



## INFORMATION ABOUT ADOPTION

### Who can adopt or be adopted?

Any person residing in Idaho (subject to rules in Idaho Code, Title 16, chapter 15) may adopt any minor child. Residence in Idaho means residing in and maintaining a dwelling within the state for at least six consecutive months prior to the filing of a petition for adoption.

There are some age restrictions between the adult and child. The person adopting a child must be at least fifteen years older than the person adopted, or twenty-five years of age or older, unless the adopting parent is the spouse of the natural parent of the child.

An adult may be adopted by another adult residing in Idaho in cases where the person adopting has sustained the relation of parent to such adopted person either for a period in excess of one year while the person was a minor, or for such period of time or in such manner that the court after investigation finds a substantial family relationship has been created.

### Can a child born in another country be adopted?

An adult may petition the court to adopt a foreign born child who has been allowed to enter the United States for the purpose of adoption under the provisions of Idaho Code 16-1514. Similarly, United States citizen parents who have adopted a child in a foreign country may petition the court to have the foreign adoption recognized and granted judicial comity under this code section. Judicial comity is the informal and voluntary recognition by courts of one jurisdiction of the laws and judicial decisions of another. A petition must be filed by the person or persons proposing to adopt the child, in the district court of the judicial district in which the person or persons reside.

### What is the process for adoption?

A. A person wanting to adopt must first file a petition for adoption, asking the court to order the adoption. The petition must be filed in the county where the petitioner(s) resides and contain the following information:

1. Name and address of the petitioner(s) (the person(s) wanting to adopt the child),
2. Petitioner's date of marriage,
3. Name of the child proposed to be adopted and the name that the child will be known by if adopted,
4. The child's date of birth,
5. The degree of relationship of the child, if any, to the petitioner(s), and
6. The names of any person or agency whose consent to the adoption is necessary.
7. The petition must also state whether the Indian Child Welfare Act is applicable.

The Indian Child Welfare Act is a federal law regulating the adoption of an "Indian child". "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43 of the U.S. Code. "Indian child"

means any unmarried person who is under age eighteen and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. If this act is applicable to your case, then the additional requirements of the Indian Child Welfare Act in the U.S. Code must be followed (25 USC, chapter 21). You should contact an attorney for assistance in this area of law.

B. Notice of the adoption proceeding must be served on each of the following people:

1. Any person or agency whose consent is required by law, unless that right has already been terminated;
2. Any person who has registered notice of the commencement of paternity proceedings according to law;
3. The petitioner's spouse, if any, if he or she has not joined in the petition;
4. Any person who is recorded on the birth certificate as the father with the knowledge and consent of the mother, unless parental rights have been previously terminated;
5. Any person who is living with the mother or married to the mother at the time she gives consent to the adoption;
6. An unmarried biological father is entitled to notice only under certain circumstances as described in Idaho Code section 16-1504.

Any parent or guardian of the child to be adopted who must give consent must be given notice by personal service. Any other person for whom notice is required, service by certified mail, return receipt requested, is sufficient. (Personal service upon an individual is defined in the Idaho Rules of Civil Procedure, Rule 4, which states that service shall be made by an officer authorized by law to serve process, or by some person over the age of eighteen, not a party to the action, by delivering a copy of the summons and complaint (or petition) to the individual personally or by leaving copies at the individual's dwelling house with a person over

the age of eighteen years who lives in the same residence.)

C. Consent to adoption is required from the following people:

1. The child being adopted, if he or she is over twelve years old;
2. Both parents, or the surviving parent of a child who was conceived or born within a marriage;
3. The mother of an adoptee born outside of marriage;
4. Any biological parent who has had paternity established by the court prior to the mother's giving of consent;
5. An unmarried biological father, only if the requirements of Idaho Code 16-1504 (2)(a) or (2)(b) have been proven;
6. Any legally appointed custodian or guardian of the child;
7. An unmarried biological father who has filed a Voluntary Acknowledgment of Paternity with the Vital Statistics Unit of the Department of Health and Welfare.

There are additional requirements regarding an unmarried biological father who lives in another state. See Idaho Code 16-1504(8) for specific requirements.

Any person whose consent is required shall give consent in writing before a district judge or magistrate of a district court, or equivalent judicial officer in the county and state where the person consenting resides or is present, even if this is not where the petition was filed.

D. A home study must be done next. This is a thorough background investigation of the prospective adoptive family and all of its members according to the rules of investigation of the Idaho Department of Health and Welfare. The home study may be done at the petitioner's expense by an adoption agency or by the Idaho Department of Health and Welfare. The home study may be waived by permission from the judge in cases of grandparent or stepparent adoption if: the date of

marriage is listed in the petition for adoption; the adoptive parents have been married for at least two years; and at least three supporting affidavits from people who have personal knowledge of the family are filed.

E. A report of investigation is required when a Petition for Termination of Parental Rights is not filed along with a petition for adoption, or if there is no voluntary consent to the termination of parental rights, or if the petition for termination was not filed by a licensed adoption agency. The report of investigation again may be done at the petitioner's expense by an adoption agency or the Idaho Department of Health and Welfare. The report of investigation is a background investigation of the parent whose rights are to be terminated to determine if it is in the child's best interest to terminate a parent's rights. Also, a financial analysis report detailing the amount of any unreimbursed public assistance moneys paid by the state of Idaho on behalf of the child must be filed. The financial analysis shall include recommendations regarding repayment of unreimbursed public assistance and provisions for future support for the child, and the reasons therefore.

F. A hearing before the judge is done after the reports are filed and the termination of parental rights (if applicable) is completed. At the hearing the agreement to adopt, consent to adopt and the order of adoption are signed, and the adoption is finalized.

#### **What rights and responsibilities does a person have in an adoption?**

An unmarried mother has the right to make appropriate decisions regarding the future of her child. She also has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, or to volunteer information to the court with respect to the father.

An unmarried biological father must demonstrate a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth. This means he must provide appropriate medical care and financial support and establish legal paternity. Failure to establish a relationship with his child may result in loss of his parental rights or greatly diminish the constitutional significance of his interest.

An unmarried father has the primary responsibility to protect his paternal rights and is presumed to know that the child may be adopted without his consent unless he establishes paternity and shows a prompt and full commitment. Also, a father who wishes to contest the adoption must file a written objection to the adoption with the court within twenty days after service. The written objection must ask for specific relief desired and be accompanied by a memorandum stating factual and legal grounds for the objection.

Once the child is adopted, the biological mother and father have no more legal rights or responsibilities to the child. They do not have to support the child, nor could they inherit from the child; they also have no rights for visitation and custody; the child would also have no right to inherit from his or her biological parents after the adoption.

The adopted child or adult may take the name of the person adopting. The legal relation between them is that of parent and child, with all the rights and duties of that relation, including support and the right to inherit from his or her adoptive parents.

The Ada County Court Assistance Office provides this information as a public service. It is not a substitute for legal advice. The laws and court rules are complex. It is always advisable to talk to a lawyer about your situation before filing your action.