

STEPPARENT ADOPTION

This packet is designed to help you through the process of filing a *Stepparent Adoption*. In this packet we will refer to places in the NEW MEXICO STATUTES (NMSA) that you can read for certain information that must be included. The New Mexico statutes can be located at the UNM Law Library. The New Mexico statutes can also be found on the web at www.nmcourts.gov, see 2nd Judicial District Court NM Statutes on-line. In addition, you may look in the Yellow Pages under Attorneys for further assistance and legal advice. They are listed by the types of cases they accept. Included in this packet are definitions of some words that may be unclear or unfamiliar.

When you see, “*Stepparent Adoption* (See 32A-5-32 NMSA 1978)” indicated in the packet, we are suggesting that you read the NEW MEXICO STATUTES ANNOTATED 1978, Chapter 32A, Article 5, Paragraph 32 (Stepparent Adoptions).

A person may adopt his/her spouse’s child in accordance with the condition of the Adoption Article:

1. When the adoptee has lived with his/her stepparent for at least one year following the stepparent’s marriage to the custodial parent:
 - a. Placement will not be required.
 - b. A pre-placement study or post—placement report will not be required unless ordered by the Court.
2. When the stepparent and the custodial parent have been married for less than two years, counseling will be required for the stepparent and the custodial parent;
3. The non-custodial parent will receive counseling prior to consenting or relinquishing unless counseling is waived;
4. The *adoptee*, if ten (10) years of age or older, will receive counseling;
5. A report of fees and charges shall not be prepared unless ordered by the Court;
6. The Court may waive the ninety-day period between the filing of the petition for adoption and granting of the decree of adoption;
7. When adopted, the adoptee will take the name indicated in the adoption petition so long as the Petitioner’s spouse and the *adoptee* if fourteen (14) years of age or older, consent to the name;
8. When an *adoptee* has not lived with the stepparent for more than one year following the stepparent’s marriage to the custodial parent, the adoption shall proceed as an *independent adoption*;
9. When the adoptee is foreign born and has not obtained legal status, additional requirements must be met through immigration before pursuing a stepparent adoption.
10. If the child is of Native American decent, additional requirement must be met.

Submit your documents for filing to the Children’s Court Clerk located at 5100 Second St. NW Rm. 173 between the hours of 8:00am – 4:30pm. The required filing fee is \$132.00. Cash, a cashier’s check or money orders are acceptable forms of payment. Personal checks and credit cards are not accepted. All additional paperwork will continue to be filed with the Children’s

Court Clerk. When filing any paperwork, provide an original with at least three additional copies. **A COPY OF ALL PAPERWORK FILED IN AN ADOPTION MATTER MUST BE MAILED TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT BY THE PETITIONER.**

1. The caption for adoption paperwork shall be worded, "In the Matter of the Adoption Petition of (Petitioner's Name)".
2. A petition for adoption shall be completed and verified by the Petitioner (See 32A-5-26 NMSA Petition; content). The verification must be notarized. Prepare an original set plus three additional copies. The Petitioner shall provide to the clerk of the Court a self-addressed stamped envelope addressed to the department as follows:
 - Children, Youth and Families Department
 - Protective Services Division
 - Central Adoptions Unit
 - P.O. Drawer 5160
 - Santa Fe, NM 87502-5160

The clerk of the Court will mail a copy of the petition for adoption to the Children, Youth and Families Department in the self-addressed stamped envelope provided by the Petitioner.

3. The Petition for Adoption and Summons or Notice of Petition of Petition for Adoption will be served by the Petitioner on the following persons unless it has been previously waived in writing:
 - a. Any acknowledged father of the adoptee(s);
 - b. The surviving parent of a deceased parent of the adoptee(s);
 - c. Any person known to the Petitioner having custody of, or visitation with the adoptee under a court order;
 - d. Notice does not need to be served on the following persons:
 - i. Alleged or putative fathers;
 - ii. Any person whose parental rights have been relinquished or terminated.

If a parent is not served, the adoption may be void. Therefore, every effort must be made to serve the parent. To properly serve a party, please refer to the New Mexico Rules Annotated, Section 1-004.

4. If the whereabouts of a parent whose consent is required is unknown, service by publication may need to be requested from the Court. The Judge may schedule a hearing in this matter, but this type of request does not usually require a hearing. The following documents should be filed with the Court when making your request:
 - a. A Motion for Service by Publication: The motion should list the Petitioner's reasons for asking the Court to grant this motion. It should include what attempts you've made to locate the biological father, along with proof that supports your efforts.
 - b. An Affidavit for Publication (affidavit as to the identity and whereabouts of the non-custodial parent): This document is a sworn statement made by the custodial parent advising the Court why service of the petition cannot or could not be made personally. For example, the affidavit should include information about the biological father's last known address and detail what you've done to locate the biological father. If the mother alleges that the identity of the father is unknown, the Petitioner shall obtain an affidavit signed by the mother stating the

circumstances which caused the lack of knowledge of the father's identity. This affidavit must be signed by the custodial parent and notarized.

- c. An Order Allowing Service by Publication: This document should list the reasons why the motion for service by publication is being granted. This document must be signed by the judge assigned to the case.
 - d. The Petitioner will file the motion for service by publication and affidavit of service of publication. The endorsed copies of these documents along with three (3) copies of the order to publish and pre-addressed stamped envelopes addressed to interested parties should be dropped off at the assigned judge's office. If the order is approved by the Judge, then the secretary will file and mail the endorsed copies of the motion and order to parties listed on each envelope. If a hearing is needed, a hearing date will be scheduled and a notice of hearing will be sent to interested parties.
 - e. Once the Petitioner receives the endorsed copy of the motion and order for publication, the Petitioner should prepare the notice of adoption petition then file it in the clerk's office to have the Notice of Petition for Adoption issued. DO NOT publish prior to the order from the judge being signed.
 - f. Notice of Petition for Adoption: This document needs to be completed by the Petitioner. The signature line that indicates, "Deputy" should be left blank. The clerk will sign and seal the Notice of Petition for Adoption.
 - g. Take the endorsed copy of the Notice of Petition for Adoption to a newspaper published in the county where the case is pending or the last known address of the biological parent you are trying to serve. Please contact the newspaper for further inquiries about cost. Remember that the Notice of Petition for Adoption should be published one day per week for three (3) consecutive weeks.
 - h. If the biological parent fails to respond to the publication by 5:00pm on the 20th day from the last day of publication, the Petitioner shall prepare and submit a Certificate as to the State of the Record. Before filing, this document needs to be completed by the Petitioner. The signature line that indicates, "Deputy" should be left blank. The clerk will sign and seal the Certificate as to the State of the Record.
5. Prepare the Motion for Default Judgment and Request for Hearing and file with the clerk's office. Once the motion is filed, deliver an endorsed copy to the judge's secretary along with three copies of the Default Judgment and pre-addressed stamped envelopes for all parties. If the order is approved by the Judge, the secretary will file and mail the endorsed copies of the motion and order to parties listed on each envelope. If the order is not approved, a hearing will be scheduled.
 6. A criminal records check will be done on the Petitioner. The fingerprint card and instruction sheet can be obtained by calling the Children, Youth and Families Department in Santa Fe, NM. The phone number is (505) 827-8464. They can also be reached by mail at:

Children, Youth and Families Department
Protective Services Department
Criminal Records Check
P.O. Drawer 5160
Santa Fe, NM 87502

7. An “Abuse and Neglect Check for Prospective Foster/ Adoptive Parents” must be completed. This form can be obtained from the Children’s Court Paralegal or by calling Protective Services at (505) 827-8464 or toll free at (800) 610-7610. This form along with the finger print card and a check for \$33.00 must be submitted to:
 - Children, Youth and Families Department
 - Attn: Loretta Perea
 - P.O. Drawer 5160
 - Santa Fe, NM 87502
8. Counseling is required for couples who have been married for one year but less than two years. Also, children who are ten years of age or older must receive two sessions of counseling. Counselors must be CYFD certified in adoption counseling. You can obtain a list of counselors from CYFD or the Children’s Court Paralegal.
9. Once all the necessary paperwork has been filed, the Petitioner shall file a request for hearing and submit an endorsed copy of the request and four (4) copies of the notice of hearing with the Judge’s office. The request shall be for the finalization of adoption. **Remember to include self-addressed stamped envelopes.** Also, all consents and the final decree must be submitted to the judge’s secretary for review. The Court will review the file to determine if everything required by statute has been submitted in its proper content. If it appears to be ready for hearing, the secretary will schedule a hearing and mail out the notice of hearing provided by the Petitioner. At this hearing, the Petitioner shall have all the consents ready for signature. The final decree for adoption should be prepared for final approval by the District Court Judge.
10. 32A-5-38 Birth Certificates (1993)
 - a. Within 30 days after an adoption decree becomes final; the Petitioner shall prepare an application for a birth certificate in the new name of the adoptee and have it certified by the court clerk. The birth certificate shall be in the new name of the adoptee showing the Petitioner as the adoptee’s parent and shall provide the application to the clerk of the Court. Petitioner shall then forward the application to Vital Records:
 - i. For a person born in New Mexico the address is:
 - [New Mexico Vital Records and Health Statistics](#)
 - P.O. Box 26110, 1105 St. Francis Dr.
 - Santa Fe, NM 87502
 - ii. For a person born in another state, the appropriate vital statistics office of the place, if known, where the adoptee was born; or
 - iii. For all other persons, to the state registrar of vital statistics. In the case of the adoption of a person born outside the United States, if requested by the Petitioner, the Court shall make findings based on evidence from the Petitioner and other reliable state or federal sources on the date and place of birth of the adoptee. These findings shall be certified by the Court and included with the application for a birth certificate.
 - b. The state registrar of vital statistics shall prepare a birth record in the new name of the adoptee in accordance with the vital statistics laws, but subject to the requirement of the Adoption Act [Chapter 32A, Article 5NMSA 1978] as to the confidentiality of adoption records.