not required to attempt to reunify the child with the parents. The division will place the child into foster care or a pre-adoptive home as soon as possible. The birth mother can contact the division to reclaim custody, although after 21 days the division will move towards the goal of permanency through the court processes of termination of parental rights and adoptive placement.

11. What happens if the birth parents do not agree that adoption should be the plan?

- Title 9:17-40: The parent and child relationship extends equally to every child and to every parent regardless of the marital status of the parents. If one or both of the parents have not had their rights terminated voluntarily or involuntarily the child is not available for adoption.

BIRTH FATHER RELATED

1. Does the father of the baby have to be notified of the birth and the mother's adoption plan?

- Title 9:3-39.1 (c): Yes. Written notice shall be given to the birth parent, except one who cannot be identified or located prior to the placement of the child for adoption. Provision of such notice shall be confirmed in a written document signed by the birth parent and adoptive parent in separate documents, which shall be filed with the court prior to the termination of parental rights.

2. How is the father of the baby notified of the mother's adoption plan?

- See #1 above.

3. Can the father of the baby choose the adoptive parents?

- Not addressed in statute. This is common practice for infant adoptions. This can be done in counseling sessions with the mother of the baby or separate from the mother of the baby.

4. What happens if the biological father of the baby is not the baby's legal father?

- Title 9:3-045; 9:3-45.1
- New Jersey does not have a Putative Father Registry.
- The putative father may file written objections within 20 days of receipt of notice of adoption proceedings in the case of a resident, or within 35 days if a nonresident. The putative father is entitled to notice if within 120 days of the child's birth, or prior to the date of a preliminary hearing (whichever occurs first), he has acknowledged paternity by amending the birth certificate or filing a paternity action in court.

5. What happens if the husband (legal father) is not the biological father?

- Not addressed in statute as to whether both fathers are to receive notice.

6. What happens if the mother does not know who the biological father is?

- Title 9: 3-45 (c): If personal service of the notice cannot be effected because the whereabouts of a birth parent of the child to be adopted are unknown, the court shall determine that an adequate effort has been made to serve notice upon the parent if the plaintiff immediately prior to or during the placement and not more than nine months prior to the filing of the complaint has: (1) sent the notice by regular mail and by certified mail return receipt requested, to the parent's last address; (2) made a discreet inquiry as to the whereabouts of the missing parent among any known relations, friends, and current or former employers of the parent; (3) unless otherwise restricted by law, made direct inquiries, using the party's name and last known or suspected address, to the local post office, the Division of Motor Vehicles, county welfare agency, the municipal police department, the Division of State Police, the county probation office, the Department of Corrections, and any social service and law enforcement agencies known to have had contact with the party, or the equivalents in other states, territories or countries. Failure to receive a response to the inquiries within 45 days shall be a negative response.

7. What happens if the mother refuses to give the name of the biological father?

- Title 9: 3-45 (d): In any case where, within 120 days of the birth of the child or prior to the date of the preliminary hearing, whichever occurs first, the identity of a birth parent cannot be determined or where the known parent of a child is unable or refuses to identify the other parent, and the court is unable from other information before the court to identify the other parent, service on that parent shall be waived by the court.

- 8. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born?**
- See #4 above.
- 9. Can the birth father change his mind before signing the legal consents to the adoption?**
- Yes.
- 10. Can the birth father communicate with the adoptive parents and child after the adoption?**
- Only if the adoptive parents and birth parents have agreed upon this. The adoptive parents can alter this agreement at any time according to their beliefs about what is in the best interest of the child. There is no legally binding cooperative adoption or contact agreement in New Jersey.
- 11. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?**
- In New Jersey a minor may consent to place their child for adoption.
 - Title 9:3-41: In New Jersey the parent or guardian of the child, and any agency, which has obtained the authority to place the child for adoption must consent to an adoption.
- 12. Can the birth father change his mind after signing the legal consents to the adoption?**
- Title 9: 3-40: A surrender by the birth father of a child shall not be valid if taken within 72 hours of the birth of the child. The denial of paternity by an alleged father, at any time including prior to the birth of the child, shall be deemed a surrender for purposes of allowing the child to be adopted.
- 13. Can a birth father anonymously surrender a newborn child?**
- Title 30: 4C-15.7: Yes. New Jersey has a Safe Haven Infant Protection Law, which was instituted in 2000. The infant must be 30 days or less, and may be relinquished by a parent or any person. The parent is not required to provide identifying or medical information. Relinquishment to a hospital emergency room or police department is an affirmative defense to prosecution for abandonment. The division is not required to attempt to reunify the child with the parents. The division will place the child into foster care or a pre-adoptive home as soon as possible. The parent can contact the division to reclaim custody, although after 21 days the division will move towards the goal of permanency through the court processes of termination of parental rights and adoptive placement.

14. What happens if the birth parents do not agree that adoption should be the plan?

- Title 9:17-40: The parent and child relationship extends equally to every child and to every parent regardless of the marital status of the parents. If one or both of the parents have not had their rights terminated voluntarily or involuntarily the child is not available for adoption.

ADOPTIVE PARENT RELATED

1. Who can be an adoptive parent and who selects them?

- Title 9:3-42: Any person who is at least 18 years of age and 10 years older than the adoptee may adopt. Married persons must adopt jointly.
- Title 9:3-39.1: Placement of a child for adoption may be done by the parent or guardian of the child, an approved agency, or an intermediary, if the adoptive parent has a home study through an approved agency.

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

- Title 9:3-41.1: Information regarding the child includes their development and medical history. Information about the birth parents includes their medical history, including hereditary conditions, drugs and medications taken during pregnancy, any known factor that may influence the current or future health of the adopted person.

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

- Title 9:3-53.2: The Home Study should include suitability, a criminal background check and any history of child abuse.

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

- This is common practice in foster parent adoptions. The child must be in the adoptive home for at least 6 months while in a supervisory period with monthly or bi-monthly visits (depending on age of the child) from a licensed social worker who will write reports that will be filed with the court, along with the home study for the judge to review at the finalization hearing.

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

- A cooperative adoption agreement is not addressed in New Jersey Statutes. It is not permitted by statute nor forbidden. If the adoptive parents and birth parents have agreed upon contact, the adoptive parents can alter this agreement at any time according to their beliefs about what is in the best interest of the child. There is no legally binding cooperative adoption or contact agreement in New Jersey.
- 6. Under what circumstances can an adopted child communicate with the birth parents?**
- The adopted child may communicate with their birth parents if allowed by their adoptive parents.
- 7. What information must the birth parents provide to the adoptive parents?**
- Title 9:3-41.1: Information about the birth parents includes their medical history, including hereditary conditions, drugs and medications taken during pregnancy, any known factor that may influence the current or future health of the adopted person.
- 8. Who supervises the adoptive placement and for how long?**
- Title 9: 3-44: If the child is being placed by the Department or approved agency, the Department or agency shall provide the supervision. The cost of such supervision shall be paid by the person receiving the child.
 - Title 9: 3-47: A period of six months of supervision of the child in the home is required and visits are determined to take place monthly or bi-monthly depending on the age of the child being adopted.
- 9. When is the adoption final?**
- Title 9: 3-50: The entry of judgment of adoption is when the adoption is final. For good cause, the court may direct the entry of judgment nunc pro tunc as of the date the action was instituted.

COURT SPECIFIC PROCEDURES

- 1. Who initiates the adoption process?**
- The attorney for the adoptive parent initiates the court process.
- 2. When are the legal adoption papers filed with the court?**

- At the time of the filing of the adoption petition, which occurs towards the end of the supervisory period.
- 3. When do the birth parents actually sign the legal documents for adoption?**
- See previous answers to Birth Mother Related Question 6 and Birth Father Related Question 12. Consent to adoption is not valid until 72 hours after the birth of the child for both mother and father of the baby.
- 4. What happens if the birth parents do not agree on the adoption plan?**
- See answer #5 below.
- 5. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?**
- Yes, if their parental rights are involuntarily terminated through a Termination of Parental Rights court proceeding. Consent is not required from a parent whose rights have already been terminated, a parent who has failed to perform regular and expected parental functions of care and support for the child for 6 months or more, an alleged father, who has denied paternity at any time including and prior to the birth of the child, and if the identity of the parent cannot be determined, or if the known parent refuses to identify the unknown parent and the court is unable to find out who that parent is, that parent's consent to the adoption is waived.

MISCELLANEOUS QUESTIONS

- 1. What is the process for accessing adoption files, including identifying information?**
- a. In New Jersey there is a mutual registry that adoptive parents and birth parents can register on at the time of the child's birth, and then continually update information. In private agency adoptions if the birth parents are not on the registry then the adoptee upon adulthood may contact the agency in which they were adopted. The adoptee at that time will receive from the agency all the non-identifying information that was provided to the adoptive parents at the time of the adoption. The private agency will also send an inquiry to the birth parents at the last known address to inquire if they are interested in contact.
- 2. What is considered a kinship adoption? How is kinship adoption handled? Are home studies necessary? Who can conduct them? Is there a fee?**
- a. In New Jersey, if a woman chooses to voluntarily and permanently place her baby with a close relative (parent, grandparent, adult sibling) there is a

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

- a. A cooperative adoption or contact agreement is not addressed in New Jersey Statutes. It is not permitted by statute nor forbidden. Any contact arrangement by the birth and adoptive families would be agreed upon by all parties and finally subject to the adoptive parents' view of what is in the best interest of the child at the time of contact.