

## EFFECTS OF ADOPTION

An order of adoption confers the surname of the adoptive parent on the adopted child.

- The adopted child is therefore deemed in law to be the legitimate child of the adoptive parents.
- The child acquires the adoptive parents' surname.
- An adopted child, can inherit from the adoptive parent who dies intestate i.e without a Will.
- Adoption ends all rights and legal responsibilities (like the right to maintenance) between the child and his natural parents and their relatives.
- However, the child may inherit from the natural parents if they died without a Will.
- The adoptive parents acquire parental power over the child and the child must be supported by the adoptive parents.
- Marriage between the adopted child and the adoptive parents is prohibited.

**N.B:** The consent must be in writing and signed by the person giving it, in the presence of a District Commissioner.

The consent must be attached to the application of adoption.

**For further details contact**

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**Administration of Justice**

# ADOPTION

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is the legal process through which the rights and obligations between a child and natural parent or parents are terminated, and a new parental relationship enjoying legal recognition is created between the child and its adoptive parent or parents. (Naude and Another V Frazer 1998 (4) SA 539 (SCA)). The adopting parent is referred to as the adoptive parent and the child is the adopted child.

### WHO MAY ADOPT A CHILD?

- A husband and his wife jointly.
- A widower or widow or unmarried or divorced person
- A married person whose spouse is at the time of the adoption mentally disordered or defective and has been in that state for a continuous period which is more than seven years immediately preceding that time.
- A married person who is separated from his or her spouse by judicial decree.
- Any person over 25 years may adopt a child.
- A child of 16 years of age can only be adopted by parents who are at least 25 years older than that child

- However, a widow or widower or unmarried or divorced person may adopt his/her biological child who was previously adopted by any person under the Act, whether or not he or she is under the age of 25 years or is less than 25 years older than the child.
- A husband and his wife may adopt a biological child of one of them even though they are under the age of 25 years and the child is 16 years or more. The husband, however, must be at least 15 years older than the child of his wife and the wife must at least be 10 years older than the child of the husband.
- A person cannot adopt a child 25 years younger than him/her unless the child is of the same sex as the adoptive parent.

### HOW DO YOU GET AN ADOPTION

Adoption of a child is ordered by any magistrate court in the district in which the adopted child resides on the application of the adoptive parent(s).

- The prospective adoptive parent or parents make an application to court for adoption.

- The application must be accompanied by a report of a Social Welfare officer which gives background information on all the affected parents and further indicate whether that the adoptive parents are qualified to adopt the child.

### ADOPTION ORDER

The court will grant an adoption order if it is satisfied that:

- (a) The applicant(s) are qualified to adopt the child
- (b) The applicant(s) are of good repute and are fit and proper persons to be entrusted with custody of the child and possess adequate means to maintain and educate the child.
- (c) The proposed adoption will serve the interests and conduce to the welfare of the child.
- (d) Consent to the adoption has been given -
  - (i) by both parents of the child or if the child is born out of wedlock, by the mother of the child.
  - (ii) if both parents are dead or in the case of child born out of wedlock and the mother is dead, by the guardian of the child.
  - (iii) If one parent is dead, by the surviving parent.
- (e) If the child is over 10 years of age, the child must give consent.