

**OFFICE OF THE STAFF JUDGE ADVOCATE
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ADOPTION

Introduction

Every state has private agencies that arrange and supervise adoptions by working with the birth parents to match the adoptive parents with children. Many states will also help arrange an adoption for need-specific child citizens of that state through the state Child Protective Service agency. Other services may include payment for some of the legal costs of the adoption and provide benefits to the adopted child throughout their growth and development. These state agencies can also help those considering adopting children from an unfit home.

Adoption procedures vary from state to state, however most states require adoptive parents to prepare for the adoption with the help of a social worker. This preparation may include an interview and a home inspection to determine whether they are "fit." Once the social worker and state agency have submitted an approval, the court will then finalize the adoption. While there are several adoption agencies listed in the phonebook, it is recommended to rely on a referral from an acquaintance.

Foreign Adoptions

Many agencies have long waiting periods before children are available for adoption. Therefore, parents often turn to adopting a child from another country. However, this is especially complicated because anyone attempting to adopt a child from a foreign country will need to complete an extensive amount of paperwork and work closely with the U.S. Citizenship and Immigration Office (formerly the INS) (1-800-375-5283). Nonetheless, with the help of another parent that has adopted from the country being considered and an attorney experienced with adoptions, the process can be accomplished.

Embryo Adoptions

A third form of adoption is embryo adoption. In this case, a woman alone or with her spouse adopts an egg that has already been fertilized by a sperm and thus became an embryo. These embryos are typically created as a result of invitro fertilization (IVF) by the donor couple. The donor couple's IVF may have resulted in the creation of multiple embryos, only a few of which were used by the donor couple. As a result, the remaining embryos may be left in cold storage and may be adopted with the approval of the couple who created the embryos.

Embryo adoption differs from other forms of adoption in several ways. In all cases, the adoptive mother is the birth mother of the child. Another important distinction is that embryo adoption usually falls under contract law rather than adoption law, because the embryo's personhood is not recognized by the law. Therefore, it is sometimes referred to as embryo donation. When the adoptive/birth mother gives birth, the birth certificate will list her name as the mother.

Placing a Child in Adoption

The decision to place a child for adoption traditionally meant that the birth mother (and usually father) surrendered all rights and were relieved of all responsibilities with respect to the child. Note that while some states allow a form of *open adoption* in which the birth parent retains some rights, the general rule is that adoption terminates the birth parent's parental rights. Placing a child in adoption requires that the birth parent(s) sign an agreement to surrender all rights in the child.

Adoption is an irrevocable option. That is, once a certain point is passed, the birth parents cannot "change their mind" and reinstate their parental rights. Thus, this decision is not one that should be made without consulting both a doctor and a counselor, whether legal or otherwise.

Birth Parent Rights

Traditionally, those who give up their parental rights under adoption have surrendered **ALL** rights and responsibilities for the child being adopted. The adoptive parents become the legal parents of the child and the biological parents have no right of visitation or any other involvement in the child's life.

Open adoption is a modern trend, although it is not recognized in all states. In this type of adoption, the birth mother surrenders all of her legal rights. However, the adoptive parents agree to allow scheduled visits with the child. This prevents adopted children from being completely cut off from their biological family. Additionally, most states require that a biological father be given notice of a pending adoption. In such a case, the father may object to the adoption, but only if the father is willing and able to assume full responsibility for the child himself. He cannot both refuse to allow the adoption to go forward and refuse to raise the child, otherwise the state will terminate his parental rights.

Adoption Records

Adoption records are usually sealed to prevent access by the public. While there has been movement to open the records, there has been an equally strong movement to keep records private. Laws on access to adoption records will vary on a state-by-state basis.

Adoption of a Foreign Child Relative

United States citizens who wish to adopt a related-child from abroad and petition for that child to immigrate to the United States will generally follow the adoption procedures in the same way as non-relative prospective adoptive parents. However, it is important to note that the child must be adopted before age 16 (or be the natural sibling of such a child, adopted by the same parents as his or her sibling while under the age of 18) and be in the legal custody of, and reside with the adoptive parents for at least two years prior to the filing of the I-130 petition.

Financial Assistance for Adoption

There are several financial resources for parents adopting a child, including grants, tax refunds, and tax deductions. However, it will depend upon individual circumstance to determine which may apply. Note that a step-child or embryo adoption may not qualify for some tax credits (such as the federal Adoption Tax Credit). However, special needs adoptions may qualify for grants, or qualify to claim a tax credit, even if there were no expenses. It is recommended that a legal assistance attorney is contacted to further discuss your specific case.

Resources

U.S. state laws on adoption:

<http://laws.adoption.com/statutes/state-adoption-laws.html>

For more information on adopting a related child abroad, visit the following Department of State website and follow the link to the USCIS website on this webpage:

<https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/how-to-adopt/adopting-a-relative-for-immigration.html>

The Department of State provides country-specific information on intercountry adoptions:

<https://travel.state.gov/content/adoptionsabroad/en/country-information.html>

Department of Health and Human Services, Children's Bureau provides background resources:

<https://www.acf.hhs.gov/cb/faq/adoption8>

Conclusion

If you are contemplating adopting a child, the first step should be to contact a civilian attorney licensed in the state in which the adoption will take place and who is experienced in this field. Once you have talked to an attorney, you will be on the path to parenthood. If you are not sure where you need to file, typically jurisdiction will lay where the child lives.

RAF Lakenheath Legal Assistance App

For a copy of this pamphlet, as well as other helpful pamphlets, please go to the 48 FW Phone App, click on “J.A.G.” at the bottom, and then click on “forms and documents.”

AF Legal Assistance Website

For more information about the topic above, please go to <https://aflegalassistance.law.af.mil>, select select Legal Information, then “Family Law” and then “Adoption.”

Additionally, you can call or email us to schedule an appointment to meet with an attorney at the RAF Lakenheath legal office.

RAF Lakenheath Legal Office Hours

Legal Assistance/Wills (**By appointment only**)

Tuesday 0900-1100 and Thursday 1300-1500

Call **0163852-3553 (226-3553)** or email 48fw.ja@us.af.mil

Powers of Attorney/Notary Service (No appointment necessary).

Monday-Wednesday & Friday 0830 – 1530; Thursday 0930-1530