



# NYS Kinship Navigator

## ADOPTION\*

Adoptive parents have the same responsibilities and authority over their adoptive children as did the biological parents. For children placed in foster care, the local department of social services routinely facilitates **agency adoptions**. For **private placement adoptions**, the petitioner usually will need an attorney of record, although some counties permit per se petitions. For either petition the standards are relatively the same.<sup>1</sup>

Both Family Court and Surrogate's Court will require notification to the natural parents and whenever possible the appearance in court of the parents. If the parents are willing to consent, then the adoption depends solely on the submission of the necessary documents, a favorable home study, a review of the adoptive parents criminal record (as well as any co-residents) and a child abuse registry check. If the parents are unwilling to consent, then their rights must first be terminated by showing by clear and convincing evidence that the parents are unfit or for other reasons incapable of parenting, *i.e.*, abandonment, mental illness, death.<sup>2</sup>

### Advantages of Adoption

Adoption ends the legal relationship of the biological parents to the child. **The adoptive parent is the parent.** The legal protections afforded to parents from unwarranted state interference no longer protect the biological parents, but are afforded to the adoptive parents. Laws of intestacy include the adoptive child as an heir.

Adoptive parents who intend to apply for **Social Security benefits** based on their lifetime earnings may add their adoptive child to their claim and receive additional payments because of the minor child's dependency upon them for support.<sup>3</sup>

**Medicaid** cannot make an estate claim if the Medicaid recipient is survived by a minor child (including adoptive children), a disabled or blind child.<sup>4</sup>

### Disadvantages of Adoption

Adoptive parents assume full legal responsibility for their child. Because the adoptive parents are true parents, the child is no longer eligible for a "**child-only**" **public assistance grant**. The parents' income will be deemed available to the child.<sup>5</sup>

The biological grandparents of the adoptive child still retain the right to seek **visitation**, despite the cessation of their child's parental rights.<sup>6</sup>

In agency adoptions, the surrendering parent may place **conditions on the adoption agreement**. Such conditions are limited to the naming who may adopt the child(ren) or some form of continued contact with the biological parent(s).<sup>7</sup> In private placement adoptions, no such conditions are legally enforceable.<sup>8</sup>

\* The above information is not a statutory suggested form. It is not legal advice. It is not a substitute for consulting an attorney. Up to date legal advice and legal information can only be obtained by consulting with an attorney.

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<sup>1</sup> The New York Judiciary official website contains all court forms for both agency and private placement adoptions, *see* [www.courts.ny.state.us](http://www.courts.ny.state.us).

<sup>2</sup> . *Santosky v. Kramer*, 455 U. S. 745, 753-754, 102 S.Ct. 1388, 1394-1395, 71 L. Ed.2d 599, 606 (1982).

<sup>3</sup> 42 U.S.C. § 334. The adoption must have occurred prior to the worker's initial application for benefits.

<sup>4</sup> N.Y. Soc. Serv. L. § 369(b)(ii); 18 NYCRR § 360-7.11(b)(2).

<sup>5</sup> 18 NYCRR § 352.321(a)(2).

<sup>6</sup> *Ann M.C. v. Orange County Department of Social Services*, 682 N.Y.S.2d 62 (App. Div. 2d Dep't 1998).

<sup>7</sup> N.Y. Soc. Serv. L. § 383-c.

<sup>8</sup> *Matter of Jacob*, 86 N.Y.2d 651 (1995).

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**A Program of Catholic Family Center**

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