

The Legal Aspects of Adoption:

A Summary Presentation by Harlan S. Tenenbaum, Esq.

What is Adoption?

Adoption is the legal equivalent of biological parenthood, and adoption itself is a legal process. It is the permanent legal transfer of all parental rights and obligations for a child from one person or couple to another person or couple. In order for those rights to be allowed to transfer, the rights of the biological parent(s), aka birth parents, need to be terminated, either voluntarily or involuntarily, and the adoptive parents to whom the rights will transfer must be qualified to adopt.

All States Have Adoption Laws

All states, the District of Columbia, and the US territories of Guam, Puerto Rico, American Samoa, the Northern Mariana Islands, and the Virgin Islands have laws that specify who is eligible to be adopted, how one becomes eligible for adoption, the necessary legal steps for adoption, and rules regarding confidentiality in the adoption. While the overall approach of these laws is similar, the fine points differ dramatically from state to state.

Adoption and Foster Care

Adoption and foster care are different. One of the main differences is that adoption is based on the voluntary and permanent relinquishment of the child, while foster care is often based on the involuntary and temporary relinquishment of a child who is a victim of abuse or neglect.

Who May Adopt?

Requirements to adopt include, but are not limited to age, good health, no criminal history, financial security, personal references, and the completion of a home study.

MEPA

Multi Ethnic Placement Act (MEPA). The Multi Ethnic Placement Act (MEPA) and the Small Business Jobs Protection Act (SBJPA) prohibits private and public child placement agencies from denying any person the opportunity to become an adoptive or foster parent, or from delaying or denying the placement of a child for adoption or into foster care, “on the basis of the race, color, or national origin of the adoptive or foster parent, or the child.” Violations are actionable under Title VI of the Civil Rights Act of 1964.

Indian Child Welfare Act (ICWA)

The Indian Child Welfare Act (ICWA) of 1978 exempts tribal identity from MEPA and SBJPA. ICWA is a federal law mandating that the placement of American Indian children can be governed by their tribe.

Who is Eligible to be Adopted?

Every state in the United States allows for the adoption of a child who is eligible to be adopted. Some states specifically require the child must be under the age of 18, a few other states allow parties to petition the court for the adoption of persons over age 18, but under age 21, and the majority of states allow the adoption of any person, regardless of age.

Open Records

Persons who were adopted may be able to obtain some information about their adoption under existing law. However, for some, they wish to obtain more information to which they are not legally entitled. Advocacy and support groups have been established to assist individuals in their efforts to locate information by opening confidential records. A method for exchanging information among the parties to an adoption is through Mutual Consent Registries. Those who wish information can register with the state. The other parties to the adoption are notified and information is shared only if there is mutual consent.

What are Confidential, Semi Open and Open Adoption?

Adoption can be a confidential process, where only non-identifying medical and social information about the birth parents is provided to the adoptive family through the adoption agency. Semi-open adoption typically means that non-identifying information, and ongoing letters and pictures are shared between the birth parents and the adoptive family. In a semi-open adoption, information between the adoptive parents and the birth parents is shared through the adoption agency. "Open adoption" typically means that there is continuing contact or on-going physical contact between the birth parents and the adoptive family.

Who May Place Children for Adoption?

Children may be placed for adoption by one of the three groups: adoption agencies, attorneys, and facilitators. Adoption agencies and attorneys are licensed on the state level. Facilitators are not generally licensed. Adoption agencies typically provide the most care and protection for the birth parents, offering both pre and post adoption counseling, which is confidential and free of charge.

Fees

Costs to an adoptive family for an adoption must be based on the services provided to complete an adoption, such as maternity-related medical, hospital costs, temporary living arrangements for the mother, counseling services, and legal fees. These fees can vary. Nearly all states have statutes, which provide for the regulation of adoption fees. Excessive costs can be considered as "baby selling" that is illegal. Adoptive families are not paying for the child, they are paying for the cost of maternity-related services provided to the birth parents. Tax credits are available for adoption costs.