



SB 1360 - ACT 101 OF 2010

VOLUNTARY POST-ADOPTION CONTACT AGREEMENTS

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- I. Who may be parties to an agreement?
 - A. Any birth relative, defined as a birth parent, grandparent, aunt or uncle, or sibling, by blood, marriage or adoption.
 - B. Adoptive parents and any adopted child over the age of 12.
 1. Consent of adopted child over the age of 12 is required even if the child is not a party to the agreement.
- II. Notification requirements
 - A. Any agency or anyone representing parties in an adoption must provide notice to birth parents, prospective adoptive parents, and a child who can reasonably be expected to understand that they have the option to enter into a voluntary agreement for continuing contact or communication.
 1. "Agency" is defined to include a private adoption agency.
 - B. This requirement imposes an obligation to explain the procedure to make an open adoption agreement legally enforceable.
- III. Procedure for approval
 - A. Agreement must be in writing and is to be filed with the court that finalizes the adoption
 - B. The court shall approve the Agreement if the court determines that:
 1. The Agreement has been entered into knowingly and voluntarily by all parties.



- a. An affidavit under oath stating that the Agreement was entered into knowingly and voluntarily must be filed with the court. (Affidavit can be executed jointly by all parties or separate affidavits can be filed.)
2. The Agreement is in the best interest of the child. In determining best interest, the court should consider the following:
 - a. Length of time child has been with persons other than a birth parent and the circumstances.
 - b. Interaction and interrelationship between child and birth relatives and other persons who routinely interact with them.
 - c. Child's adjustment to home, school and community.
 - d. Willingness and ability of birth relatives to respect and appreciate the bond between child and prospective adoptive parents.
 - e. Willingness and ability of prospective adoptive parents to respect and appreciate bond between child and birth relatives.
 - f. Any evidence of abuse or neglect.

IV. Legal Effect of Agreement

- A. Agreement is only legally enforceable if it is approved by the court.
 1. Without court approval, the Agreement is not legally enforceable.
- B. Failure to comply with an Agreement that is legally enforceable is not grounds for setting aside an adoption decree.

V. Modification of Agreement

- A. Only the adoptive parents or a child over age 12 may seek to modify an Agreement by filing an action in the court that finalized the adoption.
- B. Court must find that the modification serves the needs, welfare and best interests of the child.



VI. Enforcement of Agreement

- A. Any party to the Agreement or the child who is the subject of the Agreement may file an action in the court that finalized the adoption seeking enforcement of the Agreement
- B. The court may enter an order enforcing the Agreement if it finds all of the following:
 - 1. By clear and convincing evidence, enforcement serves the needs, welfare and best interests of the child.
 - 2. The party seeking enforcement has substantially complied with the Agreement.
- C. An Agreement is no longer enforceable when a child reaches the age of 18, unless the Agreement, or a court order, provides otherwise
 - 1. Court finalizing adoption has continuing jurisdiction until child reaches age 18.

VII. Discontinuance of Agreement

- A. A party to the Agreement or a child over age 12 may seek to discontinue the Agreement by filing an action in the court that finalized the Agreement.
- B. Court may order discontinuing the agreement if it finds by clear and convincing evidence that discontinuance serves the needs, welfare and best interest of the child.

VIII. General Provisions

- A. Parties are not entitled to court-appointed counsel.
- B. Parties are not entitled to money damages for breach of an Agreement.
- C. The Court may appoint a guardian *ad litem* to represent the interests of a child if there is a dispute regarding an Agreement.



- D. If an action to modify, enforce or discontinue an Agreement is found to have been brought in bad faith or is frivolous, the court may award attorneys' fees and costs to the prevailing party.

Please call Gerri Sperling at 412-918-1165 or email gsperling@metzlewis.com to discuss these changes and how they may impact your current situation.

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