

Stepparent Adoption

A stepparent adoption usually occurs when one or more of the four interested parties (noncustodial birthparent, custodial birthparent, stepparent, or the adoptee (child or adult to be adopted) believes that it is in the best interests of adoptee. This belief is sometimes fostered by the fact that one relationship has dissolved (the relationship between the child or adult being adopted and the non-custodial parent) and another has emerged (the relationship between the child or adult being adopted and the stepparent). As a result, the stepparent adoption simply provides legal recognition and confirmation of the emotional relationship that has already formed.

BENEFITS OF A STEPPARENT ADOPTION

Once the Order of Adoption is granted, the stepparent obtains the following legal rights that did not exist prior to the stepparent adoption:

1. As a part of the adoption, the adoptee's name can be changed;
2. The stepparent adopting the adoptee then stands in the place of a parent or parents to the adoptee in law and in all respects as though the adopted person had been born to the adopting parent and is liable for all the duties and entitled to all the rights of parents;
3. The birth certificate of the adoptee is changed to reflect the fact the stepparent status has been erased and replaced with the new status as legal parent.
4. The adoptee becomes an heir at law entitled to inheritance; and
5. Although the grandparents related to the child through the non-custodial parent lose all legal rights to demand visitation after the adoption order is entered, nothing prevents the parents of the child from allowing such visitation if they believe it to be in the best interests of the child.

FIRST STEP: TERMINATION

Michigan law does not allow a child to have more than two "parents". Consequently, before a stepparent adoption can occur, the non-custodial parent's rights must be terminated by death, voluntary consent or involuntarily by proof of abandonment.

CONSENT

Courts prefer to complete the termination of the non-custodial parent's rights after that parent is served with proper notice of the Termination Hearing, appears at the hearing and answers certain questions in court. The purpose of these questions is to verify that the non-custodial parent's consent is being given freely, voluntary, and without coercion because that parent believes the stepparent adoption is in the best interest of the child.

If the court believes that the consent was not given of the non-custodial parent's free will, the adoption will not be granted. If the court believes that the non-custodial parent has been promised something of value (such as money), then the court will not accept the consent or grant the Order of Adoption.

CONTESTED TERMINATION

Although adoption after the non-custodial parent comes to court and gives voluntary consent is the preferred way to complete a stepparent adoption, it is not the only way. Michigan allows a stepparent who provides the material and emotional support to a child (that would be normally be expected of the child's legal parent) to adopt the child of a non-custodial parent who has essentially abandoned the child and who has refused, or is unavailable, to consent to the adoption. The Michigan stepparent adoption statute does not literally use the word "abandoned"; it permits termination of the rights of non-custodial parents who have not financially supported

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and communicated with their child. Failure to financially support a child can be proved at least three different ways: if for a period of two years or more before the filing of the petition, a non-custodial parent:

1. "having the ability to support," fails to do so;
2. "having the ability to assist in supporting," fails to do so; or
3. "if a support order has been entered," and the non-custodial parent has failed to substantially comply with the order.

When deciding the "ability to support" question, courts can look at a variety of income sources, not just those considered for calculating child support. Failure to support can sometimes be established even when the most recent support order is held in abeyance (suspension).

Once the failure to financially support a child is established, the contested adoption case is not over. In order to terminate the rights of the non-custodial legal parent who has not appeared in court to consent to the adoption, it must also be established that such parent has also failed to visit, contact or communicate with their child.

If the non-custodial parent is a man that was not married to the mother at the time of the birth of the child and has never legally established paternity, an easier procedure for terminating his rights exists. These types of cases are often referred to as putative father cases.

NEXT STEP:

After the non-custodial parent's rights are terminated, the court will order an investigation of the proposed adoptive family, sometimes referred to as a home study. If that home study indicates that the adoption is in the best interests of the adoptee (child or adult), then the court will allow the parties to file the final papers necessary to complete the adoption and schedule a confirmation hearing.

DO I NEED AN ATTORNEY?

A question that is often asked is, "Do I need an attorney to complete a stepparent adoption?" The answer is determined by the complexity of an individual case. People often prefer to hire an attorney so that they can obtain more information about the adoption process and how to accomplish it in the most efficient manner. Court staff are not permitted to give legal advice. So the first benefit to hiring an attorney is that you have a resource that is available to answer your legal questions about the process. The more complicated an adoption is, the more important it is to hire an attorney. If the non-custodial parent lives outside the United States or out-of-state, an attorney can offer valuable guidance as to how to efficiently complete the termination of the non-custodial parent's rights so the adoption can proceed. If the non-custodial parent is in prison, it is advisable to hire an attorney. Additionally, if the birth father is unwilling to consent, an attorney can often identify facts and legal arguments that will persuade a judge to terminate his parental rights.