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ADOPTION

Adoption is a major step in the life of everyone involved. Its intended effect is to legally eliminate absolutely and forever all the rights and duties of the biological parents, and transfer those same rights and duties to the adopting parents. Once completed, the law ceases to recognize the biological parents as parents of the adopted child. Once an adoption is completed, it is intended to be final and irreversible. 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 all birth-parent rights in the child. Traditionally, those who give up their parental rights under adoption have surrendered all their rights and responsibilities toward the child. The adoptive parents become the "real parents" of the child. Legally, the birth parents never existed. In such a case, the birth parents have no right to visitation of the child nor do they have a right to any other involvement in the child's life.

"Open" adoption is a more modern trend, though it is not recognized in all states. In this type of adoption, the birth mother surrenders all of her legal rights, but the adoptive parents agree to let her visit the child on a schedule that is acceptable to everyone involved. This prevents adopted children from being cut off from their biological family.

However, once a certain point is passed, the birth parents cannot "change their minds" 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.

Adoption is a statutory creation that varies from state to state. However, there are elements common to all states: court proceedings; the termination of the parental rights of the biological parents, either by consent or involuntarily; a judicial review and determination of the suitability of the adopting parent, morally, financially and otherwise; and a final decree of adoption, normally

The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibility vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

including a change of surname and the amendment of the adopted child's birth certificate, which acts and decree are intended to finally and conclusively terminate all rights and responsibilities of the biological parents in favor of the adoptive parents. Typically, parental rights can be terminated involuntarily only if there is "clear and convincing evidence" that this would be in the best interests of the child. However, parental rights can be terminated voluntarily any time a court approves and finalizes a consent agreement between one or both of the biological parents. Death of biological parents also terminates their parental rights. There are special rules for children born out of wedlock. In such cases, consent of the putative biological father is not required unless he has established his paternity by court proceedings, or has acknowledged the child as his and provided substantial support. Usually, children over 14 must consent to their adoption and to any name change. Even adults may be adopted.

Basically, there are two methods of arranging adoptions. The first is private, where the adoptive parents deal directly, or through a private attorney, with the biological parents. Typically, the child has not been born yet. While no adoption agency will be involved, court procedures still apply. A party to the adoption files a petition for adoption with the state court. A social services agency will investigate the adoptive parents' background, and all states require adoptive parents to prepare for the adoption with a social worker. This preparation includes a "home study," consisting of interviews and a home inspection, to determine whether they are "fit." Generally, the prospective adoptive parents will be required to pay the birth mother's medical, legal and other associated expenses while the social services agency conducts its investigation and before the adoption process actually begins. However, the adoptive parents have no guarantee that the birth mother will consent to adoption, since this consent cannot be given until the child is born. It is illegal for anyone to pay money for a child, but some states permit a small amount to be paid, under court supervision, to assist the birth mother with living expenses. Unless the court permits otherwise, this amount varies from state to state. Colorado requires that the placement of children be done by licensed child placing agencies or other authorized professionals.

The second method of adoption is through an agency. The adoption agency will have its own suitability standards—which may include limitations on age, religious affiliation, income or marital status—in addition to those imposed by court procedures. Typically, the child has been born and may be housed in a foster home or with the agency. The child may be allowed in the adoptive home on a trial basis while court procedures are pending. Of course, there are fees associated with agencies in return for their help in finding a child and handling the legal work.

When it comes to selecting the best adoption agency, there is a vast array of choices. Local or regional organizations may offer an extensive list of agencies but do not typically provide an assessment of the agencies' reliability. One method of sorting through them is to seek a personal

referral from a parent or parents who have successfully adopted. There are also many resources to be found on the internet. Sites such as www.AdoptiveFamilies.com have searchable indexes of agencies and also provide lists of suggested questions to help the prospective parents vet possible agencies for reliability and affordability.

An alternative to the cost of private agency placement can be the state's social services department placement, depending on availability. Typically, the children available through state agencies are special needs children. Older children are also available for adoption through state agencies. In these cases, the state has already terminated parental rights.

BIRTH MOTHER CHANGES HER MIND

While many states have a waiting period before an adoption is final, the period in which a mother may "change her mind" about the adoption is very short. If the court agrees, she must take the child back and assume all the rights and responsibilities regarding the child.

BIOLOGICAL FATHER'S RIGHTS

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 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. In such a case, the state will terminate his parental rights.

ADOPTION RECORDS

Adoption records are usually sealed to prevent access by the public. While there has been a movement to open up the records, there has been an equally strong movement to keep the records private. Provisions vary on a state-by-state basis. Some states allow an adopted child to have access to the records once they reach the age of majority. Other states only release the records if both the child and birth mother agree. Also, in some instances if the adopted child develops a serious health problem, the identity of the birth parents may be revealed if it is believed that the genetic information would be helpful.

FOREIGN ADOPTIONS

Many agencies have long waiting periods before children are available for adoption. Parents often turn to adopting a child from another country. However, this is especially complicated. Anyone attempting to adopt a child from a foreign country will need to complete an often dizzying array of paperwork and work closely with U.S. Citizenship and Immigration Services (www.uscis.gov or 1-800-375-5283). Most parents employ the services of an international adoption agency that specializes in facilitating adoptions from the parents' country of choice. (See the first section of this pamphlet for advice on finding a suitable agency.) In addition to the limitations imposed by an adoption agency, many countries impose their own criteria of suitability for adoptive parents. The U.S. State Department (<http://adoption.state.gov>) has detailed information on the requirements to adopt in each country.

ADOPTION TAX IMPLICATIONS

The Internal Revenue Code allows for a credit against gross income for qualified adoption expenses paid or incurred by the taxpayer. Currently, the adoption credit is a nonrefundable credit that, along with certain other tax credits, is limited to the extent it can be absorbed by the taxpayer's tax liability. However, any unused adoption credit can be carried forward for up to five years. The Code sets income eligibility ceilings and also limits the amount of the credit. The current tax credit for the 2014 tax year is nonrefundable, which means it is limited to your tax liability for the year. The maximum amount (dollar limit) for 2014 is \$13,190 per child. Tax benefits for adoption include both a tax credit for qualified adoption expenses paid to adopt an eligible child and an exclusion for employer-provided adoption assistance.

Qualified adoption expenses are reasonable and necessary adoption fees, court costs, attorney fees, travel expenses (including amounts expended for meals and lodging while away from home), and other expenses which are directly related to and have the principle purpose of the taxpayer's legal adoption of an eligible child. You should note that in some states travel expenses are not covered as reasonable and necessary expenses. Expenses connected with the adoption of a child of the taxpayer's spouse don't qualify. Also ineligible are expenses of carrying out a surrogate parenting arrangement, expenses incurred in violation of law, or expenses reimbursed under an employer program or otherwise. For this purpose, the Armed Forces Adoption Reimbursement Program is an employer adoption assistance program.

An eligible child is either a person under the age of 18 at the time of the adoption, or a person physically or mentally incapable of taking care of herself or himself. A "child with special needs" is

an otherwise eligible child who (1) is a citizen or resident of the United States, (2) who the state determines cannot be returned to the parent's home and (3) who it is reasonable to conclude cannot be placed with adoptive parents without adoption assistance because of a specific factor or condition, such as age, ethnic background, medical condition or handicap.

It should be noted that the amounts are excludable from the employee's gross income for the year in which the employer pays the qualified adoption expense in connection with the adoption of an eligible child who is a citizen or resident of the United States at the time the adoption commenced. In the case of foreign adoptions, the exclusion is only available in the year the adoption becomes final.

Section of the Internal Revenue Code, section 137, provides for an exclusion from an employee's gross income for amounts paid by an employee's employer for qualified adoption expenses connected with the adoption of an eligible child by the employee, if such amounts are finalized pursuant to an adoption assistance plan. The Armed Forces Adoption Reimbursement Program qualifies for this exclusion. Military members on active duty for 180 days or more may qualify for up to \$2,000 reimbursement of adoption expenses per child—not to exceed \$5,000 in any calendar year—from the Defense Finance and Accounting Service. The reimbursement will only occur after the adoption is finalized and certain requirements must be met in order to qualify for the reimbursement. A DD Form 2675 and its accompanying instruction can be obtained online or from the local Customer Service Office.

MORE INFORMATION

Tax benefits and obligations relating to adoptions are complicated and change regularly. If you are considering adoption, or have adopted a child, make sure to speak with a tax professional about how the current law applies to your specific situation. More information may be found at www.irs.gov.