

CHECKLIST FOR RELATIVE AND STEP PARENT ADOPTION

T.C.A. § 36-1-102(42) "Related" means grandparents or any degree of great-grandparents, aunts or uncles, or any degree of great-aunts or great-uncles, or step-parent, or cousins of the first degree or any siblings of the whole or half degree or any spouse of the above listed relatives:

Waiting period, home study, court reports, supervision and guardianship order may all be waived at the court's discretion. The petition should request the waiver and an order should grant the waiver. That order granting waiver is often the final order of adoption. (For purpose of this checklist, waiver is assumed.)

PETITION

- In most adoptions, the Petitioners must live in Tennessee for six months prior to filing. In related cases, the court may waive the six month waiting period so long as the relatives are Tennessee residents at the time of filing. T.C.A. 36-1-115(d)
- Petition includes required allegations. T.C.A. 36-1-116(b)
- Petitioners have physical custody of the child. T.C.A. 36-1-115(b)
- If the child was placed from another state and the relative is not within the narrower definition of relative in the ICPC, the ICPC 100A approval form must be attached to the Petition.
- All money paid by Petitioners is disclosed in the Petition. T.C.A. 36-1-116(b)(16)(A)
- Putative Father's Registry inquiry is made within 10 working days prior to filing Petition. The response is stated in Petition or filed with the court. T.C.A. 36-1-116(b)(13)(A)
- If child is less than 30 days old, notice of petition to registry is required unless the known or legal father has already been terminated or made a party. T.C.A. 36-1-116(d) This is typically evidence by certificate of service.
- If the child is 14 years of age or older, the Petitioners must submit the sworn written consent of child, or if child is mentally disabled, consent of guardian ad litem is attached. T.C.A. 36-1-117(i)(1)&(2) Typically, the child signs a consent at the end of the adoption Petition.
- The parental rights of each legal parent and putative father must be addressed. Petitioners must provide proof of previous termination by attaching the original or certified termination documents to the Petition or say that the documents will be submitted by the agency. If a legal parent or putative father's rights are not already terminated, they may consent by joining in the adoption petition. If they do not otherwise consent the Petition must include an action for termination of parental rights. T.C.A. 36-1-117(a)
- If the Petition also requests termination of parental rights, allegations required by T.C.A. 36-1-113(d)(2) and T.C.A. 36-6-224(a) should be included. T.C.A. 36-1-116(b)(11),(12)
- A consent to a relative adoption only requires joining the sworn petition and does not require confirmation. T.C.A. 36-1-117(f)
- An Order of reference to the home studying agency, of Petitioners' choice, should be issued within 5 days of filing the Petition. Supervision of the placement should also be ordered with fees taxed to the Petitioners. T.C.A. 36-1-116(b)(13)(A) Petitioners' counsel will typically prepare and offer a proposed order.
- Good service on all parties must be accomplished. Be particularly mindful of service when judgment is by default.
- The Petition should contain the usual allegations and also if a parent is signing the Petition to evidence their consent, the Petition is to contain some "magic words" about the consent. T.C.A. 36-1-117(g)(1)
- Waiting period, home study, court reports, supervision and guardianship order may all be waived at the court's discretion. T.C.A. 36-1-116(e)(1), Supervision waived in T.C.A. 36-1-116(g)(1), 36-1-119(b)

JURISDICTION

Upon the filing of the Petition, the adoption court shall have exclusive jurisdiction of all matters pertaining to the child including legitimation, except delinquency, unruliness and truancy. T.C.A.

36-1-116(f) The court and counsel should be mindful of the effect of filing an adoption on other matters. Pending matters in Juvenile Court is common.

FINALIZATION

- The Final Order must state T.C.A. 36-1-120(a):
 - The full name of the child;
 - The full names of petitioners, county of residence and relationship to child;
 - The fact and date of the filing of petition;
 - The date petitioners acquired physical custody of child, from person or agency and by which court order;
 - The fact and date of guardianship order, if entered;
 - That all persons entitled to notice have been served with process, the status of those persons and that all necessary parties were properly before the court;
 - That the time for answering Petition has expired;
 - That termination of all parental or guardian rights to child by court order or surrender or parental consent necessary to proceed with the adoption have occurred;
 - That orders reflecting termination of parental rights, parental consents or consent of the department or licensed child-placing agency, the consent of the child if over 14 years of age, consent of guardian ad litem of an incompetent adult or mentally disabled child have been filed in the court record;
 - That if the child has been brought into Tennessee from another state or foreign country, there is compliance with the ICPC, or with requirements of the foreign government for petitioners to have custody of the child and the U.S. government for immigration of the child to this country, unless good cause has been shown to excuse such compliance;
 - That the child's adoption is in compliance with or is not subject to the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 et seq.;
 - Whether the child has been the subject of an adoption decree in a foreign country in which petitioners were given the child in adoption by decree and is a readoption for purpose of complying with requirements of the U.S. government for purposes of the child's immigration or naturalization;
 - That the petitioners are fit persons to have the care and custody of the child;
 - That the petitioners are financially able to provide for the child;
 - That the child is a suitable child for adoption; and
 - That the adoption is for the best interest of the child.

- Timing of final order. T.C.A. 36-1-119 The six (6) month waiting period may be waived in the case of relatives or if the child has already resided in the home for six (6) months. T.C.A. 36-1-117(j)
- In file: Agency fee affidavit. T.C.A. 36-1-120(b)(2)
- In file: Attorney fee affidavit. T.C.A. 36-1-120(b)(1)
- Expense oversight. The court can reduce attorney fees. T.C.A. 36-1-120(b)(1) Anyone can report illegal payments as a felony. T.C.A. 36-1-109
- Private interview with adoptee 14 years or older to obtain verbal consent prior to entry of the final order of adoption. T.C.A. 36-1-117(l) There is also a form that is signed during this interview.
- After the finalization, a birth certificate application is submitted to the court clerk. T.C.A. 36-1-120(f)(1)
- If there is no appeal, the adoption must be completed or dismissed within two years unless Petitioners can show good cause why a final order should not be entered.