



Birthparents Most Common Legal Questions

Written By: Kevin P. Harrigan, Esq.

A birthparent's choice to place a child for adoption may be the most difficult decision of his or her life. There are emotional, soul-searching questions that can test the strongest resolve and challenge lifelong beliefs.

Knowing the answers to some of the most fundamental questions can bring some relief to birthparents who are considering adoption as an option. I have spent thousands of hours talking with birthparents about the process, and implications of adoption. Looking back, I realize that there are three questions that seem to arise with every birthparent. These same questions also appear to cause them the most emotional distress.

Question: Do I have to go to court?

No, not necessarily. For birthparents who are considering adoption as an alternative to parenting, the legal process begins with the voluntary termination of parental rights, and many times, this is done without the birthparents going to court.

In New York State, adoption may be private (with custody of the child transferred directly from the birthparents to the adoptive parents) or through an authorized adoption agency (with the custody and guardianship of the child transferred from the birthparent to the agency and then from the agency to the adoptive parents). In both types of adoption, the child is placed into the adoptive family's home shortly after the birth parents' consent.

In either case, birthparents are not permitted to sign documents that terminate their parental rights until after the child has been born. Following the birth, however, the birthparents may choose to sign either a Judicial Consent or Surrender document (in the court) or an Extra-Judicial Consent or Surrender document (outside of court).

The vast majority of consents or surrenders are executed outside the courtroom, in most cases before the birthmother leaves the hospital, or shortly thereafter. These consents and surrenders are signed in the presence of the birthparent's attorney and, in an agency adoption, with the addition of the adoption agency caseworker.

If the surrender is signed outside of court in an agency case, the birthparent may file a revocation within 30 days that will revoke their surrender of the child and return the child to their custody. If the child is in foster care at the time that the surrender is executed, the birthparent has 45 days to file a revocation. In a private adoption, the Extra-Judicial Consent may always be revoked within 45 days.

When the birthparent chooses to execute a Judicial Consent or Judicial Surrender in the Family Court or Surrogate Court in New York State, the same 30-day revocation period applies unless the child to be adopted is in foster care, in which case there is no revocation period, and birthparents' parental rights are immediately and irrevocably terminated.

Whether these documents are signed in court or out of court, the consents or surrenders must be explained to the birthparents in their principal language (e.g. English, Spanish, etc), and the birthparents must be allowed to ask any questions they might have. Finally the birthparents must be given a copy of the consent or surrender that they have signed.

Question: Do I need to involve the birth father?

Ideally, the goal of every adoption is to have both the birthmother and the birthfather be part of the adoption plan with the adoptive parents and the adoption agency.

In reality, the birth father is often not an active participant in adoption planning. Sections 111 and 111-a of the Domestic Relations Law establish which birth fathers must consent to an adoption as well as those who must receive notice of the adoption proceeding. For example, a birthfather who is

currently married to the birthmother must always consent to the adoption. In general, the Courts look to the six-month period immediately preceding the placement of the child for adoption and ask if the unwed birthfather has sufficiently shown his intention to accept parental responsibility.

Section 111-a of the Domestic Relations Law sets out a "laundry list" of birth fathers who must receive notice of the adoption proceeding.

Among these are birthfathers who are named on the birth certificate by the birthmother or whom the birthmother has named in a written sworn statement; birthfathers who have initiated paternity proceedings or filed with the putative father registry; birthfathers who have connected themselves to the child during pregnancy by supporting the birth mother both financially and emotionally; or birthfathers who have paid hospital, medical, or nursing expenses for the birthmother while holding themselves out to be the child's father.

For many years in New York State, the birthmother was considered responsible for telling the birthfather about the pregnancy. More recently, the New York Court of Appeals has rejected the contention that an unwed mother is under any obligation to advise the unwed father of her pregnancy. At the same time, the birthmother cannot lie or deceive the birthfather if he asks her about this pregnancy.

A birthfather's acknowledgement of paternity does not automatically entitle him to notice or consent status in the adoption proceeding. The birthfather can no longer stand back and not participate. In order to be recognized as a consent or notice father, he must take responsibility by acknowledging his role in the pregnancy and connect himself to the unborn child in some way, for example by financially supporting the mother or being involved in medical care.

Under Section 111-a of the Domestic Relations Law, a birthfather who meets these criteria is entitled to receive notice when an adoptive proceeding is initiated. He is then given an opportunity, if desired, to appear before the court to challenge the adoption plan and assert his rights as a parent. He can claim

the child and present an alternative plan in which he is the chief caretaker of the child. At this point, the birthfather must demonstrate to the court that he is personally capable of parenting and supporting the child.

In some situations, a man is automatically considered to have parental rights – and must consent to the adoption plan – in order for the adoption to proceed. This would include anyone who is married to the birth mother. Even if he is not the biological father, this man is considered the legal father and therefore must consent to the adoption or deny paternity.

Birthfathers who have lived with the birthmother and child for at least six months after the child is born can also be considered consent fathers.

Whenever appropriate, the adoption attorney or agency working with the birth mother should encourage the birthmother to include the birthfather in the planning and execution of the consent or surrender process. Usually a simple review of the birthfather's history with an agency caseworker or experienced adoption attorney can help the birthmother determine if the birthfather should play a role.

Question: Am I permitted to have contact with my child after the adoption is finalized?

Often the most important part of the adoption plan is the Post Adoption Contact Agreement (PACA) because it embodies the special spirit of love and cooperation between the adoptive parents and birthparents.

The PACA is a relatively new development in the overall adoption plan. Typically a PACA will include arrangements for the adoptive parents to update the birthparents on the child's progress and development by sending them periodic letters and pictures.

A PACA may also provide for scheduled visits between the birthparent(s), the adoptive parents, and the child. The frequency of these contacts depends completely on the wishes and consensus of the involved parties. Often the number of contacts agreed upon in the PACA is considered only a baseline and may be increased over the years, as the relationship

develops.

The PACA may include not only the birthparents but also their extended families, such as the child's grandparents, siblings, and the birthparents' close friends. Family Connections, Inc. provides relaxing and supportive meetings for adoptive parents, birthparents, and their families.

Typically, as children grow older, the PACA arrangements may change with the consent of the parties. These agreements can continue until the child reaches the age of 18. At this point, adopted children are adults and are free to make their own contact arrangement with birthparents.

Unfortunately, in New York State, PACAs are enforceable in agency adoptions but not in private adoptions. In an agency adoption, the birthparents have legal recourse if the PACA terms are not met. These agreements are legally binding and become enforceable when the courts make them part of the surrender, either at the time of the Surrender Approval Hearing or at the Adoption Finalization proceeding.

If contact-related problems arise between the birthparents and adoptive families, the adoption agency may first seek to intervene and to act as a mediator. But ultimately, these agreements are enforceable by the Family Court or Surrogate Court in New York State. It should be noted that a breach of the Post Adoption Contact Agreement will not invalidate the adoption. With private adoptions, continuing contact between the child and the birthparents depends on the goodwill, sincerity, and cooperation of the parties.

Even under the best of circumstances, the adoption process can be emotional and complex. In the end, there is no substitute for having good information. Take every opportunity to meet with your adoption agency and your adoption attorney.

Written by - Kevin Harrigan is an attorney in the Central New York area whose practice specializes in the field of adoption and adoption related issues. He has devoted over twenty years to guiding prospective adoptive parents as they embark on the start of the lifelong journey of parenthood, as well as the compassionate representation of birth parents in their commitment to making an adoption plan for their child.