

LAW OF ADOPTION

Fourth Edition

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INTRODUCTION

Properly speaking a legal adoption is a procedure which establishes the relationship of parent and child between persons not so related by nature. At the same time the adoption terminates all such relationships between the child and its natural parents.

Ordinarily adoption is a judicial proceeding, requiring a hearing before a judge of a competent court in the particular jurisdiction. In some states, however, an exception is made in the case of a father wishing to "adopt" an illegitimate child. In these jurisdictions a father may adopt an illegitimate child merely by publicly acknowledging that the child is his own, without being required to go through extended judicial proceedings.

Although ordinarily thought of as a relatively modern practice, adoption in fact has a history of great antiquity. Although unknown to the common law, the practice prevailed among the ancient Greeks, Romans, Babylonians and Assyrians.

The first American jurisdiction to enact an adoption statute was Massachusetts—in 1851. Prior to this, as well as later in many jurisdictions, adoptions, were negotiated by deed—a now obsolete practice. The first English adoption statute was enacted in 1926.

Originally, the primary purpose of adoption was to provide the adopting parent or parents with an heir, but today it embraces many other aspects of the parent-child relationship. In this connection it may be noted that the term "adoption" is often employed loosely and inaccurately, as, for example, in references to the sponsoring of alien refugees and orphans, when what is actually meant is merely that the sponsor is assuring or contributing to the alien's support after arrival in this country.

Modern adoption procedures are primarily designed for protection of the interests and welfare of the adoptee, but they simultaneously safeguard those of the adopting and natural parents.

As in the case of marriage, divorce and other aspects of family law, adoption practice is governed by state or territorial law rather than federal. Each state has its own adoption statute and while many of such laws correspond in essentials, no two are identical. Even Montana and Oklahoma, the two states which have adopted the Uniform Act, have incorporated varying modifications.

The law of the forum state governs adoption proceedings even when some of the parties reside elsewhere. In many states the procedure is explained in pamphlets provided by the state welfare department. Where adoptions are handled through child placement agencies, advice respecting the proper procedure may be obtained through such organizations.

It should be remembered that adoption procedure, as specified in the pertinent state statute, must be strictly followed and that a legally binding adoption must be one in which all the formal requirements have been satisfied.

As adoption almost always involves the preparation of legal documents, as well as a formal hearing in court, the advice and service of a competent attorney is usually essential. In some instances legal assistance may be obtained from public officials. In Arizona, for example, it is provided that the county attorney shall give legal assistance without charge to persons desiring to institute adoption proceedings. For the most part, however, the services of a private practitioner will be necessary.

It is ordinarily desirable to seek the guidance of an attorney or authorized agency as soon as a decision to adopt is made, even though there has been as yet no choice of a child. Such persons will be able to tell the prospective petitioner whether he can qualify as an adopter pursuant to the pertinent law, the nature of the proceedings in general and the ultimate effect of adoption. It should be remembered, however, that the functions of an attorney and a placement agency are entirely distinct and that neither should undertake to assume those of the other.

These and related matters are considered throughout the course of this volume, whose primary purpose is to give prospective adopters a general understanding of the pertinent law. It is not intended, nor should it be used, as a substitute for competent legal or adoption agency advice. In fact, the utilization of expert counsel and assistance at the earliest possible moment frequently saves adopting parents both time and money and enables them to avoid much misery and heartache.

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Chapter 1

HISTORY OF ADOPTION

Among the ancient peoples of Greece, Rome, Egypt and Babylonia, adoption served essentially as a way of providing a male heir to childless couples. Male children were considered crucial not only to maintain the family line for inheritance of property, but also for performance of religious rites. In Rome, an additional function of adoption was related to the notion that a candidate for public office was better if he had children, or had more of them, than his opponent. In these ancient cultures, the adopted were often adult citizens instead of abandoned or destitute children. A man might adopt his daughter's husband or her sons to carry on the family line. In early Rome it was customary for a large family to allow one of its sons to be adopted by a childless family, thereby forming a closer alliance between the two families and providing an heir to the second family.

Inheritance

Inheritance is still of such importance that in countries such as France, Greece, Spain and most of Latin America, adoption is prohibited when it would change the inheritance rights of biological children.

The practice of adoption disappeared almost completely in Europe in the Middle Ages. The most common means of transferring custody of a child was through indenture. Indenturing treated the child as property, contracting him out to a work home until the age of majority (18 for girls, 21 for boys), usually in exchange for food, clothing, and housing, as well as basic schooling and some training in an occupation. Until adoption was introduced again with the general adoption laws passed in the mid-nineteenth century, the few adoptions that did take place were either informal agreements or by means of a separate legislative act for each particular child being adopted by each particular adult.

Formal legal provisions of a general adoption law was an outgrowth of concern such as that voiced in a report by the New York Commissioners of the Code in 1865 recommending enactment of general adoption law in New York State. While informal adoptions were not uncommon, adopting parents feared that

natural parents would reclaim children, especially if there was a financial advantage. The Report stated:

“... yet there is no method by which the adopting parents can secure the children to themselves except by a fictitious apprenticeship, a form which, when applied to children in the cradle, becomes absurd and repulsive. It is, indeed, so inappropriate a form in every case that it is rarely resorted to.”

The first general adoption statutes in the United States were passed in 1850 in Texas and Vermont. These and laws enacted shortly after by a few other states were passed merely to “make public record of private agreements of adoptions.” There was no mention of public supervision or requirement that a judgment be made on the propriety of the adoption.

In 1851 Massachusetts was the first of several states, including New York, to enact a law which provided to some extent for judicial supervision, calling for a judgment to be made of the parents’ ability to provide for the child.

From 1890 through the 1920’s many states passed laws that provided for social investigations to be either prerequisites in all adoptions or required at the discretion of the judges. In many cases these social investigations were delegated to county departments of charity or welfare.

The practice of adoption in this country has evolved from the needs of childless parents to a focus on the needs of parentless children. In addition to the social investigation of prospective adoptive homes, waiting periods have been imposed between the child’s placement in a home and the legal consummation of the adoption. In many states, once the adoption proceedings are closed, records are sealed and a new birth certificate is issued in order to protect the rights of the child and his adoptive parents.

Chapter 2

QUALIFICATIONS OF ADOPTING PERSONS

As a general rule, adoption may be undertaken by either married or unmarried persons, and the requirements are basically the same in either case. In the case of the former, however, all states require either that the petition be made jointly or be consented to by the other spouse. The requirement of a joint petition, however, does not apply in connection with the adoption of a stepchild: the petition is submitted solely by the stepparent, with the consent of the spouse (the natural parent).

AGE: The most commonly encountered age requirement is that the adopting parent be at least 21 years of age. Many statutes merely specify “any adult” or “any person of lawful age”, but the usual effect of this provision is as just stated. There are, however, jurisdictional variants to this general rule. Some states setting a minimum age of 21 nevertheless permit married persons under that age to join in an adoption petition, while a number of states allow “any person” or “any resident” to adopt (making it possible for minors to institute adoption proceedings). In some jurisdictions, the adopting parent must be a specified number of years older than the adopted child. Eight states, for example, require that this age differential be at least 10 years. In two states, the differential is 15 years (unless the adoptee be the child of the adopter’s spouse). In Georgia, an adopter must be 25 years of age if unmarried (otherwise, an “adult”) and at least 10 years older than the child. Puerto Rico has a unique provision that the adopting parent be over 21 years of age and also 16 years older than the adopted child, except in a stepchild adoption where the adopter has been married to the adoptee’s parent for at least five years.

Chart A (which follows) lists the statutory requirements in this connection. It specifies the persons who may adopt and the prescribed age limitations. It should be remembered, however, that in agency adoptions age requirements may be more stringent than those specified by statute. Many responsible agencies set a maximum age for adopting parents at about 40 years particularly where infants are involved. Such requirements may be ascertained by consulting the particular adoption agencies.

Chart A

WHO MAY ADOPT

STATE	Statutory Definition	Other Age Requirements
Alabama	Proper adult	
Alaska	Any person	
Arizona	Any adult	10 years older than child
Arkansas	Any person of lawful age	
California	Any adult	10 years older than child
Colorado	Any person	Over 21
Connecticut	Any person	18 years of age
Delaware	Any resident	Over 21 if unmarried
District of Columbia	Any person	
Florida	Any adult	
Georgia	Adult resident (married and living with spouse; 25 years of age if unmarried)	10 years older than child

STATE	Statutory Definition	Other Age Requirements
Hawaii	Any proper adult person	
Idaho	Any adult	15 years older than child (unless spouse of natural parent)
Illinois	Any reputable person	Of legal age, but minor may adopt by leave of court for good cause
Indiana	Any resident	
Iowa	Any person of lawful age (construed to include minors attaining majority by marriage)	
Kansas	Any adult	
Kentucky	Any adult resident	
Louisiana	Any person	Over 21 if unmarried; person over 20 may adopt person over 17
Maine	Any person	
Maryland	Any person	Over 21
Massachusetts	Person of full age	Other than adoptee
Michigan	Any person	
Minnesota	Any resident of more than one year (unless requirement waived)	
Mississippi	Any proper unmarried adult, or spouses jointly	
Missouri	Any person	

STATE	Statutory Definition	Other Age Requirements
Montana	Spouses jointly; either if other is child's parent; single person 21 years of age; unmarried parent of illegitimate child; married person of 21 and legally separated	Adopter of adult must be 10 years older than adoptee
Nebraska	Any adult	
Nevada	Any adult or any married couple	10 years older than child
New Hampshire	Any person may adopt minor; any adult may adopt adult unless latter is spouse, brother, sister, uncle or aunt of whole or half blood	
New Jersey	Any adult U.S. citizen (or one who has declared intent to be)	10 years older than child (15, if adult adoptee)
New Mexico	Bona fide resident, or non-resident relative within third degree	20 years older if adopting adult
New York	Any adult (minor may adopt spouse's child born in or out of wedlock)	
North Carolina	Any proper adult person or spouses jointly	
North Dakota	Any adult	10 years older than adoptee
Ohio	Any proper person	

STATE	Statutory Definition	Other Age Requirements
Oklahoma	Spouses jointly; either if other is child's parent; single person 21 years of age; married parent of illegitimate child; married person of 21 and legally separated	-
Oregon	Any person	
Pennsylvania	Any adult	
Puerto Rico	Any person in full exercise of civil rights	Over 21 and 16 years older than adoptee (except in stepchild adoption by spouse of at least 5 years)
Rhode Island	Any person	Older than adoptee
South Carolina	Spouses jointly; either if other is parent of child; single person of legal age; married, of legal age and legally separated; any unmarried parent may adopt illegitimate child	Only adult may adopt adult
South Dakota	Any adult	10 years older than child
Tennessee	Any U.S. citizen	Over 21
Texas	Any adult	
Utah	Any adult	10 years older than child
Vermont	Any person of age and sound mind	
Virginia	Any natural person	

STATE	Statutory Definition	Other Age Requirements
Washington	Any person	
West Virginia	Any person	15 years older than child (unless stepchild)
Wisconsin	Any adult resident; resident spouses (or resident stepparent) may adopt minor	
Wyoming	Any resident (of 21) (or spouses jointly or either if stepparent)(any person may adopt adult resident)	

RESIDENCE: In the ordinary case where both the child and adopting parents live in the same state, resident requirements present no problems. Various complications may arise, however, when this is not the case. There are two possible solutions:

1. The child may be brought into the state where the adopting parents reside.
2. The adopting parents may go to the state where the child resides and bring the adoption proceedings there.

In deciding upon which course to follow, attention must be given to both legal and practical considerations. If possible, it is generally preferable to institute the proceeding in the state where the adopting parents reside. The chief reason for this is that the court considering the application will be in a better position to obtain pertinent information and evidence concerning the prospective adopters and thus properly determine whether or not to approve the application. In addition, if, as is usually the case, an official investigation is required before an application may be approved, it greatly simplifies matters if the proceeding is in the state where the petitioners reside. However, it may be difficult or impossible for either legal or practical reasons to bring the proceeding in this jurisdiction. For example, if the child is in a boarding home or agency in another state, it will be necessary to secure the assistance and cooperation of those having custody of the child in order to transport the latter to the forum state for purposes of adoption. Moreover, consideration must be given to the various state laws respecting the interstate

transportation of children for purposes of adoption. Most states have such laws, and in practically all of these, it is necessary to first obtain permission from the state welfare department. Most also require the posting of a bond, usually for \$1,000, although in some states it is higher. About half the states which regulate importation require, in addition to permission from the state welfare department, follow-up reports to that agency.

A few states regulate exportation, i.e., the taking of a child out of a state for adoption. These laws are generally simpler than those relating to importation. Permission from the state welfare agency is usually required, and sometimes follow-up reports, but generally no bond-filing requirement. Moreover, the exportation laws do not usually apply where the child is taken from the state by its parents or guardian.

In addition to the laws just described are others which may demand attention in certain situations. Where, as is occurring with increased frequency, children are brought to this country for adoption from abroad, consideration must be given to the laws of the country of origin as well as to our own immigration requirements.

If it cannot conveniently be arranged to bring the proceeding where the adopting parents reside, the only alternative is to proceed in the state where the child resides if this is legally feasible. However, some states require that adopters be residents thereof, while some go even further and require residence for a stated period of time prior to instituting an adoption proceeding.

The following chart (Chart B) lists the residence requirements (if any) of the various states.

Chart B

RESIDENCE REQUIREMENTS FOR ADOPTING PARENTS

STATE	Are There Residence Requirements?	What Are They?
Alabama	No	
Alaska	No	
Arizona	Yes	Residence of State
Arkansas	No	
California	Yes	Residence of County of Proceeding
Colorado	No	
Connecticut	No	
Delaware	Yes	Resident of State
District of Columbia	Yes	Legal Resident of District or Have Lived One Year in District (unless adoptee in legal custody or control of Commissioners or child-place- ment agency)
Florida	Yes	Resident of State
Georgia	Yes	Resident of State
Hawaii	No	
Idaho	Yes	Resident of and residing in State
Illinois	Yes	6 Months Immediate Continuous Residence (no residence require- ment if adoptee is "related child" or child placed by an "agency")