

**SOUTH CAROLINA ADOPTION LAW:
A GUIDE FOR ADOPTIVE PARENTS**

**Provided with Permission from
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In 1986, the South Carolina Legislature passed a new Adoption Act that put in place many important procedural requirements and necessary safeguards to ensure the protection of the adoptive family, biological parents, and most importantly, the child. This is a brief overview of that process and reflects South Carolina Law as of January 2011.

INVESTIGATION AND REPORTS

The Adoption Act requires a medical and social history of the biological parents and child. Also, a pre-placement investigation (home study) must be performed on a proposed adoptive family, as well as a post-placement investigation after a child has been placed with the adoptive family. These investigations are conducted by qualified professionals who are credentialed by the state of South Carolina.

INTERSTATE ADOPTION

The Adoption Act permits the placement of a child with a family outside the state of South Carolina when there are “unusual or exceptional circumstances.”

There are variety of circumstances that Family Court judges consider to be unusual and exceptional, the most important factor being the wishes of the birth mother and a review of the adoption expenses. The law allows a family Court Judge to make this determination prior to the birth of the child.

Interstate adoptions must also comply with the requirements of the Interstate Compact on the Placement of Children (ICPC). The ICPC is reciprocal state law in the fifty states governing placement of children. The ICPC requires the preparation and filing of many documents including birth family medical and social histories, consents, and home studies.

A new statute passed in 2010 requires all adoptions of South Carolina children to be finalized in South Carolina, unless the adoptive parents are related to the child.

BIRTH MOTHER EXPENSES

The Adoption Act mandates that under no circumstances may a birth mother receive a fee for giving her consent to adoption. However, costs may be paid by the adoptive parents for the following:

- a. Reimbursement for necessary, actual medical expenses and reasonable living expenses incurred by the birth mother and child for a reasonable period of time.
- b. The fee for obtaining investigations and reports.
- c. The fee of the individuals required to take consent of the birth parents.

- d. The fee of the Guardian ad Litem.
- e. Reasonable attorney fees and costs.

An accounting of fees and expenses paid by the adoptive parents must be filed with and approved by the Family Court.

CONSENT BY BIRTH MOTHER

In order to allow a child to be adopted, the Family Court requires a birth mother to sign a Consent/Relinquishment for Adoption. This consent must be an informed and voluntary release of all parental rights by the birth mother and the statute is very particular about the contents of this Consent. The consent must be taken in the presence of an attorney who does not represent the adoptive family or a person credentialed by the state for talking such consents. The birth mother's consent is usually given twenty-four hours or later after the birth of the child.

WITHDRAWAL OF CONSENT

There is no revocation period in South Carolina in which a birth parent may change her or his mind after signing a Consent. In order to set aside a Consent, the birth parent must show the consent was involuntarily given and the withdrawal of the Consent must be in the best interest of the child. This is difficult two-pronged approach. Therefore, for all practical purposes, unless exceptional circumstances exist, once the Consent is given, it is final and cannot be revoked.

BIRTH FATHER RIGHTS AND RESPONSIBILITIES

Neglecting to effectively deal with the rights of a birth father can jeopardize an adoption. If a birth father is married to a birth mother, his Consent/Relinquishment must be obtained or his rights must be terminated by the Court.

A birth father, who is not married to the birth mother, can block an adoption only if:

- a. the father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption, and the father openly held himself out to be the father of the child during the six month period; or
- b. the father paid a fair and reasonable sum, based on the father's financial ability, for the support of the child or for the expenses incurred in connection with the mother's pregnancy or with the birth of the child, including, but not limited to, medical, hospital, and nursing expenses.

The birth father's rights are also affected by such considerations as whether his efforts to support the birth mother were thwarted. He must use prompt and good faith efforts to demonstrate his commitment to the child.

For children being adopted who are over six months old, the birth father's responsibilities are slightly different. In either case, even though consent of the birth father may not be required, he is

entitled to receive notice of the adoption proceedings. This can be accomplished by personal service or if he cannot be located by publication in a newspaper. When a birth mother does not know the identity of the birth father or she declines to reveal his identity, the Responsible Father Registry comes into play.

The Responsible Father Registry (RFR) is a newly created statutory mechanism by which a man who has potentially fathered a child with a woman to whom he is not married can ensure that he receives notice of a termination of parental rights (TPR) or adoption action involving the child. In order to establish his right to notice, a man must record his name in the state-maintained database—the Registry— along with the name of the woman. Then, if and when a TPR or adoption action is filed regarding a child of the woman who is named in the Registry, the law will require the party initiating the action to notify the registered man of the proceeding so that he may come forward to assert his rights to the child if he so chooses. The Registry ends the practice of serving fathers by John Doe publications.

TEMPORARY CUSTODY, THE FINAL HEARING, APPOINTMENT OF GUARDIAN AD LITEM

Once the adoptive family receives placement of a child and a petition for adoption has been filed, the adoptive family immediately has custody of the child and is responsible for the care, maintenance, and support of the child including any necessary medical or surgical treatment. Most health insurance policies begin to cover a child at this time or from the moment of birth.

After at least ninety days from the date of filing, a final hearing is held wherein the Court hears testimony, reviews all documents filed with the court, including home studies, background investigations, and Consent/Relinquishments, and determines whether it is in the best interest of the child to grant the adoption.

Prior to that time, a Guardian ad Litem is appointed to report to the Court whether it is in the best interest of the child to grant the adoption. Following the signing of the final decree by the Family Court Judge, the relationship of parent and child is created just as if the child were biological offspring of the adoptive family. Further, after the final decree is signed, the birth mother and father cannot revoke their consent to the adoption. No person can successfully attack a final order unless fraud is proven.

NEW NAME, BIRTH CERTIFICATE AND CONFIDENTIALITY

Following the signing of the final decree, a new birth certificate is issued in the name of the adoptive family. This birth certificate may take several weeks to arrive.

The adoption file is sealed by Order of the Family Court. Confidentiality at every step of the adoption process is one of the paramount considerations of the attorney and adoption agency.