

# The Legal Rights of Birth Fathers in an Adoption

## by Amy Silverberg

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#### **Introduction**

The U.S. Supreme Court has said that a man who is a putative (alleged) father has an opportunity to establish an interest in a child who may be his biological child. He must grasp this opportunity by establishing a substantial relationship with the child before he will have constitutionally protected parental rights.

Generally birth fathers, like birth mothers, love their children and want what's best for them. For a variety of reasons, birth fathers and birth mothers may not agree about whether adoption is the best plan. Even if they agree on adoption, they may not agree on the specific adoption plan.

While not ideal, in some cases the birth mother and the adoptive parents make an adoption plan completely independently of the birth father. Be aware that this practice can be very dangerous. To accomplish a legally secure adoption, it is critical to assess the legal risk by carefully considering who the child's father is and what his legal rights are.

Legal issues are not the only considerations. Social and medical history information from the birth father is critical to the health and wellbeing of your child. Will your child grow up knowing the birth father or will the identity of the birth father be a disturbing mystery? Remember that the child's interests should come first in the adoption process. Consider what the impact of your present decisions will be on your child in the future.

#### **What Laws Apply?**

Adoption law is complex. To make things even more challenging, adoption law is determined at the state level. This means that in each state there is a unique set of laws defining who is a father and directing the legal process

that must be followed to free the child legally to be adopted.

### **What is the Best Practice?**

In an ideal adoption both birth parents would be involved in the decision-making and planning of the adoption. They would fully cooperate with the legal process and the adoption would be finalized with their blessing.

In the real world, birth parents may not see eye-to-eye about adoption. They may not get along or they may not even know each other very well. Mental illness, domestic violence, substance abuse or other factors may affect the relationship between the birth parents. Because the legal interests of the birth mother and the birth father may be in conflict, it is very important to determine whether one or more men have legal rights with regard to the child.

### **Who is a Father?**

A man may be able to establish a legal connection to the child, depending on state law, by one of the following methods:

Marrying or attempting to marry the mother;  
Providing financial support for the mother or for the child;  
Holding the child out as his child;  
Registering with the father's adoption registry;  
Cooperating with genetic paternity testing; or  
Signing and filing a recognition of paternity document with the state.  
The state law may require that a man be provided with notice of the adoption proceedings. For example, in some states a man who has registered with the state's father's adoption registry is entitled to notice of the adoption proceedings even though he has not established paternity to the child.

Most states provide a procedure that allows the birth parents of a child to sign a recognition of parentage form and file it with the state registrar of vital statistics. By filing the form, the birth parents create a legal presumption of paternity.

### **Is it Possible for a Child Have More Than One Legal Father?**

Because there are many different ways to establish a legal connection to a child, it is possible for a child can have more than one legal father. To be legally safe, it may be necessary to notify or to obtain the consent of all of the child's legal fathers.

### **What Happens if a Birth Father is Unaware of the Pregnancy or if he is aware of the Pregnancy, but is Disinterested?**

The answer to this question is complex and will depend on the legal status of the birth father and the applicable state law.

## **What is a Father's Registry?**

Twenty or more states have registry systems to allow men who believe that they may have fathered a child to register with a state administered database. Depending on the specific provisions in the state's registry law, registration gives a man more rights regarding a child. A grid detailing the fathers' registry laws state by state, is available at the web site of the National Adoption Information Clearinghouse .

There currently is a legislative effort at the federal level to enact a federal registry law. A federal law would make the registry process uniform nationwide. This would be a big improvement over the current system in which more than one state's registry laws may be applicable.

## **Resolving Conflicts**

When conflicts arise, don't panic. Sometimes merely including the birth father in the adoption planning will resolve the conflict.

Like birth mothers, many birth fathers are not comfortable with an adoption without any contact after finalization. If a birth father is reluctant to participate in the adoption planning, it may be that he wants some contact after the adoption is finalized. Of course the type of contact depends upon the birth and adoptive families, and to a certain extent, on the relationship between the birth mother and the birth father.

Again, state law controls. Depending upon the applicable state law, it may be possible to negotiate a legally enforceable contact agreement. Even if a legally enforceable contact agreement is not provided for under state law, it may be possible to make an informal agreement that everyone can live with.

## **Conclusion**

The best way to accomplish a safe and secure adoption is with the full cooperation and participation of the child's birth mother and birth father. If the father is missing or uncooperative, it may be possible to negotiate a resolution or to accomplish the adoption without the cooperation of the birth father. Adoption is a complicated area of the law and legal mistakes can result in devastating consequences for children and their families. Consult with an experienced adoption attorney to determine what legal process you must follow in your state in order to legally terminate the birth father's legal connection to the child before you adopt.

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