

# ADOPTION OVERVIEW

# 1

## INTRODUCTION

When clients make a decision to build or grow their family through adoption, they have made the first step in a process that takes time, patience, and persistence. Adoption requires an experienced adoption professional who can guide the client through the different types of adoptions. The professional can identify and determine the applicable laws for a particular adoption and ensure they can legally finalize the adoption in a proper jurisdiction.<sup>1</sup> Some of the essentials of

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1. In each state, different courts hear specific cases. In Florida, Illinois, Kentucky, Michigan, Mississippi, Missouri, Oregon, Pennsylvania (Orphan's Court), South Dakota, Tennessee, Utah, Virginia, Maryland, Nebraska and West Virginia, adoptions are heard in the circuit court. District courts hear adoptions in Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Texas, Wyoming, and American Samoa and Puerto Rico. The District of Columbia's adoptions are in the superior court, along with adoptions in Alaska, Arizona, California, Georgia, New Jersey, North Carolina, Washington, Guam, and the Virgin Islands. Alabama, Arkansas, Connecticut, Indiana, Maine, Massachusetts, New Hampshire, Ohio, and

adoption law include knowing and understanding what the terms used mean, who can be adopted, who can adopt, which state substantive laws will apply to the adoption, who to contact for helpful information, how to prepare adoptive clients for the emotional and financial risks of adoption, and how to properly advise birth parents regarding their rights in the adoption process.

Adoption is a legal process where the legal relationship between the adopted child and his or her biological parents and relatives is completely severed and a relationship of parent and child is created between the adoptive parents and the child.<sup>2</sup> Ensuring the adoption is handled properly and ethically from intake to finalization to prevent an attack on the adoption later is the primary goal of every adoption attorney.

## DEVELOPMENT OF LAW

Adoption law was and is created by statute. There has never been a common law form of adoption. Although early in American history there may have been informal arrangements whereby children were reared by someone other than their biological parents,

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Vermont handle adoptions in probate court. Colorado, Louisiana, Iowa, and Minnesota handle adoptions in juvenile court. Delaware, Hawaii, New York, Rhode Island, and South Carolina have family court handle their adoptions. In addition, in some states, the court of original jurisdiction for adoption proceedings may be a division of a court of more general jurisdiction. For example, in Michigan, the family division of the circuit court has jurisdiction over adoptions. In New Mexico, jurisdiction over adoption petitions lies with the children's court division of the district court, while in Missouri and Wisconsin, the juvenile division of the circuit court has jurisdiction over adoption proceedings. In Vermont, adoption cases are handled by the probate division of the superior court. This majority of this information was obtained from the Child Welfare Information Gateway at <https://www.childwelfare.gov/>.

2. *See, e.g.*, 2005 CONN. CODE, § 45a-707 (formerly § 45-61b). Likewise, the Uniform Adoption Act of 1994 (not adopted by all states) section 1-105 states that after an adoption is final, the legal relationship of parent and child between each of the adoptee's former parents and the adoptee terminates, except for a former parent's duty to pay arrearages for child support. Every state has a similar statute establishing the termination of the previous parents' rights and affirming those rights on the adoptive parents.

this was not a legally recognized relationship.<sup>3</sup> As such, the child's biological parents always retained their parental rights. Today, when there is an informal arrangement where adults are performing the function of a parent, they may be referred to as *de facto* parents, psychological parents, or third parties, but they are not adoptive parents.<sup>4</sup> In the United States, adoption first became recognized in the 1850s, when the first statutes on adoption became law. However, those statutes did not provide the detail, certainty, or protections that adoption laws do today. Massachusetts was the first state to enact an adoption statute in 1851.<sup>5</sup> Adoption pursuant to this statute required judicial approval, consent of the child's parents, and a finding that the adoptive family had the sufficient ability to raise the child.<sup>6</sup> Despite the requirement, there were no

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3. See Ellen Herman, *The Adoption History Project*, UNIVERSITY OF OREGON, <http://pages.uoregon.edu/adoption/timeline.html>, for a detailed history of adoption.

4. These terms are defined differently by each state; however, they generally refer to a person who stands in the shoes of a parent and performs parental-type functions with a child.

5. See "Adoption," *DICTIONARY OF AMERICAN HISTORY* (2003); *ENCYCLOPEDIA .COM*, October 22, 2010, <https://www.encyclopedia.com/children/encyclopedias-almanacs-transcripts-and-maps/adoption-united-states>; or *The Adoption History Project*, UNIVERSITY OF OREGON, <http://pages.uoregon.edu/adoption/timeline.html>, for a more detailed history of adoption.

6. "An Act to provide for the Adoption of Children," Acts and Resolves passed by the General Court of Massachusetts, Chap. 324 (1851).

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

Sect. 1. Any inhabitant of this Commonwealth may petition the judge of probate, in the county wherein he or she may reside, for leave to adopt a child not his or her own by birth.

Sect. 2. If both or either of the parents of such child shall be living, they or the survivor of them, as the case may be, shall consent in writing to such adoption: if neither parent be living, such consent may be given by the legal guardian of such child; if there be no legal guardian, no father nor mother, the next of kin of such child within the State may give such consent; and if there be no such next of kin, the judge of probate may appoint some discreet and suitable person to act in the proceedings as the next friend of such child, and give or withhold such consent.

Sect. 3. If the child be of the age of fourteen years or upwards, the adoption shall not be made without his or her consent.

Sect. 4. No petition by a person having a lawful wife shall be allowed unless such wife shall join therein, and no woman having a lawful husband shall be competent to present and prosecute such petition.

Sect. 5. If, upon such petition, so presented and consented to as aforesaid, the judge of probate shall be satisfied of the identity and relations of the persons, and that the petitioner, or, in case of husband and wife, the petitioners, are of sufficient ability to bring up the child, and furnish suitable nurture and education, having reference to the degree and condition of

guidelines for when or how consent to the adoption was taken or what the consent meant in regard to irrevocability. Likewise, there were no safeguards to ensure the consent was informed or voluntary or what it meant for the adoptive parents to be sufficiently able to raise the child.<sup>7</sup> In 1917, Minnesota was the first state to create and implement more adoption safeguards. Minnesota required that either a private or a public agency investigate a potential adoption and make recommendations to the court regarding the placement.<sup>8</sup> However, the suitability requirement of the adoptive

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its parents, and that it is fit and proper that such adoption should take effect, he shall make a decree setting forth the said facts, and ordering that, from and after the date of the decree, such child should be deemed and taken, to all legal intents and purposes, the child of the petitioner or petitioners.

Sect. 6. A child so adopted, as aforesaid, shall be deemed, for the purposes of inheritance and succession by such child, custody of the person and right of obedience by such parent or parents by adoption, and all other legal consequences and incidents of the natural relation of parents and children, the same to all intents and purposes as if such child had been born in lawful wedlock of such parents or parent by adoption, saving only that such child shall not be deemed capable of taking property expressly limited to the heirs of the body or bodies of such petitioner or petitioners.

Sect. 7. The natural parent or parents of such child shall be deprived, by such decree of adoption, of all legal rights whatsoever as respects such child; and such child shall be freed from all legal obligations of maintenance and obedience, as respects such natural parent or parents.

Sect. 8. Any petitioner, or any child which is the subject of such a petition, by any next friend, may claim and prosecute an appeal to the supreme judicial court from such decree of the judge of probate, in like manner and with the like effect as such appeals may now be claimed and prosecuted in cases of wills, saying only that in no case shall any bond be required of, nor any costs awarded against, such child or its next friend so appealing. Approved by the Governor, May 24, 1851.

7. U.S. CHILDREN'S BUREAU, ADOPTION LAWS IN THE UNITED STATES: A SUMMARY OF THE DEVELOPMENT OF ADOPTION LEGISLATION AND SIGNIFICANT FEATURES OF ADOPTION STATUTES, WITH THE TEXT OF SELECTED LAW (Emelyn Foster Peck, ed., Bureau Publication No. 148, Washington, DC, Government Printing Office 1925), 27–28.

8. *Id.*

**Minnesota Adoption Law of 1917**

*Adoption; petition and consent.*—Any resident of the State may petition the district court of the county in which he resides for leave to adopt any child not his own. If the petitioner be married the spouse shall join in the petition. All petitions for the adoption of a child who is a ward or pupil of the State public school shall be made jointly by the person desiring to adopt such child and the superintendent of the State public school. . . .

*Investigation by board of control.*—Upon the filing of a petition for the adoption of a minor child the court shall notify the State board of control. It shall then be the duty of the board to verify the allegations of the petition, to investigate the condition and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption, and to make appropriate inquiry to determine whether the proposed foster home is a suitable home for the child. The board shall as soon as practicable submit to the court a full report in writing, with a recommendation as to the granting of the petition and any other information regarding the child or the proposed home which the court shall require. No petition shall be granted until the child shall have lived for six months in the proposed home: *Provided, how-*

parents had no substance, and there was confusion over what the adoption meant, particularly because historically, some cases allowed the child to still inherit from his or her biological parents even after the adoption was finalized.<sup>9</sup> Currently, every state has specific laws that outline how and when consents can be taken; home study requirements for adoptive parents that provide a full overview of their financial, emotional, and social situation; and other safeguards to protect the child and parties to the adoption.<sup>10</sup>

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*ever*, That such investigation and period of residence may be waived by the court upon good cause shown, when satisfied that the proposed home and the child are suited to each other.

*Consent, when necessary.*—Except as herein provided, no adoption of a minor shall be permitted without the consent of his parents, but the consent of a parent who has abandoned the child, or who can not be found, or who is insane or otherwise incapacitated from giving such consent, or who has lost custody of the child through divorce proceedings or the order of a juvenile court, may be dispensed with, and consent may be given by the guardian, if there be one, or, if there be no guardian, by the State board of control. In case of illegitimacy, the consent of the mother alone shall suffice. In all cases where the child is over fourteen years old his own consent must be had also. . . .

*Decree; change of name.*—If upon the hearing the court shall be satisfied as to the identity and relationship of the persons concerned, and that the petitioners are able to properly rear and educate the child, and that the petition should be granted, a decree shall be made and recorded in the office of the clerk, setting forth the facts and ordering that from the date thereof the child shall be the child of the petitioners. If desired, the court, in and by said decree, may change the name of the child.

*Status of adopted child.*—Upon adoption such child shall become the legal child of the persons adopting him, and they shall become his legal parents, with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption, he shall inherit from his adopting parents or their relatives the same as though he were the legitimate child of such parents, and shall not owe his natural parents or their relatives any legal duty; and in case of his death intestate the adopting parents and their relatives shall inherit his estate as if they had been his parents and relatives in fact.

*Annulment.*—If within five years after his adoption a child develops feeble-mindedness, epilepsy, insanity, or venereal infection as a result of conditions existing prior to the adoption, and of which the adopting parents had no knowledge or notice, a petition setting forth such facts may be filed with the court which entered the decree of adoption, and if such facts are proved the court may annul the adoption and commit the child to the guardianship of the State board of control. In every such proceeding it shall be the duty of the county attorney to represent the interests of the child.

*Records of adoption.*—The files and records of the court in adoption proceedings shall not be open to inspection or copy by other persons than the parties in interest and their attorneys and representatives of the State board of control, except upon an order of the court expressly permitting the same.

9. *Id.*

10. See Child Welfare Information Gateway at <http://www.childwelfare.gov/adoption>.

## PARTIES TO AN ADOPTION

The parties to an adoption are the adoptee (a child or an adult); the biological parents,<sup>11</sup> often referred to as the “birth parents,” “expectant parents,” “natural parents,”<sup>12</sup> or “placing parents”;<sup>13</sup> and the adopting or adoptive parents. Adoption laws are created with a goal of protecting all of these parties in every adoption, and the parties are often referred to as the “adoption triad.” The rights of the adoptive parents and the birth parents in an adoption are not absolute rights because they are subject to what is in the adoptee’s best interest. Thus, for every adoption, a judicial determination is necessary, and the court must find the adoption is in the adoptee’s best interest before it can be granted.

## WHO CAN ADOPT?

Who can adopt varies among agencies and states and by the child’s country of origin. Adoptions in the United States are governed by state laws and regulations, which are different in every state.<sup>14</sup> Some jurisdictions allow a single parent to adopt a child; some pro-

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11. In a case where the child was previously adopted, the placing parent would *not* be a biological parent but would be the previous adoptive parents.

12. “Natural parent” is not used as frequently in adoptions anymore but was previously an accepted term. In some statutes and cases, this term will appear, but the more accepted terms are the others listed.

13. There is a distinction in adoption drawn between an “expectant parent” and a “birth parent” in that an expectant parent is one when the child has not been born while a birth parent is a parent who has a child that has been born; however, for ease of use, in this book the term “birth parent” will be used to refer to both the biological parent of a child that has been born and the biological parent of a child who is expected to be born.

14. Child Welfare Information Gateway (CWIG) is a service of the U.S. Department of Health and Human Services. It connects child welfare and related professionals to comprehensive information and resources to help protect children and strengthen families. The website has compiled state laws regarding who may adopt in *Who May Adopt, Be Adopted, or Place a Child for Adoption?* You may locate the services at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/parties/>. This website updates information about specific state laws regularly and was used often to confirm or obtain updated information for this book.

hibit certain individuals from adopting based on their sexual orientation.<sup>15</sup> Most jurisdictions require a husband and wife to jointly adopt a child. Other jurisdictions have age requirements, such as that the adopting parents must be at least 21 years old to adopt.<sup>16</sup> Likewise, there are some state statutes that include religion<sup>17</sup> and race<sup>18</sup> as factors to consider when placing a child with a particular adoptive couple. Often these factors are not mandatory or binding, but they exist nonetheless. While state laws have general requirements, private agencies can elect to limit the families they will work with based on factors such as age or religion. When one is looking at who can adopt, it is important to know the state laws where the clients reside, where their agency is licensed, and where the birth parents or adoptee resides. Choosing which substantive

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15. In Arkansas, Act 1 approved in 2008 prohibits couples who are not married—both gay and straight—from adopting a child. The law does not prohibit single gay individuals from adopting, only those who are cohabiting outside of the traditional bounds of wedlock. Utah forbids unmarried couples to adopt. Section (b) of the Utah adoption code reads: “A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. For purposes of this Subsection (3)(b), ‘cohabiting’ means residing with another person and being involved in a sexual relationship with that person.” Until 2010, Florida prohibited gay and lesbian parents from adopting, but that changed with the *Florida Department of Children and Families v. In re Adoption of X.X.G. and N.R.G.*, 3D08-3044 (2010) decision, finding the ban for gays to adopt to be unconstitutional.

16. In six states—Kentucky (KY. REV. STAT. § 199.470), Louisiana (LA. CHILD. CODE ANN. art. 1198, 1221), Montana (MONT. CODE ANN. § 42-1-106), New Jersey (N.J. STAT. ANN. §§ 9:3-39.1; 9:3-43), Tennessee (TENN. CODE ANN. §§ 36-1-115), and Washington (WASH. REV. CODE § 26.33.140)—the statute states that the prospective parents must be 18 to be eligible to adopt. Three states—Colorado (COLO. REV. STAT. §§ 19-5-202, 14-1-101), Delaware (DEL. CODE ANN. tit. 13, §§ 903, 951), and Oklahoma (OKLA. STAT. ANN. tit. 10, § 7503-1.1)—and American Samoa (AM. SAMOA CODE ANN. § 45.0411) set the age at 21; and Georgia and Idaho specify age 25. A few states allow minors to adopt under certain circumstances, such as when the minor is the spouse of an adult adoptive parent. Other states require the adopting parent to be “an adult” under their state laws. For up-to-date information on the age to adopt, visit <http://www.childwelfare.gov/adoption>.

17. E.g., MO. ANN. STAT. § 211.221 (Vernon 1983); TEX. CODE ANN., FAM. CODE § 16.032 (Vernon 1986); COLO. REV. STAT. ANN. § 19-4-103(1) (1986); D.C. CODE 1981 § 16-305.

18. *In re* Petition of R.M.G., 454 A.2d 776 (D.C. App. 1982) (race is a factor but must be directly relevant to the adoptee’s welfare).

state law will apply to a particular adoption is discussed in Chapter 6 under “Determining Applicable Law.” An analysis is required because for each case, an attorney must determine if the laws in one state are better suited for the adoption process and may advise adoptive parents to pursue and finalize their adoption in a state other than their state of residence to take advantage of more favorable provisions in the law.

## WHO CAN BE ADOPTED?

In the United States, any child can be adopted as long as the child is available or being placed for adoption and the child meets the statutory requirements, which generally require the child be under the age of 18. Generally, any child whose biological parents make an adoption plan or whose parental rights have been terminated is eligible to be adopted.

Some states do not allow or may restrict adult adoptions to certain situations.<sup>19</sup> Any adult who wishes to be adopted may be adopted unless he or she lives in a state that does not have adult adoptions. In this instance, using choice of law principles, the adult may consider the adopting parents’ state if it is different than the adult adoptee’s state of residence. In states that allow adult adoptions, there may be a requirement that the adult’s biological parents consent to or at least be notified of the adoption and given an opportunity to be heard on the issue of having their parental rights terminated, but not all states require this notice.

Internationally,<sup>20</sup> a child must meet certain guidelines before being adopted, and those guidelines differ depending on whether the country is a Hague country (i.e., a country that has adopted the Hague Adoption Convention Treaty) or a non-Hague country.<sup>21</sup>

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19. See Chapter 15 for a full discussion on adult adoptions.

20. Although international adoptions are generally addressed from time to time, this book is focused on domestic adoption. For detailed information on international adoption, consider reviewing *THE INTERNATIONAL ADOPTION SOURCEBOOK* published by the American Immigration Lawyers Association.

21. A Hague country is one that has ratified the Hague Adoption Convention Treaty (HACT). Doing so affects inter-country adoption by establishing a Central Authority to ensure the adoption process is safeguarded. In



The United States has specific definitions of a child eligible for adoption<sup>22</sup> from a Hague country:

1. The child is under the age of 16 at the time the I-800<sup>23</sup> is filed on his or her behalf (taking into account special rules on filing dates for children aged 15–16), is unmarried, and lives in a Convention country.
2. The child will be adopted by a married U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least 25 years of age, habitually resident in the United States, whom United States Citizen and Immigration Services (USCIS) has found suitable and eligible to adopt (Form I-800A approval) with the intent of creating a legal parent–child relationship. Note that at this stage, the child must not have been adopted yet, unless that adoption has been voided by the country of origin. (USCIS, in September 2008 FAQs on its website, offered guidance on cases in which the adoption cannot be voided in the country of origin.)
3. The child’s birth parents (or parent if the child has a sole or surviving parent), or other legal custodian, individuals, or entities whose consent is necessary for adoption, freely gave their written irrevocable consent to the termination of their legal relationship with the child and to the child’s emigration and adoption.
4. If the child has two living birth parents who were the last legal custodians who signed the irrevocable consent to adoption, and they are determined to be incapable of providing proper care for the child.

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the United States, that is the Department of State. Adopting the HACT also requires that the adoptive parents use the services of an authorized adoption service provider who has been accredited and certified by the two countries to handle the adoptions; finally, there are specific forms to be completed that differ from those for non-Hague countries to ensure the adoptive parents and child are suitable for the process. See Chapter 19 on international adoption for a full discussion.

22. For U.S. definitions and information about individual countries, visit the U.S. State Department website at <http://adoption.state.gov>.

23. This is the form required by the United States for International Hague adoptions. It can be found at [https://travel.state.gov/content/travel/en/Inter-country-Adoption/adopt\\_ref/adoption-forms.html](https://travel.state.gov/content/travel/en/Inter-country-Adoption/adopt_ref/adoption-forms.html).

5. The child has been adopted or will be adopted in the United States or in the Convention country in accordance with the rules and procedures elaborated in the Hague Adoption Convention and the Inter-country Adoption Act of 2000, including that accredited adoption service providers were used when required, and there is no indication of improper inducement, fraud, misrepresentation, or prohibited contact associated with the case.<sup>24</sup>

For non-Hague countries, a child who may be adopted must meet the following criteria: the child must have no parents, or the child has a sole or surviving parent who is unable to care for the child and the parent has, in writing, irrevocably released the child for emigration and adoption.<sup>25</sup> The form to be completed for a non-Hague country is the I-600. A discussion on the re-adoption or finalization process in the United States for a child adopted internationally is discussed in Chapter 19 on international adoption under “Re-adoption and Foreign Finalizations.”

## TYPES OF ADOPTION

There are two types of domestic adoption: independent and agency. An independent adoption is where the birth parents place the adoptee in the direct care of the adopting parents without an agency taking guardianship of the child or otherwise facilitating the adoption. Some states specifically prohibit or restrict independent adoption.<sup>26</sup> Independent adoptions are also referred to as “nonagency,” “parental placement,” “direct placement,” or “private” adoptions.

A private agency adoption is where a birth parent surrenders his or her parental rights to a licensed, private, child-placing agency, which assumes guardianship and then places the child with the adoptive parent(s) for adoption. A public agency adoption, which includes foster care, is generally where children are removed

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24. See <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html>.

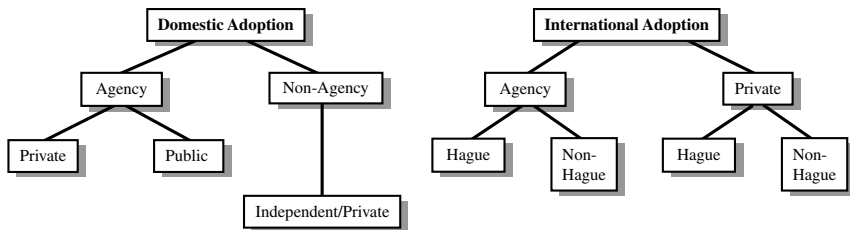
25. *Id.*

26. Delaware, DEL. CODE ANN. tit. 13, § 904, and Massachusetts, MASS. GEN. LAWS, part II, tit. III, ch. 210, § 11A.

from their birth parents due to neglect or abuse or the birth parent surrenders the child to the public agency because he or she cannot care for the child. Like a private agency, a public agency obtains legal custody or guardianship of the child and places the child for adoption after the parental rights are terminated.

There are also two types of international adoption: agency and private. Attorneys who handle international adoptions are very specialized because it requires a working knowledge of and relationships with foreign officials regarding the foreign countries' adoption procedures. These persons are Hague approved as individuals to process international adoptions. To pursue an international adoption, most clients use an accredited agency that has developed an international adoption program in the clients' country of interest. Thus, the agency is licensed in the United States and has been approved by the foreign country to process adoptions by going through numerous certifications and clearances referred to as "Hague accreditation." The laws, the necessary contacts, and the accreditations required to handle adoptions from a foreign country are complex and require working knowledge of the requirements for the United States as well as the country in question. Thus, use of an established agency or accredited attorney is highly recommended and routinely required. Below is a flow chart that demonstrates the different types of adoptions in a way that is easier for potential clients to understand.

**ADOPTION FLOWCHART**



**FINALITY OF ADOPTION**

Upon entry of a final decree of adoption, the biological or previous adoptive parents' rights are terminated and the current adoptive

parents' rights are set. The final decree of adoption is a final order or judgment given full faith and credit by all other states.<sup>27</sup> State courts require final hearings in adoptions, where, routinely, the adoptive parents and child appear before the judge. Often, this requirement cannot be waived. However, for cases where there are out-of-state residents, some state courts will allow the parents to finalize by phone; an attorney should obtain court approval through proper motions for an order waiving the parties' appearance if this is the case. Generally, in cases involving out-of-state residents, the adoptive parents appear before the judge for a preliminary or placement hearing at the time the child is placed with them in that state so that the parties do appear at least one time in person before a judge.<sup>28</sup> Depending on the status of the case and adoption before the court, the final hearing could be pro forma or a full hearing where evidence and testimony are presented to the court. Adoption attorneys should, of course, properly prepare their clients for the particular type of hearing that will occur in their case.

Once an adoption is finalized, states have a statute of repose of generally one year. Some states do have shorter periods of six months, while others allow for up to three years. A statute of repose is a statute barring a lawsuit or an attack on the final decree a fixed number of years after the final decree has been entered. With a statute of repose, the claim or right does not exist because it is extinguished when the time period passes as set forth in the statute. Generally, this statutory time period is used to cure jurisdictional or procedural defects in an adoption; however, some states allow an adoption to be attacked for varying periods of time for fraud, duress, or undue influence.<sup>29</sup> Once the time set

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27. See *V.L. v. E.L.*, 2016 WL 854160, in which the U.S. Supreme Court unanimously extended full faith and credit to Georgia second-parent adoption. For a further discussion on full faith and credit, see Chapter 10 on second-parent adoptions.

28. This is not the case for every state or every court and may be left to the discretion of the presiding judge in the particular adoption.

29. In Chapter 6 there is a discussion on choice of law that must take place as soon as adoptive parents are matched with birth parents, and iden-

forth in the statute of repose has passed, the adoption decree cannot be attacked directly or collaterally thereafter.

## TERMINOLOGY

Adoption terms are set forth in the glossary at the back of this book; however, how an attorney speaks about adoption to members of the adoption triad and other professionals is as important as knowing the definitions. Understanding terminology and being able to relate to a birth parent, child, or adoptive parent in a respectful manner and not offending any party with language choices can set an attorney apart by evidencing his or her specialized understanding of the adoption triad. For example, the following chart<sup>30</sup> sets forth the current nonpreferred and preferred language used when talking about adoption to clients and others.

In many ways, the word usage in the chart appears obvious, or perhaps the differences really “don’t make sense,” but as adoption professionals, attorneys understand the nuances and how they can make a client or prospective client feel.

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tifying the post-adoption aspects is an important part of that analysis. For example, if one state allows an adoption decree to be attacked for fraud indefinitely and another only allows such an attack within six months, that becomes part of the analysis for making a determination of where the adoption will be finalized.

30. In most cultures, adoptive families face what has been termed “adoptism.” Adoptism is made evident in English-speaking cultures by the prominent use of negative or inaccurate language describing adoption. To combat adoptism, adoptive families encourage positive adoption language. This chart was adapted from <https://family.findlaw.com/adoption/glossary-of-adoption-terms.html>; however, changes were made based on the author’s view of updated or current terminology accepted among adoption professionals.

<b>Nonpreferred</b>	<b>Preferred</b>	<b>Reason for Preference</b>
Your own child	Birth child	Saying a birth child is “your own child” or “one of your own children” implies that an adopted child is not.
Child is adopted	Child was adopted	Some adoptees believe that their adoption is not their identity but is an event that happened to them. (“Adopted” becomes a participle rather than an adjective.) Others contend that “is adopted” makes adoption sound like a disability to be overcome.
Gave away or did not want baby	Unable to parent	Biological parents do not give away their baby and generally “want” to parent, but they are unable to do so.
Give up for adoption	Place for adoption or make an adoption plan	“Give up” implies a lack of value. The preferred phrases are more emotionally neutral.
Real mother Real father Real parent	Birth mother Birth father Birth parent Biological mother Biological father Biological parent	The use of the term “real” implies that the adoptive family is artificial, and it is not as descriptive as the preferred language.
Birth mother Birth father Birth parent	Expectant parent Expectant mother Expectant father	“Birth parent” refers to a biological parent after the baby is born; until then, the person is an expectant parent.
Your adopted child	Your child	The use of the adjective “adopted” signals that the relationship is qualitatively different from that of parents to birth children.

## SUMMARY POINTS

- The power of a court to grant an adoption is purely statutory and does not exist at common law.<sup>31</sup>
- The parties to an adoption include the adopting parent(s), the biological parents, and the child.
- Adoption laws are intended to protect the adoption triad.
- Each state has statutory requirements adoptive parents must meet before adopting. Adoptive parents must be adults.
- Any child and, in some states, adult may be adopted.
- There are two types of adoption in the broader sense: domestic and international. The latter can be private or public agency, while the former can be private agency, public agency, or private adoption. Private is also referred to as “independent” or “parental placement.”
- Adoptions are meant to provide security, and thus final decrees can only be attacked in specific circumstances within strict periods of time.

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31. *See, e.g., Atkins v. Gose*, 189 Md. 542, 56 A.2d 697 (1948); *Falck v. Chadwick*, 190 Md. 461, 59 A.2d 187 (1948).