

A Guide to Adoption Law for North Carolina Birth Mothers

1. Who may place a child for adoption? Who accepts children for adoption?

A parent with legal and physical custody of a child may place the child for adoption either with an agency - a county department of social services (DSS) or a licensed child placing agency – or directly with the adoptive parents. If the birth parents are married to each other and living together, both must place for adoption. Attorneys or adoption facilitators are not allowed to accept and place children in North Carolina. Individuals or organizations may assist birth parents in locating and evaluating prospective adoptive parents, but may not charge for that service in North Carolina.

If the child will be placed with an agency, the parent signs a relinquishment to the agency, and the agency then places the child and executes its consent so the adoptive parents can adopt. If the child is placed directly with the adoptive parents in an independent adoption, the parent signs a consent to the adoptive parents.

2. Who may adopt?

Any adult may adopt a child. If the adoptive parent is married, the spouse must join in the petition and adopt as well, unless the clerk waives this requirement. If the adult who wishes to adopt is unmarried, no one else may join in the petition. Single sex marriages are not recognized in North Carolina. If a single sex couple wishes to adopt, only one partner will become the adoptive parent.

3. Can a minor parent release a child for adoption without the appointment of a guardian for the minor parent? Must the parents of the minor parent agree?

A minor parent is legally able to release a child for adoption without the appointment of a guardian or the consent of his or her parents. The minor parent is treated as an adult for this purpose.

4. Is the citizenship or immigration status of the birth parent or adoptive parents relevant in an adoption?

The fact that a birth parent and/or adoptive parents are not citizens or even in this country legally is not an automatic bar to an adoption. However, citizenship and immigration status could be relevant to whether the adoption is in the child's best interest in particular cases. For example, if the adoptive parents were at risk of deportation and wanted to adopt an unrelated child who was a US citizen, the clerk would consider those facts in determining if that adoption was in the child's best interest. State law governs adoptions and federal law governs immigration, so the parties may need legal advice on both issues.

5. When can a birth mother or father sign papers consenting to the adoption of their child? How long do they have to revoke?

A father can sign a consent or relinquishment either before or after the child is born. A mother may sign any time after the child is born, but not before. The revocation period is seven days, except that a second identical relinquishment to the same agency or second consent to the same adoptive parents is irrevocable. The seven days begin on the day following the execution of the relinquishment or consent.

The revocation must be in writing and must be given by personal delivery, overnight delivery service, or registered or certified mail to the person and address specified in the consent. If overnight delivery or certified/registered mail is used, the revocation is considered complete upon deposit with the delivery service or in the mail. Thus, the birth parent can mail her revocation by certified/registered mail on the 7th day, and it will be valid, even though received by the adoptive parents after the seven days have passed. A revocation entitles the placing parent (the parent who previously had legal and physical custody of the child) to the child's return.

There are some specific instances in which a longer revocation period is available to the birth parents, and these will be discussed in the sections on relinquishments and consents below.

6. What is the role of the hospital if the adoptive parents will be taking the child home from the hospital?

NC statutes provide that the hospital may allow the baby to leave with prospective adoptive parents if the parent with legal custody signs an authorization for transfer of physical custody for the purpose of adoption to the adoptive parents. This authorization must be signed in the presence of a hospital employee.

7. Does a birth parent have any choice in the selection of adoptive parents if she places her child with an agency? What services does an adoption agency provide?

Every agency must provide a birth parent or adoptive parent, upon request, a copy of its fees and policies, including the role of the birth parent in the selection process and any counseling available for the birth parents. The agency will gather health and other background information from the birth parents for the adoptive parents.

Many agencies now offer a variety of adoption choices for birth parents, from completely anonymous and confidential to a totally identified adoption. In any adoption, the agency may tell the parent when placement with the adoptive family has occurred and when the adoption decree has been entered.

Birth parents may execute two types of relinquishments to an agency – general and designated. A general relinquishment gives the agency authority to make the placement decision. A designated relinquishment gives the agency authority to place only with the placement designated in the relinquishment.

The birth mother often reviews non-identifying home studies of prospective adoptive parents and decides which family to designate. The birth mother and adoptive parents can decide to meet through the agency in a non-identifying way to learn more about each other, or can agree to an identified agency adoption. In either case, any agency placement must have a favorable preplacement assessment or home study.

Either type of relinquishment vests legal and physical custody of the child in the agency and allows the agency to place the child for adoption, subject to the revocation period. The parent does not, however, lose all her parental rights to the child until the final decree of adoption. And the parent is still liable for child support pending the final decree of adoption; however, generally, that is not pursued.

If the birth parent chooses a designated relinquishment, the birth parent can also choose whether to be notified if that adoption cannot be completed for any reason. If the birth parent chooses to be notified that the planned adoption will not take place, the parent has an additional ten day period in which to revoke after that notification.

If the placing parent revokes, the child must be returned to the birth parent upon request. If the non-placing parent revokes, the adoption cannot proceed until the rights of that parent, usually the father, are cleared, but he does not have a right to return of physical custody. If the parent does not revoke within the ten day period, the relinquishment becomes a general one, and the agency can make another placement choice.

If the parent chooses not to be notified, and the original adoption cannot take place, the relinquishment becomes a general relinquishment and authorizes the agency to make another placement choice for the child.

8. What if the birth parent wants to place directly with the adoptive parents instead of using an agency?

Independent adoptions are allowed in North Carolina as long as the birth parent personally chooses the adoptive parents. The birth parent may not sign a consent without knowing the adoptive parents. The birth parents provide health and other background information directly to the adoptive parent and must be given a copy of the adoptive parents' approved preplacement assessment so the placing parent has adequate information on which to base her placement decision.

Sometimes a birth mother meets adoptive parents and chooses to place her child with them before their preplacement assessment has been prepared or completed. In that event, the placing parent has more than the normal seven day revocation period. She has up to and including five business days after receiving the assessment from the adoptive parents, even if she does not receive that assessment for several months.

The approved assessment must be delivered to her, but if her whereabouts are unknown to the adoptive parents when the preplacement assessment is ready, it may be sent by mail, return receipt requested, to the address the placing parent gave in her consent. In that event, the five business days begin to run the day after the date of last attempted delivery.

A consent vests legal and physical custody of the child in the adoptive parents and authorizes them to file an adoption petition for the child. The parent is still liable for support until the final adoption decree, and all parental rights are not terminated until that time.

9. What expenses of the birth parent can adoptive parents legally pay in North Carolina?

Adoptive parents or someone acting on their behalf may pay the “reasonable and actual fees and expenses” for (1) services of an adoption agency, (2) medical, hospital and similar expenses in connection with the pregnancy, birth of the child and any illness of the adoptee, (3) counseling services for the parent or adoptee directly related to the adoption, (4) ordinary living expenses of a mother during her pregnancy and for no more than 6 weeks after birth, (5) expenses incurred in obtaining background information about the adoptee and his biological family, (6) legal services for a birth parent, and (7) preparation of a preplacement assessment and post-placement report to the court.

The birth parent is not liable for repayment of any pre-birth expense reimbursement if she later decides not to place the child for adoption with the prospective adoptive parents, unless the adoptive parents can show the benefits were accepted with the fraudulent intent not to complete the adoption.

The American Academy of Adoption Attorneys website is an excellent resource for anyone looking for an adoption attorney. www.adoptionattorneys.org.

10. What are the rights of birth fathers? If only the birth mother places her child for adoption, what must the agency or adoptive parents do to clear the birth father?

Whether a birth mother places with an agency or directly with adoptive parents, she must complete an affidavit of parentage form which lists the father's name and address or states that his name and /or whereabouts are unknown to her. She must also indicate if there is a legal father in addition to a biological father. If she was married and not divorced, her child is presumed to be the child of her husband, and he must be dealt with as well in the adoption.

There are a number of ways to clear fathers who do not consent or relinquish. An unwed father can sign a denial of paternity. If a court has found the legal father is not the actual father or someone else is the father of the child, the legal father's consent is not required. If a father is deceased, a certified copy of his death certificate attached to the petition is sufficient

The most common ways to clear a father are to terminate his parental rights in an action brought in district court by an agency or adoptive parents or to give him notice in a private adoption that the adoption petition has been filed and have the clerk find his consent is not necessary because he has not responded or has not taken certain active steps to "grasp the opportunity to be a father." Simply being the biological father is not enough. To protect his rights, the father must have taken these statutorily mandated steps prior to the filing of the TPR action or the adoption petition.

In order to clear a father who has not consented, relinquished, or signed a denial of paternity, he must be given notice of the filing of the termination of parental rights action or the adoption petition. Personal service or service by registered mail is the preferred form of notice. Publication is the least preferred and can only be used when a diligent search has been made to find the father and any notice is published where the father is believed to be if that place is known. Therefore, the mother plays a critical role in providing information about the father so he can be located or served.

11. Are there special procedures if the adoption crosses state lines?

Yes, the Interstate Compact on the Placement of Children (ICPC) must be followed. The ICPC requires that the sending state and receiving state approve an adoptive placement before the child is taken to the receiving state by the adoptive parents. If a parent and certain relatives are involved in the adoption, the ICPC does not apply. But the ICPC applies to all interstate non-related independent adoptions and begins with the signing of a form called the ICPC 100A by the mother as the "sending agency." That form goes to the DHHS ICPC staff in Raleigh and is then forwarded to the ICPC office in the receiving state.

12. Is adoption assistance available for adoptive parents?

There are federal tax credits available for adoptive parents. They should check with their tax adviser. Monthly adoption assistance benefits are only available for special needs children who are adopted from the custody of a county DSS or licensed child placing agency.

13. What are the rules about confidentiality after an adoption is final? Can a court order post-adoption contact between the parties? Can a birth parent or adoptee get information from adoption records?

North Carolina does not have a mutual consent registry for matching birth parents and adoptees, and adoption records are not automatically open to the adoptee when he becomes an adult. Adoption proceedings are confidential, and after the final decree of adoption is entered, the records are sent to Raleigh where they are permanently filed and sealed, including the adoptee's original birth certificate. No one can access those records except by filing a motion with the clerk in the county where the adoption was finalized and obtaining an order from the clerk.

Recently, NC adoption law has been amended to allow agencies to provide confidential intermediary services to adult adoptees and birth parents, as well as birth family members. The agency will search for birth family or adoptive family, attempt to obtain updated information, and determine if any non-identifying or identifying contact is desired. Information obtained can be shared with the consent of both parties.

The parties to an adoption can, however, get non-identifying information from adoption records without a court order or the use of a confidential intermediary, although generally that information will date back to the time of the adoptive placement. Moreover, if at any time an agency receives medical information important to an adoptee's health from the birth family, the agency must make a diligent effort to share that information with the adoptee, if an adult, or the adoptive parents, if the adoptee is a minor.

A court cannot mandate post adoption contact between the adoptee and birth family in North Carolina. That contact sometimes occurs voluntarily in private adoptions and in identified agency adoptions since the parties know each other. But the adoptive parents have full discretion in allowing that contact, and any agreement about contact is unenforceable.

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