

Information & Instructions - A Summary of the Adoption Process

PREVIEW

1. The following form letter explains some of the basic information (discussed above) that the client might want to know about adoptions. It also explains the legal procedures required to obtain an adoption.
2. The attorney could elect to send the following letter to his or her client and then have the client sign the following two affidavits regarding the placement of the child and compliance with § 45 of the Texas Human Resources Code.

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Form: A Summary of the Adoption Process

PREVIEW

[Date]

[Client's name]

[Client's address]

A SUMMARY OF THE ADOPTION PROCESS

THE FOLLOWING DOCUMENT IS THE WORK PRODUCT OF THE UNDERSIGNED ATTORNEY AND AS SUCH, IT IS A PROTECTED AND CONFIDENTIAL COMMUNICATION INTENDED FOR THE ADDRESSEE ONLY. THIS COMMUNICATION IS A GENERAL RESPONSE TO GENERAL QUESTIONS ABOUT THE ADOPTION PROCESS AND YOU SHOULD CONSULT WITH THE UNDERSIGNED ATTORNEY ABOUT THE SPECIFIC FACTS IN YOUR CASE WHICH MAY ALTER OR AFFECT THE LAW APPLICABLE TO YOUR CASE.

Dear [Client Salutation]:

Pursuant to our initial conversation, I am sending the following document which contains answers to a number of general questions about the adoption process in Texas.

As stated above, note that this general information is intended to enlighten our clients about this legal process, but note that each case will be affected by the facts pertaining to that case, and thus, you should direct any particular questions about your fact situation to the undersigned.

Note that when you have completed to the best of your ability the questionnaire I have given you, bring it to the office so we can place in your file. Note that if you do not know the answer to a particular question, just give the information you do know, and, if necessary, we will determine if such information can be ascertained in another manner.

What is an Adoption?

An adoption is the legal process by which children or adults are linked to parents who are not their birth parents, granted to said adopted children all the rights and

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benefits of being a child as though said child was born to an adopting adult, and the adopting adults acquiring children or adult children, with all pertaining rights, privileges, and duties, as though the children or adults were in fact children born to them. In other words, adoption gives persons who desire to be parents the legal opportunity to be in the parental position, even though they did have the blessing, gift, opportunity, or experience of giving birth to that child or adult. It could be said that this is the creation of parenthood by legal process. Adoption is in almost every situation a positive uplifting experience for all who are involved. Judges love to grant adoptions in most cases, and lawyers enjoy their work in presenting the case to the court. Adoption is one of most emotionally rewarding things that happens in family courts.

The scene portrayed most often in adoption proceedings, is that a family or future family comes to court dressed in their Sunday best clothing, with smiles on their faces. Often the participants take pictures of the court, the judge, and the attorneys together with the parties. Many courts take time out to accommodate the family. If you are planning to photograph the event, you might give your attorney or the guardian ad-litem for the child, advance notice of your plans, so they can counsel you about the judge and court where your proceeding is pending, and perhaps, pre-arrange the photograph session.

How Are Children or Adults Chosen for an Adoption?

Many persons today desire to adopt a child. However, under conditions as they currently exist, this may not be easy. Many unwed mothers today elect to rear their own children. Some unwed mothers obtain an abortion. Thus, fewer babies may be available for adoption, in relation to the number of couples seeking to adopt a child..

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In times past children were placed for adoption by private individuals, but the legislature has provided that only licensed agencies may legally place a child for adoption. The purpose of such legislation is to regulate the placement of children, and to protect the placement thereof from the abuses which have occurred in the past involving unscrupulous individuals, who may have been nurses, attorneys, doctors, or agencies, who may have involved themselves in the placement of children with the primary goal being personal profit, rather than for the welfare of the child.

Most persons involved in adoptions today are step-parents, or individuals who find a child from contact with relatives or friends. An attorney or other person may not place a child for adoption. This means that an expecting mother may not look up an attorney, and then have that attorney find a prospective parent for the child. If she found the parent herself, that would probably be permissible, but no other person may act to choose or place the child with any prospective adopting parent. Of course, an expecting mother could locate a licensed child placement agency, then that agency could place the child.

What Role Do Government Agencies Play In An Adoption?

Government agencies, such as the Texas Department of Human Services, may have possession of children who may have come from abused or neglected situations. In some situations, children may be available for placement or adoption. However, many of the children available are older children, rather than small babies, and are most often not considered by prospective adopting parents. In larger counties, government agencies may be regularly appointed to conduct social studies, which is explained hereafter in more detail.

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Can I Pay Someone To Find Me a Child To Adopt?

(Criminal Penalties)

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Most states have criminal laws which prohibit purchasing a child. An unwed mother cannot sell her child to the highest bidder. It is illegal to pay money for the placement of a child. You cannot hire an attorney, or for that matter, any other professional or individual, to place a child with you.

Proposed adoptive parents often pay reasonable medical expenses related to the birth and care of the child. The payment of medical bills is not prohibited. The best practice is to pay medical bills directly to the medical health provider, such as the hospital and delivery physician.

Explanation Of The Termination/Adoption Procedure

Usually, the adoption process involves a two step proceeding. Since most children who are available for adoption have one or more living parents, it will be necessary to terminate the parental rights of the living parents who are not the husband or wife of the person adopting the child. In step-parent adoptions, the step-parent must be joined by his or her spouse as a petitioner in the proceeding. Thus, living parents will either be involved in the termination/adoption proceeding either as a petitioner or a respondent.

Termination is a very serious legal proceeding, which according to the Supreme Court of the United States, has constitutional implications. The rights of parent with his child are considered constitutionally protected rights, and may not be severed between the parent and the child without following the strict requirements of due process set forth

in the United States and Texas Constitutions.

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Texas law requires a higher burden of proof in terminations cases. This burden of proof is not always easily understood by the lay person. In short, a parent's rights with his child are not be terminated except in specific statutorily defined fact situation, where the evidence established said statutory provision by "clear and convincing evidence", which is the highest level of evidence required in civil proceedings. "Clear and convincing evidence" is evidence which establishes a fact so clearly and so persuasively, that it is most obvious and clear that the event or fact did occur. This level of evidence is best explained by contrasting it with the standard of evidence required in most civil cases, which is called the "preponderance of evidence." This "preponderance of the evidence" is a lesser burden, which is that the greater weight of the credible evidence favors the issue or fact to be established.

In a termination proceeding, due process requirements established by the Constitutions of both the United States of America and the State of Texas must be strictly complied with, which include notice to living parents in constitutionally accepted methods. This means that parents are entitled to notice of such proceedings and such notice should apprise them of the nature of the proceedings against them, and should give them a fair and equitable opportunity to be heard.

Courts carefully scrutinize termination cases. Therefore, the most common ground of termination in the overwhelming number of termination/adoption cases, is the ground whereby the living parents or parent voluntarily signs an affidavit of relinquishment. Most termination cases, which are contested, are brought by Department of Protective and Regulatory Services, or the Department of Human Services, and involve situations where parents are guilty of gross neglect, abandonment, or abuse of

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their children. Another ground of termination, which is used more frequently, involves the non-payment of child support for at least 12 months, which period of 12 months ends or occurs within 6 months of the filing of the petition for termination.

If you believe the living parent will not sign an affidavit of relinquishment as set forth in the Texas Family Code, then you should discuss the facts with your attorney to determine if other grounds of termination might be available in your case.

The adoption proceeding will follow the termination process. This is the simple process which follows the dramatic termination process. In the adoption proceeding, the evidence centers around the adoptive parent or parents, and their understanding of the responsibilities and duties they are taking upon themselves by adopting children. Simply put, the adopting parents will tell the court that they are willing to assume the duties and liabilities of a parent, and that they will love and cherish and sacrifice for the adoptive child or children as their own children as though they had been born to them as their natural offspring.

What is a Relinquishment Of Parental Rights?

A Relinquishment of Parental Rights is an affidavit witnessed by two witnesses and a Notary Public, wherein a parent signs away his parental rights and voluntarily gives a statutory ground, that being the execution of the said affidavit, which will sustain a termination order terminating a parental relationship. The Relinquishment must be drafted pursuant to the requirements of the Texas Family Code.

What Happens If We Can't Find One or Both of The Natural Parents?

This is a frequently occurring problem in termination/adoption proceedings. As previously noted, the constitutionally required steps for termination proceedings, require notice

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to living parents. In the situation where the parent is unknown, in times past the courts often required the person seeking the adoption to issue notice in a newspaper to the unknown parent. Usually, this requirement was met by the posting of notice in a legal notice type newspaper, and an attorney appointed to represent the unknown parent.

However, the legislature has amended the law by establishing a Paternity Registry maintained by the Texas Bureau of Vital Statistics, to relieve the petitioner from service on an alleged father under certain circumstances, which includes any unknown father, if the father has not registered with the Paternity Registry, maintained by the Texas Bureau of Vital Statistics. However, the legislature has required that the Petitioner obtain from the registrar of the Paternity Registry (maintained by the Texas Bureau of Vital Statistics) a certificate that the registrar has checked the records, and has found no one alleging to be the father of the child to be adopted. Note that an alleged father is one who alleges he is the father of a child, or who is alleged to be the father of the child, but whose paternity has not been determined and who is not a parent father as set forth in the Texas Family Code. A presumed father is the man who is married to the mother on the date the child is conceived or born, or who is listed on the child's birth certificate, or who has been found by a court of competent jurisdiction, to be the parent of the child. A mother is always a parent.

Of course, if you know the parents of the child, but their address is unknown, they must be served with citation. Before you can issue citation by publication, you must make a diligent effort to locate the missing parent. This effort should include searching records, such as telephone directories, available to you, and by contacting relatives and friends of the missing parent, as well as past employers. Also, you should consider

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retaining an expert in the field of locating missing persons, which can be done rather inexpensively over the internet. If you cannot serve them with citation because you

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cannot locate them, then you must serve the missing parent by publication. You will be required to sign an affidavit swearing that you have made a diligent effort to locate the parent, as well as offering testimony at the termination hearing, which should describe in detail your efforts to locate this parent. In this situation, the court will appoint an

attorney to represent the missing parent. One of the duties of this attorney will also be to try to find the missing parent, but the paramount duty will be yours. He will be calling

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you, and you are urged to cooperate with him, providing him with all of the information you know that he might find the missing parent. Your termination/adoption will be strengthened and made less challengeable on appeal or by other litigation, if you are able to locate the missing parent and have them served with personal service by a process server.

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What Are Court Appointed Social Studies?

As previously explained, social studies are required in all adoptions. However, the Texas Legislature has changed the term or name “social study” to what is now called a Pre-Adoptive Home Screening Report and a Post-Placement Adoptive Report. In fact, the law as now written actually requires three (3) reports to be filed in adoptions in some cases, and in all cases, at least two reports. These three (3) reports are called: (1) Health,

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Social, Educational, and Genetic History Report; (2) Pre-Adoptive Home Screening Report; and (3) Post-Placement Adoptive Report. The Health, Social, Educational, and Genetic History Report is not required in adoptions where the adopting petitioner is a

step-parent, grandparent, aunt or uncle by birth, marriage, or prior adoption. The

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statutes governing these reports provide that the Department of Protective and Regulatory Services, or a licensed child placing agency, or the child's parent or guardian shall

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compile a report on the available health, social, educational, and genetic history of the child to be adopted, if the adoption is not being pursued by a grandparent, aunt or uncle by birth, marriage, or prior adoption, or a stepparent. However, in all cases involving an adoption or a termination where a managing conservator of the child will be appointed, a social study (Pre-Adoptive Home Screening Report and Post-Placement Adoptive Report) is required, and the law authorizes the court to appoint a private agency or another person, to conduct the social study.

In Texas, the term managing conservator means the person having custody of a child. The court is required to appoint a managing conservator in all cases where the court terminates parental rights. The appointment of the agency or person to conduct the Pre-Adoptive Home Screening and Post-Placement Report, will be decided by the court. Some judges will only appoint certain agencies, and others will appoint only certain

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social workers, who the court feels comfortable with. In fact, the Texas Department of Protective and Regulatory Services has the authority to prescribe the qualifications of the persons authorized to conduct such studies, and persons who want to qualify for such work, must file with the Court a form which sets forth their respective qualifications. Your attorney may file a motion suggesting someone to conduct the social study, but the court will make the decision on who shall be appointed, and you will be bound by that decision. Failure to cooperate in the social study will most likely result in the adoption being denied, as such reports are required in every adoption.

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The costs of the social study will be paid by the adoptive parents. In some counties, where social workers are appointed, these costs may be higher than those charged by agencies or domestic relations offices.

What Is a Guardian Ad Litem?

The law requires that a guardian ad-litem or an attorney ad-litem be appointed in termination cases to protect and ensure the adequate representation of the child. The courts usually appoint an attorney who has met the qualifications outlined in the Texas Family Code. Most courts maintain a list of attorneys who they have approved as

qualifying for such service. If the child to be adopted is over the age of four (4) years old, the attorney appointed must interview the child. This may be accomplished by you scheduling an appointment for your child to meet with the said guardian in his or her office, or in the alternative, the guardian ad-litem visiting you in your home. Obviously, this person will play a big part in these proceedings, and your cooperation with this person will facilitate the smooth presentation of your termination-adoption proceeding.

You will be required to pay the fees charged by the guardian ad-litem. Check with your attorney for his estimate of the costs of those services, or call the guardian directly, and ask what his or her fees will most likely be.

The Court Hearing

When the social study, meaning the reports discussed hereinbefore, has been completed, and after all other requirements have been complied with, which include proper citation of the respondents, then the court will schedule the case for a hearing.

Usually, the evidence will be presented to the court in two stages. The first stage will be the termination proceeding and the second, the adoption. The evidence will be presented

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to the court in the termination proceeding to establish one of the statutory grounds of termination. In most adoption cases, this evidence is offered by you. If the respondent parent has executed an affidavit of relinquishment of parental rights, the same will be presented to the court for the court's examination. The actual manner of presentation will normally commence by your attorney calling you as a witness to establish the basis of the termination, and after offering your testimony and all written documents supporting your testimony, then your attorney will ask the court to rule on the termination portion of your case, if the same has not yet been considered. Then your attorney will move to prove up the facts supporting the adoption. He will again call the adopting parent as a witness, and establish the underlying facts supporting the adoption. The child should have lived in the adopting parent's home for at least six (6) months prior to the adoption. The court may waive this requirement if the court finds that it is in the best interest of the child to do so. Typically the attorneys will ask the adopting parent about his relationship with the adoptive child, and if he understands the legal meaning of an adoption decree, including the responsibility to support the child if an adoption is granted. The court will also examine at the hearing the social study, a copy of which should have been provided to the attorney for petitioners and petitioners prior to the hearing.

Actually, the best part of this proceeding will be the Court hearing. As previously stated the Court likes adoptions. The Court will treat you courteously and kindly. At the conclusion of the hearing, your attorney will present to the Court a proposed decree, which reduces to writing the orders of termination and/or adoption. This decree will change the name of the child to your name, and a birth certificate will be issued by the

Texas Intra and Vital Statistics upon the payment of the appropriate administrative fee.

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Conclusion

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I hope that this letter will help you in answering your questions about adoption. It may have, however, caused you to think of more questions. Please feel free to call my staff or myself, to discuss your questions, or to make an appointment to discuss the same with me. You might want to make a list of these questions, to assist you in presenting them in a concise manner.

Very truly yours

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[Attorney Name]

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