

ADOPTION OPTIONS: SELECTING THE RIGHT TYPE OF ADOPTION FOR FAMILY FORMATION

Peggy Clarie Senentz, Esquire

Families face many options when choosing to form their families by adoption. It can be challenging to navigate which adoption option will work best based upon the structure of the family unit or parties. This article provides a summary of the adoption options available for family formation and reviews some of the special considerations which attach to each option.

Non-Relative Adoptions

It is sometimes easier to define what is a non-relative adoption by understanding what it is not. Relative and adult adoptions are excluded from the definition of non relative adoptions. All other types of adoptions fall under the statutory definition of a non-relative adoption. In a non-relative adoption, parental rights to a child are terminated in one proceeding and the adoptive parents establish their parental rights in a subsequent and separate proceeding for that child. Parental rights are constitutionally protected rights so numerous statutory protections attach to the termination and adoption proceeding to ensure due process rights are extended to a parent and that they make an informed and voluntarily decision when relinquishing or accepting parental rights.¹

Practice Tips – A non-relative adoption requires an adoption entity and contains numerous provisions to ensure due process considerations are extended to parents whose rights are being terminated. These include the right to counsel and in addition notices and disclosures being provided to parents in strict adherence to Florida law. In addition, adopting parents are entitled to receive specific information as to the at-risk nature of an adoption of a minor child proceeding and the health/social history of the child and biological family. The adoptive parents must also have a valid home study with the required background clearances. It is important to remember that while parental rights are constitutionally protected, the number of protections under Florida law are many when the child is a minor and a consent to the adoption of a minor child may be deemed invalid or set aside if these constitutional protections are not extended².

Relative Adoptions – Includes Stepparent Adoptions

Under The Florida Adoption Act³, a relative is defined within three degrees of consanguinity to the child and a stepparent adoption⁴ falls within this third degree. Relative adoptions are expedited proceedings and under the Florida

¹ Art. 1, §23, Fla. Const., U.S. Cont. amend XIV.

² §63.2325, Fla. Stat. (2017). §63.182, Fla. Stat. (2017). *In the Interest of I.B.*, 142. So. 3d. 919 (Fla. 5th DCA 2014).

³ §63, Fla. Stat. (2017).

⁴ §63.032(17), Fla. Stat. (2017).

Adoption Act⁵ a petition for termination of the parental rights and petition for adoption may be filed and heard in one action. In addition, many of the statutory requirements which are enumerated for the adoption of minor child for non-relative adoptions are waived, including the requirement for a valid home study to be obtained by the adoptive parent(s) and waiver of the interview of the birth parent whose rights are to be terminated.⁶

Practice pointers – It is important to determine if your family qualifies for a relative adoption and to do so, it is prudent to confirm the stepparent marriage date and for relatives to confirm the degrees of relationship to the child using a consanguinity chart. In addition, it is prudent to analyze if your family situation would benefit from the extension of procedural a procedural safeguard that is not required by the adoption statute states for relative adoptions.

Second Parent Adoptions

A second parent adoption is the process of adding a parent onto a child's birth certificate without a biological parent losing their parental rights. Historically, this type of adoption was used by same sex couples to establish parental rights for the non- biological parent to their partner's child. Prior to *Obergefell*⁷, Florida's prohibition on same sex marriages served as a bar to a same sex couple, even if lawfully married in another state, to petition the Court for a Step Parent Adoption. With the use of a second parent adoption, the non biological parent was added onto the child's birth certificate thereby obtaining parental status regardless of their marital status. The legal arguments for second parent adoptions are rooted in both statutory definition and in constitutional principles. These statutory terms and principles also may be applied to relationships of different sex couples. In a second parent adoption, a birth certificate will use the nomenclature of parent one and parent two for the child's birth certificate.⁸

Practice pointers – A second parent adoption is not a stepparent adoption and instead is classified as a non-relative adoption. Therefore, an adoption entity is required and all the statutory requirements which are enumerated for non-relative adoptions must be followed. A second parent adoption, unlike a relative/stepparent adoption, requires a separate termination of parental rights proceeding be held and after the required waiting period, another proceeding to finalize of the adoption. Of particular importance in a second parent adoption is to review with your clients the need to review their estate planning subsequent to the adoption.⁹

⁵ Id at 3.

⁶ §63.092(3) Fla. Stat. (2017)., §63.082(3)(b) Fla. Stat. (2017).

⁷ *Obergefell et. al. v. Hodges*, 135 S. Ct. 2071 (2015).

⁸ Florida Department of Health Office of Vital Statistics DH 527

⁹ §732.108 Fla. Stat. (2017).

Adult Adoptions

Under Florida law an adult may be adopted.¹⁰ While the adoptee's birth parent is not required to consent to the adult adoption, they are entitled to notice of the final hearing for adoption.¹¹ In addition to the birth parent of the adoptee, other interested parties may also be entitled to notice of the final hearing¹². As the adoptee is an adult, the consent of the birth parent is not required and many of the statutory protections extended when the adoptee is a minor are not required such as the completion of a valid home study and birth parent interview.

Practice Pointers - An adult adoption may involve any either relatives or non-relatives as the Petitioner(s) and the adoptee. Some common types of an adult adoption are a stepparent adult adoption, an adult second parent adoption when one parent retains his or her parental rights and another parent is added onto the birth certificate, or a non-relative adult adoption. As with all other types of adoptions, the termination of a parent's rights not only severs the parental rights which the biological parent has to the minor child or adult adoptee but also severs any relationship with the biological relatives of that child whose parental rights are being terminated. It is important that a final judgment of termination of parental rights and of adoption state the familial relationships that are being severed by termination and states the parental rights that are retained or vested by the adoption. It also helps in preparing your final judgment of adoption to properly identify the adopting parents parentage label such as mother, father or parent 1 or parent 2.

Identifying which adoption option best meets the needs of your clients when seeking family formation can be challenging but holding an understanding of the different types of adoptions and the statutory requirements for each can help your clients achieve permanency in their family formation journey.

Peggy Clarie Senentz, Esquire practices in the areas of Adoption Law, Wills, Trusts & Estates with offices in South Pasadena and Tampa. She is Florida Bar Board Certified in Adoption Law.

¹⁰ §63.032(5), Fla. Stat. (2017).

¹¹ §63.062(8)(b), Fla. Stat. (2017).

¹² §63.182, Fla. Stat. (2017), Goodman v. Goodman, 126 So. 3d 310, (Fla. 3rd DCA 2013).