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Independent Adoption

Definition
Independent (or private) adoption is a procedure in which the birth parents select the adoptive parents and place the child directly with them. Custody is transferred directly between the parents, rather than through an agency. Independent adoption is not legal in some states.

The Process Before Birth
Initial contact is made between the expectant parents (or parent) and the potential adoptive parents (or parent) either directly or through an intermediary. Intentions regarding an adoption may be discussed, and financial assistance for reasonable support may be considered in many states. Prospective adoptive parents may take financial responsibility for counseling and medical care for the expectant mother in most states, but there may not be cash payment for the baby as such. In all states specific information must be exchanged between birth and adoptive parents and in many states the shared information must be identifying. Although it may be assisted by outside parties, this interaction must be directed by the principals. At this stage, no legal or binding contract can be drawn. In many states, a pre-birth home study must be completed by a state-licensed social worker or agency.

At Birth
In most states, the birth mother may grant permission, in the presence of the hospital social worker or an attorney, to allow the adoptive parents to take the baby home from the hospital with them. The birth mother signs papers assigning to the adoptive parents the baby's temporary custody and authorization to make medical care decisions for the baby. (This is a direct transfer between birth family and adoptive family.) At this point, the birth parents retain full legal custody of the child and have full rights to take the baby back if they desire. A petition is filed asking the state to permit the adoptive parents to adopt the baby.

The Process After Birth
A short time after the birth and after the adoption petition has been filed, the birth parents will be asked to sign the consent forms to transfer permanent legal custody of the baby to the adoptive parents. Once this consent has been signed and the designated time for revocation has passed (which varies from state to state, usually between 1 day and 10 days), the legal burden of proof of cause for disruption shifts to the birth parents. This means that if they wanted to get the baby back, the birth parents would have to go to the court and would have to prove that reunification is in the child's best interest. A home study must be conducted with the adoptive parents if one has not yet been completed and typically two to four home visits by a licensed social worker are required after placement. Once the social worker's post-placement report of the adoptive family has been sent to the court, the adoptive parents appear before the judge with the child to be granted permanent legal and financial custody of the child.

Independent Adoption Laws and Procedures
- The choice of adoptive parents must be made only by the birth mother or birth parents.
- If the child is to be born outside the adoptive parent's state, the adoptive parents must satisfy interstate requirements by having a home study completed prior to the birth of the child.
- The attorney appointed by the adoptive parents will usually coordinate the interstate compact work with the birth parents' attorney.

Paying for Birth Parent Expenses
Financial assistance to the birth parents must comply with the laws of both the state in which the birth parents reside and the state in which the adoptive parents reside. In many states, adoptive parents may pay pregnancy-related medical or hospital costs and necessary living expenses of the mother during her pregnancy and for a short period following. This arrangement usually permits them to pay medical costs; reasonable living expenses; counseling fees; legal costs; and travel expenses. At finalization, adoptive parents usually will have to file a detailed accounting of all their expenses, including all payments or promises of payments to birth parents.

Birth Father's Rights
Generally, birth fathers are separated into two legal categories: "alleged" fathers and "presumed" fathers. The rights of the biological father depend upon his position according to these legal definitions and vary from state to state within the following general rules.

Rights of presumed fathers: The presumed father's consent is almost always necessary for an adoption. If he is not the biological father, his consent may not be required, although he still must be notified of the adoption plan. If his whereabouts are unknown, a diligent effort must be made to find him. If he is not found, his rights can be terminated in court. A man can become a presumed father by being married to the birth mother or without marrying the birth mother by receiving the child into his home and declaring that the child is his biological child.

Rights of alleged fathers: To gain any right to custody of the child or to block the adoption, the alleged father must file a legal action establishing his paternity. His consent to the adoption is not required. In some states, a man cannot be considered an alleged father of a child unless he has come forward and placed his name in a state-maintained paternity registry, declaring that he is the father of the child in question.