

CHECKLIST FOR PROCESSING STEPPARENT ADOPTION

Primary Statutes for Review

Adoption: ORS 109.309

Petition: ORS 109.315

Adoption Summary and Segregated Information Statement: ORS 109.317

General Judgment of Adoption: ORS 109.350

- Obtain Retainer Agreement and Client information

NOTE: Identify, discuss and resolve any issues, including the status of the birth father and effect of Indian Child Welfare Act

Document Preparation

NOTE: If more than one child is subject to this proceeding, each child must be treated individually with separate proceeding documents. However, only one filing fee is charged to Petitioner. Individual counties handle waiving the additional fees differently; contact the county of filing for their process.

1. **Petition for Adoption:** (ORS 109.315)

- Petitioners' full names. (109.315(1)(a))
- The state and length of residency in the state of the petitioner, and information sufficient to establish residency requirement of **ORS 109.309(2)** has been met. (109.315(1)(b))
- Current marital or domestic partnership status of Petitioners. (109.315(1)(c))
- An explanatory statement as to why the petitioners are of sufficient ability to bring up the minor child and furnish suitable nurture and education sufficient for judgment to be entered under **ORS 109.350**. (There is considerable variability regarding the level of detail required by different counties. Inquire as to local practice and consider including: information regarding employment of petitioners, such as employer and length, sufficiency of income, type of residence and space for child, ability to provide medical care, plans for schooling, success with other children, if any, etc.) (109.315(1)(d))
- Information sufficient for court to establish compliance with jurisdiction and venue requirements of **ORS 109.309(4)** and **(5)** (109.315(1)(e))
- Full name, gender, and date of birth and place of birth of child. (109.315(1)(f))
- The marital or domestic partnership status of the biological mother when the child was conceived and born and during the 300 days prior to the date of birth of the child. (109.315(1)(g))

CHECKLIST FOR PROCESSING STEPPARENT ADOPTION

- A statement that the minor child is not an Indian child as defined in the Indian Child Welfare Act (**25 U.S.C. 1901** et seq.) (109.315(1)(h)) or, if the Indian Child Welfare Act applies

If ICWA Applies:

- A statement of the steps taken to comply with ICWA, including judicial consents and any required efforts to notify the appropriate Indian tribe(s) of the adoption. (109.315(1)(h)(A))
- A statement of the efforts made to comply with the placement preferences of the Indian Child Welfare Act or the placement preferences of the appropriate Indian tribe, if required. (109.315(1)(h)(B)).
- Name and relationship to child of any person who has executed a written release or surrender of parental rights or of rights of guardianship of the minor child as provided by ORS 418.270 and the date of the release or surrender document. A consent is required from the child if the child is 14 years of age or older. (109.315(1)(i))

NOTE: The waiver of appearance and notice in a stepparent adoption is generally contained in the consent document and no certificate of irrevocability and waiver is prepared or signed.

NOTE: Each county sets its own policy on the requirement of a consent being notarized. It is good practice to notarize a consent whether or not it is required by statute to avoid rejection by the Court.

- Name and relationship to child of any person who has given consent pursuant to **ORS 109.321** and date consent given. (109.315(1)(j))
- Name and relationship to child of any person or entity for who the consent requirement is waived or not required. (109.315(1)(k))

NOTE: Along with the name and relationship, include a detailed explanation of *why* the consent requirement for this person is waived or not required. The most common scenario in a stepparent adoption is the case where the consent of the legal parent whose rights are to be terminated is not required due to abandonment and neglect under **ORS 109.324**. In these cases, the attorney should recite the relevant facts and include reference to the birth mother's detailed affidavit swearing to the same.

- Statement of the facts and circumstances under which Petitioners obtained physical custody of the child, including date of placement with Petitioners and name and relationship to child of person or entity placing child with Petitioners. (109.315(1)(m))
- Length of time child has been in physical custody of Petitioners; if child not with Petitioners, provide reason why, and date and manner in which Petitioners will obtain physical custody of child. (109.315(1)(n))
- Whether or not a continuing contact agreement exists under **ORS 109.305**, including names of the parties to the agreement and date of execution. (109.315(1)(o))

CHECKLIST FOR PROCESSING STEPPARENT ADOPTION

- A statement establishing that the requirements of ORS 109.353 regarding advisement about the voluntary adoption registry and the registry's services have been met (109.315(1)(p))
- A statement that the requirements of ORS 109.346 regarding notice of right to counseling sessions do not apply to this proceeding. (109.315(1)(q))
- Statement that UCCJEA information is in ASSIS. (109.315(1)(r))
- Statement that ICPC does not apply.
- Unless waived, statement that home study was completed in compliance with **ORS 109.309(7)**. (109.315(1)(t)) *This is generally waived in a stepparent adoption, although DHS has the option of requesting one if circumstances dictate.*
- A statement that Petitioners have been informed of the estimated costs and expenses associated with this adoption proceeding. (109.315(3)(e) and 109.311(1), (2))
- A declaration made under penalty of perjury that the petition, and the information and statements contained in the petition, are true to the best of the petitioners' knowledge and belief and that the petitioner understands the petition, and information and statements contained in the petition, may be used as evidence in court and are subject to penalty for perjury. (109.315(1)(u))

Prayer/Request (ORS 109.315(2))

- Entry of General Judgment of Adoption. (109.315(2)(a))
- Petitioner be permitted to adopt the minor child as the child of petitioner for all legal intents and purposes. (109.315(2)(b))
- Finding that the court has jurisdiction over the adoption proceeding, the parties, and the minor child. (109.315(2)(c))
- Termination of parental rights and/or determination of nonparentage (109.315(2)(d))
- Approval of the change of the child's name to the proposed adoptive name or affirmation that the child's name is to remain unchanged. (109.315(2)(e))
- If applicable:* A finding that the Continuing Contact Agreement entered into under **ORS 109.305** is in the best interests of the minor child, and that, if the minor child is 14 years of age or older, the minor child has consented to the agreement, and that the court incorporate the Continuing Contact Agreement by reference into the adoption judgment. (109.315(2)(f))
- That the court require preparation of and certify an Adoption Report as provided in **ORS 432.223**. (109.315(2)(g))
- That all records, papers, and files in the record of the adoption be sealed as provided under **ORS 109.319**. (109.315(2)(h))

CHECKLIST FOR PROCESSING STEPPARENT ADOPTION

Any other relief requested by Petitioner. (109.315(2)(i))

CHECKLIST FOR PROCESSING STEPPARENT ADOPTION

Exhibits

Must include if applicable, but need not be limited to:

- Any written release or surrender of the minor child for adoption, or a written disclaimer of parental rights. (109.315(3)(a))
- Any written consent to the adoption. (109.315(3)(b))
- Although ORS 109.315(3) does not specifically list it, if the consent requirement is waived or not required for the parent whose rights will be terminated, the attorney should include as an exhibit an Affidavit from someone with personal knowledge of the facts demonstrating *why* consent is waived or not required (in most circumstances this is the adoptive parent retaining pre-existing parental rights).
- Any Continuing Contact Agreement. (109.315(3)(d))
- Adoption Disclosure Statement. (109.315(3)(e))
- Any other supporting documentation necessary to comply with the petition requirements in **ORS 109.309** and **ORS 109.315**.

--Petition must be signed by Petitioners--

2. **Adoption Summary and Segregated Information Statement: (ORS 109.317)**

- Full name, permanent address and telephone number of each Petitioner. (109.317(1)(a))
- Current Full Name, the Proposed Adoptive Name and Date and Place of Birth of the Minor Child. (109.317(1)(b))
- Names, permanent addresses and telephone numbers of any person whose consent to the adoption is required under **ORS 109.321**. (109.317(1)(c))
- Name and relationship to minor child and address of any person or entity for whom written consent requirement of **ORS 109.321** is waived or not required as provided in **ORS 109.322, 109.323, 109.324, 109.325, 109.326, or 109.327**, or whose written consent may be substituted for the written consent requirement under **ORS 109.321** as provided in **ORS 109.322, 109.323, 109.324, 109.325, 109.326 109.327, , 109.328 and 109.329**. (109.317(1)(d))
- The information required by the Uniform Child Custody Jurisdiction and Enforcement Act under **ORS 109.701 to 109.834**. (109.317(1)(e))
- Statement that adoption agency information is not applicable. (109.317(1)(f)).
- Name, bar number and contact information for any attorney representing a Petitioner or a person whose consent to the adoption is required under **ORS 109.321**. (109.317(1)(g))
- Type of adoption proceeding: (109.317(1)(h))

CHECKLIST FOR PROCESSING STEPPARENT ADOPTION

- Private agency adoption, either domestic or international.
- Non-related independent adoption.
- Determination of validity of an adoption in a foreign nation under **ORS 109.385**.
- Relative independent adoption.
- Stepparent independent adoption.
- An independent adoption involving one petitioner who retains parental rights.
- Out-of-state public agency adoption.
- An adoption in which the Department Human Services gives consent under **ORS 109.325**.
- Any other specified adoption.

Exhibits - **ORS 109.317**:

No medical history of the child and biological parents is required in a stepparent adoption (109.342(4)) and DHS will typically waive the home study requirement. If, given the circumstances, the home study is not waived, it should be attached as an exhibit to the ASSIS per ORS 109.317(2)(a)

- Report of Adoption as required under **ORS 432.223**.

NOTE: Before Judgment is entered in this adoption, Petitioners have an obligation to file an Amended Adoption Summary and Segregated Information Statement when any of the required information changes or when information that was not previously known or ascertainable becomes known or ascertainable.

3. **Judgment.**

- Findings of Fact to support order (**ORS 109.350**) and refer to the Petition for Adoption.
- Termination of parental rights of birth parent(s) and/or
- Determination of non-paternity of birth father
- Acknowledgment of the Court's authority to make a custody determination (UCCJEA)
- Child's name change
- Language making Petitioners the legal parents of the child
- Approval and incorporation of Continuing Contact Agreement if applicable
- Directing that the court require preparation of and certify an Adoption Report as provided in **ORS 432.223**.
- Directing Oregon Health Authority, Vital Records Department, to issue a new or amended birth certificate for the child.
- Language sealing records

CHECKLIST FOR PROCESSING STEPPARENT ADOPTION

4. Fees

\$263.00 payable to State of Oregon through the eFiling system.
\$60 for amended birth certificate

After Filing of the Petition and Related Documents

1. **ORS 109.315(5)** requires that a true copy of the Petition and ASSIS to be served on the Department of Human Services by either registered or certified mail with return receipt, or personal service within 30 days after the documents have been filed with the court.
2. If all requirements have been met, DHS will issue you a letter waiving the 90-day waiting period, home study and placement report; in the alternative, DHS will issue a letter outlining further requirements.
3. Once the DHS waiver is issued, a General Judgment of Adoption can be filed with the court.

Specific to Stepparent Adoptions

Abandonment and Neglect: If filing a petition is based on abandonment and neglect, please review **ORS 109.324** for service, notice requirements. A Motion for Order to Show Cause, Order to Show Cause and Summons are to be prepared and personally served on the birth parent if whereabouts are known or can be ascertained.

NOTE: Statutes do not require a show cause hearing, however, some courts still maintain the practice. Contact your court of filing for their process.

Notice to parents of party whose parental rights would be terminated:
ORS 109.315 requires that notice be served on the parents of the party whose parental rights would be terminated by either registered or certified mail if their names and addresses are known by Petitioner or can be ascertained. In the alternative, Petitioners can request the court to waive this requirement.

Criminal History and Child Abuse Clearances:

If Petitioners have resided in Oregon for more than five years:

- Criminal history clearance on adopting parent through Oregon State Police
- Child Abuse and Neglect clearances on both petitioners to be performed by DHS

If Petitioners have NOT resided in Oregon for more than five years:

- Criminal history clearance on adopting parent through Oregon State Police
- FBI clearance on adopting parent
- Child Abuse and Neglect Clearances on both Petitioners from every state of residence for the previous five years

NOTES:

1. Every document is subject to errors, review all incoming and outgoing documents, including but not limited to certificates of adoption and birth certificates.
2. Every court sets its own policies on processing adoptions. Be prepared for requests for

CHECKLIST FOR PROCESSING STEPPARENT ADOPTION

additional documents or information.

Client File Notes

Date File Opened: _____
Date of Client Meeting: _____
County for Filing: _____
Date Filed: _____
Case Number: _____
DHS Served: _____
DHS waiver received: _____
Birth Parent Served (if applicable): _____
Order dispensing with consent of
non-consenting birth parent obtained: _____
Notice to parents of birth parent
whose parental rights are terminated: _____
Date Judgment submitted: _____
Date Judgment Signed: _____
Date Judgment Sent to Client: _____
Date Birth Certificate Received: _____
Date Birth Certificate Sent to Client: _____
Date File Closed: _____
File Retention: See the PLF file retention and
destruction guidelines, available on the PLF
website, www.osbplf.org.

NOTES: _____

IMPORTANT NOTICES

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be

CHECKLIST FOR PROCESSING STEPPARENT ADOPTION

republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for use in their own practices. © 2019 OSB Professional Liability Fund.