

*Thomson Reuters Law for the Layperson*

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THE LAW OF ADOPTION

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Margaret C. Jasper

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Legal Almanac Series

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THOMSON REUTERS  
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# THE LAW OF ADOPTION

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*by*  
**Margaret C. Jasper**

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Legal Almanac Series:  
*Thomson Reuters' Law for the Layperson*

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To My Husband Chris

Your love and support  
are my motivation and inspiration

To My Sons, Michael, Nick and Chris

-and-

In memory of my son, Jimmy

## ABOUT THE AUTHOR

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MARGARET C. JASPER is an attorney engaged in the general practice of law in South Salem, New York, concentrating in the areas of personal injury and entertainment law. Ms. Jasper holds a Juris Doctor degree from Pace University School of Law, White Plains, New York, is a member of the New York and Connecticut bars, and is certified to practice before the United States District Courts for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second Circuit, and the United States Supreme Court.

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In 2004, Ms. Jasper successfully argued a case before the New York Court of Appeals, which gives mothers of babies who are stillborn due to medical negligence, the right to bring a legal action and recover emotional distress damages. This successful appeal overturned a 26-year old New York case precedent, which previously prevented mothers of stillborn babies from suing their negligent medical providers.

Ms. Jasper is the author and general editor of the following legal Almanacs:

AIDS Law

The Americans with Disabilities Act

Animal Rights Law

Auto Leasing

Bankruptcy Law for the Individual Debtor

Banks and their Customers  
Becoming a Citizen  
Buying and Selling Your Home  
Commercial Law  
Consumer Rights and the Law  
Co-ops and Condominiums: Your Rights and Obligations As Owner  
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Home Mortgage Law Primer  
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How To Change Your Name  
How To Form an LLC

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Labor Law  
Landlord-Tenant Law  
Law for the Small Business Owner  
The Law of Adoption  
The Law of Attachment and Garnishment  
The Law of Buying and Selling  
The Law of Capital Punishment  
The Law of Child Custody  
The Law of Contracts  
The Law of Debt Collection  
The Law of Dispute Resolution  
The Law of Immigration  
The Law of Libel and Slander  
The Law of Medical Malpractice  
The Law of No-Fault Insurance  
The Law of Obscenity and Pornography  
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Religion and the Law  
Retirement Planning  
The Right to Die  
Rights of Single Parents  
Small Claims Court  
Social Security Law  
Special Education Law  
Teenagers and Substance Abuse  
Trademark Law  
Trouble Next Door: What to do With Your Neighbor  
Victim's Rights Law  
Violence Against Women  
Welfare: Your Rights and the Law  
What if It Happened to You: Violent Crimes and Victims' Rights  
What if the Product Doesn't Work: Warranties & Guarantees  
Workers' Compensation Law  
Your Child's Legal Rights: An Overview  
Your Rights in a Class Action Suit  
Your Rights as a Tenant  
Your Rights Under the Family and Medical Leave Act  
You've Been Fired: Your Rights and Remedies



# INTRODUCTION

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According to the National Adoption Clearinghouse, more than 120,000 children are adopted in the United States each year. This Almanac sets forth the various types and circumstances of adoption, the adoption process, and the state and federal laws governing adoption. Consent requirements, termination of parental rights, and the rights of putative fathers are also examined.

This almanac discusses the costs and tax benefits of adoption, and the availability of adoption assistance for special needs children. Post-adoption considerations, such as access to birth records and inheritance issues are discussed along with an overview of international adoption.

The Appendices provides applicable statutes, resource directories, and other pertinent information and data. The Glossary contains definitions of many of the terms used throughout the Almanac.

# Table of Contents

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ABOUT THE AUTHOR .....	vii
INTRODUCTION .....	xi

## CHAPTER 1: AN OVERVIEW OF ADOPTION

WHAT IS ADOPTION? .....	1
THE UNIFORM ADOPTION ACT .....	1
WHO MAY ADOPT? .....	2
Eligibility by Age .....	2
Eligibility by Residency .....	2
Sexual Orientation of the Adoptive Parent .....	2
WHO MAY BE ADOPTED? .....	3
Adoption of a Child .....	3
Adoption of an Adult .....	3
WHO MAY PLACE A CHILD FOR ADOPTION? .....	4
Agency and Department Placement .....	4
Non-Agency Placement .....	4

## CHAPTER 2: TYPES OF ADOPTION

AGENCY ADOPTION .....	5
PRIVATE PLACEMENT ADOPTION .....	6
Independent Adoption .....	6
Advertising .....	6
Intermediaries .....	7
THE OPEN ADOPTION .....	8
THE STEPPARENT ADOPTION .....	8
THE RELATIVE ADOPTION .....	9
FOSTER CARE ADOPTION .....	9

Foster Parent Adoption .....	10
Legal Risk Placements .....	10
Concurrent Planning .....	10
Benefits of Foster Parent Adoption .....	10
Costs of Foster Parent Adoption .....	11

### CHAPTER 3: THE ADOPTION PROCESS

JURISDICTION AND VENUE .....	13
THE HOME STUDY* .....	14
Purpose of the Home Study .....	14
Elements of the Home Study Process .....	14
Training Sessions .....	15
Interviews .....	15
Home Visit .....	15
Health Statement .....	15
Autobiographical Statement .....	15
References .....	16
The Background Check .....	16
Criminal Record Check .....	16
Disqualifying Crimes .....	17
Federal Legislation .....	18
The Adoption and Safe Families Act of 1997 (ASFA) .....	18
The Child Abuse Prevention and Treatment Act (CAPTA) .....	19
The Adam Walsh Child Protection and Safety Act of 2006 .....	19
The Home Study Report .....	19
COLLECTION OF FAMILY INFORMATION ABOUT THE ADOPTED CHILD, BIRTH PARENTS, AND ADOPTIVE PARENTS .....	20
Who May Collect Information .....	20
Information About the Adopted Child .....	20
Information About the Birth Parents .....	21
Information About the Adoptive Parents .....	21
THE PLACEMENT PROCESS .....	21
FINALIZING THE ADOPTION .....	22
The Adoption Petition .....	22
Notice .....	23
The Adoption Hearing and Order .....	23

<b>CHAPTER 4:</b>	
<b>THE COSTS OF ADOPTION AND AVAILABLE RESOURCES</b>	
<b>IN GENERAL</b>	<b>25</b>
<b>TYPES OF ADOPTION EXPENSES</b>	<b>25</b>
Universal Expenses	26
Cost of the Home Study	26
Legal Fees and Court Costs	26
Adoption-Specific Expenses	26
Foster Care Adoption Costs	26
Domestic Infant Adoption Costs	27
Licensed Private Agency Adoption Costs	27
Independent Adoption Costs	27
Facilitated/Unlicensed Adoption Costs	27
International Adoption Costs	28
<b>STATE REGULATION OF ADOPTION EXPENSES</b>	<b>28</b>
Birth Parent Expenses	29
Agency Fees and Costs	29
Intermediary Fees	29
Reporting Requirements	30
<b>ADOPTION ASSISTANCE RESOURCES</b>	<b>30</b>
Adoption Assistance for Special Needs Children	30
Eligibility for Adoption Assistance	31
Limitation on Adoption Assistance	32
Termination or Modification of Adoption Assistance	33
Employer Benefits	33
Information Resources	33
Financial Assistance	34
Parental Leave	34
Eligibility and Conditions	34
Loans and Grants	35
Tax Credits	35
Federal Adoption Tax Credits	35
State Tax Credits	37
Adoption Taxpayer Identification Number	37

<b>CHAPTER 5:</b>	
<b>CONSENT TO ADOPTION AND TERMINATION</b>	
<b>OF PARENTAL RIGHTS</b>	
<b>REQUIREMENT OF CONSENT</b>	<b>39</b>
Right to Consent	39
Birth Parents	39
Other Person or Legal Entity	40
Consent of the Child	40

Timing of Consent . . . . .	41
Manner of Consent . . . . .	42
Minor Birth Parent . . . . .	42
Revocation of Consent . . . . .	42
Consent Obtained by Fraud, Duress or Coercion. . . . .	42
Consent May Be Withdrawn Within Specified Time Period. . . . .	43
Consent Must Be Withdrawn Within Specified Time Period Unless Fraud or Duress . . . . .	43
Revocation of Consent in Best Interests of Child . . . . .	43
Withdrawal of Consent in Best Interests of Child . . . . .	43
Mutual Agreement of Parties . . . . .	43
Prior to Adoption Finalization . . . . .	43
<b>RIGHTS OF PUTATIVE FATHERS . . . . .</b>	<b>44</b>
Constitutional Rights . . . . .	44
Putative Father Registries . . . . .	45
Information Maintained in Registry . . . . .	45
Access to Registry Information . . . . .	45
Revocation of Paternity Claim . . . . .	46
<b>TERMINATION OF PARENTAL RIGHTS . . . . .</b>	<b>46</b>
Grounds for Termination. . . . .	47
Requirements for Termination under the Adoption and Safe Families Act. . . . .	47
Exceptions to Termination. . . . .	48
<b>INFANT SAFE HAVEN LAWS . . . . .</b>	<b>48</b>
Safe Haven Providers. . . . .	49
Unintended Negative Consequences. . . . .	49

## CHAPTER 6: POST-ADOPTION CONSIDERATIONS

<b>POST-ADOPTION CONTACT AGREEMENTS . . . . .</b>	<b>51</b>
Parties to the Agreement . . . . .	51
Enforceability . . . . .	51
Resolving Disputes and Mediation. . . . .	52
States Without Enforceable Post-Adoption Agreements . . . . .	53
<b>ACCESS TO ADOPTION RECORDS . . . . .</b>	<b>53</b>
Non-Identifying Information . . . . .	53
Restrictions on the Release of Non-Identifying Information . . . . .	54
Identifying Information . . . . .	54
Restrictions on the Release of Identifying Information. . . . .	55
Mutual Consent Registries. . . . .	55
Other Methods of Obtaining Consent . . . . .	56
Original Birth Certificate. . . . .	56

<b>INHERITANCE RIGHTS OF ADOPTED CHILDREN</b> .....	57
Birth Parents and the Adopted Child .....	58
Adoptive Parents and the Adopted Child .....	58

## **CHAPTER 7: INTERNATIONAL ADOPTION**

<b>IN GENERAL</b> .....	59
<b>CHOOSING THE COUNTRY</b> .....	60
<b>ELIGIBILITY TO ADOPT A FOREIGN-BORN CHILD</b> .....	61
Foreign Adoption by a United States Citizen .....	61
The Two-Year Co-Residency Provision .....	62
The Orphan Petition .....	62
Orphan Status .....	63
Foreign Adoption by a Non-U.S. Citizen .....	63
Long-Term Nonimmigrant Visa Holders .....	64
Legal Permanent Residents .....	64
<b>ROLE OF THE U.S. GOVERNMENT IN INTERNATIONAL ADOPTION</b> .....	64
The U.S. Department of State .....	64

## **APPENDICES**

<b>APPENDIX 1 - TABLE OF STATE ADOPTION STATUTES</b> .....	67
<b>APPENDIX 2 - DIRECTORY OF STATE ADOPTION     INFORMATION WEBSITES</b> .....	71
<b>APPENDIX 3 - UNIFORM ADOPTION ACT (1994)</b> .....	75
<b>APPENDIX 4 - TABLE OF STATE STATUTES GOVERNING     ADVERTISING IN PRIVATE PLACEMENT     ADOPTIONS</b> .....	143
<b>APPENDIX 5 - TABLE OF STATE STATUTES GOVERNING     THE USE OF INTERMEDIARIES IN PRIVATE     PLACEMENT ADOPTIONS</b> .....	147
<b>APPENDIX 6 - TABLE OF STATE STATUTES GOVERNING COURT     JURISDICTION AND VENUE OVER ADOPTION     PROCEEDINGS</b> .....	151
<b>APPENDIX 7 - TABLE OF STATE STATUTES GOVERNING     CRIMINAL BACKGROUND CHECKS FOR     PROSPECTIVE ADOPTIVE PARENTS</b> .....	155
<b>APPENDIX 8 - TABLE OF ALLOWABLE ADOPTION EXPENSES</b> .....	159
<b>APPENDIX 9 - QUALIFIED ADOPTION EXPENSES     (IRS FORM 8839)</b> .....	163
<b>APPENDIX 10 - TABLE OF STATE STATUTES GOVERNING     CONSENT IN ADOPTION PROCEEDINGS</b> .....	167

**APPENDIX 11 - TABLE OF STATE LAWS GOVERNING  
THE RIGHTS OF PUTATIVE FATHERS ..... 171**

**APPENDIX 12 - TABLE OF STATE INFANT SAFE HAVEN LAWS ..... 179**

**APPENDIX 13 - TABLE OF STATE STATUTES GOVERNING INTESTATE  
INHERITANCE RIGHTS OF ADOPTED CHILDREN ..... 195**

**GLOSSARY ..... 199**

**BIBLIOGRAPHY AND ADDITIONAL READING. .... 207**

# **CHAPTER 1:**

## **AN OVERVIEW OF ADOPTION**

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### **WHAT IS ADOPTION?**

Adoption is defined as a court action in which an adult assumes legal and other responsibilities for another person, usually a minor. Adoptions occur for a number of reasons. For example, the birth parents may want the child to have a better life than they can provide. A young woman may be faced with an unplanned and unwanted pregnancy and the inability to raise a child. Some adoptive parents are relatives, or step-parents. Foster parents may also choose to adopt their foster children. In order for an adoption to take place, a person available to be adopted must be placed in the home of a person or persons eligible to adopt.

Adoptions are subject to state law. All states and the District of Columbia have laws that specify which persons are eligible as adopting parents, which persons can be adopted, and which persons or entities have the authority to make adoptive placements.

A table of state adoption statutes is set forth in Appendix 1 and a table of state adoption information websites is set forth in Appendix 2.

### **THE UNIFORM ADOPTION ACT**

The Uniform Adoption Act (UAA) was adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1994, following five years of intensive discussions with the entire adoption field. The 1994 UAA is the third uniform act NCCUSL has developed and is intended to be a comprehensive statute addressing all areas of adoption law. The current UAA came about because there was a perceived need for uniformity among the states on adoption matters. The UAA, like all model acts, can be introduced and passed in whole or in part by the state legislatures, although to date it has not yet been adopted, in whole, by any state.

The text of the Uniform Adoption Act is set forth in Appendix 3.



## **WHO MAY ADOPT?**

In general any single adult, or a husband and wife jointly, may be eligible to adopt. In some states, married persons may adopt singly if they are legally separated from their spouse or if their spouse is legally incompetent. In addition, a stepparent can adopt the birth child of his or her spouse. A stepparent can usually adopt a stepchild without the birth parent spouse joining in the adoption petition, provided the spouse consents to the adoption.

### **Eligibility by Age**

State statutes dictate the age at which an individual is eligible to adopt. In approximately six states, including Kentucky, Louisiana, Montana, New Jersey, Tennessee, and Washington, prospective parents must be 18 years of age to be eligible to adopt. In three states, Colorado, Delaware, and Oklahoma, the eligibility age is 21; and Georgia and Idaho specify age 25.

A few states allow minors to adopt under certain circumstances, such as when the minor is the spouse of an adult adoptive parent. In approximately six states, including California, Georgia, Nevada, New Jersey, South Dakota, and Utah, the adoptive parents must be at least 10 years older than the person to be adopted and, in Idaho, the adoptive parent must be at least 15 years older.

### **Eligibility by Residency**

Approximately 17 states, including Arizona, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Minnesota, Mississippi, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and Wyoming, require that petitioners for adoption be state residents.

The required period of residency ranges from 60 days to 1 year. There are exceptions to the residency requirement in some states. For example, in South Carolina and Indiana, a nonresident can adopt a child with special needs; and in Illinois, Mississippi, New Mexico, and Rhode Island, a nonresident may adopt through an agency.

### **Sexual Orientation of the Adoptive Parent**

The statutory laws in most states are largely silent on the issue of adoption by gay and lesbian persons. At this time, only two states, Florida and Mississippi, explicitly prohibit adoption by homosexuals in their statutes. Utah bars adoption by persons who are cohabiting but not legally married, thus this language could be interpreted to encompass