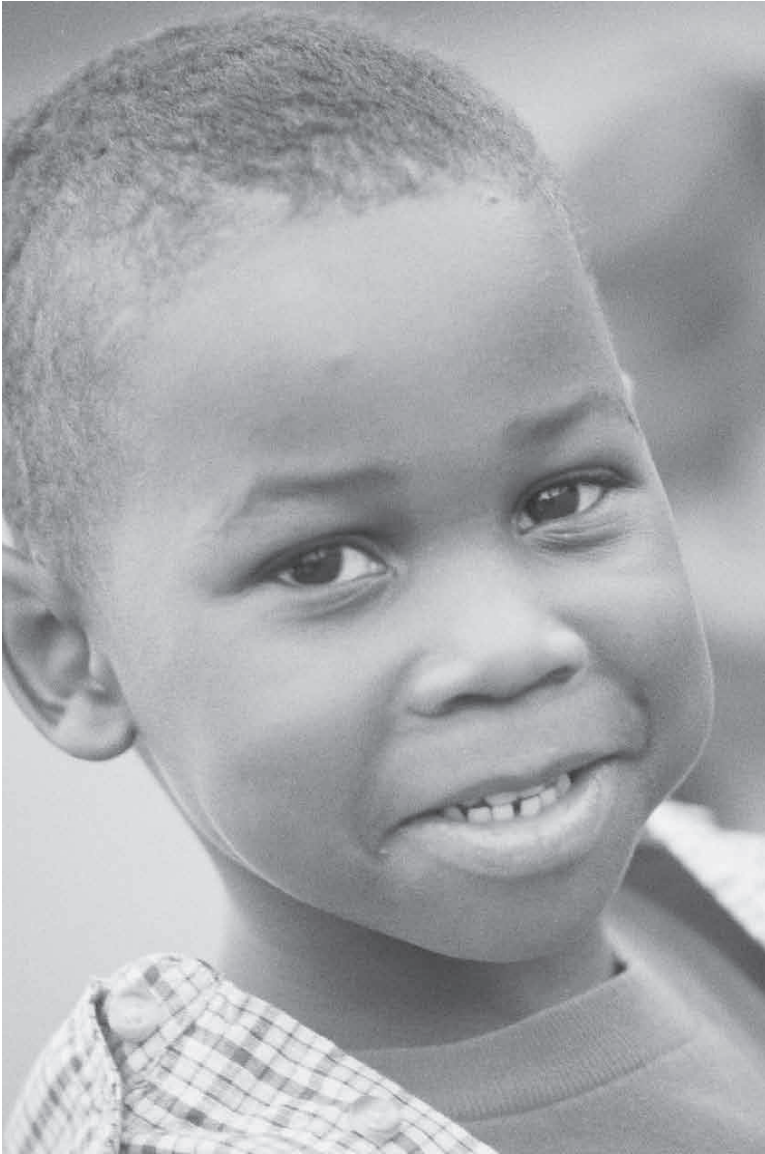




Completing an Adoption in Minnesota

The Rights and Responsibilities of Birth Parents, Prospective Adoptive Parents and Adoption Agencies





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Completing an Adoption in Minnesota

This booklet explains the legal process for adoption in Minnesota. It also reviews the responsibilities of birth parents, adoptive parents and agencies in completing an adoption.

Adoption is a complex process. Legally, adoption creates a new parent-child relationship, but it involves much more than the legal definition. Adoption involves complex social and emotional issues. Both birth parents and adoptive parents make many important decisions that affect them and their child's future.

This booklet cannot describe all of the details or unusual circumstances involved in adoptions. If you have questions or want more information, please talk with staff in licensed adoption agencies, county social service agencies or an attorney.

The adoption process

In Minnesota, birth parents, adoptive parents, adoption agencies and courts must take certain actions before a court can grant a petition for prospective adoptive parents to adopt a child:

- **Birth parents who wish to place their child for adoption must sign a form consenting to the adoption.** They cannot sign a consent to adoption until 72 hours (three days) after their child's birth. The consent must be signed within 60 days (two months) after a child's placement with adoptive parents. When birth parents sign a consent, it becomes final after 10 working days. Within those 10 working days, birth parents can request that their child be returned. On the 11th day, the consent is irrevocable unless birth parents can show that the consent was signed because of fraud.
Birth parents may consent to the adoption in one of three ways:
 - **Direct consent:** Birth parents sign written consent forms to the adoption of their child by the adoptive parents before a representative of a licensed adoption agency, county social service agency, judge or judicial officer.
 - **Consent to the agency placing the child:** Birth parents sign a written agreement and consent with a licensed child placing agency or with the commissioner of the Minnesota Department of Human Services to place their child in an adoptive home.
 - **Petition the court to end parental rights:** Birth parents petition the court to end their parental rights. The court then gives guardianship to an adoption agency or an individual to place a child and later consent to a child's adoption.
- **Adoption of American Indian children:** The Indian Child Welfare Act requires that a parent's consent for adoptive placement, adoption or termination of parental rights must be given in writing and before a judge. The parent may withdraw consent for any reason and at any time prior to entry of a final decree of termination of parental rights or adoption.
- **Prospective adoptive parents must have an approved adoption home study.** All prospective adoptive parents (except stepparents or the following people related to the child by blood, marriage or adoption: grandparents, brothers, sisters, aunts or uncles) must have a favorable adoption study before a child can be placed in their home. Adoption studies may be completed by a licensed adoption agency or a county social services department.

If you have questions or want more information, please talk with staff in licensed adoption agencies, county social service agencies or an attorney.

■ **Adoption agencies help place children in adoptive homes through agency or direct adoptions.**

- An agency placement occurs when a licensed adoption agency is a child's legal guardian or a child's birth parents have signed an agreement with an agency to place their child in an adoptive home. The agency will:
 - Sign a written adoptive placement agreement with the prospective adoptive parents stating the rights and responsibilities of the adoptive parents and the agency
 - Supervise the placement, serve as a resource and source of support to the adoptive parents, and provide the court with a report and recommendation, including its consent to the adoption.
- Direct or "independent" adoptive placement occurs when birth parents consent to the adoption by the prospective adoptive parents.

Before the placement of a child:

- Prospective adoptive parents must seek an order for placement from the district court in the county where they live. They can ask for the order without having a formal court hearing. They may obtain the order as early as 60 days before the intended date of placement.
- In an emergency, the court must respond to a request within 24 hours of receiving the request.
- The court must have received a copy of the adoption study, along with certain other documents. The court's order establishes the legal basis for placing a child with adoptive parents.

■ **The court completes the adoption process.**

Within 12 months of a child's placement into their home, prospective adoptive parents must file a petition to adopt. The petition must be filed in the district court in their county of residence.

- The court will set a date to hear the petition. The child must have lived in the home of the adoptive parents for at least three months before the date of the court hearing. The court may shorten that time.
- Prior to the hearing, the adoption agency that supervised the placement will submit its report to the court.
- The court decides if the adoption is in a child's best interest and, if so, grants the adoption.
- The records of the adoption are then sealed and may only be opened by an order of the court or an agency conducting a birth parent or adoptive parent search.

Since the lives of birth parents and adoptive parents are changed through adoption, it is important to be aware of both rights and responsibilities.



Birth parents' rights and responsibilities

Birth parents have responsibilities to:

- Consider the pros and cons of parenting
- Look at choices available through adoption.

Birth parents have the right to make informed decisions about adoption of their child. They have the right to:

- Have a lawyer
- Receive counseling about their decision
- Choose to place their child through an adoption agency or direct adoption process
- Choose to ask the court to terminate their parental rights and appoint a guardian (usually an adoption agency) to place their child for adoption and
- Consent to the adoption.

When birth parents use an adoption agency, they must receive:

- A written statement about adoption agency services before and after adoption
- A statement on any information the agency has about attorney referral services, or about obtaining assistance with completing legal requirements for an adoption
- Help in completing their social and medical health history
- Assistance in signing consent to the adoption forms for direct adoptive placement; or signing the agreement for an agency to place their child for adoption; or when the Indian Child Welfare Act applies, signing the consent to adopt before a judge.

Birth parents who choose to make a direct adoptive placement must be told by prospective adoptive parents about their rights to receive:

- Up to 35 hours of counseling about issues related to adoption at the expense of the adoptive parents
- Legal counsel until either their consent to the adoption becomes irrevocable or 70 days after the placement, at the expense of prospective adoptive parents. Birth parents cannot use the adoptive parents' attorney.

Adoptive parents and a birth relative may enter into an agreement regarding communication with or contact between an adopted minor, adoptive parents and birth relatives. An agreement is not legally enforceable unless approved by the court and the terms of the agreement are contained in a written court order at the time the adoption decree is granted.

What are a birth father's parental rights?

A child's genetic heritage comes from both the mother and father. Birth mothers are encouraged to identify the father in situations where there is no legally recognized father and no alleged father comes forward. However, a birth mother is not required to name the person she believes to be the father.

When a birth father is recognized as a child's legal father, he must consent to an adoption. An alleged father, who wants to be recognized as a child's father, must

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register with the “Father’s Adoption Registry” through the Minnesota Department of Health. He may register at any time following conception through 30 days after a child’s birth. Registration does not create the parent-child relationship, but does establish the procedures through which his rights may be recognized.

If a father is not identified or not known, a court will terminate the father’s parental rights; the birth mother’s consent to adoption will be submitted to the court, allowing the court to grant an adoption.

How do birth parents provide information about a child’s background?

Children who are adopted need to grow up knowing their background and medical history. Both the birth mother and birth father must complete a *Birth Parent Social and Medical History* booklet for the adoptive parents before a child is placed with them.

Can birth parents receive payment or reimbursement for placing their child for adoption?

Birth parents may not receive payment or anything of value for placing a child for adoption. However, birth parents may receive reimbursement for reasonable adoption-related expenses from prospective adoptive parents. Allowable reimbursements include:

- Counseling, medical (for the mother’s pregnancy and childbirth) and legal fees paid directly to a provider of these services
- Transportation, meals and lodging incurred in placing a child for adoption
- Adoption services provided by an agency at the request of a birth parent and paid directly to the agency
- Living expenses of a birth mother limited to maintaining an adequate standard of living because of her loss of income or other support resulting from pregnancy.

Adoptive parents may not seek reimbursement for any expenses they paid if a birth parent decides not to place a child for adoption.

Prospective adoptive parents' rights and responsibilities

What is required of adoptive parents?

Adoptive parents must complete an adoption study with an adoption agency before a child may be placed in their home. During the study, prospective adoptive parents will have an opportunity to learn about adoption. They will discuss adoption issues and assess their suitability to become adoptive parents. The agency's written adoption study must be updated every 12 months until a child is placed in an adoptive home. A copy of the completed adoption study is given to the court when adoptive parents file their petition to adopt a child.

What are the responsibilities of adoptive parents in a direct adoption?

Prospective adoptive parents must notify the birth parents of their rights to legal representation and to counseling. The prospective adoptive parents must, upon the request of the birth parent(s), pay for a lawyer to represent the birth parents. Payment is allowed for up to 35 hours of counseling for birth parents.

Prospective adoptive parents must obtain a court order allowing a child to be placed in their home. The order may be obtained up to 60 days before the expected date of placement.

Prospective adoptive parents who are working through an adoption agency should talk with their adoption agency about their responsibilities.

Are prospective adoptive parents required to pay birth parents' expenses?

Prospective adoptive parents or anyone acting on their behalf may only pay certain expenses for birth parents. Allowable reimbursements include:

- Counseling, medical (for the mother's pregnancy and childbirth) and legal fees paid directly to a provider of these services
- Transportation, meals and lodging incurred in placing a child
- Adoption services provided by an agency at the request of a birth parent and paid directly to the agency
- Certain living expenses of a birth mother limited to maintaining an adequate standard of living because of her loss of income or other support resulting from pregnancy.

Adoptive parents may not seek reimbursement for any expenses they paid if a birth parent decides not to place a child for adoption.

Prospective adoptive parents may also have other adoption-related, out-of-pocket expenses. The court must receive an accounting of all expenses paid in an adoption.



Prospective adoptive parents have the right to receive a detailed social and medical history of a child and the child's birth families.

What rights do prospective adoptive parents have?

Prospective adoptive parents have the right to receive a detailed social and medical history of a child and the child's birth families. The information provided must protect the identities of all individuals described.

Prospective adoptive parents have the right to receive written information from an adoption agency on:

- Fees charged
- Timelines for payments of fees
- The likelihood and estimated time for placement
- Available agency services
- Attorney referral services and
- Assistance in completing a legal adoption.



Licensed adoption agencies' responsibilities

Any organization or individual providing adoption services must be licensed by the Minnesota Department of Human Services.

Adoption agencies are allowed to:

- Facilitate international and United States adoptions
- Complete adoption studies with prospective adoptive parents
- Witness birth parents' signing of consent forms to adoption
- Accept either legal guardianship of children or the birth parent agreement to place children for adoption.

Requirements to become a licensed adoption agency include:

- Being incorporated as a nonprofit corporation
- Providing a schedule of fees for all services and timelines indicating when each fee or portion of a total fee must be paid; fees may only be paid as services are performed
- Providing a statement of services provided to birth and adoptive parents
- Providing to prospective adoptive parents specific information about each program they offer, the likelihood of an adoptive placement and the estimated length of time for making a placement. The agency must also indicate that it cannot guarantee an adoption.

Birth or adoptive parents who believe that agencies have acted improperly or in violation of the law should contact the Minnesota Department of Human Services, Licensing Division, 444 Pine Street, St. Paul, MN 55155, (651) 296-3971.

An adoption agency cannot guarantee adoption.

Additional information

The following publications are online at:
www.dhs.state.mn.us

- *Post Adoption Search*
- *Minnesota Adoption Assistance Program for Children With Special Needs*
- *Answers to Your Questions About Adoption*
- *Being a Legal Father*

Other publications:

- *Minnesota's Waiting Children* available through the Minnesota Adoption Resource Network at (612) 861-7115
- *Kinship Caregiver Resource Manual* available through the public library, county social service agencies or licensed adoption agencies.





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