

# Frequently Asked Questions About Adoption in Delaware

## MOTHER OF THE BABY: BIRTH MOTHER RELATED

1. When can the mother of the baby start the adoption process?

Whenever she chooses but her consent may only be executed after the birth of the child. 13 Del.C. §1106.

2. Can the birthmother choose the adoptive parents?

Yes. 13Del.C. §1129.

3. Can the birthmother see and hold the baby after the birth?

Yes. Both prior to and after signing the consents to the termination of her parental rights and adoption.

4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?

While there is no statutory provision for the allowance of birthmother expenses, an “opinion letter” from the Attorney General of the State of Delaware is followed to permit the payment of necessary costs of living (food, shelter, medical, transportation, clothing, counseling and legal) expenses to be paid by the licensed agency on behalf of the birthmother. The fact that such payments are made shall not be a bar to the giving of consent nor render the consent unacceptable when given.

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

Yes. 13Del.C. § 908(c) However, there is no direct placement of children in Delaware. Minor mother must sign consent to placement of the child with licensed agency who must place the child consistent with minor mother’s request.

6. When does the birth mother actually sign the legal documents required for the adoption?

Consent by the mother can be given any time after the birth. 13 Del.C. §1106

7. Can the birthmother 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?

13Del.C. §1106B(a)(1) grants mother 14 days to revoke her consent to the termination of her parental rights. 13Del.C. § 909 grants mother (if over 14) 60 days from the date of the filing of the petition containing her consent to the adoption to file a petition seeking the revocation of her consent.

9. Can the birth mother communicate with the adoptive parents and child after the adoption?

13Del.C. §929 permits a licensed agency, consistent with the best interests of the child, as part of the adopting planning process, the exchange of identifying information: a) in the preplacement process may be limited to viewing of photographs only, provided both the birth and adopting parents consent; b) after the placement selection process has been completed but before finalization, identifying information may be exchanged including but not limited to names, addresses, photographs, face-to-face meetings, provided that both the birth and adopting parent(s) request the exchange in writing; and the agency agrees to aforesaid exchange of information; and that both birth and adopting parent(s) execute a written acknowledgement attesting to the parties' understanding that no legal right of or assurance of continuing contact after finalization of the adoption exists; and that both the birth and adoptive parent(s) execute written acknowledgements that no monies have been paid or received by any person or organization other than court costs, legal services and an agency fees not to exceed the costs of services rendered.

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

Yes. 16 Del.C. § 907A, known as the "Safe Arms for Babies Act" provides for the anonymous surrender of a newborn child with no repercussions unless there is evidence that the child has been abused or neglected at which time an investigation may be commenced. All information gathered is kept confidential.

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

If either of the birth parents do not agree that adoption should be the plan then if no contest to the termination of his/her parental rights is executed by the other parent an involuntary termination of that parent's parental rights proceeding is commenced. If successful, the adoption petition may be filed. If unsuccessful, the adoption process is halted and the consent to the termination of the consenting parent's parental rights may be withdrawn and custody of the child would revert to the parent that had physical and/or legal custody of the child unless there is evidence that the child was abused or neglected. If the person who executed the consent did not have legal

and/physical custody of the child then custody would revert to the organization or individual who had custody at the time the consent was executed.

## FATHER OF THE BABY: BIRTH FATHER RELATED

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

Father has to be notified of the adoption plan. 13Del.C. § 1107A requires notice of the hearing for the termination of parental rights hearing to be served upon all parties(birth, legal and putative parents) unless a waiver of notice has been duly executed. Service shall be personal unless unable to do so and if not, by publication in the county the hearing is to take place as well as the last known address of the father. However, no notice to father shall be necessary if father has been found to have committed an act of domestic violence against the baby or the mother of the baby. 13 Del.C. § 8403 establishes a Putative Fathers Registry which further delineates fathers rights to notice.

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

By personal service, mail or publication.

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

Fathers have the same rights to choose adoptive parents as do mothers.

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

Biological fathers have the same rights to notice as do legal fathers.

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

Consent is required by the biological father and any presumed father of a child, provided, however, that the consent of the alleged biological father or presumed father need not contain an admission that he is the father. In the event that the named biological or presumed father disclaims paternity, an affidavit signed by him to that effect shall be attached to the petition in lieu of a consent from the natural or presumed father. It is further provided that in the event of a petition containing statements described in section 906(7)b, II, iii or (iv) of title 13, after a hearing in which it is established on the record that the mother and father of the child are not living together as husband and wife openly and that they have not done so nor married since the birth of the child, the Court may, following consideration of the social report, dispense with the requirements of the father's consent in compliance with section 932 of title 13. 13Del.C. §908

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

13Del.C. § 1105(a)(5)a.-e. requires that the petition for termination of parental rights contain an affidavit from the birth mother to the effect that she either knows the identity of biological father and she refuses to disclose it; or she doesn't know the identity of the biological father or his address; or that the mother's husband, if she was married at the time of the child's conception or birth, is not the child's biological father.

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

13Del.C. § 1105(a)(9) provides that if mother refuses to name the biological father the petition must contain detailed information concerning the efforts made to locate the parent.

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

Yes. 13Del.C. § 8403 (Putative Father Registry) provides that a father may register either before the birth of the child or within 30 days after the birth of the child.

9. Can the birth father change his mind before signing the legal consents to the adoption?

Yes.

10. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?

Yes. 13Del.C. § 908(c) provides that "If the individual in whom the right to consent exists is under the age of 18 years, this fact shall not be a bar to the giving of consent nor render the consent when given invalid."

11. Can the birthfather change his mind after signing the legal consents to the adoption?

Yes. Consent to the termination of his parental rights can be revoked within 14 days of executing his consent by giving written notice to the agency or the individual to which the parental rights had been transferred. 13Del.C. § 1106B.(a)(1).

#### ADOPTIVE PARENT RELATED

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

An unmarried person, husband and wife jointly, a divorced or a legally separated person who is a resident of the state at the time of filing and over the age of 21 may petition the Family Court for an order authorizing the petitioner or petitioners to adopt a child not his, her or theirs. 13 Del.C. §903

The Department of Services for Children, Youth and their Families and licensed placing agencies are allowed to place children in Delaware. 13 Del.C. §901

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

13 Del.C. § 901, 912, 924. Information about the child must include their physical and mental history, family background and eligibility for adoption. Information about the birth parents shall include their health and medical information.

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

13 Del.C. § 912. Information about the adoptive parents shall include the suitability of placement and relevant information about both, if applicable, adoptive parents and home.

The report shall include information regarding the child, its background, its eligibility for adoption, information regarding the adoptive parent or parents, and the proposed adoptive home. Information about the physical and mental condition of the child, information regarding the suitability of the placement, a statement as to whether all requirements have been compiled with, and in stepparent/relative cases a statement that the birth parent whose parental rights are being terminated has been advised of their rights, and a recommendation.

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

Yes. While not specifically addressed in the statute, “at risk” placements are the norm as well as foster care that may lead to adoption.

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

If no agreement between the adoptive and biological(legal) parent(s) providing for the exchange of information exist then YES. If such an agreement exists the agency may assist in the exchange of information provided both biological(legal) and adoptive parent(s) consent in writing. However, open adoption agreements are NOT BINDING in Delaware.

6. Under what circumstances can an adopted child communicate with the birth parents?

Only upon the consent of both the biological (legal) and adoptive parent(s).

7. What information must the birth parents provide to the adoptive parents?

13 Del.C. § 901, 912, 924 Information about the child must include their physical and mental history, and their family background and eligibility for adoption. Information about the birth parents shall include their health and medical information.

8. Who supervises the adoptive placement and for how long?

13 Del.C. §904. No petition for adoption shall be presented unless prior to the filing of the petition the child sought to be adopted has been placed for adoption by the Department, a licensed agency or an authorized agency, and the placement has been supervised by the Department or a licensed agency. No such placement or supervision shall be necessary in the case of a child adopted by a stepparent, or a child adopted by a blood relative.

No placement for an identified adoption in which an intermediary has been involved shall be approved or permitted by the Department or licensed agency.

When the prospective adoptive parents are legal residents of the state, but live elsewhere, the approval and supervision required by this section shall be provided by an authorized agency located in close proximity to the family.

There is no statute regarding the length of time a placement must be supervised.

9. When is the adoption final?

13 Del.C. §918. Upon the expiration of 6 months from the date of the entry for the decree of adoption, any irregularities in the proceedings shall be deemed cured, and the validity of such decree shall not thereafter be subject to attack either through collateral or direct proceeding.

## COURT SPECIFIC PROCEDURES

1. Who initiates the adoption process?

13 Del.C. §902. A petition for adoption shall be filed either in the Family Court of the county in which the licensed or authorized agency placing the child is located, or the Family Court of the county in which the petitioner resides.

2. When are the legal adoption papers filed with the court?

13 Del.C. §902. (See above) At the time of the filing of the petition.

3. When do the birth parents actually sign the legal documents for adoption?

At the same time they sign the consents to the termination and transfer of their parental rights.

4. What happens if the birth parents do not agree on the adoption plan?

Both parents have the right to keep or place their child for adoption. If one parent disagrees usually the parent wishing to keep the child will be permitted to do so unless there is evidence to support an involuntary termination of that parent's parental rights.

5. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?

13Del.C. §§ 907, 908, 1103,1106. Yes, but only if both biological (legal) parents' rights have been judicially terminated. Absent judicial termination or consent of biological (legal) parents', no. However, no consent is needed if the child has been abandoned, the parent is legally incompetent, the parent is convicted of a felony where a child has been harmed, or there is a history of neglect or abuse.

## SPECIAL ISSUES

1. Can a Native American child be placed for adoption without the approval of the Tribe?

No. Delaware complies with the Indian Child Welfare Act of 1978.

2. Can children be placed for adoption with parents of a different race, color or national origin?

Yes. The state of Delaware complies with the Federal Multi-Ethnic Placement Act.

3. Can a child born with birth anomalies or organic impairments be placed for adoption?

Yes.

## CHILD WELFARE/SPECIAL NEEDS

1. Can a child born to illegal/undocumented alien parents be placed for adoption?

Yes. 13 Del.C. §908 states that a child who is legally free for adoption in Delaware may be adopted.

2. What rights do birth grandparents have in their child's decision to place a child for adoption?

None.

3. Who can engage in the practice of adoption?

13 Del.C. §904. In Delaware only the Department or a licensed or authorized agency may place a child in adoption.

## CHILD PROTECTION LAW

1. Under what condition must a health care professional refer the case of a pregnant child to the State's child protective services?

Reporting is mandatory if there is suspicion of abuse or neglect; "statutory rape"(consensual but under age);child tests positive for illegal substances and/or tests positive for sexually transmitted diseases.

## MINOR CONSENT LAWS

1. What medical procedures may a pregnant minor consent to without parental, legal guardian, or court approval?

Minors in Delaware may consent to medical treatment or services regarding contraceptive services, prenatal care, treatment for STD-HIV/AIDS, alcohol and/or drug treatment services, and outpatient mental health services.

2. What medical procedures require parental, legal guardian, or court approval, permission or agreement?

The State of Delaware requires minors under the age of 16 notify one parent or pgrand parent or licensed health care professional before obtaining an abortion. A judicial bypass option is available.

Minors may also not consent to outpatient mental health services.

3. Can a minor consent to medical treatment for her/his child?

In Delaware a minor may consent for medical care for their child.

### COMPETENCY LAWS

1. Who determines if a patient/client, minor or adult, is competent to consent to medical treatment and decision-making?

Unless a question is raised, usually in court, there is no such determination necessary. Once raised however, legal competency is determined by judicial proceeding.

2. What is the process for making a competency determination?

A petition for guardian of the person based on incompetency is filed with the court and the court makes the final determination after a hearing on the merits. The court may order psychological and/or psychiatric evaluation and the appointment of a guardian ad litem and/or an attorney or the office of the Public Guardian for Minors.

### NOTIFICATION/REPORTING LAWS REGARDING ADULTS

1. What events involving adults require the health care professional to report to law enforcement or an administrative agency?

Evidence of child abuse or neglect, positive testing of sexually transmitted disease, and any “unusual-out of the ordinary occurrences” e.g. dog bite, gun shot wounds, etc.