



LEGAL BRIEF ADOPTION

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I. INTRODUCTION TO ADOPTION

Adoption is a legal process that creates a new, permanent parent-child relationship. It grants the adoptive parents all the legal rights and responsibilities of a biological parent and gives the child being adopted all the social, emotional, and legal rights and responsibilities of a family member. When the goal for a child in foster care becomes adoption rather than reunification with his or her biological parents, the current foster parents often decide to adopt. If the judge approves an adoption, the biological parents lose all custody rights to a child. They will not have to pay child support and will not have any responsibilities for a child. The adoptive parents will be the child's parents forever, even if they later separate or divorce.

Actual adoption procedures vary from state to state. To adopt, the biological parents must either consent to the adoption in writing or must have their rights terminated by a court. If the biological parents will not consent to an adoption, you may need to file for Termination of Parental Rights first. All states require adoptive parents to prepare for the adoption with a social worker. This preparation includes an interview and a home inspection to determine whether they are "fit." Once the social worker and agency are both satisfied, a court will finalize the adoption. Adoption agencies are listed in the phone book, though it may be best to get a referral from an acquaintance instead.

II. FOREIGN ADOPTIONS

Adopting a child from a foreign country may avoid long waiting periods, which is often the case with United States adoption agencies; however, foreign adoptions can be especially complicated. Anyone attempting to adopt a child from a foreign country will need to complete large quantities of paperwork and work closely with the United States Citizenship and Immigration Service. It may be helpful to find another parent that has adopted from the country you are considering and contact the attorney that the person used.

III. GIVING UP A CHILD FOR ADOPTION

Adoptions are quicker and easier if the noncustodial biological parents consent. The biological parents can sign a consent to the adoption which agrees to terminate their own rights, have it notarized in front of two witnesses, and then the adoption can go forward. You may voluntarily give up your parental rights if someone else wants to adopt your child, or if someone

else has filed a petition to terminate your rights. You will typically need to go to a court hearing to let the judge know your wishes in person. No matter what, the judge also must decide that it would be in the child's best interest to terminate the parent's rights.

IV. NEVADA ADOPTION LAW

Anyone can adopt a child; however, the process is usually shorter and easier for stepparents or other people who are already related to the child. By state law, an adoptive parent is required to have a child placed in his or her home for a minimum of six months prior to being able to finalize an adoption. This time period allows for the child and the adoptive family to adjust to each other and ensure that the family and the child are a good fit for each other.

If two people want to adopt a child, they must be married or registered domestic partners. If a stepparent wants to adopt a child, the parent and stepparent petition the court together for the adoption. If a child's other relatives (grandparents, great-grandparents, aunts, and uncles) want to adopt the child, they will petition the court for the adoption. If a non-relative wants to adopt a child, a home study is usually required.

The child welfare agency and/or private adoption agencies usually arrange for the home study and help with the legal paperwork. If you are interested in adopting a child through the Clark County Department of Family Services, you can learn about their process by visiting their website: <http://www.clarkcountynv.gov/family-services/adoptions/Pages/default.aspx>.

Adoptions are generally filed in the District Court of the county where the child lives.

When the Petitioner files the initial documents to terminate a parent's rights, the court sets a hearing date. You will find this hearing date on the "Notice of Hearing" document. Plan to attend the hearing. Make sure to arrive early to the courthouse so you have enough time to park, get through security, and get to the courtroom before your case is called. If you are the Petitioner, make sure you have filed documents proving that the parent was served with all the paperwork. If you do not do this, your hearing may be cancelled!

After the judge has heard from everyone, the judge may decide immediately whether to terminate the parent's rights. If the judge needs to hear more before deciding on the termination, the judge may set a trial.

V. ADOPTION ASSISTANCE

Currently, there are two ways military members can receive financial help when they are contemplating adoptions. The military member may be entitled to a tax credit on his or her adoption expenses, or he or she may be entitled adoption reimbursement from the Federal Government.

1. Adoption Tax Credit and Exclusions

You may be able to take a tax credit for qualifying expenses paid to adopt an eligible child (including a child with special needs). The adoption credit is an amount subtracted from your tax liability. For expenses paid prior to the year the adoption becomes final, the credit generally is allowed for the year following the year of payment. A taxpayer who paid qualifying expenses in the current year for an adoption which became final in the current year, may be eligible to claim the credit for the expenses on the current year return, in addition to credit for expenses paid in a prior year. The adoption credit is not available for any reimbursed expense. In addition to the credit, certain amounts paid by your employer for qualifying adoption expenses may be excludable from your gross income.

For both the credit or the exclusion, qualifying expenses include reasonable and necessary adoption fees, court costs, attorney fees, traveling expenses (including amounts spent for meals and lodging while away from home), and other expenses directly related to and for which the principal purpose is the legal adoption of an eligible child. An eligible child must be under 18 years old or be physically or mentally incapable of caring for himself or herself. The adoption credit or exclusion cannot be taken for a child who is not a United States citizen or resident unless the adoption becomes final. A taxpayer also may be eligible to take an increased credit or exclusion for expenses related to the adoption of a child with special needs if the child otherwise meets the definition of qualifying child, is a United States citizen or resident, and a state determines that the child cannot or should not be returned to his or her parent's home and probably will not be adopted unless assistance is provided. The credit and exclusion for qualifying adoption expenses are each subject to a dollar limit and an income limit.

Under the dollar limit the amount of your adoption credit or exclusion is limited to the dollar limit for that year for each effort to adopt an eligible child. If you can take both a credit and an exclusion, this dollar amount applies separately to each. For example, if we assume the dollar limit for the year is \$10,000 and you paid \$9,000 in qualifying adoption expenses for a final adoption, while your employer paid \$4,000 of additional qualifying adoption expenses, you may be able to claim a credit of up to \$9,000 and also exclude up to \$4,000. The dollar limit for a particular year must be reduced by the amount of qualifying expenses taken into account in previous years for the same adoption effort.

The income limit on the adoption credit or exclusion is based on your modified adjusted gross income (AGI). If your modified AGI is below the beginning phase out amount for the year, the income limit will not affect your credit or exclusion. If your modified AGI is more than the beginning phase out amount, your credit or exclusion will be reduced. If your modified AGI is above the maximum phase out amount, your credit or exclusion will be eliminated.

Generally, if you are married, you must file a joint return to take the adoption credit or exclusion. If your filing status is married filing separately, you can take the credit or exclusion only if you meet special requirements.

2. Adoption Expense Reimbursement Program (AERP)

The Department of Defense offers a program to reimburse an individual or a couple for adoption expenses—up to \$5,000 in one year. The DoD Instruction 1341.09, Incorporating Change 1, July 5, 2016, outlines the policy for adoption reimbursement.

Under the procedures established by the DoD, a Service member must submit a request for reimbursement using DD Form 2675, to the nearest military personnel and finance office no later than 1 year after finalization of the adoption. The member must obtain a receipt for his or her records from the military personnel and finance office showing the date the application was submitted. The date of the receipt shall be used to determine if the 1-year requirement has been satisfied. Exceptions can be made by the Service certifying official when deployment responsibilities impact the member's ability to comply with the 1-year deadline; in these cases, the certifying official who signed the DD Form 2675 shall submit a letter stating that the member's deployment impacted the member's ability to comply with the 1-year deadline.

This program applies to members whose adoption of a child under 18 years of age is finalized after 2 Nov 07. Members may be reimbursed a maximum of \$2,000 per child for qualifying expenses related to the adoption and a maximum of \$5,000 for multiple adoptions per calendar year. Certain rules do apply. Please contact MPF for additional details.

VI. CONCLUSION

To learn more about foster care and adoption, please contact the Clark County Foster Care Department of Family Services at (702) 455-0181, or email your name, address and phone number to clarkcountyfostercare@ClarkCountyNV.gov, or schedule a legal assistance appointment to speak with an attorney.

VII. REFERENCES

- Adoption: An Overview, Legal Information Institute, Cornell University Law School, <https://www.law.cornell.edu/wex/adoption>.
- Adoption, U.S. Citizenship & Immigration Services, <http://www.uscis.gov/adoption>.
- <http://dcfs.nv.gov/Programs/CWS/Adoption/Guide/AdoptionInNV/>
- <http://www.clarkcountynv.gov/family-services/adoptions/Pages/adoptionviewer.aspx>
- <http://www.leg.state.nv.us/NRS/NRS-127.html>
- <http://www.familylawselfhelpcenter.org/self-help/adoption-termination-of-parental-rights>
- <http://www.familylawselfhelpcenter.org/community-resources/other-community-resources/98-videos>

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