FAMILY LAW

Adoption

Adoption is the process where a person applies in court to be considered as the parent of a child.

Find more information on adoption and the law here.

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What is adoption?
Adoption is the process where a person applies in court to be considered as the parent of a child.

Who may be adopted?

Any child (a person younger than 18 years of age) may be adopted, where:

- s/he is an orphan and there are no legal guardians or caregivers willing to adopt him/her;
- his/her parents or legal guardians cannot be established;
- s/he was abandoned, for example, the child had no contact with his/her parents or legal guardians for at least three months;
- s/he was abused or neglected by his/her parents, legal guardians or caregivers; or
- s/he needs a permanent home.

Who can apply to adopt a child?

- The following persons, older than 18 years of age, can adopt a child:
    - spouses, partners in a life-partnership (including same-sex partners), or other persons sharing and forming a permanent home;
    - a widower, widow, unmarried, or divorced person;
    - a person married to the parent of the child, for example, a stepparent; or
    - the father of a child born out of wedlock.
- A person cannot be prevented from adopting a child due to his/her financial status.
- A person wanting to adopt a child must be:
- fit and proper to be entrusted with full parental rights and responsibilities;
- willing and able to exercise and maintain those rights and responsibilities; and

be properly assessed by an adoption social worker.

Who must give consent to an adoption?

- Each parent of the child (whether married to each other or not) and/or every legal guardian must give his/her consent.
- If the child is older than 10 years of age, s/he must also give consent.
- If the child is younger than 10 years of age, his/her consent will only be required if s/he has the maturity and understanding to consent to the adoption.
- Consent must be reduced to writing, signed by the person giving the consent and verified by the Children's Court.

Can consent be withdrawn?

- Yes, a person who gave consent to an adoption has up to 60 days after the consent has been given to withdraw his/her consent.
- A Children's Court must not allow the adoption to be finalised before the period of 60 days has expired.

When is consent not required?

Consent is not required if the parents or legal guardians:

- has a mental illness;
- abandoned the child and cannot be tracked down;
- abused or neglected the child, or allowed the child to be abused or neglected;
- failed to fulfill their parental rights and responsibilities towards the child for 12 months;
- failed to respond to the notice of the proposed adoption within 30 days of receiving it;
- is the father of the child, but did not marry the child's mother and did not acknowledge that he is the father of the child;
- is the father of the child who was conceived from an incestuous relationship between his/her parents; and
- is the father of the child and the court found that the child was conceived as a result of the rape of his/her mother.

What is the adoption procedure?

- The first step of the adoption process is that a notice must be served by the sheriff on each parent and/or guardian to request his/her consent to the adoption.
- An interview must be held with a social worker who will compile a report containing information on whether:
- the child can be adopted;
- if the adoption is in the best interests of the child;
- medical information in relation to the child; and
- the eligibility of the prospective parent/s.
- An application for the adoption of a child can be made in the Children's Court and must:
- be accompanied by the report of the social worker;
- be accompanied by a letter from the provincial head of Social Development recommending the adoption of the child; and
- include the necessary consent forms, where applicable.
- The Children's Court must take these factors into account before considering whether to allow the adoption:
- the community, religious and cultural background of the child, the child's parents, and the prospective parent/s;
- if the adoption will be in the best interests of the child; and
- any other relevant information contained in the application.
- Certain fees might be payable during the adoption process, such as professional fees for medical expenses or fees payable to the relevant child protection organisation who assisted with the adoption.
- If an adoption order has been granted by the Children's Court, the order, together with the birth certificate of the child, must be taken to the relevant Home Affairs office to record the adoption and any change in surname, where applicable.

What are the consequences of adoption?

- An adopted child is regarded as the biological child of the adoptive parents.
- All parental rights and responsibilities of the child's biological parents or previous legal guardians, will be terminated. However, the parental rights and responsibilities will not automatically terminate if, for example, the child is adopted by a stepparent while being married to the child's biological parent.

- The adoptive child takes the surname of the adoptive parents (unless the Children's Court states otherwise).
- An adoption will not affect the adoptive child's rights to property s/he obtained before the adoption.

Glossary of terms:

CAREGIVER: a person other than a parent or guardian who has the right to care for a child. Care is the right of that person to have a child reside primarily with him/her and to control or supervise the daily life of that child.

CHILDREN'S COURT: a special court dealing with matters relating to children. Every Magistrate's Court shall be a Children's Court and the High Court is the upper guardian of all children.

CHILD BORN OUT OF WEDLOCK: a child whose parents were not married to each other at the time of the child's conception or at any time after the birth of the child.

GUARDIAN: both parents are guardians of a child born from the marriage; the mother of a child born out of wedlock is the guardian, unless the father acquires guardianship, for example, by living in a permanent life-partnership with the mother; or the court may appoint a guardian. Guardianship includes safeguarding the child's property or property interests; representing the child in legal matters; and consenting to marriage, adoption, removal from South Africa, or an application for a passport.

INCESTUOUS RELATIONSHIP: a sexual relationship between persons who are closely related, for example, brothers and sisters or a father and his daughter.

PARENT: the biological father or mother of a child who has full or limited parental rights and responsibilities over his/her child.

PARENTAL RIGHTS AND RESPONSIBILITIES: to care for a child, maintain contact with the child, act as guardian of the child and to contribute to the maintenance of the child.

SHERIFF: a person who is authorised to deliver court documents, such as summonses and notices.

How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest Branch.

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