

# *The Legal Rights of Women in Vermont*

## **Adoption, Guardianship & Emancipated Minors**

### **Chapter 1**

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If you are considering adoption, have been adopted, wish to be appointed guardian for a minor child, or want to understand how to become an emancipated minor, this chapter will help you understand your rights under Vermont law.

### **Who Can Adopt**

You may **petition for adoption in the Vermont Superior Court Probate Division** if:

- a child has been placed with you for the purpose of adoption;
- you have been selected as a possible adoptive parent by a person authorized to make such a selection;
- you had physical custody of a child for at least six months just before the filing of the adoption petition, if the filing of the petition is allowed by the court;
- you are the child's stepparent;
- you want to adopt an emancipated minor or an adult.

**A couple who is neither married nor in a civil union can adopt a child.** Some Vermont Probate Division judges permit joint adoptions, while others may require the parties to go through a "stepparent or second parent" adoption procedure which is explained in a later section.

If the couple ends their domestic relationship after the adoption, the Family Division of the Superior Court will determine the rights and responsibilities of each parent, as well as any parent-child contact and child support. In these situations, child custody and support are treated just as they would be in a divorce proceeding.

### **Who Can Be Adopted**

A **minor child** can only be adopted if he/she has been placed for adoption by:

- a parent who has legal and physical custody of the child;
- a guardian who has been authorized by the courts to place the child for adoption;
- an agency to which the child has been given for the purposes of adoption by the parent or guardian; or
- an agency that has been expressly authorized by a court order that has terminated parental rights.

**A parent who has legal and physical custody of a child cannot place the child for adoption if the other parent has legal custody or visitation rights with the child and that parent's whereabouts are known.** An exception is made if the other parent has agreed in writing to the adoption placement or has been sent an appropriate notice of the proposed adoption. This allows the other parent to object to the adoption and take whatever steps may be available to that parent during the court's consideration of the adoption. Except in those cases in which a birth parent is unknown, a reasonable effort must be made to notify that parent of the proposed adoption.

An **emancipated minor or adult can be adopted.** The process is essentially the same, except that the emancipated minor or adult has to file the petition for adoption along with the person who wishes to adopt them. This means that the person who is being adopted must understand the consequences of the adoption and how that will affect their legal rights.

## **Procedure for Adoption**

### **Formal Petition for Adoption**

There are many requirements that have to be met and appropriate documents that have to be filed with the court while going through an adoption proceeding. Some of these include the preplacement evaluation, the final evaluation, appropriate documents relating to the child, the status of the birth parents, and the appropriate documents from the adoption agency (if one was used).

### **The Probate Division will grant a petition for adoption if it finds that:**

- the adoption is in the best interest of the child,
- notice of the pending adoption has been given to the appropriate people and entities,
- every necessary consent, relinquishment, waiver, disclaimer in paternal interest, judicial order terminating parental rights, or other document has been filed with the court,
- all appropriate evaluations have been filed with, and considered by, the court,
- the person(s) seeking to adopt is a suitable parent for the child,
- the person(s) seeking to adopt has received all the health and background information about the child which is required to be provided by law, if applicable, any legal requirement governing an interstate or intercountry placement for adoption has been met,
- the Indian Child Welfare Act is not applicable, or that its requirements have been met.

Once a child has been placed with you for purposes of adoption, you must file a **formal petition for adoption at the Probate Division of the Vermont Superior Court** within 45 days, unless you are a foster parent, relative, or stepparent.

### **Preplacement Evaluation**

Before you can start the formal process to become an adoptive parent, you must have a favorable preplacement evaluation. The evaluation must have been conducted no more than one year prior to placement or it will have to be updated. **There are a few exceptions to this rule, but a favorable evaluation will have to be received in all cases before a final adoption can take place.** This is required in placements by an agency and private placement by the parents.

Preplacement evaluations must be performed by an evaluator authorized by the Vermont Department for Children and Families. The evaluation has to be completed within 90 days after it is requested, unless the Probate Division allows for a longer time.

If you receive an evaluation saying that you are not suited to be an adoptive parent, you have 90 days from the time you receive the unfavorable evaluation to petition for a review by the Probate Division.

### **Disclosure of Information to Adoptive Parents**

The **Vermont Adoption Act** includes a long list of the types of information that need to be provided. Before a child is placed for adoption, either by a birth parent or an adoption agency, a fairly complete social and health history of the child as well as of the child's birth parents and extended family must be given to the prospective adoptive parents. This information must be provided if it is reasonably available from the parents, relatives or guardian of the child, the agency, any person who had physical custody of the child for 30 days or more, or any person who has provided health, psychological, educational or similar services to the child. It also specifically requires adoption agencies to inform the adoptive parents of any unique requirements or special needs the child has and that the agency is aware of. This includes any adoption subsidies for which the child might be eligible.

### **Rights of Birth Parents**

In many cases, the birth parents may have given up or "relinquished" their parental rights to an adoption agency. The agency then places the child with a proposed adoptive family.

**Before an adoption can take place, the woman who gave birth to the child must consent to the adoption and relinquish her parental rights, unless the court has terminated her parental rights.** The father may have to consent and relinquish his rights, which is explained in more detail below. If the child is under the care of a guardian who is not the parent, the guardian(s) may have to consent if they are legally recognized as the mother or father, or the court has otherwise given them authority to consent to adoption. **If the**

**parents are minors, they can only consent to adoption and relinquish parental rights if they have been advised by an attorney who is not representing the adoption agency.**

If the birth parents are making a direct placement of the child without going through an adoption agency, they must sign a consent in order for the adoption to occur. The same timelines apply to direct placement as adoption through an agency.

A “relinquishment” is signed in the presence of a judge. This relinquishment hearing cannot be scheduled until **the child is at least 36 hours old**. Any relinquishment may be revoked within 21 days of having signed it by simply notifying the court in which the document was signed. **If the relinquishment is not revoked within 21 days, the adoption becomes final and irrevocable unless a court orders otherwise.**

### **Rights of Birth Fathers**

**Consent of the biological father of the child to be adopted is not required under certain circumstances.** If the biological father was not married to the birth mother, he signed a notarized statement denying paternity or disclaiming any interest in the child after the child was conceived, and he acknowledged that his statement is irrevocable.

Otherwise, the following men must be notified of the pending adoption and must either sign a consent to the adoption or take other action to contest the adoption:

- the biological father of the child, if he is identified by the birth mother or is otherwise known to the Probate Division;
- a man who was married to the birth mother at the time the child was born, or was legally separated, or had the marriage terminated within 300 days of the child’s birth;
- a man who was not married to the birth mother at the time the child was born, but has formally acknowledged that he is the father of the child, or has filed a notice to retain parental rights, and has demonstrated a commitment to the responsibilities of parenthood by setting up a custodial, personal or financial relationship with the child, or can show that he was prevented from or unable to do so;
- a man whom the person seeking adoption knows is claiming to be or who is named as the father or possible father of the child when paternity of the child has not yet been determined by a court (unless he has already signed a formal statement denying paternity or disclaiming any interest in the child).

**Notice of the adoption petition is not required to be sent to any of the above men if their parental rights were formally terminated by a court.**

### **Rights of People Who Have Been Adopted**

All records of an adoption will be permanently held by the **Vermont Adoption Registry** ([See VCW’s Resource Directory – Adoption section](#)) and sealed for 99 years after the adopted

person's date of birth, except as outlined below:

Access to information depends on when the adoption was finalized. **If the adoption was finalized before July 1, 1986**, the adoption registry can only release identifying information if the birth parent agreed to be identified at your request when the adoption was finalized. This is called a "consent to disclose." **If the adoption was finalized after July 1, 1986**, the adoption registry will probably provide the information requested even without the consent of the birth parent.

If you have been adopted and are at least 18 years old, or if you are the child of someone who was adopted and has passed away, you may request information about the birth parents. If you have been adopted and are at least 18 years old, you may seek to **identify your birth parents** or the person who terminated their parental rights and other identifying information kept by the official Vermont Adoption Registry.

If you do not need their names, but just want information about them, you will request "**non-identifying information.**"

Who can request non-identifying information:

- adoptee 18 years or older;
- emancipated adoptees;
- adoptive parents or adoptee's legal custodians / guardians;
- direct descendants of deceased adoptees;
- birthparents;
- birth grandparents; or
- birth siblings.

If you have a serious health condition and want information relating to your family health history, you can submit a certified statement from a physician explaining why you need this information to the court if it denies your request.

Non-identifying information includes either:

- a detailed summary of information in the adoption record (for example – birth parents, birth siblings, adoptee's genetic information or social background); or
- a summary of the adoption record (for example – adoptee's history after parental rights were relinquished, the adoption, or the adoptive parents.).

Anyone who is denied non-identifying information that they are entitled to may petition the court to obtain the information.

A person who has been adopted and is at least 18 years old can give permission to the registry to disclose their own identifying information to the adoptee's birth parent or sibling of the adoptee, if the sibling is at least 18 years old.

The identifying information kept by the Adoption Registry includes:

- the adoptee's birth date, name at birth and after adoption;
- the names and addresses of the adoptee's former parents and adoptive parents;
- the date and court in which a consent or relinquishment of parental rights was filed;
- the date and court in which the petition for adoption was filed;
- any agency which was involved in the adoption;
- the date and nature of the results of the adoption petition;
- any consent for disclosure or document requesting non-disclosure;
- any non-identifying background information that was provided to the adoptive parents, such as the social and health histories of the adopted child and the child's birth parents.

Who can request identifying information:

- adoptee 18 years or older;
- emancipated adoptee;
- direct descendants of deceased adoptee;
- birthparents; or
- birth siblings 18 years or older.

If adoptees are denied identifying information by the Registry, they can petition the court for the information. However, if the birth parent filed a formal request to never have their identity released to you, then the court cannot release their identity to you. This is called a **"request for non-disclosure"** and is an official document that any birth parent who releases their parental rights can file with the court. The birth parent can withdraw the request for non-disclosure at any time.

In certain limited circumstances the probate division is authorized to release identifying information to a person who was adopted despite the fact that no "consent to disclose" document was filed with the registry. The court must make a reasonable effort to locate the birth parent in advance of the hearing for the purpose of determining the birth parent's position on the issue.

## **Adoption of Stepchildren and Others**

Ordinarily, in order for a child to be adopted, the parental rights of the child's prior legal parents must be terminated.

**Vermont law provides an exception for the adoption of a minor stepchild, or the minor child (biological or adopted) of one's partner.** You may adopt the minor child of your spouse or unmarried partner of either sex, if your spouse or partner:

- has sole legal and physical custody of the child and the spouse or partner has had physical custody of the child for the six months before the adoption petition was filed;

- has joint legal custody and the child has resided primarily with the spouse and stepparent for the 12 months before the adoption petition was filed.

**Such a** stepparent or second parent adoption will not terminate the parental rights of the adoptive stepparent's or second parent's spouse or partner, although such an adoption does terminate any former parent's parental rights. **For that reason, you must** generally get the written consent of the child's other legal parent in order to obtain a stepparent or second parent adoption. If the parent whose rights will be terminated will not consent to the adoption, the other parent can file a Petition for Termination of Parental Rights. The petition is not a guarantee to terminate the parental rights. The court may also require a formal evaluation of the stepparent in order to assure that adoption is in the best interest of the child.

A stepparent or partner who wishes to adopt must file a **Petition to Adopt Minor by Stepparent** with the Probate Court.

In addition, the law provides for the adoption of an **emancipated minor, an adult, or any adult who has been found to be incompetent by the court.** Vermont law does not allow a person to adopt his or her spouse.

## **Guardianship of a Minor**

Guardianship is different from adoption in that it does not end the legal relationship between a parent and a child. Typically, a guardian takes care of a child's personal needs, including shelter, education, and medical care. Financial obligations of the parent are not ended. A guardianship usually ends when the child is 18 years of age.

In Vermont, biological parents or interested potential guardians may petition the Probate Division for an **Order of Guardianship of a Minor** who is under the age of 18 for one or more of the following reasons:

- the child has no living parent;
- the biological parent is unsuitable to have custody of the child;
- the parents agree that the transfer of custody to a legal guardian would be in the best interest in the child and **is not solely for the purpose of establishing a residence for school.**

Two individuals may be named. The Probate Division can appoint a parent, a family member or an individual who is not related to the child. Vermont law also allows parents to name their choice for guardian in their will, in case both parents die before the children are 18 years of age.

**Minors, 14 years or older may choose their guardian, subject to court approval.**

## Emancipation of a Minor

If you have reached a point where you feel you can no longer live with your parents, you have a couple of options. You can file with the Probate Division to have someone besides your parents appointed as a guardian or you can ask the court to emancipate you. The choice to seek either emancipation or a guardianship is a serious one with a number of repercussions.

As explained above, guardianship allows you to have another family member or family friend act as your guardian and can be a less drastic compromise to problems with your parents.

Emancipation means the release of a minor from the legal control of his or her parents. You are also considered an emancipated minor if you are or have been married, or if you are on active duty with any branch of the armed forces. **An emancipation order may not be used for the purpose of obtaining residency and in-state tuition or benefits at the University of Vermont or Vermont state colleges.**

**If you are 16 years old or older, and feel you cannot live with your parents, you may ask the Probate Division to emancipate you.** You need to tell the Probate Division your name, date of birth, residence, and why you want to be emancipated. You also need to tell the Probate Division who your parents are and where they live.

To be emancipated, you must show that it is in your best interest to be emancipated and that you:

- have lived separate and apart from your parents, custodians, or guardians for at least three months before the hearing;
- are managing your own financial matters and **are able to demonstrate the ability to be self-sufficient in your economic and personal affairs without being on public assistance;**
- have, or are working toward a high school diploma, GED, or equivalent; and
- are not under the custody of the Department for Children and Families or the Commissioner of Corrections.

Emancipation may mean that you no longer qualify to be covered by the health insurance of your parent or guardian.

## Relevant Laws

### Vermont:

Adoption Act, 15A V.S.A. Chapters 1-7

Emancipation of a Minor, 12 V.S.A. Chapter 217

Guardianship of a Minor, 14 V.S.A. Chapter 111 §2621 et seq.



**Federal:**

Indian Child Welfare Act, 25 U.S.C.A. §1901 et seq.

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