

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 848

An Act to amend and reenact §§ 63.2-1200, 63.2-1201, 63.2-1202, 63.2-1205, 63.2-1208, 63.2-1210, 63.2-1213, 63.2-1222, 63.2-1223, 63.2-1227, 63.2-1228, 63.2-1231 through 63.2-1234, 63.2-1237, 63.2-1241, and 63.2-1243 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 12 of Title 63.2 an article numbered 4.1, consisting of sections numbered 63.2-1242.1, 63.2-1242.2, and 63.2-1242.3, relating to adoption laws.

[H 727]

Approved April 19, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1200, 63.2-1201, 63.2-1202, 63.2-1205, 63.2-1208, 63.2-1210, 63.2-1213, 63.2-1222, 63.2-1223, 63.2-1227, 63.2-1228, 63.2-1231 through 63.2-1234, 63.2-1237, 63.2-1241, and 63.2-1243 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 12 of Title 63.2 an article numbered 4.1, consisting of sections numbered 63.2-1242.1, 63.2-1242.2, and 63.2-1242.3, as follows:

§ 63.2-1200. Who may place children for adoption.

A child may be placed for adoption by:

1. A licensed child-placing agency;
2. A local board;
3. The child's parent or legal guardian if the placement is a parental placement; and
4. Any agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; ~~however, when any such agency outside the Commonwealth, or its agent, executes an entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights and responsibilities with respect to a child; the requirements of §§ 63.2-1221 through 63.2-1224 shall apply. Any entrustment agreement that fails to comply with such requirements shall be void.~~

§ 63.2-1201. Filing of petition for adoption; venue; jurisdiction; and proceedings.

Proceedings for the adoption of a minor child and for a change of name of such child shall be instituted only by petition to a circuit court in the county or city in which the petitioner resides, ~~or in the county or city in which is located the child-placing agency that placed the child is located, or in the county or city in which a birth parent executed a consent pursuant to § 63.2-1233.~~ Such petition may be filed by any natural person who resides in the Commonwealth, or who has custody of a child placed by a child-placing agency of the Commonwealth, ~~for or by an adopting parent of a child who was subject to a consent proceeding held pursuant to § 63.2-1233, or by intended parents who are parties to a surrogacy contract. The petition shall ask leave to adopt a minor child not legally his the petitioner's~~ by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating consent to the prayer thereof only. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents, and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

§ 63.2-1202. Parental, or agency, consent required; exceptions.

A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless written consent to the proposed adoption is filed with the petition. Such consent shall be *in writing*, signed *under oath* and acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth parent for the adoption of his child placed directly by the birth parent shall be executed as provided in § 63.2-1233, and the circuit court may accept a certified copy of an order entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

B. A birth parent who has not reached the age of 18 shall have legal capacity to give consent to adoption and *perform all acts related to adoption*, and shall be as fully bound thereby as if the birth parent had attained the age of 18 years.

C. *A man shall be presumed to be the father of a child if:*

1. *He and the mother of the child are married to each other and the child is born during the marriage;*
2. *He and the mother of the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or after a decree of separation; or*
3. *Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, divorce, or after a decree of separation.*

Such presumption may be rebutted by sufficient evidence that would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.

C D. Consent shall be executed:

1. By the ~~parents or surviving parent~~ of a child born in wedlock. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required. This presumption may be rebutted by sufficient evidence, satisfactory to the circuit court, which would establish by a preponderance of the evidence the paternity of another man, or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in such case his consent shall not be required. If the parents are divorced and the residual parental rights and responsibilities as defined in § 16.1-228 of one parent have been terminated by terms of the divorce, or other order of a court having jurisdiction, the petition may be granted without the consent of such parent; ~~or birth mother and by any man who:~~

- a. *Is an acknowledged father under § 20-49.1;*
- b. *Is an adjudicated father under § 20-49.8; or*
- c. *Is a presumed father under subsection C.*

2. By the ~~parents or surviving parent~~ of a child born to parents who were not married to each other at the time of the child's conception or birth. The consent of the birth father of a child born to parents who were not married to each other at the time of the child's conception or birth shall not be required (i) if the identity of the birth father is not reasonably ascertainable or (ii) if the identity of such birth father is ascertainable and his whereabouts are known, such birth father is given notice of the adoption proceeding, including the date and location of the hearing, by registered or certified mail to his last known address, and such birth father fails to object to the adoption proceeding within 21/5 days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the circuit court in which the petition was filed during the business day of the court, within the time period specified in this section. Failure of the objecting party to appear at the consent hearing, either in person or by counsel, shall constitute a waiver of such objection; or

3. By the child-placing agency or the local board having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903 or 63.2-1221; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; and

4 3. By the child if he is 14 years of age or older, unless the circuit court finds that the best interests of the child will be served by not requiring such consent.

E. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.

D F. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

E G. When a child has been placed by the birth parent(s) with the prospective adoptive parent(s) who is the child's grandparent, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt, the circuit court may accept the written and signed consent of the birth parent(s) that has been acknowledged by an officer authorized by law to take such acknowledgments *No notice or consent shall be required of any person whose parental rights have been terminated by a court of competent jurisdiction.*

H. No consent shall be required of a birth parent who, without just cause, has neither visited nor contacted the child for a period of six months prior to the filing of the petition for adoption. The prospective adoptive parent(s) shall establish by clear and convincing evidence that the birth parent(s), without just cause, has neither visited nor contacted the child for a period of six months prior to the filing of the petition for adoption. This provision shall not infringe upon the birth parent's right to be noticed and heard on the allegation of abandonment.

1. *A birth father not married to the mother of the child may consent to the termination of all of his*

parental rights prior to the birth of the child.

J. The failure of the nonconsenting party to appear at the scheduled hearing, either in person or by counsel, after proper notice has been given to said party, shall constitute a waiver of any objection and right to consent to the adoption.

§ 63.2-1205. Best interests of the child; standards for determining.

In determining whether the valid consent of any person whose consent is required is withheld contrary to the best interests of the child, or is unobtainable, the circuit court or juvenile and domestic relations district court, as the case may be, shall consider whether ~~the failure to grant~~ granting the petition pending before it would be ~~detrimental to~~ in the best interest of the child. ~~In determining whether the failure to grant the petition would be detrimental to the child, the~~ The circuit court or juvenile and domestic relations district court, as the case may be, shall consider all relevant factors, including the birth parent(s)' efforts to obtain or maintain legal and physical custody of the child; *whether the birth parent(s) are currently willing and able to assume full custody of the child*; whether the birth parent(s)' efforts to assert parental rights were thwarted by other people; the birth parent(s)' ability to care for the child; the age of the child; the quality of any previous relationship between the birth parent(s) and the child and between the birth parent(s) and any other minor children; the duration and suitability of the child's present custodial environment; and the effect of a change of physical custody on the child.

§ 63.2-1208. Investigations; report to circuit court.

A. Upon consideration of the petition, the circuit court shall, upon being satisfied as to proper jurisdiction and venue, immediately enter an order referring the case to a child-placing agency to conduct an investigation and prepare a report unless no investigation is required pursuant to this chapter. The court shall enter the order of reference prior to or concurrently with the entering of an order of publication, if such is necessary. Upon entry of the order of reference, the clerk shall forward a copy of the order of reference, the petition, and all exhibits thereto to the Commissioner and the child-placing agency retained to provide investigative, reporting, and supervisory services. If no Virginia agency was retained to provide such services, the order of reference, petition, and all exhibits shall be forwarded to the local director of social services of the locality where the petitioners reside or resided at the time of filing the petition or had legal residence at the time the petition was filed.

A B. Upon receiving a petition and order of reference from the circuit court, the applicable agency shall make a thorough investigation of the matter and report thereon in writing, in such form as the Commissioner may prescribe, to the circuit court within ~~90~~ 60 days after the copy of the petition and all exhibits thereto are forwarded. A copy of the report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the circuit court. On the report to the circuit court there shall be appended either acceptance of service or certificate of the local director, or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. ~~The Commissioner may notify the circuit court within 21 days of the date of delivery or mailing of the report as shown by the agency, during which time the circuit court shall withhold consideration of the merits of the petition pending review of the agency report by the Commissioner, of any disapproval thereof stating reasons for any further action on the report that he deems necessary~~ The circuit court shall expeditiously consider the merits of the petition upon receipt of the report.

B C. If the report is not made to the circuit court within the periods specified, the circuit court may proceed to hear and determine the merits of the petition and enter such order or orders as the circuit court may deem appropriate.

C D. The investigation requested by the circuit court shall include, in addition to other inquiries that the circuit court may require the child-placing agency or local director to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 13 (§ 63.2-1300 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the ~~same home~~ physical custody of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; and (vii) what fees have been paid by the petitioners or on their behalf to persons or agencies that have assisted them in obtaining the child. Any report made to the circuit court shall include a recommendation as to the action to be taken by the circuit court on the petition. A copy of any report made to the circuit court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.2-1200 or § 63.2-1218, the local director or child-placing agency shall so inform the circuit court and the Commissioner.

D E. The report shall include the relevant physical and mental history of the birth parents if known to the person making the report. The child-placing agency or local director shall document in the report all efforts they made to encourage birth parents to share information related to their physical and mental

history. However, nothing in this subsection shall require that an investigation of the physical and mental history of the birth parents be made.

§ F. If the specific provisions set out in §§ 63.2-1228, 63.2-1238, 63.2-1242 and 63.2-1244 do not apply, the petition and all exhibits shall be forwarded to the local director where the petitioners reside or to a licensed child-placing agency.

§ 63.2-1210. Probationary period, interlocutory order and order of reference not required under certain circumstances.

The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption under the following circumstances:

1. If the child is legally the child by birth or adoption of one of the petitioners and if the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.

2. *If one of the petitioners is a step-parent of the child and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper, the court may omit the order of reference if the petitioners meet the requirements of § 63.2-1241.*

3. After receipt of the report required by § 63.2-1208, if the child has been placed in the ~~home~~ *physical custody* of the petitioner by a child-placing agency and (i) the placing or supervising agency certifies to the circuit court that the child has lived in the ~~home~~ *physical custody* of the petitioner continuously for a period of at least six months immediately preceding the filing of the petition and has been visited by a representative of such agency at least three times within a six-month period, provided there are not less than ninety days between the first visit and the last visit, and (ii) the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. The circuit court may, for good cause shown, in cases of placement by a child-placing agency, omit the requirement that the *three visits be made in the within a six-months immediately preceding the filing of the petition, provided that such visits were made in some six-month period preceding the filing month period.*

4. After receipt of the report, if the child has ~~resided in the home~~ *been in physical custody* of the petitioner continuously for at least three years immediately prior to the filing of the petition for adoption, and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.

5. ~~When a child has been placed by the birth parent with the prospective adoptive parent who is the child's grandparent, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt and the circuit court has accepted the written consent of the birth parent in accordance with § 63.2-1202, and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. If the circuit court determines the need for an investigation prior to the final order of adoption, it shall refer the matter to the local director or a licensed child - placing agency for an investigation and report, which shall be completed within such time as the circuit court designates.~~

6. After receipt of the report, if the child has been legally adopted according to the laws of a foreign country with which the United States has diplomatic relations and if the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper, and the child (i) ~~has resided in the home~~ *been in the physical custody* of the petitioners for at least one year immediately prior to the filing of the petition, *and a representative of a child-placing agency has visited the petitioner and child at least once in the six months immediately preceding the filing of the petition or during its investigation pursuant to § 63.2-1208* or (ii) ~~has resided in the home~~ *been in the physical custody* of the petitioners for at least six months immediately prior to the filing of the petition, has been visited by a representative of a child-placing agency or of the local department three times within such six-month period with no fewer than ninety days between the first and last visits, and ~~the three visits have last visit~~ *has occurred within eight six months immediately prior to the filing of the petition.*

7. After receipt of the report, if the child was placed into Virginia from a foreign country in accordance with § 63.2-1104, and if the child has ~~resided in the home~~ *been in the physical custody* of the petitioner for at least six months immediately prior to the filing of the petition and has been visited by a representative of a licensed child-placing agency or of the local department three times within the six-month period with no fewer than ninety days between the first and last visits, ~~and the three visits have occurred within eight months immediately prior to the filing of the petition. The circuit court may, for good cause shown, in cases of an international placement, omit the requirement that the three visits be made within a six-month period.~~

§ 63.2-1213. Final order of adoption.

~~After the expiration of six months from the date upon which the interlocutory order is entered, and after considering~~ *After consideration of the report made pursuant to § 63.2-1212 or as permitted pursuant to § 63.2-1210, if the circuit court is satisfied that the best interests of the child will be served thereby, the circuit court shall enter the final order of adoption, provided that the child has been in the physical custody of the petitioner for at least six months immediately prior to entry of the order. However, a final order of adoption shall not be entered until information has been furnished by the petitioner in compliance with § 32.1-262 unless the circuit court, for good cause shown, finds the information to be unavailable or unnecessary. No circuit court shall deny a petitioner a final order of adoption for the sole reason that the child was placed in the adoptive home in the physical custody of*

the petitioner by a person not authorized to make such placements pursuant to § 63.2-1200. An attested copy of every final order of adoption shall be forwarded, by the clerk of the circuit court in which it was entered, to the Commissioner and to the child-placing agency that placed the child or to the local director, in cases where the child was not placed by an agency.

§ 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; notice and objection to entrustment; copy required to be furnished; requirement for agencies outside the Commonwealth.

A. For the purposes of this section, a birth parent who is less than 18 years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, *and perform all acts related to adoption* and shall be as fully bound thereby as if such birth parent had attained the age of 18 years.

B. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child born out of wedlock if the identity of the birth father is not reasonably ascertainable, or if such birth father is *denies under oath and in writing paternity of the child*.

C. *When a birth father is required to be given notice, he may be given notice of the entrustment by registered or certified mail to his last known address. and If he fails to object to the entrustment within 24 15 days of the mailing of such notice, his entrustment shall not be required.* Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the agency that mailed the notice of entrustment within the time period specified in § 63.2-1223. ~~An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.~~

D. *The execution of an entrustment agreement shall be required of a presumed father except under the following circumstances: (i) if he denies paternity under oath and in writing in accordance with subsection D of § 63.2-1202; (ii) if the presumption is rebutted by sufficient evidence, satisfactory to the circuit court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child; (iii) if another man admits, in writing and under oath, that he is the biological father; or (iv) if an adoptive placement has been determined to be in the best interests of the child pursuant to § 63.2-1205.*

E. *When none of the provisions of subsection D apply, notice of the entrustment shall be given to the presumed father pursuant to the requirements of § 16.1-277.01.*

F. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when the birth father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

G. *A birth father not married to the mother of the child may execute an entrustment agreement for the termination of all parental rights prior to the birth of the child. Such entrustment shall be subject to the revocation provisions of § 63.2-1223.*

H. *No entrustment shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.*

I. A copy of the entrustment agreement shall be furnished to all parties signing such agreement.

J. When any agency outside the Commonwealth, or its agent, that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates executes an entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights and responsibilities with respect to the child, the requirements of §§ 63.2-1221 through 63.2-1224 shall apply. *The birth parent may expressly waive, under oath and in writing, the execution of the entrustment under the requirements of §§ 63.2-1221 through 63.2-1224 in favor of the execution of an entrustment or relinquishment under the laws of another state if the birth parent is represented by independent legal counsel. Such written waiver shall expressly state that the birth parent has received independent legal counsel advising of the laws of Virginia and of the other state and that Virginia law is expressly being waived. The waiver also shall include the name, address, and telephone number of such legal counsel.* Any entrustment agreement that fails to comply with such requirements shall be void.

§ 63.2-1223. Revocation of entrustment agreement.

A valid entrustment agreement terminating all parental rights and responsibilities to the child shall be revocable by either of the birth parents until (i) the child has reached the age of ~~twenty-five~~ 10 days and (ii) ~~fifteen~~ seven days have elapsed from the date of execution of the agreement. In addition, a valid

entrustment agreement shall be revocable by either of the birth parents if the child has not been placed in the ~~home~~ *physical custody* of adoptive parents at the time of such revocation. Revocation of an entrustment agreement shall be in writing and signed by the revoking party. The written revocation shall be delivered to the child-placing agency or local board to which the child was originally entrusted. Delivery of the written revocation shall be made during the business day of the child-placing agency or local board to which the child was originally entrusted, in accordance with the applicable time period set out in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the agency or local board is officially closed, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the agency or local board is officially closed. Upon revocation of the entrustment agreement, the child shall be returned to the parent revoking the agreement.

§ 63.2-1227. Filing of petition for agency adoption.

A petition for the adoption of a child placed in the ~~home~~ *physical custody* of the petitioners by a child-placing agency shall be filed in the name by which the child will be known after adoption, provided the name is followed by the registration number of the child's original birth certificate and the state or country in which the registration occurred unless it is verified by the registrar of vital statistics of the state or country of birth that such information is not available. *In the case of a child born in another country, an affidavit by a representative of the child-placing agency that a birth certificate number is not available may be substituted for verification by a registrar of vital statistics for that country.* The report of investigation required by § 63.2-1208 and, when applicable, the report required by § 63.2-1212 shall be identified with the child's name as it appears on the birth certificate, the birth registration number and the name by which the child is to be known after the final order of adoption is entered. *The petition for adoption shall not state the birth name of the child or identify the birth parents unless it is specifically stated in the agency's consent that the parties have exchanged identifying information.*

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents, and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

§ 63.2-1228. Forwarding of petition.

Upon the filing of the petition, the circuit court shall, *upon being satisfied as to proper jurisdiction and venue, immediately enter an order referring the case to a child-placing agency to conduct an investigation and prepare a report pursuant to § 63.2-1208.* Upon entry of the order of reference, the court shall forward a copy of the petition and all exhibits thereto to the Commissioner and to the agency that placed the child. In cases where the child was placed by an agency in another state, or by an agency, court, or other entity in another country, the petition and all exhibits shall be forwarded to the local director or licensed child-placing agency, whichever agency completed the home study or provided supervision. If no Virginia agency provided such services, *or such agency is no longer licensed or has gone out of business,* the petition and all exhibits shall be forwarded to the local director of the locality where the petitioners reside or resided at the time of filing the petition, or had legal residence at the time of the filing of the petition.

§ 63.2-1231. Home study; simultaneous meeting required; exception.

Prior to the consent hearing in the juvenile and domestic relations district court, a home study of the adoptive parent(s) shall be completed by a licensed or duly authorized child - placing agency in accordance with regulations adopted by the Board. The home study shall make inquiry as to (i) whether the prospective adoptive parents are financially able, morally suitable, and in satisfactory physical and mental health to enable them to care for the child; (ii) the physical and mental condition of the child, if known; (iii) the circumstances under which the child came to live, or will be living, in the home of the prospective adoptive family, as applicable; (iv) what fees have been paid by the prospective adoptive family or in their behalf in the placement and adoption of the child; (v) whether the requirements of subdivisions A 1, A 2, A 3 and A 5 of § 63.2-1232 have been met; and (vi) any other matters specified by the circuit court. In the course of the home study, the agency social worker shall meet at least once with the birth parent(s) and prospective adoptive parents simultaneously. ~~When the child has been placed with prospective adoptive parents who are related to the child as specified in subdivision 6 of § 63.2-1233, this meeting is not required.~~

§ 63.2-1232. Requirements of a parental placement adoption.

A. The juvenile and domestic relations district court shall not accept consent until it determines that:

1. The birth parent(s) are aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families, and that the birth parents' consent is informed and uncoerced.

2. A licensed or duly authorized child-placing agency has counseled the prospective adoptive parents with regard to alternatives to adoption, adoption procedures, including the need to address the parental rights of birth parents, the procedures for terminating such rights, and opportunities for adoption of other children; that the prospective adoptive parents' decision is informed and uncoerced; and that they intend

to file an adoption petition and proceed toward a final order of adoption.

3. The birth parent(s) and adoptive parents have exchanged identifying information including but not limited to full names, addresses, physical, mental, social and psychological information and any other information necessary to promote the welfare of the child, *unless both parties agree in writing to waive the disclosure of full names and addresses.*

4. Any financial agreement or exchange of property among the parties and any fees charged or paid for services related to the placement or adoption of the child have been disclosed to the court and that all parties understand that no binding contract regarding placement or adoption of the child exists.

5. There has been no violation of the provisions of § 63.2-1218 in connection with the placement; however, if it appears there has been such violation, the court shall not reject consent of the birth parent to the adoption for that reason alone but shall report the alleged violation as required by § 63.2-1219.

6. A licensed or duly authorized child-placing agency has conducted a home study of the prospective adoptive home in accordance with regulations established by the Board and has provided to the court a report of such home study, which shall contain the agency's recommendation regarding the suitability of the placement. A married couple or an unmarried individual shall be eligible to receive placement of a child for adoption.

7. The birth parent(s) have been informed of their opportunity to be represented by legal counsel.

B. The juvenile and domestic relations district court shall not accept the consent if the requirements of subsection A have not been met. In such cases, it shall refer the birth parent to a licensed or duly authorized child-placing agency for investigation and recommendation in accordance with §§ 63.2-1208 and 63.2-1238. If the juvenile and domestic relations district court determines that any of the parties is financially unable to obtain the required services, it shall refer the matter to the local director.

§ 63.2-1233. Consent to be executed in juvenile and domestic relations district court; exceptions.

When the juvenile and domestic relations district court is satisfied that all requirements of § 63.2-1232 have been met with respect to at least one birth parent and the adoptive child is at least 40 days old ~~in the third calendar day of life~~, that birth parent or both birth parents, as the case may be, shall execute consent to the proposed adoption in compliance with the provisions of § 63.2-1202 while before the juvenile and domestic relations district court in person and in the presence of the prospective adoptive parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent, as described hereinafter.

1. a. The execution of consent before the juvenile and domestic relations district court shall not be required of a birth father who is not married to the mother of the child at the time of the child's conception or birth if (i) the birth father consents under oath and in writing to the adoption; (ii) ~~the birth mother swears under oath and in writing that the identity of the birth father is not reasonably ascertainable;~~ (iii) the identity of the birth father is ascertainable and his whereabouts are known, he is given notice of the proceedings by registered or certified mail to his last known address and he fails to object to the proceeding within 21 days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the court, within the time period specified in this section. Failure of the objecting party to appear at the consent hearing, either in person or by counsel, shall constitute a waiver of such objection; or (iv) the putative birth father named by the birth mother denies under oath and in writing paternity of the child. An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the juvenile and domestic relations district court that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

b. *The consent of a birth father who is not married to the mother of the child at the time of the child's conception or birth shall not be required if the putative father named by the birth mother denies under oath and in writing the paternity of the child. The mother may, but is not required to identify the father who is not acknowledged pursuant to § 20-49.1, adjudicated pursuant to § 20-49.8, or presumed pursuant to § 63.2-1202.*

c. *When a birth father is required to be given notice, he may be given notice of the adoption by registered or certified mail to his last known address and if he fails to object to the adoption within 15 days of the mailing of such notice, his consent shall not be required. An objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the court, within the time period specified in this section. When no timely objection is filed, no hearing on this issue is required. Failure of the objecting party to appear at any scheduled hearing, either in person or by counsel, shall constitute a waiver of such objection.*

d. The juvenile and domestic relations district court may accept the written consent of the birth father

who is not married to the birth mother of the child at the time of the child's conception or birth, provided that the identifying information required in § 63.2-1232 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such consent ~~shall be executed after the birth of the child~~, shall advise the birth father of his opportunity for legal representation, and shall be presented to the juvenile and domestic relations district court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation.

e. In the event that the birth mother's consent is not executed in the juvenile and domestic relations district court, the consent of the birth father who is not married to the birth mother of the child shall be executed in the juvenile and domestic relations district court.

f. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required, *unless the court finds that the father's consent is withheld contrary to the best interests of the child as provided in § 63.2-1205 or if his consent is unobtainable. The consent of such presumed father shall be under oath and in writing and may be executed in or out of court.* ~~This~~ The presumption that the husband is the father of the child may be rebutted by sufficient evidence, satisfactory to the juvenile and domestic relations district court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required. *If the court is satisfied that the presumption has been rebutted, notice of the adoption shall not be required to be given to the presumed father.*

2. A birth parent whose consent is required as set forth in § 63.2-1202, whose identity is known and who neither consents before the juvenile and domestic relations district court as described above, nor executes a written consent to the adoption or a denial of paternity out of court as provided above, shall be given notice, including the date and location of the hearing, of the proceedings pending before the juvenile and domestic relations district court and be given the opportunity to appear before the juvenile and domestic relations district court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until ~~21~~ 15 days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, 10 days after the completion of the execution of an order of publication against such birth parent. The juvenile and domestic relations district court may appoint counsel for the birth parent(s). If the juvenile and domestic relations district court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.2-1205, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents; ~~which order shall become effective 15 days thereafter.~~ If the juvenile and domestic relations district court denies the petition, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.

3. Except as provided in subdivision 4, if consent cannot be obtained from at least one birth parent, the juvenile and domestic relations district court shall deny the petition and determine custody of the child pursuant to § 16.1-278.2.

4. If the child was placed by the birth parent(s) with the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic relations district court may grant the petition without the consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents, which order shall become effective 15 days thereafter. Prior to the entry of such an order, the juvenile and domestic relations district court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent; (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s); and (iii) that pursuant to § 63.2-1205, the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable.

Under this subdivision, the court or the parties may waive the requirement of the simultaneous meeting under § 63.2-1231 and the requirements of subdivisions A 1, A 3, and A 7 of § 63.2-1232 where the opportunity for compliance is not reasonably available under the applicable circumstances.

5. If both birth parents are deceased, the juvenile and domestic relations district court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

6. When a child has been placed by the birth parent(s) with prospective adoptive parents who are the child's grandparents, adult brother or sister, adult uncle or aunt or adult great uncle or great aunt, consent does not have to be executed in the juvenile and domestic relations district court in the presence of the prospective adoptive parents. The juvenile and domestic relations district court may accept written consent that has been signed and acknowledged before an officer authorized by law to take acknowledgments. No hearing shall be required for the court's acceptance of such consent.

When such child has resided in the home of the prospective adoptive parent(s) continuously for three or more years, this section shall not apply, and consent shall be executed in accordance with subsection E of § 63.2-1202.

7. No consent shall be required from the birth father of a child placed pursuant to this section when such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the proceedings under this section.

7. *No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with the respect to the adoption of the child and cannot be withdrawn.*

8. *A birth father not married to the mother of the child may consent to the termination of all of his parental rights prior to the birth of the child.*

§ 9. The juvenile and domestic relations district court shall review each order entered under this section at least annually until such time as the final order of adoption is entered.

§ 63.2-1234. When consent is revocable.

Consent shall be revocable as follows:

1. By either consenting birth parent for any reason for up to ~~fifteen~~ 10 days from its execution. *Once the child is 10 days old, no executed consent can be withdrawn.*

a. Such revocation shall be in writing, signed by the revoking party or counsel of record for the revoking party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the juvenile and domestic relations district court, within the time period specified in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the clerk's office is closed as authorized by statute, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the clerk's office is closed as authorized by statute.

b. Upon the filing of a valid revocation within the time period set out in this section, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement is void and, if necessary, the juvenile and domestic relations district court shall determine custody of the child as between the birth parents.

2. By any party prior to the final order of adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents.

§ 63.2-1237. Petition for parental placement adoption; jurisdiction; contents.

Proceedings for the parental placement adoption of a minor child and for a change of name of such child shall be instituted only by petition to the circuit court in the county or city in which the petitioner resides or *in the county or city where a birth parent has executed a consent pursuant to § 63.2-1233.* Such petition may be filed by any natural person who resides in the Commonwealth *or is the adopting parent(s) of a child who was subject to a consent proceeding held pursuant to § 63.2-1233.* ~~for The~~ *The* petition shall ask leave to adopt a minor child not legally ~~his~~ *the petitioner's* by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating his or her consent to the prayer thereof only. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

The petition shall state that the findings required by § 63.2-1232 have been made and shall be accompanied by appropriate documentation supporting such statement, to include copies of documents executing consent and transferring custody of the child to the prospective adoptive parents, and a copy of the report required by § 63.2-1231. The court shall not waive any of the requirements of this paragraph nor any of the requirements of § 63.2-1232 *except as allowed pursuant to subdivision 4 of § 63.2-1233.*

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents; and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

§ 63.2-1241. Adoption of child by new spouse of birth or adoptive parent.

A. When the spouse of a birth parent of a child born in wedlock or the spouse of a parent by adoption of the child has died, and the surviving birth parent or parent by adoption marries again and the new spouse desires to adopt the child, on a petition filed by the surviving birth parent or parent by adoption and new spouse for the adoption and change of name of the child, the circuit court may

proceed to order the proposed adoption or change of name without referring the matter to the local director.

B. When a birth parent of a legitimate infant or a parent by adoption is divorced and marries again and the birth parent or parent by adoption desires the new spouse to adopt the child, on a petition filed by the birth parent or parent by adoption and the new spouse for the adoption and change of name of the child, *or if the child is the result of surrogacy*, the circuit court may proceed to order the proposed adoption or change of name without referring the matter to the local director if the other birth parent or parent by adoption consents in writing to the adoption or change of name or if the other birth parent or parent by adoption is deceased.

C. When the custodial birth parent of a child born to parents who were not married to each other at the time of the child's conception or birth marries and the new spouse of such custodial birth parent desires to adopt such child, on a petition filed by the custodial birth parent and spouse for the adoption and change of name of the child, the circuit court may proceed to order the proposed adoption and change of name without referring the matter to the local director if (i) the noncustodial birth parent consents, under oath, in writing to the adoption, or (ii) the mother swears, under oath, in writing, that the identity of the father is not reasonably ascertainable, or (iii) the putative father named by the mother denies paternity of the child, or (iv) the child is fourteen years of age or older and has lived in the home of the person desiring to adopt the child for at least five years, or (v) the noncustodial birth parent is deceased, *or (vi) the noncustodial birth parent executes a denial of paternity under oath and writing, or (vii) the noncustodial birth parent:*

- a. Is not an acknowledged father pursuant to § 20-49.1; and*
- b. Is not an adjudicated father pursuant to § 20-49.8; and*
- c. Is not a presumed father.*

D. When a single person who has adopted a child thereafter marries and desires his spouse to adopt the child, on a petition filed by the adoptive parent and the spouse for the adoption and change of name of the child, the circuit court may proceed to order the proposed adoption or change of name without referring the matter to the local director.

Article 4.1.

Close Relative Adoption.

§ 63.2-1242.1. Close relative adoption.

A. *For the purposes of this chapter, a "close relative placement" shall be an adoption by the child's grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.*

B. *In a close relative placement the court may accept the written and signed consent of the birth parent(s) that is signed under oath and acknowledged by an officer authorized by law to take such acknowledgements.*

§ 63.2-1242.2. Close relative adoption; child in home less than three years.

A. *When the child has continuously resided in the home or has been in the continuous physical custody of the prospective adoptive parent(s) who is a close relative for less than three years, the adoption proceeding, including court approval of the home study, shall commence in the juvenile and domestic relations district court pursuant to the parental placement adoption provisions of this chapter with the following exceptions:*

- 1. The birth parent(s)' consent does not have to be executed in juvenile and domestic relations district court in the presence of the prospective adoptive parents.*
- 2. The simultaneous meeting specified in § 63.2-1231 is not required.*
- 3. No hearing is required for this proceeding.*

B. *Upon the juvenile and domestic relations district court issuing an order accepting consents or otherwise dealing with birth parents rights and appointing the close relative(s) custodians of the child, the close relative(s) may file a petition in the circuit court as provided in Article 1 (§ 63.2-1200 et seq.) of this chapter.*

C. *For adoptions under this section:*

1. An order of reference, an investigation and a report shall not be made if the home study report is filed with the circuit court unless the circuit court in its discretion requires an investigation and report to be made.

2. The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption when the court is of the opinion that the entry of an order would otherwise be proper.

3. If the circuit court determines that there is a need for an additional investigation, it shall refer the matter to the licensed child-placing agency that drafted the home study report for an investigation and report, which shall be completed within such times as the circuit court designates.

§ 63.2-1242.3. Close relative placement; child in home for three years or more.

When the child has continuously resided in the home or has been in the continuous physical custody of the prospective adoptive parent(s) who is a close relative for three or more years, the parental placement provisions of this chapter shall not apply and the adoption proceeding shall commence in the circuit court.

For adoptions under this section:

1. *An order of reference, an investigation and a report shall not be made unless the circuit court in its discretion shall require an investigation and report to be made.*

2. *The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption when the court is of the opinion that the entry of an order would otherwise be proper.*

3. *If the circuit court determines the need for an investigation, it shall refer the matter to the local director of the department of social services for an investigation and report, which shall be completed in such time as the circuit court designates.*

§ 63.2-1243. Adoption of certain persons eighteen years of age or over.

A petition may be filed in circuit court by any natural person who is a resident of this Commonwealth (i) for the adoption of a stepchild eighteen years of age or over to whom he has stood in loco parentis for a period of at least three months; (ii) for the adoption of a ~~niece or nephew over~~ *close relative, as defined in § 63.2-1242.1, eighteen years of age who has no living parents and who has lived in the home of the petitioner for at least three months or older*; (iii) for the adoption of any person eighteen years of age or ~~over older~~ who is the birth child of the petitioner or who had resided in the home of the petitioner for a period of at least three months prior to becoming eighteen years of age; or (iv) for the adoption of any person eighteen years of age or older, for good cause shown, provided that the person to be adopted is at least fifteen years younger than the petitioner and the petitioner and the person to be adopted have known each other for at least ~~five years~~ *one year* prior to the filing of the petition for adoption; ~~and provided further that both the petitioner and the person to be adopted have been residents of the Commonwealth for at least two years immediately prior to the filing of the petition.~~ Proceedings in any such case shall conform as near as may be to proceedings for the adoption of a minor child under this chapter except that:

(a) No consent of either parent shall be required; and

(b) The consent of the person to be adopted shall be required in all cases.

Any interlocutory or final order issued in any case under this section shall have the same effect as other orders issued under this chapter; and in any such case the word "child" in any other section of this chapter shall be construed to refer to the person whose adoption is petitioned for under this section. The entry of a final order of adoption pursuant to this section which incorporates a change of name shall be deemed to meet the requirements of § 8.01-217.

The provisions of this section shall apply to any person who would have been eligible for adoption hereunder prior to July 1, 1972.