

## Frequently Asked Questions about Adoption in Florida

### BIRTH MOTHER RELATED

1. When can the mother of the baby start the adoption process?
  - A. As soon as she has a confirmed pregnancy the adoption process can begin. However, she cannot finalize her adoption plan until after the baby is born.
2. Can the birth mother choose the adoptive parents?
  - A. Yes.
3. Can the birth mother see and hold the baby after the birth?
  - A. Yes.
4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?
  - A. In both agency and independent adoptions, the prospective adoptive parents (and/or agency) may pay “reasonable living expenses” of the birth mother in many situations. Reasonable living expenses include rent, utilities, basic telephone service, food, toiletries, clothing, transportation, insurance, and expenses found by the court to be necessary for the health and well-being of the birth mother and unborn child. These expenses can be paid during the length of the pregnancy and up to six weeks post-partum. In addition to reasonable living expenses, reasonable and necessary medical expenses, legal fees/expenses, court costs, and professional fees, including counselor/therapist fees may be paid for the birth mother. In addition to the expenses listed above, when the adoption is done through an agency, foster care expenses, pre-placement and post-placement social services, and agency facility and administrative costs may also be paid by the prospective adoptive parents IF they are approved by the Department.
5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?
  - A. If she is over fourteen (14) years of age she may sign independently. Otherwise, if 14 or under, it must be witnessed by a parent, legal guardian, or court appointed *Guardian ad Litem*.
6. When does the birth mother actually sign the legal documents required for the adoption?
  - A. Forty-eight (48) hours after the baby has been born or the day the birth mother has been notified in writing, either on her patient chart or in release paperwork, that she is fit to be released from the licensed hospital or birth center, whichever is earlier.
7. Can the birth mother change her mind before signing the legal consents to the adoption?
  - A. Yes.

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8. Can the birth mother change her mind after signing the legal consents to the adoption?
  - A. No, unless the court finds that the consent was signed under fraud or duress. However, if the child is over six (6) months when the birth mother signs the consent, the consent is subject to a revocation period of three (3) business days.
9. Can the birth mother communicate with the adoptive parents and child after the adoption?
  - A. Yes, if that was part of the adoption plan that was agreed upon by both parties. This may be subject to change if it can be shown to the court that it is in the child's best interest.
10. Can a birth mother anonymously surrender a newborn child?
  - A. Yes, this is called the Safe Haven Act. Within seven (7) days of giving birth, a birth mother can drop the child off at a hospital, ambulance station, or fire department and not have to provide any information regarding herself or the child. There is a presumption that the parent who leaves the newborn infant intended to leave the newborn infant and consented to termination of parental rights.
11. What happens if the birth parents do not agree that adoption should be the plan?
  - A. It depends. If a mother wants to place and the father has not been involved in the process at all until signing, the court could terminate his rights regardless. However, an adoption entity or attorney should place the minor in foster care until a decision could be made by both parties, especially if the father has been involved in the pregnancy with physical and emotional support/or attempts have been made by him to be involved.
12. Will the birth mother be asked to file an affidavit in her adoption papers regarding future contact or the release of identifying information to the adoptee or adoptive parents?
  - A. The Florida Statutes do not require this.

## BIRTH FATHER RELATED

1. Does the father of the baby have to be notified of the birth and the mother's adoption plan?
  - A. Yes, if he is the legal father. If his whereabouts are unknown, a search has to be done and the Florida Putative Father Registry has to be checked. No, if he is not the legal father, although the Florida Putative Registry has to be checked before making that decision.

The law states that the interests of the state, the mother, the child, and the adoptive parents outweigh the interest of an unmarried biological father who does not take action in a timely manner to establish and demonstrate a relationship with his child. An unmarried biological father has the primary responsibility to protect his rights and is presumed to know that his child may be adopted without his consent unless he files a claim of paternity with the Florida Putative Father Registry maintained by the Office of Vital Statistics, files a verified response with the court which contains a pledge of commitment to the

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child in substantial compliance with the statute, AND provides support for the birth mother and child. If an unmarried biological father whose consent is required fails to timely and properly file a verified response with the court and a claim of paternity form with the Office of Vital Statistics, the court shall enter a default against the father and his consent will no longer be required.

2. How is the father of the baby notified of the mother's adoption plan?
  - A. An adoption entity shall serve a Notice of Intended Adoption Plan (NOIAP) upon any known and locatable unmarried biological father who is identified by the mother before she signs a consent to adoption. Also, the adoption entity shall serve a Notice of Intended Adoption Plan on anyone who is identified by a diligent search of the Florida Putative Father Registry. The notice may be served at any time before the child's birth or before placing the child in the adoptive home.
3. Can the father of the baby choose the adoptive parents?
  - A. With the support and agreement of the birth mother unless she is deceased. If that is the case, he can make the decision himself unless the child has been living with others who may be eligible to help make the decision.
4. What is the difference between a legal father and named birth father? How is the process for voluntary termination of parental rights different between a legal father and named birth father?
  - A. Generally, a man is the legal father of a child if the minor was conceived/born while the man was married to the child's mother, if the minor is his child by adoption, if the minor has been established in a court proceeding to be his child (ex. paternity action), or if the man has filed an affidavit of paternity. A man who is an unmarried biological father (a/k/a named birth father) has fewer rights and protections in the adoption process than a legal father.

Legal fathers - father's consent to termination of parental rights and adoption is required in writing after the birth of the child. The statutes seem to authorize an irrevocable affidavit of non-paternity prior to the child's birth as an alternative to consent. However, the statute is unclear and because of the ambiguity, some courts will insist on a consent signed after the child's birth.

Unmarried birth father/Non-legal fathers - consent is only required if he registers with the Florida Putative Father Registry AND does ALL of the following:

- a) Child who is placed with adoptive parents more than six (6) months after the child's birth – an unmarried biological father must have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by providing financial support to the child in accordance with the unmarried biological father's ability, if not prevented from doing so by the person or authorized agency having lawful custody of the child, and either: regularly visited the child at least monthly, when physically and financially able to do so and when not prevented from doing so by the birth mother or the person or authorized agency having lawful custody of the child; or maintained regular communication with the child or with the person or agency having the care or custody of the child, when physically or financially unable to visit the child or when not prevented from

doing so by the birth mother or person or authorized agency having lawful custody of the child.

- b) Child who is younger than six (6) months of age at the time the child is placed with the adoptive parents – an unmarried biological father must have demonstrated a full commitment to his parental responsibility by having performed all of the following acts prior to the time the mother executes her consent for adoption:
  - 1. Filed a notarized claim of paternity form with the Florida Putative Father Registry within the Office of Vital Statistics of the Department of Health, which form shall be maintained in the confidential registry established for that purpose and shall be considered filed when the notice is entered in the registry of notices from unmarried biological fathers.
  - 2. Executed and filed an affidavit in that proceeding stating that he is personally fully able and willing to take responsibility for the child, setting forth his plans for care of the child, and agreeing to a court order of child support and a contribution to the payment of living and medical expenses incurred for the mother's pregnancy and the child's birth in accordance with his ability to pay.
  - 3. If he had knowledge of the pregnancy, paid a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability and when not prevented from doing so by the birth mother or person or authorized agency having lawful custody of the child.

If an unmarried biological father does not do ALL of the above, the statutes state that his consent to adoption is NOT required, and his rights can be terminated and the baby adopted without his consent.

NOTE: There is recent case law (2<sup>nd</sup> District Court of Appeals) which states that unmarried biological fathers, who file paternity actions but do not register with the Florida Putative Father Registry, may be individuals whose consent is required. There is also case law (1<sup>st</sup> District Court of Appeals) which states that unmarried biological fathers "identified" as the child's father in dependency proceedings are individuals whose consent is required.

- 5. What happens if the mother does not know who the biological father is?
  - A. The birth mother will have to file an affidavit stating any details she might have regarding the biological father. The affidavit must also state whether she was married or cohabitating with anyone at the time of conception. The adoption entity will do its best to do a search with whatever information they have and will also search the Florida Putative Father Registry.
- 6. What happens if the mother refuses to give the name of the biological father?
  - A. Every attempt is made to work with the mother to give the name of the biological father with the knowledge of the importance for the minor child about to be adopted and the risk involved in the adoption if the father later comes forward. If she still refuses, the Putative Father Registry will be checked and a diligent search made based on whatever information was given. In the 8<sup>th</sup> Judicial Circuit, the judges require that she sign an affidavit stating any details she might have regarding the biological father.

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7. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born?
  - A. Yes. He should immediately register with the Florida Putative Father Registry. Additionally, he should file an affidavit and plan of care for the child. He should pay his fair share of reasonable living and medical expenses for the child during the pregnancy and he should establish a relationship with the child. Courts have also suggested that filing a paternity action may protect some of his rights. See Answer to Question 1 for more specifics.
8. Can the birth father change his mind before signing the legal consents to the adoption?
  - A. Yes.
9. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?
  - A. Yes, if he is over fourteen (14). If he is 14 years old or younger, the consent must be witnessed by a parent, legal guardian, or court appointed *Guardian Ad Litem*.
10. Can the birth father change his mind after signing the legal consents to the adoption?
  - A. No, unless he can prove that he signed the consent under fraud or duress. However, if the baby is older than six (6) months at the time the father signs the consent, the consent is subject to a revocation period of three (3) business days.
11. Describe the process for doing an involuntary termination of a legal father's or named birth father's rights.
  - A. Legal Father - Normally, his consent or an affidavit of non-paternity is required so there are a limited number of ways, as follows, to terminate his rights involuntarily:
    - a) If he is served with notice of the intended adoption plan and has not responded within the designated time period;
    - b) If he has been served notice of the proceedings and has been determined to have abandoned the child;
    - c) If he has been judicially declared incapacitated with restoration of competency found to be medically improbable;
    - d) If he has been served notice of the proceedings but has been found by the court to be unreasonably withholding his consent;Non-Legal Father (Unmarried Biological Father) - His rights can be involuntarily terminated if he does not follow all the steps listed in the answers to Questions 1 and 4 above.
12. Describe the process for making a diligent effort to find the birth father if the birth mother knows the identity of the birth father but he cannot be located.
  - A. When the identity of the father is known but the location is unknown, the adoption entity must conduct a diligent search, which must include inquiries including the following:

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- a) The person's current/last address – through U.S. Postal Service through the Freedom of Information Act;
- b) Name and address of person's last employer;
- c) Names, addresses of relatives to the extent they can be reasonably obtained from the petitioner or other sources, contact with those relatives, and inquiry as to the person's last known address. The petitioner must pursue any leads to any addresses where the person may have moved;
- d) Information as to whether individual has died and if so, date and location;
- e) Telephone listings in the area where the person last resided;
- f) Inquiries of law enforcement agencies in the area where the person last resided;
- g) Highway patrol records in the state where the person last resided;
- h) Department of Corrections records in the state where the person last resided;
- i) Hospitals in the state where the person last resided;
- j) Records of utility companies, including water, sewer, cable, electric in the area where the person last resided;
- k) Records of the Armed Forces as to whether there is any information as to the person;
- l) Records of the tax assessor and tax collector in the area where the person last resided;

A person contacted by a petitioner or adoption entity requesting records under this subsection must release the requested records to the petitioner or adoption entity without the necessity of a subpoena or a court order, except when prohibited by law. An affidavit of diligent search conducted in accordance with the section must be filed with the court. The diligent search may be conducted before the birth of the minor. A judgment terminating parental rights and approving a diligent search that fails to locate a person is valid and is not subject to direct or collateral attack because the mother failed or refused to provide the adoption entity with sufficient information to locate the person.

13. Describe the process for termination of the rights of the birth father in the event of a rape.
  - A. Depending on his status (non-legal father versus a legal father) his rights would be determined based on what category he falls into (See answer to Question 12). If the mother is alleging that she does not know who the birth father is (unknown identity and unknown name), the court may require the mother to sign an affidavit to that effect, in the interests of protecting the due process rights of the father. Also, if the alleged rapist is not the legal father of the child, his rights would be terminated if he did not do all of the acts listed in Answers 1 and 4. The courts do have discretion though when it comes to these kinds of cases.

### **ADOPTIVE PARENT RELATED**

1. Who can be an adoptive parent and who selects them?
  - A. A husband and wife jointly, or an unmarried adult. No person eligible to adopt may adopt if he or she is a homosexual. The adoption entity and/or the birth mother/father can select them.

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2. What information about the birth parents and the child must be provided to the adoptive parents?
  - A. Social and medical information on the birth parents, their family including siblings and grandparents and the minor child. Whatever is known must be reported.
3. What procedures are followed to ensure that adoptive parents are fit to adopt a child?
  - A. A home study must be completed which includes a minimum of background checks, assessment of the physical environment of the home, financial screening, documentation of counseling and education on adoption, and recent medical reports.

After the baby is placed in the home, post placement visits are required to check on the well being of the minor, bonding, and any other issues related to the adoption. These visits must be done every thirty (30) days until the adoption is finalized. A report is written recommending the finalization if everything is going well.
4. Can the potential adoptive parents have the child placed with them prior to the actual court procedures?
  - A. Yes, but it is considered an at-risk placement until the termination of parental rights takes place approximately thirty (30) days after the birth parents consent to the adoption.
5. Can the adoptive parents prevent the birth parents from communicating with the child after the adoption?
  - A. Yes, if it is in the best interest of the child. There is no legal requirement to maintain contact but written agreements are routinely done. A court proceeding may be requested to help determine what is in the best interest of the child if a party is protesting the kind of communication that is taking place. These communication agreements do not affect the validity of the adoption and do not prevent the adoptive parents/child from changing their residence (even out of the state of Florida).
6. Under what circumstances can an adopted child communicate with the birth parents?
  - A. As deemed appropriate by the court and/or by a written or oral agreement during the adoption planning process. If there was a medical emergency when contacting them could be essential, a court would determine this if the adoption was a closed one.
7. What information must the birth parents provide to the adoptive parents?
  - A. Medical and social information on the minor, parents, grandparents and siblings, if known.
8. Who supervises the adoptive placement and for how long?
  - A. The adoption entity for at least sixty (60) days after placement or monthly until the adoption is finalized. If the adoption entity is an attorney, the social worker that performed the home study would be the one to do the post placement visits and report to the court.

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9. When is the adoption final?
  - A. The hearing on the petition to adopt a minor may not be held sooner than thirty (30) days after the date the judgment terminating parental rights was entered or sooner than ninety (90) days after the date the minor was placed in the physical custody of the petitioner, unless good cause is shown for a shortening of these time periods. The minor must remain under the supervision of the adoption entity until the adoption becomes final.

### OTHER ADOPTION RELATED QUESTIONS

1. Who initiates the adoption process?
  - A. The adoptive couple can initiate the home study process and application with an adoption entity. However, the birth mother/parents are the ones that would then help pick out the adoptive person or persons or give permission for the adoption agency to seek out the adoptive couple or individual.
2. When are the legal adoption papers filed with the court?
  - A. The legal papers are filed after the baby is born and the birth parents have signed their consents for adoption. Termination of parental rights does not take place for at least thirty (30) days after the papers have been signed. This is in order to allow time to serve the parties notice of the hearing. If the biological parents have already consented and have waived service of process and notice, the TPR hearing can occur in less than 30 days. The final adoption hearing will then occur at least 30 days after the TPR or ninety (90) days after the adoptive parents got physical custody, whichever is longer.
3. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?
  - A. Yes, if the courts terminated parental rights due to abuse or neglect; and/or if either parent is deceased.
4. What happens if the birth parents do not agree on the adoption plan?
  - A. If the biological parents are alive and their rights have not been terminated, their consent would still be required. If they do not agree (and do not consent) the adoption would not be approved.
5. Who can charge a fee for bringing birth parents and adoptive parents together?
  - A. It is prohibited to charge a fee that constitutes payment for locating a minor for adoption. However, charges can be made for cost of advertising, application process, and home study process in bringing the parties together.
6. Is the use of a non-licensed facilitator, non-licensed child-placing agencies, permitted to match adoptive families and birth families?
  - A. No, unless it is an attorney who is licensed to practice law in Florida.
7. Are independent adoptions allowed?
  - A. Yes.
8. How are independent and agency adoptions different?

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A. Independent adoptions are conducted by attorneys. Agency adoptions are handled by a licensed child-placing agency. Usually adoption agencies will have a social worker working with the adoptive couple and one working with the birth mother/father to provide counseling and support. An attorney may be working with both sides at the same time and does not provide counseling.

9. How does an adoptee go about requesting access to their adoption file?

A. The adoption file is considered sealed once the adoption is finalized. Many judges are very conservative and will require good cause to unseal the adoption file (i.e., it is rarely done). However, if agreements were made between parties for communication to take place, that would be one way to ask questions or seek answers regarding identifying or non-identifying information.

An adoptee and/or the adoptee's parents, if he or she is a minor, can request non-identifying information about himself/herself and his/her birth parents by putting in writing a request to the adoption agency, attorney, or the Florida Post Adoption Services Unit located in Tallahassee. However, in recent years, this information has been required at the time of the adoption.

If it is not known where or who facilitated the adoption, the adoptee can register on the Florida Adoption Reunion Registry (for identifying information) or request information from the Florida Post Adoption Services Unit (non-identifying information). The registry is a passive one so both parties would have to have registered in order for information to be shared.