

Texas Adoption Basics

BY JENNY L. WOMACK

For the purposes of this article, it is assumed that both the birthparents and the prospective adoptive parents are Texas residents.

Do I need an adoption agency?

In Texas, there are two main reasons why you would need an adoption agency. The first reason is to find a birthmother. Although many adoptive parents locate their birthmother by “word-of-mouth,” it may take a long time and you may not want to have to screen potential birthmothers yourself. Your other option is to engage a reputable, licensed adoption agency. Only licensed child-placing agencies can legally match you with a birthmother in Texas.

The second reason you would need an agency is if your birthmother needs financial assistance. Although Texas law does allow private (aka independent) adoptions where you do not use an agency, *only* a licensed agency can provide financial assistance beyond a birthmother’s medical, legal, and counseling expenses. If your birthmother needs assistance with living expenses, you *must* involve a licensed agency immediately. It is a felony for you, the adoptive parent, to pay anything other than medical, legal, or counseling expenses on the birthmother’s behalf.

Do I need an attorney?

Adoptions are complicated legal matters and I strongly recommend any family considering adoption consult with an experienced adoption attorney. If you are working with an adoption agency, then the agency’s attorney may handle the

legal work pertaining to the termination of the birthparents’ parental rights and perhaps even finalizing the adoption itself. However, please remember that the agency’s attorney represents the agency and not you. Furthermore, some agencies handle only the termination of parental rights so you may need your own attorney to finalize the adoption. If you are proceeding with a private adoption, then you need an attorney to assist you with both the termination of parental rights and the final adoption. Some adoptive parents have attempted to represent themselves, but given the complexities of adoption, I do not recommend it.

When can the birthmother sign her relinquishment and is it revocable?

The typical termination-of-parental-rights lawsuit is based upon the birthmother’s voluntary relinquishment of her parental rights, but she cannot sign her affidavit of relinquishment until at least 48 hours after the birth of the child. In an agency adoption, the relinquishment is most likely irrevocable from the moment it is signed. In a private adoption, the relinquishment can be irrevocable for a period of up to 60 days, if the affidavit specifically provides for this. In such a case, the relinquishment would become revocable on day 61 if the birthmother’s rights were not terminated by the court before that time. If a period of irrevocability is not stated in the affidavit, in either a private or an agency case, then the affidavit is revocable for 10 days and becomes irrevocable on day 11.

What about the birthfather?

If the birthmother is married or was married within 300 days of the child’s birth, then her husband would be a “presumed father,” whether or not he is the biological father of the child, and his rights must be terminated. He can sign an affidavit of relinquishment, but not until 48 hours after the child is born. An “alleged father” (any possible father who is not a “presumed father”) can sign an affidavit waiving his rights at any time. However, if a birthfather (alleged or presumed) does not sign, you still must terminate his rights. An experienced adoption attorney can help you explore the options for involuntarily terminating his rights.

If the birthmother does not know who the father is or where he is, a variety of steps can be taken to try to identify and/or locate him so that he can be served with notice of the termination lawsuit. If he cannot be identified or located, then you may be able to serve him with notice by publication. Again, an experienced adoption attorney can assist you with this.

If I am not adopting through an agency, do I still need a homestudy?

Under the Texas Family Code, a pre-adoptive home screening (aka homestudy) should be completed before the child enters your home and is required in *every* adoption. In fact, in a private adoption, the homestudy report must be filed with the court in the termination of parental rights case.

How long do I have to wait to finalize my adoption?

The Texas Family Code says the child should be in your home for a minimum of six months when the adoption is finalized. In a private adoption, the court may waive this requirement if all other prerequisites, including the post-placement supervision, are completed more quickly, but even then, it usually takes four to five months.

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