

Common Questions About Adoptions

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{Author's Note: Chapter 161 of the Texas Family Code deals with Termination of the Parent-Child Relationship. Chapter 162 of the Texas Family Code deals with Adoption.}

While it is possible to adopt either a child or an adult, the guide will deal only with the adoption of minor children.

1. What is the difference between custody (or conservatorship) and adoption?

Custody, also referred to as conservatorship in the State of Texas, is the legal process used to establish the rights of a parent, or other adult with respect to a child. Custody can be joint or separate, and may also be temporary or final. However, even a final custody order may be reviewed if the circumstances of any of the parties, or the child, change.

Adoption is the process of legally replacing one or both parents with a new parent or parents. Adoption is a permanent process. The rights of the parents are terminated, and the child to be adopted becomes the legal child of the adopting parents. Once the adoption is completed, the order is not reviewed, and the court documents are usually sealed.

2. What does "termination" of parental rights mean?

The parents of a child have certain fundamental rights and responsibilities for that child, including the duty to provide food, clothing, shelter, and other necessities. Parents also have great freedom in raising their child, with respect to religious and moral education, where a child will live, and who can have possession or access to that child.

Termination of the Parent-Child Relationship is a legal proceeding to remove the natural parents as the persons responsible for the care and control of a child. Once a parent's rights have been terminated, they no longer have a legal relationship with a child.

3. What is the difference between voluntary termination and involuntary termination? And what are some of the ways to terminate a parent's rights without that parent's consent?

Any parent may sign an affidavit giving up their parental rights to a child. This affidavit, usually called a relinquishment of parental rights, must be signed by the parent, witnessed by two competent adults, and notarized. Once the affidavit has been signed, a Court can terminate that parent's parent-child relationship with a child; no other grounds or reasons are needed.

A parent may also have their parent-child relationship terminated without their consent. To do so requires a Court to make a determination that the termination is in the child's

best interest, and that the parent whose rights are to be terminated has engaged in certain conduct as set forth in the Texas Family Code §161.001. That section lists twenty (20) different acts that are grounds for termination. The most common grounds are:

- (A) **Voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return.** This is sometimes called abandonment.
- (B) **Voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months.** This is a combination of abandonment and non-support.
- (C) **Voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months.** This is another combination of abandonment and non-support, but note that it makes no mention of expressing an intent to return as in (A), (B), and (C) above.
- (D) **Knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child.** This is sometimes called endangerment.
- (E) **Engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child.** This is another type of endangerment.
- (F) **Failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition.** This is sometimes called non-support.

While there are other reasons a parent's rights might be terminated, these are the most common reasons.

It should also be noted that the death of a parent automatically terminates that parent's parent-child relationship with his or her children.

{Author's Note: the bold-faced type above is taken directly from the Texas Family Code, §161.001.}

4. When do the parents' rights have to be terminated?

Each parent's rights must be terminated prior to an adoption being granted. The termination of the parental rights can be done by a separate action, or can be joined to the petition for adoption. If the termination is joined to the adoption, the termination phase of the case must be completed before the adoption is done. This can be accomplished in a single hearing, or in a series of hearings.

5. Besides terminating the parents' rights, what else is required to adopt a child?

In addition to termination, there are a number of steps that must be accomplished before any child can be adopted:

A. If the person petitioning the court for adoption is married, that person's spouse **must** join in the petition for adoption.

B. A pre-adoptive home screening and a post-placement report must be made to the Court. This is a report done by a social worker into the suitability of the petitioners and their home for the child. This report is usually done in two parts, and submitted to the court for inclusion in the Court's documents. The purpose of this screening is to make sure that those seeking to adopt a child are capable of providing the emotional and physical support for the child. It is the responsibility of the petitioners to obtain these reports, and they must pay for them too.

C. A Health, Social, Educational, and Genetic History Report must also be submitted to the Court. This document is to make sure that the adoptive parents are aware of any potential problems with the child's health, such as a childhood disease or genetic defect of the child's biological family. It is also designed to report on educational and social issues, such as a learning disability or a child that was the subject of physical abuse or neglect. This report is not necessary if the adoptive parents are the grandparents, aunt and uncle, or a stepparent.

D. The child must have lived with the petitioners for at least six months. If the child is under six months of age, this requirement may be waived. It may also be waived by the Court upon a showing that the waiver is in the child's best interest.

E. Each petitioner seeking to adopt a child must submit to the Court a criminal history record. This report may be obtained for a small fee by submitting a fingerprint card to the Texas Department of Public Safety.

F. The petitioners must also comply with the Interstate Compact on the Placement of Children. This provision generally deals with licensed adoption or placement agencies that place children from other states with adoptive parents in this state. Generally, if all the parties are residents of the State of Texas a simple affidavit of compliance will meet this requirement.

6. Who can adopt a child?

Any competent adult who has met the requirements above can petition the Court for adoption. However, the Court has a duty to look at the best interest of the child in determining if an adoption is proper. The Court will look at such factors as the financial stability of the petitioners, the general health and well-being of the petitioners (including their age), the capability of the petitioner to provide the necessities of life for the child, and the criminal history of the petitioners. (While a spotless criminal history is to be

desired, the Court is primarily concerned with conduct which is detrimental to the welfare of the child—such as offensives against a child, sexual misconduct, drug offenses, and domestic violence.) The bottom line is what is in the child’s best interest.

7. Where do the children eligible for adoption come from?

Children eligible for adoption can be found through licensed adoption or placement agencies. The Texas Department of Family and Protective Services also places children for adoption. Religious organizations also sponsor adoptive agencies or services. The other major source of children for adoption are relatives of the petitioners.

8. What is a relative adoption?

A relative adoption is when the petitioners are related to the child in some fashion. Relative adoptions usually bypass adoption or placement agencies, and are sometimes much less difficult to accomplish. For certain relatives, the requirement of a Health, Social, Educational, and Genetic History Report to the Court is unnecessary.

9. Do I have to go through an adoption agency? What about advertisements in the newspaper or phone book?

The participation of an adoption or placement agency is not necessary. In some cases using such an agency may be helpful in locating a suitable child for adoption. Advertisements in newspapers or phone books should be investigated very carefully. While many of these advertisements are from legitimate placement agencies, someone wanting to adopt a child should not just take the word of someone over the phone. Legitimate agencies will welcome inquiries.

10. What will it cost to adopt a child?

The cost to adopt a child can be considerable. There are a number of fees and expenses associated with the adoption process:

A. There is an initial filing fee to file the adoption with Court. This fee will vary depending upon the number of children and upon the local jurisdiction where the suit is filed.

B. There is a fee for conducting the pre-adoption home screening and post adoption report. This fee will depend upon who conducts the screening, how many children are involved, and other local considerations. It can be several hundred dollars.

C. There is a small fee for the criminal history report. This fee is usually in two parts, a small fee of \$10.00 - \$20.00 for the fingerprint card; and \$20.00 – \$40.00 charged by the Department of Public Safety. As a cost saving tip, many local police or sheriff’s offices will waive their charge for making the fingerprint card if you simply tell them it is for an adoption.

D. The production of the Health, Social, Educational, and Genetic History Report can be costly, depending upon how much there is to report. It is difficult to predict how much such a report will cost because of how much might need to be reported. As with most costs, this report will probably be higher if there are more children.

E. When the adoption is completed, there is a \$15.00 fee to record the adoption with the Texas Bureau of Vital Statistics.

F. After the adoption is recorded there is a \$25.00 fee to amend the child's birth certificate and an \$11.00 fee to have a certified copy of the birth certificate sent to the adoptive parents. (The fees in E and F may be combined into a single payment to the Texas Bureau of Vital Statistics.)

G. There are also attorney's fees associated with the adoption. These will vary depending on several factors including location, number of children, difficulty of the case, whether or not a termination will be necessary, and others.

H. If the adoptive parents use an adoption or placement agency, that agency will also have fees and costs. It may not be possible to get a complete schedule of fees or costs, but adoptive parents using an adoption or placement agency should certainly discuss this issue at the beginning of the adoption so there are no surprises.

While it is illegal to buy a baby for adoption, many agencies discuss the possibility of adoption with women during their pregnancy. Many adoptive parents want to adopt a newborn child, and may meet the birth mother before hand. It is possible for the adoptive parents to help defray costs of the pregnancy and birth. If such an arrangement is made, the adoptive parents should be very careful to discuss these costs, and means of limiting them, with the agency. Adoptions can be very expensive so it is a good idea to plan and ask the attorney handling the case to explain each expense.

11. Will the child's name be changed?

Generally a child's last name is changed to that of the adoptive parents. It is also possible to change the child's first and middle name, although the older the child, the less likely that is. It is possible, especially for much older children, that the child's name will not change—although that is usually the result of a desire on the part of an older child to keep his or her birth name.

12. Is there a minimum age or maximum age for a child to be adopted?

The maximum age for a child to be adopted is seventeen. Once the child turns eighteen, he or she is no longer a child, and the adoption would be of an adult. There is no minimum age for a child to be adopted. Generally speaking the child must reside with the petitioners for six months prior to the adoption being granted, but that requirement may be waived by the Court.

13. How can I prove that I have adopted a child?

When the adoption is granted, the Court will sign an order granting the adoption. A certified copy or copies of that order can be obtained from the clerk of the Court at the time the order is filed. That certified copy is proof of the adoption. In addition, a Central Adoption Registry is maintained by the Texas Bureau of Vital Statistics, and certain information can be obtained. Finally, an amended birth certificate is usually issued, naming the adoptive parents as the mother and father of the child on the birth certificate—that also constitutes proof of parentage.

14. Is there a legal difference between an adopted child and a natural child?

Texas law makes no distinction between naturally born children and adopted children. Each child has the same rights, including inheritance rights; and each parent has the same duties and responsibilities to a natural child and an adopted child.

15. What happens if my spouse and I adopt a child, and then get a divorce?

The adopted child would be considered a child of the marriage, just like any naturally born child. Custody would have to be determined by the divorce Court. This is true even of a stepparent adoption, where one of the divorcing spouses is the natural parent and the other is the adoptive parent. Because the State of Texas makes no distinction between natural and adopted children, the natural parent would have no superior legal right to custody.

16. How can I undo an adoption once it is completed?

Once an adoption is granted, it cannot be undone. The only way to stop being the adopted child's parent is to have your parental rights terminated.

17. Do I have to have a lawyer to adopt a child?

Adoptions are complicated and emotional proceedings with a number of legal requirements. It is advisable to have a lawyer to assist you with the process. Remember, even the simplest adoption is still complex.