

Frequently Asked Questions About Adoption in New York

BIRTH MOTHER RELATED

- 1. When can the mother of the baby start the adoption process?**
 - This is not addressed specifically in state law, however it is practice that the birth mother can start to formulate her adoption plan anytime during the pregnancy. No legal paperwork is signed until after the birth of the child.

- 2. Can the birth mother choose the adoptive parents?**
 - Yes- The birth mother is encouraged to be involved in her adoption plan and can choose the adoptive parents.

- 3. Can the birth mother see and hold the baby after the birth?**
 - Yes- it is the birth mother's choice as to how much or as little contact as she has with the baby.

- 4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?**
 - Expenses allowed to be paid on behalf of the birth mother include:
 - Actual medical and hospital costs
 - Other necessary expenses related to the pregnancy such as maternity clothes, rent, utilities, transportation and food. All expenses would be paid directly to the entity and not the birth parent.
 - Legal Fees
 - Payment of expenses shall not exceed 60 days prior to birth as well as 30 days after the birth. A list of the expenses is included in the adoption paperwork and needs to be approved by the judge before the adoption can be finalized.

- 5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?**
 - Yes.

- 6. When does the birth mother actually sign the legal documents required for the adoption?**
 - The birth mother can sign the legal documents any time after the baby is born.

- 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?**
- In any adoption, consent given in court is irrevocable (not to be revoked or recalled).
 - An extra-judicial consent (consent taken outside of court) may be revoked within 30 days. (The time frame is 45 days for a non-agency adoption).
 - Parental consents to adoption may be challenged if obtained by fraud, duress, or coercion.
 - A birth parent may revoke his or her consent to adoption only by giving notice, in writing, of such revocation no later than 30 days after signing the consent for adoption. At this time it is the decision of the judge whether or not to set a hearing to determine the best interest of the child. The baby is not automatically returned to the birth mother.
- 9. Can the birth mother communicate with the adoptive parents and child after the adoption?**
- Yes- The parties can agree to communicate with a written Post Adoption Contact Agreement (PACA). The PACA is a legal document outlining the contact the birth parents may have with the adoptive parents and the child after the adoption is finalized. The PACA is a legally binding document that needs to be approved by the judge prior to the adoption being finalized. In the future if contact is not in the best interest of the child the adoptive parents need to petition the court for the PACA to be reviewed. The legal agreement also protects the rights of the birth parents.
 - The birth parents and adoptive parents can also enter into an informal non-legally binding agreement that is not presented to a judge for approval prior to finalization of the adoption.
- 10. Can a birth mother anonymously surrender a newborn child?**
- Yes – under the Abandoned Infant Protect Act of 2000, a parent can anonymously leave their infant, under 5 days old, in a designated “save haven” with no questions asked. This can include a hospital, police station or fire station. This law generally allows a parent to remain anonymous and to be shielded from prosecution for abandonment or neglect in exchange for safely surrendering the infant to a safe haven.
 - The local Department of Social Services (DSS) is notified and the infant (through the courts) is placed in foster care. If the parent does not come forward after 6 months, DSS can file a Termination of Parental Rights petition to free the child for adoption.
- 11. What happens if the birth parents do not agree on the adoption plan?**
- If the birth father’s consent is required by a court, the adoption may not proceed if he does not agree with the birth mothers’ plan.

BIRTH FATHER RIGHTS

- 1. Does the father of the baby have to be notified of the birth and the mother's adoption plan?**
 - The birth father's role during the last 6 consecutive months prior to the birth or placement of the child for adoption is the critical legal period which will determine the status of his parental rights. The adoption agency or adoption attorney makes every attempt to ascertain the birth father's involvement with the birth mother during that time frame; however, the adoption agency or attorney must rely solely on information provided by the birth mother and/or birth father. Birth parents should always be encouraged to provide this information as truthfully and accurately as possible. The court will ultimately determine if the birth father will or will not be involved in the adoption proceeding.
 - A birth father can register with the Putative Father Registry to assert his status as a father.
 - Consent and notice fathers must fulfill certain parameters before the birth of the baby in order to gain the right to be notified.

- 2. How is the father of the baby notified of the mother's adoption plan?**
 - Either the birth mother advises the birth father or in the course of the legal proceedings, a court will determine if the birth father is a consent father or entitled to notice. If no address is known, notice can be published in an appropriate publication.

- 3. Can the birthfather of the baby choose the adoptive parents?**
 - Yes- he can be involved in the adoption plan.

- 4. What happens if the biological father of the baby is not the baby's legal father?**
 - If the birth mother is married, her husband is presumed the legal father.
 - The consent father may sign a surrender or denial of paternity

- 5. What happens if the husband (legal father) is not the biological father?**
 - The legal father must sign a surrender or denial of paternity.

- 6. What happens if the birth mother does not know who the biological father is?**
 - The birth mother may state in an affidavit that she does not know the identity of the birth father.

- 7. Can the birth mother refuse to identify the biological father?**
 - The birth mother has the right to refuse to identify the birth father.

- 8. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born?**

- Yes if he is a “consent” or “notice” father. A “notice” father must demonstrate that he has the intent and means to parent the child.
- 9. Can the birth father change his mind before signing the legal consents to the adoption?**
- Yes, just as the birth mother can.
- 10. Can the birth father communicate with the adoptive parents and child after the adoption?**
- The “consent” or “notice” father, adoptive parents and adoptee can agree to communicate with a PACA, just as a birth mother could
 - The “consent” or “notice” birth father could also enter into an informal non- legally binding agreement that has not been presented to a judge with the adoptive parents and child.
- 11. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?**
- Yes.
- 12. Can the birth father change his mind after signing the legal consents to the adoption?**
- In any adoption, consent in court is irrevocable (not to be revoked or recalled).
 - An extra-judicial consent (consent taken outside of court) may be revoked within 30 days. The time frame is 45 days for a non-agency adoption.
 - Birth parent consents to adoption may be challenged if obtained by fraud, duress, or coercion.
 - A birth parent may revoke his or her consent to adoption only by indicating in writing their intent to revoke no later than 30 days after signing the consent for adoption. At that time, it is the decision of the judge whether or not to set a hearing to determine the best interest of the child.
- 13. Can a birth father anonymously surrender a newborn child?**
- Yes. A birth father can surrender his child under the same “Safe Haven” law as a birth mother.
- 14. What happens if the birth parents do not agree that adoption should be the option?**
- If the birth father is a consent father and he does not agree with the birth mother’s plan, the matter would go before a judge to decide what is in the best interest of the child.

ADOPTIVE PARENT RELATED

- 1. Who can be an adoptive parent?**

- An adult over 18 years of age, whether married or single
- An adult married person legally separated or not legally separated and living apart from their spouse for 3 years
- Same sex partners may both adopt a child
- An unmarried partner of a child's birth parent

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

- The information that must be provided to the adoptive parents about the child includes:
 - Date and Place of Birth
 - Medical History
 - Religious preference of birth parent if any
- The information that must be provided to the adoptive parents about the birth parents includes:
 - Health and medical history
 - Hereditary diseases, if any
 - Drugs or medication taken during pregnancy
 - Nationality, ethnic heritage
 - Legal risks associated with placement

3. What procedures are required to adopt a child?

- All adoptive families must have an approved adoption home study which includes:
 - Marital, family status
 - Religion
 - Occupation, income
 - Finances, property owned
 - Physical by an MD
 - Familial, social and emotional history
 - Personal references
 - Child abuse history
 - Criminal background check

4. Can the child be placed with the adoptive parents prior to the adoption being finalized?

- Yes, if they have met the pre-certification or home study requirements.

5. **Can the adoptive parents prevent the birth parents from communicating with the child after the adoption?**
 - If adoptive parents feel that communication is no longer in the best interest of the child, and they have a court approved PACA, they can petition the court to review or revise the existing PACA. If a PACA was not approved in court the birth parents little to no recourse.
6. **Under what circumstances can an adopted child communicate with the birth parents?**
 - When a PACA is approved by a court, or arrangements were made before the placement of the child.
7. **What information must the birth parents provide to the adoptive parents?**
 - Health and medical history
 - Hereditary diseases, if any
 - Drugs or medication taken during pregnancy
 - Nationality, ethnic heritage
 - Legal risks associated with placement
8. **Who conducts the post placement supervision prior to finalization and for how long?**
 - In an agency adoption, the agency supervises for at least three months. In a private adoption, the court is the supervising entity.
9. **When is the adoption final?**
 - The adoption cannot be finalized until three months after the placement.

COURT SPECIFIC PROCEDURES

1. **Who initiates the adoption process?**
 - The birth parents initiate the adoption process through an agency or intermediary. In a private adoption, the birth parents make a connection with the adoptive parents on their own, through a valid intermediary.
2. **When are the legal adoption papers filed with the court?**
 - Within 10 days of placement.
3. **When do the birth parents actually sign the legal documents for adoption?**
 - Birth parents do not sign legal documents until after the birth of the baby. A birth father can sign a denial of paternity prior to the birth.
4. **What happens if the birth parents do not agree on the adoption plan?**

- If the birth father is a consent father and he does not agree with the birth mother's plan, the matter would go before a judge to decide what is in the best interest of the child.
- 5. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?**
- If the baby is in the custody of the County Department of Social Services, it is not necessary for the birth parents to consent to the adoption.

MISCELLANEOUS QUESTIONS

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

- In New York if you are adopted, placed a child for adoption, or are the biological sibling of an adopted person, you are able to have access to the New York State Health Departments Adoption Registry. Identifying information can be exchanged through the registry if both the birth parent and the adult adoptee are registered and give written consent for identifying information to be shared; otherwise no identifying information is shared.

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

- In New York State, a close relative (grandparents, aunts, uncles, brothers and sisters) can adopt utilizing a modified procedure for the adoption. These adoptions may take place directly with the court.

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

- If a Post Adoption Contract Agreement (PACA) is to be made, it must be made before the adoption is finalized. The PACA is a document outlining the contact the birth parents will have with the adoptive parents and the child after the adoption is finalized.
- The PACA is only legally enforceable if presented to a court, prior to finalization of the adoption, for approval of the terms and incorporated into a written order.
- If at any time the contract (that has been approved by the court) is not in the best interest of the child, the adoptive family can petition the court for the PACA to be reviewed and revised. Likewise, if the adoptive family is not adhering to the agreement, the birth parent(s) can have the PACA reviewed in court as well.