



## Helpful Adoption Internet Sites

Child Welfare Information Gateway:  
<http://www.childwelfare.gov/adoption/index.cfm>

State Adoption Law page on the Cornell Law School's Legal Information Institute  
<http://www.law.cornell.edu/wex/index.php/Adoption>

Adoption Taxpayer Identification Number (ATIN)  
<http://www.irs.gov/individuals/article/0,,id=96452,00.html>

DoD Adoption Reimbursement Policy  
<http://dtic.mil/whs/directives/corres/pdf/134109p.pdf>

For International Adoptions visit the State Department at  
<http://travel.state.gov/content/adoptionsabroad/en.html>

### DISCLAIMER:

The information contained in this pamphlet is meant for the sole use of active duty members, retirees, their families, and other persons eligible for Legal Assistance from the Holloman AFB, NM, 49 WG/JA Office. The information is general in nature and presented to assist eligible persons in preparing for a Legal Assistance appointment with an attorney in the legal office. It is not an all-inclusive guide to federal or New Mexico law. It is not a substitute for legal advice from an attorney regarding individual situations. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general statements of background information presented here without discussing your specific situation with an attorney prior to taking any action in court. (As of January 2017)

# ADOPTING A CHILD

### Adopting a Child

Adoption is the legal process that transfers the rights and duties of a child's biological or natural parents to the adoptive parents. The rights and obligations between the child and his or her biological parents are terminated with the adoptive parents becoming the sole possessor of the rights, privileges and duties of parenthood for all legal purposes effective upon completion of the adoption.

There are two methods for adoption: a private adoption and an agency adoption. A private adoption generally consists of an adopting parent or parents and a child whose identity was previously known to them. To adopt through an agency, prospective adopting parents can register with an agency which will evaluate their suitability as parents. The agency will find the best child for them and usually live with the adopting parent for a period of time while under supervision. If everything works out, the adoption will be finalized. If you are considering using a private agency, be sure to check whether they are a "qualified adoption agency" for purposes of the DoD Adoption Reimbursement Program or the Adoption Income Tax Credit.

### What are the Requirements for Legal Adoption in New Mexico?

According to New Mexico Statute §32a-5-11, any resident of New Mexico who has been approved by the court may adopt. Non-residents may also adopt in cases in which a New Mexico agency is involved if the adoptee is a resident of New Mexico or was born in New Mexico but is less than six months of age and was placed by the department or an agency licensed by the state of New Mexico. The adoption of any child must also serve in furtherance of the best interest of the child. The biological parents of the child must 1) consent to the adoption after counseling with a judge's approval or with an agency head's approval after independent legal counsel, 2) relinquish parental rights to the Children, Youth and Families Department (C.Y.F.D.) either voluntarily or through an abuse or neglect proceeding or relinquish to a state-licensed agency, or 3) impliedly consent by court order after service of notice upon the parent who has left the child under certain circumstances prescribed by law without justifiable cause. In most New Mexico adoptions, a criminal records check is required of the adopting parents. The monies expended in connection with the adoption must also be reported to the court in most instances. Also required in many New Mexico adoptions are pre-placement and post-placement reports which include information from all parties' background, a home study and other analysis of whether the adopting parents are suitable. Although the above list is not exhaustive, it does touch upon most requirements. Note: There are specific requirements for the adoption of Indian children. When seeking to adopt a child of Indian descent, it is important to consult a lawyer who is familiar with the provisions of the Indian Child Welfare Act of 1978.



# ADOPTING A CHILD

## [How is a Child Placed for Adoption?](#)

Court or agency permission must be obtained before a child may be placed in a home for purposes of adoption except in the limited circumstance of a step-parent adoption which is discussed below. The biological parents may place their child for adoption by going to the Department of Children, Youth and Families (C.Y.F.D.), to a state-licensed adoption agency or by obtaining, through an attorney, court permission to place the child with a specific family. The identity of the adopting parents need not be known to the biological parents. For example, the biological parents may request the court to allow them to place the child with a family whose specific identity is not known but who has been recommended to them by a clergyman, physician, family friend, or state-licensed agency. To obtain court approval prior to placement, a request with the court must be on file with the court at least 30 days. Placement, however, does not terminate biological parents' rights in and of itself and the biological parents can change their minds about the child's placement for adoption at any time until they sign, with proper approval, a consent to adoption.

Currently, a consent for adoption cannot be validly executed until 48 hours after the child's birth. Once a valid consent is given, however, it is binding and final.

## [When Should Placement Planning Occur?](#)

Many adoptions involve newborn children. Placement planning should begin during the pregnancy of the mother so that all of the legal requirements can be completed by the time of the child's birth. It is considered best for an infant to be placed in the adoptive home as soon as possible after birth. This is not possible if legal requirements have not been met. As described above, any request before a placement order must be on file at least 30 days before a placement order is rendered. It is recommended that placement be pursued by going to any agency or an attorney no later than 60 days before the child's anticipated birth, or sooner if possible.

## [How to Obtain a Child for Adoption](#)

The surest way to locate a child for adoption is to work through a state-licensed agency or through the Department of Children, Youth and Families (C.Y.F.D.), Social Services Division, Placement Services Section. To obtain information concerning the identity of a state-licensed agency or how to proceed in working with the department, contact C.Y.F.D. or write to the State of New Mexico, Children, Youth and Families Department, Social Services Division, Placement Services Section, Post Office Box 5160, Santa Fe, New Mexico 87502-5160, and request the information.

Occasionally, a prospective adoptive family will become aware of a child available for adoption through the referral of another person. Should that occur, see a lawyer immediately for advice as to how to proceed with a private placement. Do not, under any circumstances, take a child you desire to adopt into your home without court permission unless you are the step-parent of the child, a blood relative of the child within the fifth degree or the blood relative's spouse, or a person designated in the child's deceased parents' will to care for the child.

## [Open Adoptions](#)

The New Mexico Adoption Act has been modified to reflect a movement by our society toward open adoptions. The need for accurate medical history and for possible future anatomical and blood transfusion gifts has, in part, spurred this movement. An open adoption permits contact between the biological and adopting parents. The agreed upon future contact may include exchange of identifying or nonidentifying information, visitation between biological parents and/or the biological parents' relatives and the child and/or adopting parents. The potential for disputes and other problems related to an open adoption agreement is relatively greater than in a closed adoption situation, and great care should be taken to ensure that a legal agreement is made and that all parties understand its terms.

## [Stepparent Adoptions](#)

When both parents are living and the custodial parent remarries, the question of adoption of the stepchild(ren) by the new spouse may arise. The non-custodial parent's consent, express or implied, or relinquishment or termination is required in such a case. Counseling is also now required of each of the custodial parents and the prospective adopting parent as well as the child if ten years of age or older. If the child has not resided with the prospective adopting parent for at least one year, certain placement restrictions as discussed above will apply. Retaining an attorney is a necessary and important step in commencing the adoption of a stepchild.

## [What is the Cost of Adoption?](#)

State-licensed agencies have set fees which you may obtain upon request. Adoptions handled through the C.Y.F.D. are typically provided with no agency, medial or counseling costs. Whether you are working with an agency or the department, however, you will need to retain an attorney to prepare and present the necessary legal documents to the court to complete the adoption. You will need to consult an attorney to discuss the legal fee for these services. In private placements, the usual arrangement is that the adopting parents will pay the medical, legal and counseling expenses of the biological parents relating to the birth of the child. They will also pay their own legal expenses in this instance. Therefore, private placement adoptions are typically substantially greater in cost.

Adoptive parents should NOT make any payment to a woman, directly or indirectly, for conceiving and carrying a child. They CANNOT demand repayment for previous medical, legal or counseling expenses to threaten or coerce a natural parent to relinquish parental rights or consent to adoption. Either of these latter two acts constitute a misdemeanor and can result in imprisonment up to one year in a county jail or a fine of up to \$1,000, or both.

## [Following the Law](#)

Following the law is crucial to a successful adoption that will not become susceptible to a future attack. The required legal steps and precautions are intended to protect the interests of all persons involved with the adoption and compliance will help avoid devastating future consequences. For your protection, you should retain an attorney familiar with adoption law as soon as it appears that you may desire to receive or place a child.

## [Adoption Taxpayer Identification Number \(ATIN\)](#)

An ATIN is an Adoption Taxpayer Identification Number issued by the Internal Revenue Service as a temporary taxpayer identification number for the child in a domestic adoption where the adopting taxpayers do not have and/or are unable to obtain the child's Social Security Number (SSN). The ATIN is to be used by the adopting taxpayers on their Federal Income Tax return to identify the child while final domestic adoption is pending. To obtain an ATIN, the Form W-7A, Application for Taxpayer Identification Number for Pending Adoptions, is used by qualifying taxpayers. You may also get a copy of Form W-7A at an IRS walk-in office or by calling 1-800-829-3676. ATIN is only available for domestic adoptions or foreign adoptions where the child/children have a permanent resident alien card or certification of citizenship. Otherwise, if you adopt a foreign child you will need to apply for an Individual Taxpayer Identification Number (ITIN).

## [Department of Defense Adoption Reimbursement Policy](#)

This policy allows a Service member who adopts a child under 18 years of age to be reimbursed reasonable and necessary adoption expenses, up to \$2,000 per adoptive child, but no more than \$5,000 per calendar year. In order to qualify for the reimbursement, members must be serving on continuous active duty for at least 180 days and the adoption must be finalized while on active duty. Adoptions that qualify for reimbursement include those arranged by a qualified adoption agency, or, for adoptions that are finalized after November 2, 2007, to include those arranged by an other source authorized to place children for adoption under State or local law. A qualified adoption agency is a state or local government agency that has responsibility under state or local law for child placement through adoption, or a nonprofit, voluntary adoption agency authorized under state or local law to place children for adoption. Adoption of a stepchild already living in the home does not qualify for reimbursement. In order to be reimbursed for authorized expenses, military members should fill and submit DD Form 2675, September 2006 no later than 1 year after finalization of the adoption to personnel and finance offices.