

Stepparent Adoption

What is a Stepparent Adoption? Idaho law allows the stepparent of a child to adopt his or her spouse's child. This situation occurs in a variety of ways. Sometimes the child has been born outside of marriage and the birth mother has now married and she and her husband want to raise the child together without the involvement of the birth father. Another common situation is where the parents divorced and the custodial parent later remarries and a strong bond is formed between the stepparent and the child. There are other circumstances where a stepparent adoption is considered but, in all situations, the common factor is the desire of the married couple to have the biological child of one spouse adopted by the other spouse.

Legal Framework. Stepparent adoption is governed by Idaho law which sets out certain requirements. The stepparent adoption, like any other adoption, is initiated by a court case which results in an order from a judge. The stepparent adoption is really a combination of two cases; the termination of the birth parent's rights and the approval by the court of the petition of the other biological parent and stepparent for the adoption.

The termination of the birth parent's rights requires either the consent of the birth parent given before a judge or the involuntary termination by the court of the birth parent's rights, usually due to abandonment. The voluntary termination before the judge can be accomplished before a judge in Idaho or in another state. The involuntary termination due to abandonment must be based on willful failure to provide reasonable support or failure to maintain regular personal contact for a period of one year or more.

The Court Process. A stepparent adoption starts with the couple seeking the advice and representation of an attorney and the development of a case plan. That plan will consider whether or not it is appropriate to request that the biological parent voluntarily consent to the termination. If an involuntary termination of parental rights is considered, the attorney will want to begin gathering the necessary facts to support a claim of abandonment.

The attorney then prepares the petition for termination of parental rights and adoption and arranges for personal service (hand delivery) on the parent whose rights will be terminated. If the terminating parent agrees to termination, the arrangements will be made to have the consent given before a judge. If an involuntary termination is pursued, a hearing will be scheduled before the judge in the county where the petitioners and the child reside for hearing of evidence of the abandonment and any defenses raised by the birth parent whose rights are to be terminated. If the birth parent does not attend the hearing, the court can enter a default judgment granting the termination.

The Adoption. Once the parental rights have been terminated by consent or by the judge at the court hearing, a hearing is held to consider the adoption. The judge must find that the adoption will be in the child's "best interests." Typically, the attorney for the petitioners will present testimony from both petitioners that they are in a stable marital relationship and that the child has formed a bond with the adopting stepparent. Idaho law allows the judge to order a stepparent adoption without the expense and delay of the background check and home study required in a non-stepparent adoption.

The child, even a very young child, must be present at the adoption hearing. A child age twelve or older must give his or her consent to the adoption at the hearing.

Consequences of the Adoption. The adoption creates the same legal relationship between the adopting parent and the child as created between a biological parent and child. The adopting parent now has a duty to support the child and the birth parent's duty to support is terminated. The birth certificate is changed to reflect the adopting parent as the parent on the child's birth certificate. The adoption order typically changes the child's last name, but can also change the child's first and middle name.

Final Thoughts. The decision of a parent and stepparent to pursue adoption by the stepparent is a significant matter and should not be taken lightly. Many families have benefitted from the stability and security created for the family by knowing that their strong emotional bond is supported by the legal bond created by the stepparent adoption.