

The Adoption Process in New Mexico – Frequently Asked Questions

Independent Placement

Questions and New Mexico Law	Agency Placement	Independent – Non Related	Step/Related
Who initiates the process and where can a person go for help? <i>NM 32-A-5-12</i>	Birth parent(s) contacts a licensed adoption agency.	Birth parent(s) contacts a licensed adoption agency or an adoption attorney.	Birth parent(s) identify a relative (within the 5 th degree) and contacts an attorney.
Who finds the adoptive parents? <i>NM 32-A-5-12</i> <i>NM 32-A-5-13</i>	The licensed adoption agency finds families, and does home studies. Studied, approved families usually are on a waiting list. Birthparent(s) select from a pool of approved, waiting families.	The birth parent(s) finds families on their own, through advertising or answering an ad, or through an adoption attorney. Birth parent(s) selects from a pool of families approved by a licensed adoption agency or certified social worker.	The birth parent(s) identifies a specific relative and contacts an adoption attorney to process the necessary court documents.
Who legally selects the adoptive parents? <i>NM 32A-5-17 through 23</i>	The licensed adoption agency approves the selection and may or may not involve birth parent(s). <i>Agencies receiving Federal funds must not make placement decisions based on race, ethnicity, or culture of the child or adoptive parents. Further, a Native American child must be referred to the Tribe for their decision on placement suitability.</i>	The birth parent(s) must select the adopting parents. <i>Note: Birth parents can choose whomever they wish so long as the chosen parent meets the local requirements for adoptive parents. The only exception is that a Native American child must be referred to the Tribe for their decision on placement suitability.</i>	The birth parent(s) must select the adopting parents. <i>Note: Birth parents can choose whomever they wish so long as the chosen parent meets the local requirements for adoptive parents. The only exception is that a Native American child must be referred to the Tribe for their decision on placement suitability.</i>
Who studies the family? <i>NM 32A-5-14</i>	The licensed agency studies and usually provides support and training for families.	An adoption attorney will engage an adoption professional to conduct an adoptive family assessment; or a licensed adoption agency will provide a home study.	If required by the court, a licensed adoption professional or agency will complete a homestudy.
Who consents to the adoption in Court? <i>NM 32A-5-5-17</i>	The birth parent(s) relinquishes their child in court to a licensed adoption agency. The agency becomes the legal parent of the child and consents to the adoption.	The birth parent(s) legally consents to the adoption with a named individual or couple.	The birth parent(s) legally consents to the adoption with a specific named relative.

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<p>Can a birth parent revoke a release or consent for adoption?</p> <p><i>NM 32A-5-21</i></p>	<p>Birth parent(s) cannot sign relinquishment papers until at least 48 hours after the child’s birth.</p>	<p>Same</p>	<p>Same</p>
<p>Who prepares and files the legal adoption papers in court?</p> <p><i>NM 32A-5-25 through 28</i></p>	<p>The agency or attorney prepares and files all legal adoption papers.</p>	<p>The licensed adoption agency <i>or</i> adoption attorney prepares and files documents.</p>	<p>Same</p>
<p>Who decides where the child will live while an adoption is pending?</p> <p><i>NM 32A-5-29</i></p>	<p>Once a child is released to a licensed adoption agency, the agency decides whether to permit a “temporary placement” with the adopting parents.</p>	<p>Only birth parent(s) can give permission for a “temporary placement” with adopting parents, pending the court adoption action.</p>	<p>Only birth parent(s) can give permission for a “temporary placement” with adopting parents, pending the court adoption action.</p>
<p>What does the Court do in an adoption?</p> <p><i>NM 32A-5-36</i></p>	<p>The court reviews and accepts all required documents (parent’s release, agency’s consent, home study, adoption petition, statement of fees charged).</p> <p>Court confirms that birth parent(s) are advised of their rights and are making a fully informed consent to the adoption.</p> <p>The court terminates birth parent(s) rights and enters an adoption order.</p>	<p>Same</p> <p>Same</p> <p>Same</p>	<p>Same</p> <p>Same</p> <p>Same</p>
<p>What fees can be charged to adoptive parents by agencies, adoption attorneys, or the court?</p> <p><i>NM 32A-5-34</i></p>	<p>Legal fees charged for consultation and legal advice, preparation of papers, and representation in connection with an adoption proceeding, including legal services performed for a biological parent or a guardian and necessary court costs in an adoption proceeding.</p> <p>Expenses incurred in ascertaining the information</p>	<p>Same</p>	<p>Same</p>

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	<p>required about an adoptee and the adoptee’s biological family.</p> <p>Reasonable and actual charge for preparation of the preplacement assessment and any additional investigation ordered.</p>	<p>Same</p> <p>Same</p>	<p>Same</p> <p>Same</p>
<p>What expenses can be paid to and/or on behalf of the mother or the adoptee by the adoptive parents?</p> <p><i>NM 32A-5-34</i></p>	<p>Expenses that can be paid for by law include:</p> <p>Medical, hospital, nursing, or pharmaceutical expenses incurred by the birth mother or the adoptee in connection with the birth or any illness of the adoptee.</p> <p>Living expenses of a mother before the birth of the child and for no more than 6 weeks after the birth.</p> <p>Traveling expenses necessitated by the adoption.</p> <p>A prospective adoptive parent shall pay for counseling the parent or guardian related to the adoption.</p>	<p>Same</p> <p>Same</p> <p>Same</p> <p>Same</p> <p>Same</p>	<p>Same</p> <p>Same</p> <p>Same</p> <p>Same</p> <p>Same</p>
<p>Who will supervise the adoption and for how long?</p> <p><i>NM 32A-5-31</i></p>	<p>The court assigns the adoption agency to visit the family and make reports to the court for 3 to 6 months.</p>	<p>The court assigns a licensed adoption agency to supervise the placement for 3 to 6 months.</p>	<p>Supervision may be waived by the court.</p>

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<p>When is the adoption final?</p> <p><i>NM 32A-5-31</i></p>	<p>An adoption is final after the supervisory period is satisfactorily completed and the court enters a final order of adoption.</p>	<p>Same</p>	<p>Same</p>
<p>Can an adoption be overturned in New Mexico?</p> <p><i>NM 32A-5-31</i></p>	<p>An adoption is final and cannot be changed except when there is fraud and/or intentional legal flaws and it is proven to be in the child’s best interests.</p>	<p>Same</p>	<p>Same</p>
<p>Can a Native American child be placed for adoption without approval of the tribe?</p> <p>Indian Child Welfare Act <i>PL 95-608</i></p>	<p>No: A Native American child cannot be placed for adoption without approval of the Tribe.</p> <p>The adoption worker should ask the birthmother if either she or the birthfather are Native American.</p>	<p>Same</p>	<p>Same</p>
<p>How does New Mexico’s Safe Haven effect adoption placement?</p> <p><i>NM 24-22-1 to 24-22-8</i></p>	<p>A person may leave an infant with the staff of a hospital without being subject to prosecution for abandonment or abuse if the infant was born within ninety days of being left at the hospital, as determined within a reasonable degree of medical certainty and if the infant is left in a condition that would not constitute abandonment or abuse of a child. There shall be no presumption of abuse or neglect against a person seeing reunification within thirty days of the date the infant was left at a hospital in accordance with the provision of the Save Haven for Infants Act.</p>	<p>Not applicable</p>	<p>Not applicable</p>

Rights of Birth Parents

The New Mexico Adoption Code – NM 32-A-5-1 through NM 32A-5-45 includes several rights of birth parents:

- Birth parents decide what type of adoption to choose – independent placement or agency placement.
- Birth parents authorize the temporary transfer of custody to adoptive parents.
- Birth parents can revoke temporary transfer of custody and have child returned prior to the termination of parental rights petition being filed.

Also:

- The birth mother and father, if known, must sign relinquishment papers or consent to the adoption.
- If either parent is unknown, the court must make a finding that the identity cannot be determined after reasonable efforts to identify the parent or parents have been made.
- Putative Father:
 - A putative father is a man not married to the mother and who has not acknowledged paternity, whom the mother says is the child's father.
 - A putative father may file paternity at the birth of the child or express intent to file paternity before the child's birth by signing a statement under oath and filing it with the Putative Father's Registry in Santa Fe, New Mexico.
 - When the putative father who has filed a Notice of Intent to Acknowledge Paternity does not come forward to voluntarily relinquish or consent to an adoption, the court notifies the putative father of the existence of the child and grants him the right to come before the court and establish why his parental rights should not be terminated.
- In situations where a birth mother has decided to relinquish her rights, a birthfather may legalize his paternal relationship to the child and claim custody of the child, when the court determines this is appropriate.
- Courts must provide legal notice to putative fathers prior to terminating rights.

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