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Adoption Procedures and Forms: A Guide for Virginia Lawyers

Editors: Colleen M. Quinn
Barbara C. Jones

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Adoption Procedures and Forms: A Guide for Virginia Lawyers

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VIRGINIA LAWYERS PRACTICE HANDBOOK

ADOPTION PROCEDURES AND FORMS:
A GUIDE FOR VIRGINIA LAWYERS

Seventh Edition

Editors:

Colleen M. Quinn
Locke & Quinn / Richmond

Barbara C. Jones
Clifton

 Virginia CLE[®]
Publications

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CHAPTER 2

PLACEMENT FOR ADOPTION

2.1 WHO MAY PLACE

2.101 Virginia Agencies. A licensed or authorized child-placing agency may place children for adoptive purposes in Virginia.¹ This includes (i) public agencies (referred to as authorized child-placing agencies) that are branches of the department of social services, and (ii) private agencies (which must be licensed child-placing agencies).² Public or private agencies outside of Virginia also may place a child in Virginia.

Adoption units attached to local departments of social services often are involved in placing children whose parents' parental rights have been terminated by the courts for abuse, neglect, or abandonment.³ Public agencies also deal with prior foster care placements in which parents have failed to rehabilitate themselves within 12 months or failed to maintain continuing contact with a child for 6 months and have, therefore, had their parental rights terminated. Subsidies and adoption assistance nonrecurring funds are typically available to cover the attorney fees and court costs for clients adopting through the foster care system.⁴

There are also many private agencies licensed to place children in Virginia. The Child Welfare Information Gateway website provides a list of these agencies.⁵ Currently, there are approximately 60 private agencies licensed in Virginia. They generally charge more than public agencies but may offer a wider range of support services and have the ability to complete home studies and visitation reports more quickly. Only private agencies that are licensed child-placement agencies should be used, and a copy of the agency's license can always be requested. Additionally, their compliance and

¹ Va. Code § 63.2-100.

² Va. Code § 63.2-1817.

³ Va. Code § 16.1-283.

⁴ Va. Code § 63.2-1301.

⁵ www.childwelfare.gov/nfcad/.

“good standing” (whether they remain licensed) may be verified on the Virginia Department of Social Services website.⁶

2.102 Biological and Legal Parents. In Virginia, “birth” or biological parents have long had the right to place their child with the adoptive parent or parents of their choice.⁷ This is most commonly accomplished by using parental placement adoption procedures or by placing the child with an adoption agency. Moreover, a legal parent who is not the birth parent, including an adoptive parent and legal guardian, has the authority to place a child for adoption.⁸ Although the Virginia Code uses the term “birth parent,” many adoption advocates prefer terms such as “expectant parent with an adoption plan” and the like. The term “birth parent” is used in this book since that is the term used and defined in the Virginia Code.⁹

For agency placements, sections 63.2-1225 and 63.2-1226 provide a “designated adoption” procedure that allows the birth parents to recommend adoptive parents to the licensed child-placing agency. The agency must consider the birth parents’ recommendations for placement and determine whether they are in the best interest of the child.¹⁰ Both the birth parents and the adoptive parents must be advised that they have a right to be represented by independent legal counsel. The birth parents also must be informed of their legal options so that they may decide whether to use the parental placement adoption procedures or the agency adoption procedures.¹¹

A birth parent under the age of 18 has the legal capacity by statute to consent to adoption and perform all acts related to adoption.¹² Thus, a minor may consent to an adoptive placement without the minor’s parent being involved. However, as a practical matter, if a placing birth parent is a minor, many courts will appoint a guardian ad litem for the minor birth parent or expect the minor birth parent to have independent legal counsel. Some courts will still appoint a guardian for the placing birth parent, even when the minor already has independent legal counsel.

⁶ www.dss.virginia.gov/facility/search/cpa.cgi.

⁷ Va. Code § 63.2-1200; *see also* Va. Code § 63.2-1225 (determination of appropriate home).

⁸ Va. Code § 63.2-1200.

⁹ Va. Code § 63.2-100.

¹⁰ See Appendix 4-11 for a sample verification form regarding birth parent’s recommended placement election.

¹¹ Va. Code § 63.2-1225(B).

¹² Va. Code § 63.2-1202(B).

2.103 Legal Guardians. Section 63.2-1200 of the Virginia Code also provides that a “legal guardian” may place a child for adoption. That situation might occur, for example, where both birth parents are deceased and a child is left in the care of a relative who may be the only person who has guardianship or custody of the child.

2.104 Out-of-State Agencies. Any agency located in a state other than Virginia may place children for adoptive purposes in Virginia if it is licensed or otherwise authorized to place children for adoption under the laws of the state in which it operates. The out-of-state agency must still comply with the requirements of the Interstate Compact on the Placement of Children.¹³

2.2 RESTRICTIONS ON PLACEMENTS

2.201 Recommendations for Placement. A licensed child-placing agency may place a child in a home, based on a recommendation from a birth parent, physician, attorney licensed in the commonwealth, or clergyman familiar with the situation.¹⁴ But Virginia law expressly prohibits a birth parent, physician, attorney, or clergyman from charging a fee or advertising that such a recommendation can be made.¹⁵ Of course, if such a recommendation is followed, the birth parents and adoptive parents are more likely to know each other’s identities.

As previously noted, if the agency accepts custody of a child for the purpose of placing the child with adoptive parents chosen or recommended by the birth parents, the birth parents may choose whether to proceed under the parental placement adoption procedures or the agency placement procedures.¹⁶

2.202 Unauthorized Placements. Sections 63.2-1711 and 63.2-1712 of the Virginia Code provide that a person who engages in the activities of a child-placing agency without being licensed is subject to injunctive relief and is guilty of a Class 1 misdemeanor, and each day’s violation is a separate offense.

¹³ Va. Code § 63.2-1000 *et seq.*

¹⁴ Va. Code § 63.2-1225(A).

¹⁵ Va. Code § 63.2-1225. An attorney, however, may charge fees and costs for the legal services provided in connection with the placement.

¹⁶ See Va. Code §§ 63.2-1225, 63.2-1226.

In the past, a parental placement adoption could be disrupted, with possible criminal sanctions imposed, if an individual who knew of a prospective adoptive couple and a prospective birth mother “placed the child for adoption” and was not a licensed child-placing agency, a local board, the child’s parent or legal guardian, or any agency outside the Commonwealth of Virginia licensed or authorized to operate in Virginia, as set forth in section 63.2-1200. This was considered an unauthorized placement activity and could result in the disruption of the placement if the court discovered such contact was involved in the placement.

However, section 63.2-1213 states that “[n]o circuit court shall deny a petitioner a final order of adoption for the sole reason that the child was placed in the physical custody of the petitioner by a person not authorized to make such placements pursuant to section 63.2-1200.” Moreover, under section 63.2-1225 of the Virginia Code, “the recommendations of the birth parent(s), a physician or attorney licensed in the Commonwealth, or a clergyman who is familiar with the situation of the prospective adoptive parent(s) or the child” may be considered in placing a child for adoption. Courts in Virginia now realize as a practical matter that almost all parental placement adoptions depend on a third person who knows both the prospective adoptive parents and the birth parents and is involved in bringing them together. Nevertheless, sections 63.2-1218 and 63.2-1225 forbid attorneys and other individuals to accept, pay, or charge compensation for placement or “matching” services. This basically prohibits anyone other than a licensed agency from acting as a paid adoption broker or facilitator in Virginia.

2.3 WHO MAY ADOPT

2.301 Statutory Rules. Any natural person who resides in Virginia or any person who has custody of a child placed by a Virginia child-placing agency may adopt in Virginia. The Virginia Code makes no distinction between married couples and an unmarried individual, nor does it make any distinction between male and female unmarried individuals.¹⁷ Married same-sex couples can adopt together in Virginia, following the United States Supreme Court’s denial of certiorari (in October 2014) in the Fourth Circuit ruling of *Bostic v. Schaefer*,¹⁸ which recognized marriage equality. That ruling held that, even though the Virginia Constitution was amended effective January 1, 2007 to define marriage as only being between a man and a woman,

¹⁷ See Va. Code §§ 63.2-1225, 63.2-1227.

¹⁸ 760 F.3d 352 (4th Cir. 2014).

that constitutional amendment was unenforceable. This was further reinforced by the subsequent United States Supreme Court ruling in 2015 of *Obergefell v Hodges*,¹⁹ which recognized marriage equality throughout the United States.

2.302 Separated but Not Divorced Persons. If a prospective adoptive parent is separated but has never been granted a final divorce, he or she will need to obtain a final divorce decree before the adoption can proceed. The Virginia Code requires that the spouse of a prospective adoptive parent join in the petition for adoption,²⁰ and as this incurs child support obligations, a separated spouse generally is not willing to do so. Thus, it is important that the single adoptive parent make certain that a final decree of divorce is entered before filing an adoption petition.

2.303 Previously Married Person Who Stood *In Loco Parentis*. In addition, under section 63.2-1201.1(A) of the Virginia Code, a previously married person who stood *in loco parentis* to a child during the marriage may petition to adopt or re-adopt the child in a stepparent adoption, even if that individual did not do so during the marriage, as long as the former spouse who is the child's parent consents. This is permitted even if the adopting stepparent has remarried. This is the only part of the adoption code that references that, via the adoption, the child may have no more than one mother and one father. That specific provision arguably is unconstitutional in light of *Bostic v. Schaefer* yet nonetheless remains in the adoption code.

2.304 Home Study. With a few exceptions, the prospective adoptive parents must have a completed home study recommending approval by the court before any final order of adoption is entered. The exceptions include stepparent adoptions,²¹ close relative adoptions where the child has been in the adoptive home for two years or more,²² and adult adoptions where the adoptee is over the age of 18 and meets certain other requirements.²³ It is within the court's discretion whether an investigation and report will be required under section 63.2-1244, which addresses adult adoptions, except that the investigation and report must be completed in the case of an adult

¹⁹ 135 S. Ct. 2584 (2015).

²⁰ Va. Code § 63.2-1201.

²¹ Va. Code § 63.2-1241.

²² Va. Code § 63.2-1242.3.

²³ Va. Code § 63.2-1243.

adoptee who is not a stepchild, close relative, birth child, or who had not lived in the home at least three months before turning age 18.

2.305 Sexually Violent Offenders; Conviction of Barrier Crime. Persons convicted of a sexually violent offense or an offense requiring registration with the Sex Offender and Crimes Against Minors Registry pursuant to section 9.1-902 of the Virginia Code are prohibited from adopting children.²⁴ Persons convicted of certain barrier crimes under sections 19.2-392.02 and 63.2-1719 of the Virginia Code also are prohibited from becoming adoptive parents.²⁵

2.306 Public Agency Placements. A public agency may place a child with any single person or married couple who has successfully completed a home study. Public agencies may give preference to placing the child with a family of the same race or ethnicity or at least seek to ensure that the adoptive parents are educated regarding the child's heritage and commit to "preserving the child's heritage" in raising the child.²⁶

Age restrictions, income, and housing considerations may be more relaxed with a public agency, especially if the agency is primarily placing children designated as having special needs or who are in need of therapeutic care. Those placements sometimes are made with older couples who may have already raised a family, or who may have waited until later in life to consider raising a family.

2.307 Private Agency Placements. The statutory requirements for placing a child by a private agency are the same as those governing public agency placements—the adoptive parents must have successfully completed a home study before placement. However, as a practical matter, some private agencies may be more restrictive as to whom they will accept as prospective adoptive parents. Some private agencies have an age cut-off of 40, which may apply if either of the adoptive parents is over 40 or only if both are over 40. In addition, some agencies may have stricter requirements for income stability and housing standards.

Private agency placement requirements may also vary depending on the type of child sought; for example, healthy Caucasian infants are increas-

²⁴ Va. Code § 63.2-1205.1.

²⁵ Va. Code § 63.2-901.1(E).

²⁶ Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4063 (Oct. 20, 1994).