

LEVEL UP LAW

South Carolina Legal Services

LEVELING UP YOUR LEGAL KNOWLEDGE



ADOPTION Application

Adoptions:
Everything you've always
wanted to know

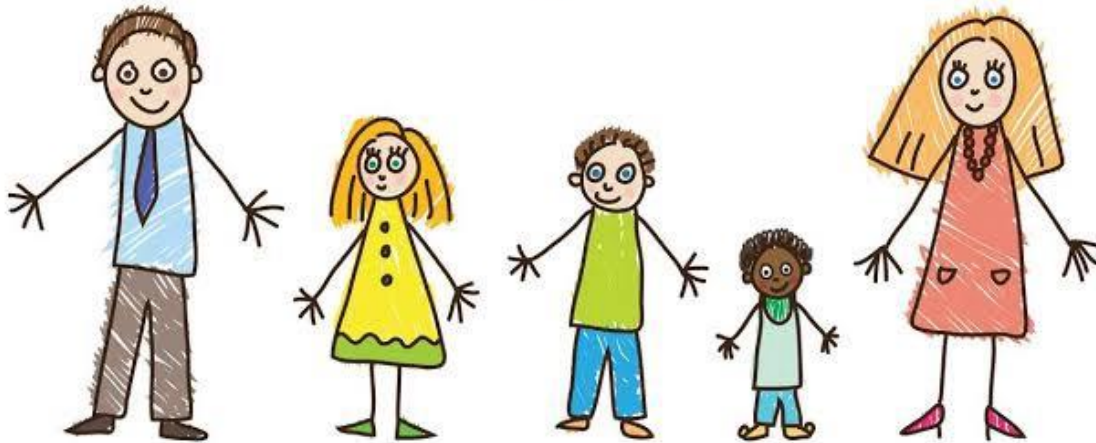
- South Carolina Legal Services
- October 2020

Are you
personally familiar
with adoptions?



- (1) I was adopted
- (2) I have adopted a child
- (3) I know someone who was adopted and/or adopted a child
- (4) I'm thinking about adoption

ADOPTION



Today's Presentation

- What is adoption?
- Types of adoption
- Who can adopt and who can be adopted
- Termination of parental rights
 - The adoption process
 - Adoption FAQs

Adoption is the
judicial act of creating
a relationship of
parent and child
where it did not exist
previously

ADOPTION

IS A LIFELONG
JOURNEY



TYPES OF ADOPTION

- Private Agency Adoptions
- International Adoptions
- Surrogate Adoptions
- Foster Care Adoptions
- Relative Adoptions
 - Grandparent adoptions
 - Stepparent adoptions
 - Other relative adoptions
- Non-Relative Adoptions
 - Children already residing with adoptive parents



TYPES OF ADOPTION

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- International Adoptions
- Surrogate Adoptions
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- **Non-Relative Adoptions**
 - **Children already residing with adoptive parents**



WHO CAN ADOPT?

- **The law says any South Carolina resident may petition the family court to adopt a child.**
- **Things to consider:**
 - Both married and single persons
 - Must be of legal age
 - US Citizenship not required
 - **Financial**
 - Must be able to financially provide for the child
 - **Housing**
 - Must offer enough space and ensure the health, safety, and well-being of the child
 - **Health**
 - Consider physical and emotional health

WHO CAN BE ADOPTED?

- **The law says any child present within the state at the time the petition for adoption is filed, regardless of place of birth or place of residence.**
- Typical cases:
 - Wife marries father of children from previous relationship
 - DSS removed children from biological parents due to abuse/neglect and placed children with relatives
 - Child tested positive for drugs at birth
 - Child was abandoned with relatives



Termination of Parental Rights: Purpose

- To have procedures in place for the reasonable and compassionate termination of parental rights where the children are abused, neglected, or abandoned in order to protect the health and welfare of these children and make them eligible for adoption by persons who will provide a suitable home environment and the love and care necessary for a happy, healthy, and productive life.



How to Terminate Parental Rights: Two Ways

- (1) Consensual
 - Biological parents can consent or relinquish parental rights for the purpose of adoption
- (2) Non-Consensual
 - Family Court can terminate parental rights of biological parents if grounds exist and there is a finding that it is in best interests of the child



Voluntary Consent to Adoption

- (1) Sworn document signed by the biological parent giving consent
- (2) Biological parent forfeits all rights and obligations to the child
 - -Includes any *future* child support obligation
 - -Does **NOT** relieve obligation to pay child support *arrears*
- (3) Right to legal representation
- (4) Must be signed in the presence of two witnesses, one of whom must typically be an attorney
 - -Must attach certification



Voluntary Consent to Adoption

Can the Voluntary Consent to Adoption be withdrawn by the biological parent(s)?

- Prior to the finalization of the adoption:
 - Bio parent must prove that the withdrawal is in the child's best interest **AND**
 - Consent was not given voluntarily or the product of duress or coercion
- After the finalization of the adoption:
 - No legal redress
 - However, one common law exception: "extrinsic fraud"

Considerations in Termination of Parental Rights



- (1) Grounds for TPR
 - Abuse/Neglect
 - Willful failure to visit the child for six months
 - Incidental visitations carry little to no weight
 - Cannot prohibit visitation
 - Willful failure to pay child support for six months
- (2) TPR must be in the best interests of the child
- (3) Entitled to court appointed attorney if parent cannot afford attorney, unless in default



The Adoption Process

Consensual vs. Non-Consensual Adoption

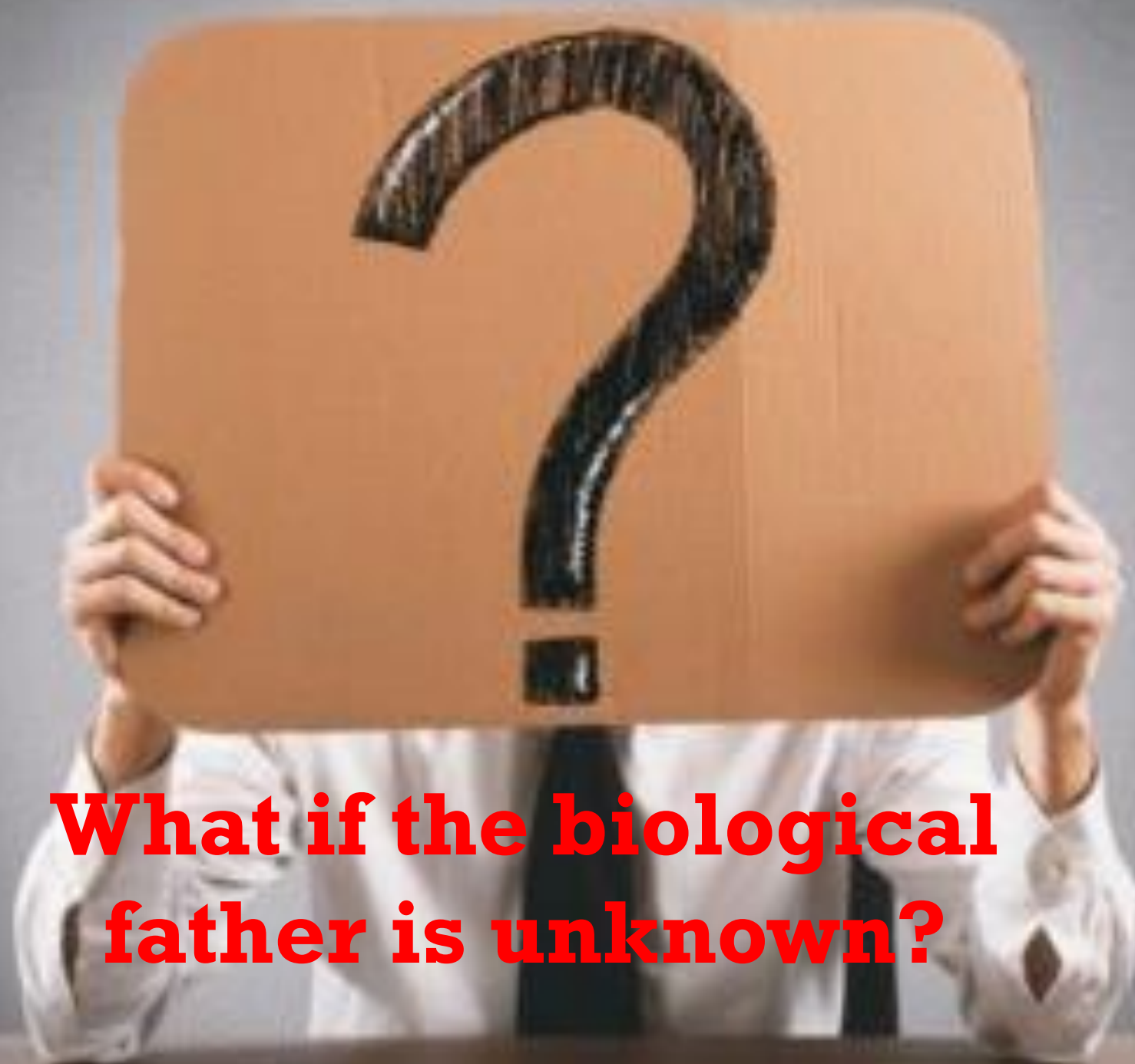


- **Consensual Adoption**

- Biological parent(s) signed Voluntary Consent to Adoption
- Do not need to name biological parent(s) in adoption proceedings and do not need to serve or give notice to biological parent(s)

- **Non-Consensual Adoption**

- Must name biological parent(s)
- Must serve biological parent(s) with Notice of Adoption
- Biological parent(s) can contest adoption



**What if the biological
father is unknown?**

Responsible Father Registry

- Effective 2010
- Previously had to serve “John Doe”
- To receive notice of a TPR or adoption, a man who has potentially fathered a child with a woman in South Carolina to whom he is not married must record his name with the Registry
- Failure to register under the Registry does not constitute a biological father’s consent, but is a **waiver** of his right to notice.

Registry:
Certificate of Diligent Search



Responsible Father Registry
Certificate of Diligent Search

A search of the registry has been conducted and no claim of paternity regarding that registrant or child was found. Your certificate number is [REDACTED]

Date: 8/10/2020
Mother's Name: [REDACTED]



Responsible Father Registry

- **Exceptions:**
 - Men married to the mother of the child, whether they are the biological father or not
 - Paternity has been established by court
 - Acknowledged fathers:
 - Father who is living with child or child's mother at time of TPR or adoption and who holds himself out as the father
 - Fathers who support/have contact with the child
 - Fathers who have been identified by the mother in a sworn written statement
 - Fathers named on the birth certificate



GUARDIAN AD LITEM
A CHILD'S ADVOCATE IN COURT

- A lawyer or non-lawyer appointed by the court in family proceedings to represent “the best interests” of the child

Relative vs. Non-Relative Adoptions

- **Adoption Requirements:**
 - Preplacement investigation and background checks
 - Postplacement investigation
 - Accounting
- **WAIVED FOR RELATIVES OR STEPPARENTS!**



Adoption Costs

- Preplacement investigation and background checks
- Postplacement investigation
- Guardian ad Litem
- Responsible Father Registry
- Service of Process Fees
- Legal Fees

**South Carolina Department of Social Services
Request for Non-Recurring Costs Reimbursement for Special Needs
Adoptions**

Adoptive Family Information

Adoptive Parent's Name _____

Adoptive Parent's Soc. Sec. # _____ Adoptive Parent's DOB _____

Adoptive Parent's Race

- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian of Other Pacific Islander
- White

Is Adoptive Parent of Hispanic Origin? Yes No Unknown – Abandoned Unknown – Incapacitated Declined

Adoptive Parent's Name _____

Adoptive Parent's Soc. Sec # _____ Adoptive Parent's DOB _____

Adoptive Parent's Race



**DSS Special Needs
Adoption
Reimbursement
\$1500**

Why is this adoption a special needs adoption? Please select all that apply

- White child 10 years old or older
- Black or mixed race child 6 years old or older
- A child having a physical, mental or emotional handicap (Specify by selecting one of the following)
 - Mental Retardation *
 - Visually or Hearing Impaired *
 - Physically Disabled *
 - Emotionally Disturbed *
 - Other Medically Diagnosed Condition Requiring Special Care *
- A child at risk of having a physical, mental or emotional handicap
- A member of a white sibling group of three children being placed together one of whom is at least 6 years of age
- A member of a white sibling group of four or more white children of any age
- A member of a black or mixed race sibling group of two children being placed together one of whom is at least 6 years of age
- A member of a black or mixed race sibling group of three or more black or mixed race children of any age
- A member of a sibling group being placed together one of whom is a special needs child.

***If you selected one of these items you must refer to Attachment A.**

Adoption Hearing

- All adoption hearings are confidential
- In closed court
- No admittance of non-participants





Certificate of Adoption

PART I	<i>This information in this section must be given as it was before adoption. Without this data it may be impossible to prepare an amended certificate of birth for this child.</i>			
FACTS OF BIRTH	Name of Child - First Name	Middle Name	Last Name	Suffix
	Date of Birth - Month, Day, Year	Sex	Race	
	County of Birth	State or Foreign Country of Birth		
NATURAL PARENTS DATA	Name of Mother - First	Middle	Last (Prior to First Marriage)	
	Name of Father/Parent - First	Middle	Last	Suffix
VERIFICATION OF PART I	Signature of person verifying data in Part I	Authorization (Attorney, Clerk of Court, Agency Director, Other (specify))		
PART II	<i>Adopting parents must furnish the following information concerning themselves as it was at the date of birth of the above child. This information is used in preparation of the amended certificate of birth.</i>			
CHECK ONE: <input type="checkbox"/> MOTHER <input type="checkbox"/> FATHER <input type="checkbox"/> PARENT	Name of Mother/Parent - First	Middle	Last (Prior to First Marriage)	Suffix
	Date of Birth - Month, Day, Year	Birthplace (State or Foreign Country)		Race
	Residence - City or Town	County	State	
CHECK ONE: <input type="checkbox"/> MOTHER <input type="checkbox"/> FATHER <input type="checkbox"/> PARENT	Name of Father/Parent - First	Middle	Last (Prior to First Marriage)	Suffix
	Date of Birth - Month, Day, Year	Birthplace (State or Foreign Country)		Race
	Occupation	Kind of Business or Industry		
VERIFICATION OF PART II	NOTE: Where the spouse of the child's natural parent (i.e. the child's stepparent) is the adopting parent, for the purpose of completing this form, both the stepparent and the natural parent will be considered the adopting parents. Signatures: Mother/Parent: _____ Father/Parent: _____ Prior relationship between adopting parent(s) and adopted child: MOTHER/PARENT: <input type="checkbox"/> Stepmother <input type="checkbox"/> Grandmother <input type="checkbox"/> Natural Mother <input type="checkbox"/> Aunt <input type="checkbox"/> Other (specify): _____ FATHER/PARENT: <input type="checkbox"/> Stepfather <input type="checkbox"/> Grandfather <input type="checkbox"/> Natural Father <input type="checkbox"/> Uncle <input type="checkbox"/> Other (specify): _____			
AGENCY OR DEPARTMENT	Name and mailing address of agency or department which investigated or handled case.			
ATTORNEY	Name and mailing address of Attorney			
PART III DOMESTICATION OF FOREIGN ADOPTION	<i>To Be Completed by the Clerk of Court</i> I hereby certify that the foreign adoption of the child by the parents named in Part II above and described in the order made on _____ and recorded in Judgement Roll or Docket No. _____ was domesticated and is now to bear the name of _____ as set forth in the order. Signature and Seal of Clerk of Court _____ Date signed _____ Clerk of Court in and for the County of _____ State of _____			
PART IV SC ADOPTION	I hereby certify that the child described in the decree of adoption made on _____ and recorded in Judgement Roll or Docket No. _____ was adopted by the parent(s) named in Part II and is now to bear the name of _____ as set forth in the order. Signature and Seal of Clerk of Court _____ Date signed _____ Clerk of Court in and for the County of _____ State of _____			
PART V	<i>When birth occurred in a state other than South Carolina the State Registrar shall forward this certificate to the proper official in the state of birth.</i>			
Certification of S.C. Dept. of Health & Env. Control	I hereby certify that this report of adoption was received on _____ Signature _____ Title _____			

Amending the Birth Certificate to Reflect the Adoption

Sealing of Adoption Records



ADOPTIONS FAQs

I already have legal custody of my grandchildren. What is the difference with an adoption?

Isn't TPR automatic if the biological parents don't comply with the DSS parenting plan?

I don't know where the biological parents are. How would I give them notice of the adoption?

I didn't have to pay for the GAL in the DSS case. Why do I have to pay for the GAL now?

ADOPTIONS FAQs

Is there any economic benefit to doing an adoption?

Can I change my grandson's name when I do the adoption?

Do I need an attorney to do an adoption?

Am I required to allow visitation with the child after the adoption?

ADOPTIONS FAQs

My stepdaughter is 16. Does she need to consent to the adoption?

Once finalized, can the adoption be challenged or overturned?

What if my granddaughter was born in North Carolina?

I've been separated for years but I'm still legally married. Does that matter in an adoption?

South Carolina Legal Services Contact Information

Legal Aid Telephone Intake Service

1-888-346-5592

Intake Specialists Are Standing By

M-Th 9 a.m. - 6 p.m

Apply Online at

www.lawhelp.org/sc/online-intake

Resources for the general public:

www.lawhelp.org/sc

www.sclegal.org