CROSS-BOROUGH
COLLABORATION

THE BASICS
Adoption in New York State

This booklet has been put together to help you understand what adoption is. It will tell you who can be adopted. It will tell you who can adopt a child and how the adoption process works in New York.

WHAT IS ADOPTION?

Adoption is when one or two people take another person (usually a child) to be his, her or their own child. The correct way to do this is the legal way. When you legally adopt a child, you have all the rights and the responsibilities of natural parents. The adopted child has all the same rights as if s/he had been born naturally to you.

The adopted child gets a new birth certificate. You can put a new name for the child on the new birth certificate, if you want to. The child's last name will be the same as yours.

WHO GETS ADOPTED?

●   Most adoptions involve children under the age of 18. Sometimes, under special circumstances, adults can be adopted too.

●   Some adoptions involve a child whose parents will not or cannot take care of the child. They give up the child so s/he can have a better life. **They voluntarily give up their parental rights.**

●   Some adoptions involve children who have been taken from their birth parents because of abuse or neglect. The birth parents did not want to give up the child but their **parental rights were ended (terminated) by court order.** These children may get adopted after having been in foster care for a period of time.

●   Some adoptions involve children whose fathers or mothers have remarried and their child is adopted by the new husband or wife **(stepparent adoptions).** For example, when a mother gets married again after a divorce, her new husband is the child's stepfather. He may want to adopt the child. He and the mother will then be the legal parents of the child. In these cases, the other birth parent (if s/he is

alive) must agree to the adoption before it can happen, unless s/he has abandoned the child (had no contact for six months or more).

HOW DO I FIND A CHILD TO ADOPT?

You can find children who have been left or neglected and who wind up in the foster care system through **government agencies**. Many of these children are not babies. Some children come in groups which include brothers and sisters, and some have medical or emotional problems. In New York City, the Administration for Children's Services can help find foster children you can adopt.

If you are not in New York City, contact the New York State Adoption Service, Office of Children & Family Services. Contact information is shown at the end of this booklet.

In almost all of these cases, the government will pay an adopting parent a monthly amount of money (a subsidy or grant) and will provide medical coverage for the child.

You can also find adoptable children through **private adoption agencies**, registered and certified by the government. Usually, birth parents have voluntarily given up children adopted through private adoption agencies. You can find private adoption agencies by contacting the organizations listed at the end of this booklet.

You can also find children to adopt by placing **personal advertisements in newspapers and by working with private attorneys who specialize in adoptions.** But trying to locate a child to adopt through newspaper advertisements can be risky. You should discuss this method with an attorney experienced in adoption law before going ahead.

A person who is interested in adoption may want to speak with friends who have adopted, and may wish to contact his/her minister, rabbi or other religious leader.

ARE THERE DIFFERENT TYPES OF ADOPTIONS?

There are two types of adoptions in New York. Each is regulated by state law. The adoption process is closely monitored and investigated before final approval by a Judge.

- **Agency Adoptions:** These adoptions are of children who are in the custody of the state or private agencies that have a state license. These agencies get the children either voluntarily and directly from their birth parent, or through a court order when there has been some legal problem, usually involving charges of neglect or abuse.

- **Private Placement Adoptions:** These adoptions are of children who do not come into the care of the state or go to a licensed adoption agency. Usually, these adoptions start with private agreements between people. They might involve stepparents or other family members. They can also involve people who are not related, where the child is located through a newspaper advertisement or by word-of-mouth.

In a private placement adoption, the people who want to adopt must get court certification before taking the adoptive child home. If the child lives with the people who want to adopt, they must request certification when filing the adoption petition.

WHO MAY ADOPT?

- An adult 18 years of age or older, whether married or unmarried

- Married persons residing together, regardless of sexual orientation

- A married person may adopt separately if s/he is legally separated from his/her spouse or has been living separately from his/her spouse for 3 years or more

- Any two unmarried adult intimate partners, regardless of sexual orientation

- An unmarried partner of the child's birth parent

- Minor married persons can adopt a child of either spouse

WHO MUST AGREE TO THE ADOPTION?

● If the parents were married and their rights have not been taken away by a court, both parents must agree to the adoption.

● If the parents were not married, the mother must agree. The father's agreement is only required if he had a lot of contact with the child (for example, by living with, visiting and/or supporting the child, or acting like the parent of the child).

● If the child's father is not known, or is unidentified, the father's agreement to the adoption may not be required.

● If the child's father is known, but he has not had much contact with the child, his agreement to the adoption may not be required. Even so, the Judge may say he has to be told about the proposed adoption. The mother still must agree to the adoption and may have to sign a statement explaining why there has not been much contact with the father.

● Where a mother's or father's rights have been taken away by court order, only the person or agency legally taking care of the child must agree to the adoption.

● If the child is over the age of 14, the child must also agree to the adoption.

Parents agree to adoption in a formal paper called a surrender. A parent can sign a surrender either outside of court or in a courtroom in front of a Judge.

A surrender agreement is a paper signed by the birth parents releasing their child for adoption.

If a parent signs a surrender agreement outside of court, that parent has time to change his/her mind. That parent can cancel the surrender and demand to have the child returned.

If a parent signs a surrender agreement in court and in front of a Judge, the surrender immediately becomes final and the parent usually cannot change

his/her mind and cancel the surrender. That parent cannot demand to have the child returned.

WHO FINALLY APPROVES AN ADOPTION?

A Judge of the Family Court or a Judge of the Surrogate's Court must approve all adoptions by signing an order of adoption.

WHAT IS AN OPEN ADOPTION?

Open adoption agreements are lawful in New York. Open adoption agreements may be legally enforceable if the terms of the agreement are incorporated into a written court order. Open adoption agreements can work as long as the adoptive parent(s) allows the birth parent(s) to stay in touch with the child.

> When the birth parents and adoptive parents agree that the birth parents may stay in touch with the child, this is called an open adoption.

However, if the adoptive parent(s) refuses to let the birth parent(s) see the child after an open adoption, the birth parent(s) has to go to court to enforce the agreement (that is, to have a Judge require the adoptive parent(s) to let the birth parent(s) see the child). Some, but not all, courts in New York State will enforce the open adoption agreement if the adoptive parent(s) refuses to allow the birth parent(s) to see the child. In addition to proving there is as open adoption agreement, the birth parent also has to prove to the Judge that his/her continued contact with the child would be good for the child (in the child's best interest).

WHERE DOES THE ADOPTION TAKE PLACE?

In New York, adoptions take place in either Surrogate's Court or Family Court in the county where the adopting parent(s) lives.

HOW MUCH DOES AN ADOPTION COST?

In **agency adoptions** of children in foster care (sometimes called subsidized adoption), all costs of the adoption, including the legal costs, are paid by the government.

In **private placement adoptions**, there may be costs to the adopting parents. The Judge has to be told about these costs. These costs might include the private adoption agency's charges, legal charges and expenses to cover the birth mother's cost of giving birth.

WHO GETS PAID FOR AN ADOPTION?

Children cannot be bought and sold. Any situation that sounds or looks like the buying and/or selling of children will be closely investigated and can end up being criminally prosecuted in New York.

DO I NEED AN ATTORNEY?

Yes. The laws are hard to understand. The rules and the amount of paperwork involved are very hard to deal with.

For the birth parent(s), making the decision to give up a child is not easy. In private placement adoptions, the birth parent(s) will also need an attorney to make sure that proper procedures are followed.

The Judge may appoint an attorney for the birth parent(s) to make sure that their rights are protected.

WHO PAYS MY ATTORNEY?

In adoptions of children in foster care, attorneys for the birth parent(s) and the adoptive parent(s) are paid for by the government.

Unless the adopting parent(s) qualifies for free legal services, in private placement adoptions and adoptions with private agencies where the children

are not in foster care, the adopting parent(s) must pay their own attorney. They also may have to pay the attorney for the birth parent(s).

WHO CAN SEE THE ADOPTION RECORDS?

In New York, adoption records are sealed. This means that the record of an adoption is not open to the public, the adopted child, the adoptive parent(s) or the birth parent(s).

IF A PERSON OR A FAMILY MEMBER HAS A CRIMINAL RECORD OR A RECORD OF HAVING NEGLECTED OR ABUSED A CHILD, CAN THAT PERSON ADOPT?

It depends. Some criminal felony convictions may stop a person from adopting. Any record of child neglect or abuse will almost always stop a person from adopting.

CAN BIRTH PARENTS CHANGE THEIR MINDS LATER AND GET THE CHILD BACK?

If a court has taken away the parental rights of the birth parents and they wait too long to ask a higher court to change the ruling of the lower court, the birth parents cannot undo an adoption.

If the birth parent has an attorney and comes into court and agrees to the adoption, the birth parent cannot change his/her mind and undo the adoption.

When a birth parent signs a surrender agreement outside of court, the birth parent has only 45 days after signing that surrender to change his/her mind.

CAN I AGREE WITH ANOTHER PERSON THAT SHE WILL HAVE A CHILD FOR ME AND GIVE THAT CHILD TO ME AFTER THE BIRTH?

Parenting and birthing agreements like this (sometimes called surrogate parenting agreements) are not binding in New York. This means that a New York Court will not force a birth parent to give her child to another person just because she agreed to do so, even if the agreement is in writing.

WHO SHOULD I CONTACT IF I WANT TO ADOPT A FOSTER CHILD OR GET THE NAMES OF LEGAL ADOPTION AGENCIES WHICH WILL HELP ME FIND A CHILD I CAN ADOPT?

- New York Council on Adoptable Children
  589 Eighth Ave., 15th Floor
  New York, NY 10018
  (212) 475 0222
  www.coac.org

- New York State Adoption Service
  Office of Children & Family Services
  1-800-345-KIDS (5437)
  www.ocfs.state.ny.us/adopt
  E-mail: adopme@dfa.state.ny.us

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