

Name Change for Minors

exists. You must apply for a name change with the Circuit Court where you are incarcerated.

In order to change the name of a minor, an application must be made by the child's "next friend" (usually a parent) and notice must be given to any other living parent. This notice may be waived if the court determines that it would present a serious threat to the child. If one of the natural parents objects to the change of a name, the court will hear evidence on the matter. The court will order the name change only if the evidence proves that the change is in the best interests of the child.

A step-parent adoption can be reasonably simple if the noncustodial parent (parent without custody) consents in writing, is unknown or is deceased. The step-parent files the petition to adopt and the natural parent who is married to the step-parent consents to the proposed adoption by filing a written statement of consent under oath. The circumstances under which the child came to live in the adoptive home determine the appropriate procedures to be followed. In many cases, the probationary period and investigative reports may not be required.

Adoptions conducted through licensed child-placement agencies or governmental agencies have somewhat different procedures. The state agency or licensed child-placement agency publishes these guidelines.

If you are interested in pursuing adoption, it is very important to speak with a lawyer who is familiar with this area of the law. He or she can fully explain the procedures, rights and obligations involved in adopting a child, which are designed to protect the rights of the natural parents and ensure that the proposed placement is in the best interests of the child. Any deviation from the proper procedure may delay the adoption or cause serious problems in the future.

Also, once a child is adopted, the duty to provide financial support for the adopted child begins. The duties, responsibilities and rights of the birth parents are completely severed after the adoption, and the birth parents are considered "legal strangers" to the child. A step-parent who adopts his or her spouse's child may have to provide child support should the husband and wife later separate and/or divorce.

Step Parent Adoption Procedures

Other Adoptions

Rights and Obligations

ADOPTION

Types of Adoption

In Virginia, there are several different types of adoption. The two most common types are private placement adoptions and step-parent adoptions. In private placement adoption, the natural parent(s) generally place the child directly with the adoptive parents of their choice. A step-parent adoption usually occurs when natural parents have divorced or one natural parent has died and the new husband or wife seeks to adopt the step-child. Other types of adoption include agency placements and children adopted through foster-care programs.

Private or Direct Placement Procedures

Adoption usually begins with the filing of a petition in the Juvenile Court. The sole purpose of this petition is to secure the consent of the natural parent(s) or guardian of the child to be adopted and to appoint the prospective parents as guardians of the child. The actual petition for adoption is then filed in the Circuit Court.

The Circuit Court judge will then enter an interlocutory order, which declares that, subject to at least six months' probation, the child will be the child of the petitioning parent. This order generally directs a licensed child placing agency, the local Board of Public Welfare, or the Commissioner of Social Services to investigate and report on the proposed adoptive placement. During the next six months, agency personnel will visit the adoptive home several times to ensure that the child and new parents are adjusting and functioning as a new family. After all of the visits have been completed and after at least six months have passed since the entry of the interlocutory order, the investigative agency will issue its recommendation. If the recommendation is positive, the Circuit Court will then enter a final order of adoption.

PATERNITY

Paternity, unless acknowledged by the father at the time of a child's birth, is established by the court. A mother will need to prove paternity if she wants the father to pay child support or if she expects the child to inherit property from the father's estate.

To establish paternity in Virginia, a child, a parent, the person with legal custody of the child or an appropriate state representative files a sworn petition with the Juvenile or Circuit Court where the child lives.

Procedure

Because of the parents' conflict of interest, neither parent may represent the child as guardian or otherwise. The court, therefore, may appoint a guardian ad litem (attorney paid by the court) to represent a child under 18 years of age.

The following are presumed to establish paternity, if there is not evidence to the contrary:

- A written statement of parenthood acknowledged by the father under oath in front of a notary public;
- Genetic blood testing that shows at least a 98% probability that a man is the child's father (the court can order that the alleged father and child submit to a blood test);
- Proof of a lawful adoption; or
- The child was born to a man and woman married to each other.

Other actions by the alleged father may also be sufficient for a court to determine paternity. These actions include openly living with the mother at the time of conception, the father's public statement to others that he is the father of the child, allowing the child to use his last name, financially supporting the child or claiming the child as a dependent for public assistance or tax purposes. Additionally, the court's paternity decision only applies to persons who are parties to the court proceeding.

MEDIATION

Process

In appropriate cases, mediation can be used as an alternative to litigation. Mediation is a cooperative process in which opposing parties tell their stories and work together to develop their own agreement.

Effectiveness

Mediation can be effective in child custody, visitation and support because the parties have an ongoing relationship as parents, even though their spousal relationship has ended. Mediation can provide a way for couples to create a positive parenting relationship even though they are no longer married. Mediation can also be used to resolve issues of spousal support and equitable distribution of assets and liabilities.

The mediator is a neutral third party. Mediators do not give advice, make judgments or settle disputes

but instead help opposing parties work out their own solutions. A mediator is someone who can help you go through a step-by-step process to resolve your own dispute.

The courts have the power to refer you for a free evaluation to determine whether mediation could be a useful tool for you. If there is a history of family abuse, you may ask the court not to make such a referral, as mediation generally is not appropriate in cases of domestic violence.

You are not required to have a court referral in order to participate in mediation; you may select a mediator privately and participate in voluntary mediation to work out a settlement agreement.

NEED FOR LEGAL ASSISTANCE

Because of the cost involved in hiring a lawyer, many people appear without a lawyer in Juvenile Court. For basic information on certain court-related topics, you can call Telecourt at (877) 801-2303. For example, you may decide to represent yourself in an uncontested custody matter, to request an increase in child support or to seek an emergency protective order. If you choose to proceed without a lawyer, the Juvenile Court clerk's office can give you information about filing and procedures.

You may decide that hiring a lawyer is necessary to protect your interests if, for example, your case involves complex financial issues, or if the opposing party has a lawyer. If you would like to hire a lawyer but do not know one who could represent you, you may contact the Virginia Lawyer Referral Service for help. If you are calling in Virginia, you may reach the Lawyer Referral Service toll-free at 1-800-552-7977.

If you cannot afford to hire a lawyer, legal aid offices around the state offer free legal services if you meet certain financial eligibility guidelines. To find out if you are eligible, call the Virginia Legal Aid Hotline at 1-866-LEGLAID (1-866-534-5243). For more information on Virginia Legal Aid and their offices throughout the Commonwealth, please see their website www.VALegalaid.org

Court Referral

Proceeding Without a Lawyer

Finding a Lawyer

GLOSSARY

Adoption: The legal process pursuant to state statutes in which a child's legal rights and duties toward his natural parents are terminated and similar rights and duties toward his adoptive parents are substituted.

Annulment: To nullify, abolish, or otherwise establish that a marriage never existed.

Assault and Battery: Any unlawful touching of another without justification or excuse. Battery requires physical contact of some sort, whereas assault is committed without physical contact.

Delinquent Child: An infant of not more than a certain age (usually 18) who has violated criminal laws or engages in disobedient, indecent or immoral conduct, and is in need of treatment, rehabilitation, or supervision.

Emancipation: Principally used in reference to the emancipation of a minor child by its parents, which involves an entire surrender of the right to the care, custody, and earnings of such child as well as a renunciation of parental duties. This usually occurs upon the child reaching majority (age 18).

Equitable: Upon divorce, the distribution of all property legally and beneficially

Distribution: acquired during marriage by husband and wife, or either of them, whether legal title is in their joint or individual names.

Injunction: A court order prohibiting someone from doing some act or commanding someone to undo some wrong or injury. Some injunctions are temporary, and some are permanent.

Joint Custody: Joint custody means both parents retain joint responsibility for the care and control of a child and both parents have joint authority to make decisions concerning the child even though the child's primary residence may be only with one parent.

Marital Property: All assets acquired by either spouse during marriage except those that can be shown to be separate.

Paternity: The state or condition of father; the relationship of a father.

Protective Order: Any order or decree of a court whose purpose is to protect a person from further harassment or abuse of service of process or discovery.

Separate Property: Those assets owned by either spouse prior to the marriage and those acquired afterward by gift, devise, or exchange for other separate property.

Sole Custody: One person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.