



# LEGAL BRIEF ADOPTION

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## PREPARED BY

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## ADOPTION

### I. INTRODUCTION TO ADOPTION

States have agencies that arrange and supervise adoptions by working with both the adoptive parents and the birth parents to match up adoptive parents with children. Generally, the adoptive parents are responsible for paying the birth mother's medical, legal, and other associated expenses while the adoption is proceeding. Older children are also available for adoption, and in some cases the parental rights of the birth parents have already been terminated by the state.

Actual adoption procedures vary from state to state. Nevertheless, all states require adoptive parents to prepare for the adoption with a social worker. This preparation includes an interview and a home inspection to determine whether they are "fit." Once the social worker and state agency are both satisfied, a court will finalize the adoption. Adoption agencies are listed in the phone book, though it may be best to get a referral from an acquaintance instead.

### II. FOREIGN ADOPTIONS

Adopting a child from a foreign country may avoid long waiting periods often present with United States adoption agencies; however, foreign adoptions can be especially complicated. Anyone attempting to adopt a child from a foreign country will need to complete large quantities of paperwork and work closely with the United States Citizenship and Immigration Service. It may be helpful to find another parent that has adopted from the country you are considering and then contact the attorney that the person used.

### III. GIVING UP A CHILD FOR ADOPTION

Giving up a child for adoption traditionally meant that the birth mother (and usually father) surrendered all rights and were relieved of all responsibilities with respect to the child. While some states allow a form of open adoption in which the birth parent retains some rights, in Nevada and most states, adoption terminates all birth-parent rights in the child. Adoption is an irrevocable option. That is, once a certain point has passed the birth-parents cannot "change their mind" and reinstate their parental rights. Thus, this decision is not one that should be made

without consulting both a doctor and a counselor, whether legal or otherwise. Adoption requires that the birth-parent sign an agreement to surrender all rights in the child.

Each state has an agency that administers adoptions; during the adoption process, the child may be placed in foster care. The use of private agencies or a personal arrangement with an individual or couple can also be accomplished. However, it is illegal for anyone to pay money for a child. Even with this prohibition in place, it is allowable for the adoptive parents to pay the medical expenses and hospitalization costs for the birth mother and child.

#### IV. NEVADA ADOPTION LAW

An adult person must be found “fit and competent” to be a parent by a state court judge to adopt in Nevada. An adoption petition may be filed in district court by any single adult, jointly by a husband and wife who maintain their home together, or by either the husband or wife if the other spouse is a parent of the child. An individual adopting a child must be at least ten years older than the child.

Several requirements must be met for a petition to be legally sufficient:

1. The petitioners must have been residents of the state of Nevada for at least 6 months.
2. The full names and ages of the petitioners and the child to be adopted must be included.
3. The petitioners must state their desire to establish the legal parent-child relationship with the child to be adopted.
4. The petition must state whether the child’s name is to be changed.
5. The petitioners must state they are financially able to care for the child.
6. The petition must state whether or not the child is an Indian Child under Nevada law.
7. The petition must state that all laws and regulations in regard to consent to adoption have been complied with.
  - a. The informed consent of the natural parent is generally required.
  - b. If the child is over 14, the child must also consent to the adoption.
8. The petition must state that the petitioners have complied fully with NRS 127.220 – 127.310, inclusive. (Nevada Revised Statute)

When an adoption petition is filed, a hearing date will be set. Prior to the hearing a copy of the petition will be served on the welfare division of the department of human resources, which shall make an investigation and report any findings. If one of the petitioners or the spouse of the petitioner is related to the child within the degree, the court, in its discretion, may waive the investigation. Any investigation and the report by the welfare division shall not become a matter of public record. All adoptions hearing are confidential and must be held in a closed court.

Other laws regarding objections and adoption without consent can be found in the Nevada Revised Statutes or you may consult an Air Force Legal Assistance or civilian attorney.

## V. ADOPTION ASSISTANCE

Currently, there are two ways military members can receive financial help when they are contemplating adoptions. The military member may be entitled to a tax credit on his or her adoption expenses, or he or she may be entitled adoption reimbursement from the Federal Government.

### *1. Adoption Tax Credit and Exclusions*

You may be able to take a tax credit for qualifying expenses paid to adopt an eligible child (including a child with special needs). The adoption credit is an amount subtracted from your tax liability. For expenses paid prior to the year the adoption becomes final, the credit generally is allowed for the year following the year of payment. A taxpayer who paid qualifying expenses in the current year for an adoption which became final in the current year, may be eligible to claim the credit for the expenses on the current year return, in addition to credit for expenses paid in a prior year. The adoption credit is not available for any reimbursed expense. In addition to the credit, certain amounts paid by your employer for qualifying adoption expenses may be excludable from your gross income.

For both the credit or the exclusion, qualifying expenses include reasonable and necessary adoption fees, court costs, attorney fees, traveling expenses (including amounts spent for meals and lodging while away from home), and other expenses directly related to and for which the principal purpose is the legal adoption of an eligible child. An eligible child must be under 18 years old or be physically or mentally incapable of caring for himself or herself. The adoption credit or exclusion cannot be taken for a child who is not a United States citizen or resident unless the adoption becomes final. A taxpayer also may be eligible to take an increased credit or exclusion for expenses related to the adoption of a child with special needs if the child otherwise meets the definition of qualifying child, is a United States citizen or resident, and a state determines that the child cannot or should not be returned to his or her parent's home and probably will not be adopted unless assistance is provided. The credit and exclusion for qualifying adoption expenses are each subject to a dollar limit and an income limit.

Under the dollar limit the amount of your adoption credit or exclusion is limited to the dollar limit for that year for each effort to adopt an eligible child. If you can take both a credit and an exclusion, this dollar amount applies separately to each. For example, if we assume the dollar limit for the year is \$10,000 and you paid \$9,000 in qualifying adoption expenses for a final adoption, while your employer paid \$4,000 of additional qualifying adoption expenses, you may be able to claim a credit of up to \$9,000 and also exclude up to \$4,000.

The dollar limit for a particular year must be reduced by the amount of qualifying expenses taken into account in previous years for the same adoption effort.

The income limit on the adoption credit or exclusion is based on your modified adjusted gross income (AGI). If your modified AGI is below the beginning phase out amount for the year, the income limit will not affect your credit or exclusion. If your modified AGI is more than the beginning phase out amount, your credit or exclusion will be reduced. If your modified AGI is above the maximum phase out amount, your credit or exclusion will be eliminated.

Generally, if you are married, you must file a joint return to take the adoption credit or exclusion. If your filing status is married filing separately, you can take the credit or exclusion only if you meet special requirements.

## *2. Adoption Expense Reimbursement Program (AERP)*

The Department of Defense offers a program to reimburse an individual or a couple for adoption expenses – up to \$5,000 in one year. The DoD Instruction 1341.09, Incorporating Change 1, April 23, 2009, outlines the policy for adoption reimbursement.

Under the procedures established by the DoD, a Service member must submit a request for reimbursement using DD Form 2675, to the nearest military personnel and finance office no later than 1 year after finalization of the adoption. The member must obtain a receipt for his or her records from the military personnel and finance office showing the date the application was submitted. The date of the receipt shall be used to determine if the 1-year requirement has been satisfied. Exceptions can be made by the Service certifying official when deployment responsibilities impact the member's ability to comply with the 1-year deadline; in these cases, the certifying official who signed the DD Form 2675 shall submit a letter stating that the member's deployment impacted the member's ability to comply with the 1-year deadline.

This program applies to members whose adoption of a child under 18 years of age is finalized after 2 Nov 07. Members may be reimbursed a maximum of \$2,000 per child for qualifying expenses related to the adoption, and a maximum of \$5,000 for multiple adoptions per calendar year. Certain rules do apply. Please contact MPF for additional details.

## VI. CONCLUSION

If you need further assistance with your adoption questions you can contact the Family Court Building, 1<sup>st</sup> Floor, 601 N. Pecos Road, 455-1500, Clark County Department of Family Services, or schedule a legal assistance appointment to speak with an attorney.

**THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT YOUR CIVILIAN ATTORNEY OR THE NELLIS AIR BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.**