

## LEGAL FACT SHEET

### ADOPTION\*

Adoptive parents have the same responsibilities and authority over their adoptive children as biological parents. For children placed in foster care, the local department of social services routinely facilitates agency adoptions. For private placement adoptions, the petitioner will usually need an attorney of record, although some counties permit pro se (without an attorney) petitions. For either petition the procedures and standards of review are similar.<sup>1</sup>

Both Family Court and Surrogate's Court have jurisdiction over adoptions. Both will require notification be given to the natural parents. Courts, whenever possible, prefer that parents appear in court to consent. 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 a showing of clear and convincing evidence that the parents are unfit or for other reasons incapable of parenting, i.e., abandonment, mental illness, or death.<sup>2</sup>

### Advantages of Adoption

Adoption ends the legal relationship of the biological parents to the child. The adoptive parent becomes 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. If the adoptive parents die without a Will, the laws of intestacy will include the adoptive child as their 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>

### Disadvantages of Adoption

Adoptive parents assume full legal responsibility for their child. Because the adoptive parents are legally the parents, the child is no longer eligible for a "child-only" public assistance grant.<sup>4</sup> The adoptive parents' income will be deemed available to the child.<sup>4</sup>

The biological grandparents of the adoptive child still retain the right to seek visitation, despite the cessation of their parental rights.<sup>5</sup>

In agency adoptions, the surrendering parent may place conditions on the adoption agreement. Such conditions are limited to naming who may adopt the child or children or whether there will be some form of continued contact with the biological parent(s).<sup>6</sup> In private placement adoptions, both parties may enter into agreements

<sup>1</sup> The New York Judiciary official website contains all court forms for both agency and private placement adoptions. See [www.courts.state.ny.us](http://www.courts.state.ny.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. § 402. The adoption must have occurred prior to the worker's initial application for benefits. 4 N.Y. Soc. Serv. L. § 369(b)(ii); 18 NYCRR § 360-7.11(b)(2).

<sup>4</sup> 18 NYCRR § 352.321(a)(2).

<sup>5</sup> *Ann M.C. v. Orange County Department of Social Services*, 682 N.Y.S.2d 62 (App. Div. 2d Dep't 1998)

<sup>6</sup> N.Y. Soc. Serv. L. § 383-c.

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for continued contacts. These agreements are legally enforceable, but failure to follow the agreement cannot undo an adoption.<sup>7</sup>

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<sup>7</sup> Matter of Jacob, 86 N.Y.2d 651 (1995). DRL 112-b.