

## 6

## NON-AGENCY PLACEMENT ADOPTIONS

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# 6

## NON-AGENCY PLACEMENT ADOPTIONS

### 6.1 Introduction

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A non-agency placement *adoption* occurs when the child is not in the custody of a *local department of social services (LDSS) or licensed child placing agency (LCPA)*. In a non-agency placement, the birth parents or legal guardians consent to the adoption, and parental rights are terminated by entry of the Final Order of Adoption. Depending on the type of non-agency placement, the local agency may have identified responsibilities to assist in the completion of the adoption.

*Fees may be charged for non-agency adoptions and are determined based on income, family size, and indirect costs to the agency. The fee schedule is established by the State Board of Social Services. See [Section 5.9](#) for additional information on charging a fee.*

### 6.2 Parental placement adoptions

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Parental placements for the purpose of adoption are governed by the provisions in Chapter 12 of the Code of Virginia, [§ 63.2-1230](#) through [63.2-1240](#).

When a LCPA or LDSS is requested to and accepts custody of a child for the purpose of placing the child with adoptive parents recommended by the birth parents or a person other than a LDSS or LCPA, the birth parents select either the parental placement adoption provisions or the agency adoption provisions ([Section 3.5](#)) for the adoption of their child.

An agency or local board shall provide information to the birth parents regarding the parental placement adoption and agency adoption provisions, and shall provide the birth parent the opportunity to be represented by independent legal counsel as well as counseling. No person shall charge, pay, give, or agree to give or accept any money, property, services, or other thing of value in connection with such adoption except as provided in [§ 63.2-1218](#).

In a parental placement, the agency completes a home study and a petition is filed in the juvenile and domestic relations court for execution of consent and awarding custody to the prospective adoptive parents. The juvenile and domestic relations court reviews the home study and collateral material to determine whether the requirements of law are met, accepts parental consent, and transfers custody to the adoptive parents. An adoption petition may then be filed in circuit court.

### 6.2.1 Timeline for parental placement adoption

The overall steps in a parental placement adoption are as follows:

- The agency *must* receive a request for a home study *from the court*.
- A home study is completed *by the agency and submitted to the court*.
- A petition is filed for execution of consents in juvenile and domestic relations district court.
- The court accepts consent and awards custody to the prospective adoptive parents.
- A petition for adoption is filed in the circuit court.
- The circuit court enters an interlocutory order if everything is in compliance with the law.
- The agency conducts supervision of the placement and submits a Report of Visitation to the circuit court (See Section [3.8.2](#) for more information on the Report of Visitation).
- After a six-month supervisory period, the circuit court enters a Final Order of Adoption.

## **6.2.2 Responsibilities of the agency in a parental placement adoption before the adoption petition is filed in circuit court**

In a parental placement, in order for the juvenile and domestic relations court to make the required determinations before accepting consent, the agency shall perform the tasks in the following sections.

### **6.2.2.1 Open the case**

In most parental placements, the agency will be asked to complete a home study before the petition to execute consent is filed in the juvenile and domestic relations court. The request will come from either the birth parent or adoptive parent. In some cases, the agency will receive an order for a home study directly from the court. When the request for services comes from either the birth parent or the prospective adoptive parents, a Service Application is completed. In cases where the court order initiates the request for services, the court order serves as the Service Application.

#### **6.2.2.1.1 Set up case records**

A parental placement case record should contain the following documents:

- Service Application (or court order).
- All court orders.
- Home study, including all certifications.
- Report of Visitation.
- All correspondence.
- Documentation, including background forms and information on the birth family.
- Documentation of the simultaneous meeting between adoptive and birth parents if held. If the simultaneous meeting is not held, all contacts and meetings with the birth and adoptive family shall be noted.
- Documentation of the counseling provided to the birth family.
- Case narratives.

### 6.2.2.2 Conduct a home study of the prospective adoptive home

The manner in which a family receives a child for adoption shall have no bearing on how the family is assessed for the purposes of an adoptive placement. The criteria of capacity for parenthood are the same whether the child was placed by an agency, the birth parents, or a legal guardian.

The difference between completing a home study for a child placed by an agency and for a child placed by the birth parents is in the role of the agency, not in the assessment of the adoptive family. In an agency placement, the agency approves or denies adoptive applicants based on home approval standards issued by Virginia Department of Social Services (VDSS). In a parental placement, the agency makes a recommendation to the court regarding the suitability of the family to adopt. The recommendation is based on an assessment of whether the placement is contrary to the best interest of the child based on information gathered during the home study process.

The adoptive home study process involves a shared determination by the adoptive applicants and the agency as to whether they can meet the needs of an adopted child. It should be carried out so that it brings an increased understanding of the adoption process and begins to prepare the applicants for adoption. A thorough assessment of the adoptive family is critical in evaluating whether the placement is contrary to the best interest of the child.

In a parental placement, it is important for the home study to be completed as early in the process as possible. Early completion of the home study provides safeguards for the child and must be completed and filed with the court prior to the consent hearing.

In a parental placement, the agency is not responsible for approving or denying the family. State law gives birth parents the right to place their child with a family of their choice ([§ 63.2-1230](#)). The agency's responsibility is to assess the family and report its findings to the juvenile court. The birth family and the juvenile court will make the determination as to whether the family is a suitable family for the child.

After completing the home study, the agency should inform the birth parents of their recommendation to the court.

### 6.2.2.3 Agency meetings with the birth parent and adoptive parent

In addition to the information gathered during the home study assessment, the agency worker shall:

- Meet at least once with the birth parents and the prospective adoptive parents. If the birth parents and prospective adoptive parents agree, the meeting may occur simultaneously ([§63.2-1231](#)).
  - The purpose of this simultaneous meeting is to facilitate the exchange by the birth parents and adoptive parents of identifying information including full names, addresses, physical, mental, social, and psychological information, and any other information necessary to promote the welfare of the child.
  - The exchange of names and addresses may be waived if both parties agree in writing to waive the disclosure of this information.
  - If the worker is unable to complete the simultaneous meeting, it shall be documented in the home study the reasons why they were not able to meet this requirement. Upon review of the home study, the court may waive the requirement to meet simultaneously where the opportunity for compliance is not reasonably available under the circumstances in accordance with [§ 63.2-1231](#).
- Inform the birth parents of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families. Anyone may provide the required information to the birth parents including doctors, attorneys, ministers, counselors, and service workers. However, it is the service worker's responsibility to determine whether this information has been provided, and if not, to provide it.
- When birth parents request additional counseling to help them work through feelings and issues related to placing the child for adoption, the role of the agency is to assist the birth parents in obtaining this counseling. The agency may provide the counseling directly or refer the birth parents to another community agency.
  - Documentation that the birth parents were provided with this information and related counseling services is required and may serve as evidence for the court. The court is required to determine that the birth parents' consent is informed and uncoerced before proceeding with the adoption ([§ 63.2-1232](#)).
- The prospective adoptive family shall be informed of alternatives to adoption; adoption procedures, including the need to address the parental rights of the birth parents; the procedures for terminating parental rights; and the opportunities for adoption of other children.

- Documentation that the adoptive parents were provided this information is required and may serve as evidence for the court. The court is required to determine that the adoptive parents' decision is informed and uncoerced and that they intend to file an adoption petition and proceed toward a Final Order of Adoption ([§ 63.2-1232](#))
- The family can be informed of this information by the attorney or the agency. The agency should determine whether the family has received this information and, if not, provide it during the course of the home study. The home study should indicate that this information was provided to the adoptive parent.

#### **6.2.2.4 No exchange of property, advertisement, or solicitation**

The agency shall determine that there has been no exchange of property, advertisement, or solicitation except that which is allowed in [§ 63.2-1218](#) and [§ 63.2-1232](#). Fees that are allowable include:

- Reasonable and customary services provided by a licensed or duly authorized child placing agency (CPA) and fees based on prevailing community rates.
- Payment or reimbursement for medical expenses and insurance premiums which are directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings, for mental health counseling received by the birth mother or birth father related to the adoption, and for expenses incurred for medical care for the child.
- Payment or reimbursement for reasonable and necessary expenses for food, clothing, and shelter when, upon the written advice of her physician, the birth mother is unable to work or otherwise support herself due to medical reasons or complications associated with the pregnancy or birth of the child.
- Payment or reimbursement for reasonable expenses incurred incidental to any required court appearance including transportation, food, and lodging.
- Usual and customary fees for legal services in adoption proceedings;
- Payment or reimbursement of reasonable expenses incurred for transportation in connection with any of the services specified in [§ 63.2-](#)

[1218](#) or intercountry placements as defined in [§ 63.2-1104](#) and as necessary for compliance with state and federal law in such placements.

If the agency suspects that there has been an exchange of property, money, services, or any other thing of value in violation of law in the placement or adoption of the child, the agency shall report the findings to the Commissioner for investigation. (If the agency has questions as to whether a violation of [§ 63.2-1218](#) has occurred, it is recommended that the agency ask the prospective adoptive family to obtain an itemized account of services rendered for the fees charged.)

#### **6.2.2.5 Binding contract**

The agency shall determine that all parties understand that no binding contract exists regarding placement or adoption of the child ([§ 63.2-1232](#)).

Birth parents may change their minds about adoption, even after executing consent. Consent does not terminate parental rights and may be revoked by the birth parents within **seven days** of execution, upon proof of fraud or duress or by mutual consent of the birth and adoptive parents until entry of the Final Order of Adoption.

The adoptive parents may also decide not to pursue the adoption. The agency's responsibility is to ensure that both parties understand that the only guarantee of adoption in a parental placement is the entry of the Final Order of Adoption.

In a parental placement adoption the birth and adoptive parents may decide to enter into a Post Adoption Contact and Communication Agreement (PACCA) per [§ 63.2-1220.2](#) (See [Section 3.5](#) for more information about PACCA). Failure to comply with a PACCA, does not impact the validity of the consent to the adoption, the voluntary relinquishment of parental rights, the voluntary, or involuntary termination of parental rights, or the finality of the adoption.

#### **6.2.2.6 Provide the juvenile court with a Report of Home Study**

The Report of Home Study is a separate document from the home study; however, information in the home study should be included in, and consistent with, information in the Report of Home Study.

#### **6.2.2.7 Report of Home Study format**

The format for the Report of Home Study should be used as recommended by the VDSS *Adoption* Unit. The report shall include the following:

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- Information regarding 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.
- The physical, mental and developmental condition of the child.
- Information about both birth parents, including:
  - Names and addresses.
  - Why the parents desire to be relieved of the responsibility for the child and what their attitude is toward the proposed adoption.
  - Physical description, ages, races, marital status, education, employment, and, if known, physical and mental health.
- The circumstances under which the child came to live, or will be living, in the home of the prospective adoptive family, and if applicable, a statement as to whether the requirements of law related to ICPC have been met.
- All financial agreements or exchange of property among the parties, including fees paid for services related to the placement and adoption of the child, shall be reported to the court.
  - The agency includes this information in the Report of Home Study that is submitted to the juvenile court.
  - The agency is also responsible for reporting suspected violations to the Commissioner.
- A statement as to whether the requirements of law related to execution of consent have been met. These requirements include:
  - The child shall be at least three days old before consent can be executed ([§ 63.2-1233](#)).
  - When there is an identified child, the agency shall verify the child's birth (if a birth certificate is not available due to the *child's recent birth*, verification may be made through a hospital certificate). The agency should make an attempt to get a certified copy of the birth certificate with the birth registration number as soon as possible.
  - If the identity of the birth father is reasonably ascertainable, but the whereabouts of the birth father are not reasonably ascertainable,

verification of compliance with the Virginia *Birth* Father Registry shall be provided to the court ([§ 63.2-1233 1b](#)).

- The birth registration number should be listed on the Report of Visitation and the Commissioner's Confidential Report form.
- The agency shall include birth information in the Report of Home Study.
- A statement in the report of the efforts made to encourage birth parents to provide information related to all reasonably ascertainable background, medical, and psychological records of the child to the prospective adoptive parents. A list of reports given to the prospective adoptive parents shall also be submitted with the Report of Visitation.

The birth parents shall be aware of their opportunity to be represented by legal counsel, and consent of the birth parents shall be informed and uncoerced.

Additional information is reported on the [Certification form](#). The Certification form is signed by the agency worker and notarized certifying the following:

- That the birth parents are aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families.
- The prospective adoptive parents have been counseled 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, the prospective adoptive parents' decision appears to be informed and uncoerced, and the adoptive parents have stated they intend to file an adoptive petition and proceed towards a Final Order of Adoption.
- During the course of the home study, the agency worker met with birth parents and adoptive parents simultaneously; or
  - The simultaneous meeting between the agency worker, the birth parents and adoptive parents did not occur because the child was being adopted by his/her grandparents, adult sibling, or adult uncle or aunt.
- Identifying information including full names, addresses, physical, mental, social and psychological information was exchanged between the birth parents and the adoptive parents.

The agency submits the Certification form to the court with the Report of Home Study.

The original and two copies of the Report of Home Study are provided to the court and the court, at its discretion, provides the birth and adoptive parents with copies of the home study.

#### 6.2.2.8 False information

If the agency becomes aware that any person has knowingly and intentionally provided false information in writing and under oath, which is material to an adoptive placement, the agency shall report this to the Commissioner ([§ 63.2-1217](#)).

**Note:** The above responsibilities all take place at the juvenile court level. Once the adoption petition is filed in the circuit court, the agency has additional responsibilities.

### 6.2.3 Duties of the attorney in parental placement adoption in juvenile court

The duties of the parent's attorney in a parental placement adoption do not require any action by the CPA (*CPA references LDSS or LCPA*). However, the CPA should be knowledgeable of what actions the attorney is required to take in facilitating the adoption.

- File petition for consent hearing ([§ 63.2-1237](#)).
- Obtain consent from ([§ 63.2-1202](#)):
  - The mother.
  - The father who may be:
    - An acknowledged;
    - An adjudicated;
    - A presumed; and/or
    - A registered putative father.
  - If a legal father denies that he is the father of a child born to his wife or ex-wife and the child was born within 300 days or ten months of the marriage ending, the agency shall make all effort to identify the father by gathering more information from the wife or ex-wife,

verifying paternity through testing or checking the *Virginia Birth* Father Registry.

- The child who is 14 years of age or older, unless the court finds that the best interest of the child will be served by not requiring such consent ([§ 63.2-1202](#)).
- If consent cannot be obtained from at least one parent, the court shall deny the petition and determine custody of the child pursuant to [§ 63.2-1233](#) unless all parents are deceased ([§ 63.2-1233.3](#)).

Consent is not required when:

- A birth father denies under oath and in writing the paternity of the child. A denial of paternity may be withdrawn no more than ten days after it is executed. Once a child is ten days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to adoption of the child and cannot be withdrawn. ([§ 63.2-1202](#))
- The birth father is convicted of a rape, carnal knowledge of a child between 13 and 15, or adultery or fornication with a daughter, granddaughter, son, grandson, father, or mother and the child to be adopted was born of this action.
- The birth father of a child placed for adoption through a parental placement when such father is convicted of rape or incest and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the adoption proceedings ([§ 63.2-1233.6](#))
- A person's parental rights have been terminated by a court of competent (legally qualified) jurisdiction.
- If birth parents without cause, has neither visited nor contacted the child for a period of six months prior to the petition for adoption.
  - The adoptive parent needs to show evidence that the birth parents has not visited or contacted the child for a period of six months.
  - A birth parent is still required to receive noticed and be heard on the allegation of abandonment.
  - Failure of the non-consenting parent to appear at any scheduled hearing constitutes a waiver of such objection.

- If both parents are deceased, the court, after hearing evidence to that effect, may grant the petition without the filing of any consent ([§ 63.2-1233.5](#)). A death certificate for a deceased birth parent can be submitted to the court as evidence that the consent is not required ([§ 63.2-1203.3](#)).
- When the parents of a child born in wedlock are divorced and the residual parental rights and responsibilities of the parent have been terminated by the divorce decree or another order of a court ([§ 63.2-1202](#)).
- When consent has been obtained from the birth mother, consent of the birth father who was not married to the birth mother at the time of the child's conception or birth is not required if ([§ 63.2-1202](#)):
  - The putative father did not register with the Virginia *Birth* Father Registry his consent is not required ([§ 63.2-1233.1b](#)). If the identity of the birth father is reasonably ascertainable, but the whereabouts or the birth father are not reasonably ascertainable, verification of compliance with the Virginia *Birth* Father Registry shall be provided to the court ([§ 63.2-1233.1b](#));
  - 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 fails to object to the proceeding within **15 days** of the mailing of the notice ([§ 63.2-1233.1c](#)); or
  - The putative birth father named by the birth mother denies under oath and in writing paternity of the child ([§ 63.2-1202](#)).

When the consent of one parent has been obtained, the consent of the other parent may be waived if the court determines that consent is being withheld contrary to the best interest of the child or is unobtainable ([§ 63.2-1203 A](#)).

The circuit court may grant the petition without consent if:

- **Fifteen days** after personal service of notice of the petition for adoption. Personal notice is by certified or registered mail. There should be a returned postal receipt signed by the parent to indicate that notice was received and this notice is kept in the record ([§ 63.2-1203 A1](#));
- If personal service is unobtainable, ten days after the completion of the execution of an order of publication against the party or parties whose consent is required; or ([§ 63.2-1203 2](#));

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- If a birth parent is deceased, upon the filing of a death certificate for a deceased parent with the court ([§ 63.2-1203 3](#)); or
- If the judge certifies on the record that the identity of any person whose consent is required is not reasonably ascertainable ([§ 63.2-1203 2](#)).

If the birth parent who is a resident of Virginia decides to place the child for adoption in another state and the laws of that other state govern the proceedings for the adoption, the birth parent may elect to waive the execution of and instead execute consent to the adoption pursuant to the laws of the receiving state.

When waiving Virginia law and using the laws of the other state, a written waiver shall be executed under oath and include:

- A statement that the birth parents received independent legal counsel from an attorney licensed in Virginia who explained the laws of Virginia and the laws of the other state where the birth parent desired to use those laws for the adoption. This statement shall also include that information was given to the birth parents of the effects of waiving their consent in Virginia for the consent process of the other state.
- A statement that the birth parent elects not to use the consent procedures of Virginia but instead use the laws of the other state where the child was placed.
- The name, address, and telephone number of the attorney whom provided the independent legal counsel.

Failure to follow these procedures will render any waiver of consent pursuant to [§ 63.2-1233](#) invalid.

#### **6.2.4 Duties of the juvenile court in a parental placement before the adoption petition is filed in circuit court**

The duties of the juvenile and domestic relations court in a parental placement adoption do not require any action by the CPA. However, the CPA should be knowledgeable of what actions the court may take in hearing the adoption petition.

The court must advance the consent proceedings on the docket to be heard within **ten days** of filing of the petition, or as soon thereafter as practicable ([§ 63.2-1230](#)).

Consent shall be executed:

- In the juvenile and domestic relations court in the locality where the child to be adopted was born; in the locality where the birth parents reside; or in the locality where the prospective adoptive parents reside ([§ 16.1-243 1c](#)); or

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- If the birth parent does not reside in Virginia, before a court having jurisdiction over child custody matters in the jurisdiction where the birth parent resides when requested by a Virginia court pursuant to [§ 20-146.11](#) ([§ 63.2-1230](#)).
- By the birth parents while before the juvenile and domestic relations court in person and in the presence of the prospective adoptive parents ([§ 63.2-1233](#)).

If the child was placed by the birth parents with the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent, the court may grant the petition without consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents ([§ 63.2-1233.4](#)).

- Transferring custody becomes effective immediately.
- Prior to the entry of such an order, the court may appoint legal counsel for the birth parents, and shall find by clear and convincing evidence that the:
  - Birth parents were given proper notice of the hearing to execute consent and of the hearing to proceed without their consent.
  - Birth parents failed to show good cause for their failure to appear at such hearings.
  - The consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable.

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 court shall consider whether granting the petition for adoption would be in the best interest of the child. In determining the best interest, the court shall consider all relevant factors, including ([§ 63.2-1205](#)):

- The birth parents' efforts to obtain or maintain legal and physical custody of the child.
- Whether the birth parents are currently willing and able to assume full custody of the child.
- Whether the birth parents efforts to assert parental rights were thwarted by other people.
- The birth parents' ability to care for the child.

- The age of the child.
- The quality of any previous relationship between the birth parents and the child and between the birth parents and any other minor children.
- The duration and suitability of the child's present custodial environment.
- The effect of a change of physical custody on the child.

Before accepting a consent that is executed in court, the juvenile and domestic relations court shall determine that:

- The child is at least three days old ([§ 63.2-1233](#)).
- The birth parents 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 ([§ 63.2-1232 A13](#)).
- A licensed or duly authorized CPA has counseled the prospective adoptive parents with regard to alternatives to adoption, adoption procedures, including the need to address the parental rights of the birth parents, the procedures for terminating such rights, and opportunities for adoption of other children; the prospective adoptive parents' decision is informed and uncoerced; and they intend to file an adoption petition and proceed toward a Final Order of Adoption ([§ 63.2-1232 A2](#)).
- The birth parents and adoptive parents have exchanged identifying information including 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 ([§ 63.2-1232 A3](#)).
- 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 ([§ 63.2-1232 A5](#)).
- There has been no violation of law in connection with the placement ([§ 63.2-1232 A5](#)).

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- A licensed or duly authorized CPA has conducted a home study of the prospective adoptive home and that during the course of the home study, the worker has met at least once with the birth parent and prospective adoptive parents simultaneously ([§ 63.2-1232 A6](#)).
  - The court can waive the requirement of the simultaneous meeting where the opportunity for compliance is not reasonably available under the applicable circumstances ([§ 63.2-1233 4](#)).
- The birth parents have been informed of their opportunity to be represented by legal counsel ([§ 63.2-1237](#)).
- If any of the above requirements have not been met, the juvenile and domestic relations court shall refer the birth parent to a licensed or duly authorized CPA for investigation and recommendation ([§ 63.2-1232 B](#)).

Consent shall be revocable as follows ([§ 63.2-1234](#)):

- By either consenting birth parent for any reason for up to **seven days** from its execution; however, the seven-day revocation period may be waived provided that the child is ten days old and the consenting birth parent acknowledges having independent legal counsel regarding the effect of the waiver ([§ 63.2-1234](#)).
- Revocation shall be in writing, signed by the revoking party or counsel of record for the revoking party, and filed with the clerk of court in which the petition was filed during the business day of the court, within the following time period:
  - If the revocation period expires on a Saturday, Sunday, legal holiday, or any day on which the clerk's office is closed, the revocation period shall be extended to the next day that is not Saturday, Sunday, legal holiday, or other day on which the clerk's office is closed.
  - Upon the filing of a valid revocation within the time period specified, the court shall order that any consent given for the purpose of such placement is void and, if necessary, determine custody of the child as between the birth parents.
- 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 ([§ 63.2-1234 2](#)).

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After accepting consent, the juvenile and domestic relations court shall transfer custody to the prospective adoptive parents, to be responsible for the care of the child until such time as the court order is modified ([§ 63.2-1233](#)).

- The juvenile and domestic relations court shall review such orders of appointment at least annually until such time as the Final Order of Adoption is entered ([§ 63.2-1233](#)).
- When a child is placed in an adoptive home by the birth parent and a court of competent jurisdiction has not entered an interlocutory order, the child shall not be removed from the physical custody of the adoptive parents, except ([§ 63.2-1103](#)):
  - With the consent of the adoptive parents;
  - Upon order of the juvenile and domestic relations district court or the circuit court of competent jurisdiction;
  - Pursuant to [§ 63.2-904](#), which removal shall be subject to review by the juvenile and domestic relations district court upon petition of the adoptive parents; or
  - Upon order of the court which accepted consent when consent has been revoked as authorized by [§ 63.2-1204](#) or [63.2-1223](#).

After the expiration of the appropriate revocation period ([§ 63.2-1206](#)):

- When a birth parent or an alleged birth parent attempts to obtain or regain custody or attempts to exercise parental rights to a child who has been placed for adoption, there shall be no parental presumption in favor of any party.
- Upon the motion of any such birth parent or alleged birth parent, or upon the motion of any person or agency with whom the child has been placed, the court shall determine:
  - Whether the birth parent or alleged birth parent is a person whose consent to the adoption is required.
  - If so, whether, in the best interest of the child, the consent of the person whose consent is required is being withheld contrary to the best interest of the child or is unobtainable.
- If the juvenile and domestic relations court suspects that there has been an exchange of property, money, services, or any other thing of value in violation

of law in the placement or adoption of the child, the court shall report the findings to the Commissioner for investigation (§ [63.-2-1218](#)).

- When services have been provided by an LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not accept parental consent until proof of payment of fees has been received (§ [63.2-1248](#)).
- If the juvenile and domestic relations court determines that the placement will be contrary to the best interests of the child, the court shall inform the birth parents. If the birth parents choose neither to retain custody of the child nor to designate other prospective adoptive parents, or if the birth parents' whereabouts are not reasonably ascertainable, the court shall determine custody of the child (§ [63.2-1235](#)).

#### **6.2.5 Duties of the Commissioner in a parental placement adoption when reports of suspected violations of law in the placement and adoption**

When reports of suspected violations of law in the placement and adoption of the child are received by the Commissioner, the Commissioner shall (§ [63.2-1218](#)):

- Investigate the suspected violation and take appropriate action when the investigation reveals that:
  - There may have been a violation of law; the Commissioner shall report his/her findings to the appropriate attorney for the Commonwealth;
  - The violation occurred in the course of the practice of a profession or occupation licensed or regulated pursuant to Title 54.1, the Commissioner shall also report his/her findings to the appropriate regulatory authority for investigation and appropriate disciplinary action (§ [63.2-1219](#)); or
  - The violation involves engaging in the activities of a CPA without a license, the Commissioner may file suit with the court of record having chancery jurisdiction (§ [63.2-1701](#)).
- The Commissioner is also authorized to investigate and may refer to the attorney for the Commonwealth any person who has knowingly and intentionally provided false information in writing and under oath, which is material to an adoptive placement (§ [63.2-1217](#)).

### 6.2.6 Duties of the circuit court in a parental placement adoption after the adoption petition is filed in circuit court

The following are duties of the circuit court regarding acting on petitions for adoption. These duties do not fall under the purview of the agency and require no action on the part of the agency. Pending certain actions taken by the circuit court as described below, documents generated in the course of the court acting on the petition may be required to be sent to the agency for filing and/or submission to the VDSS *Adoption* Unit, Adoption Records Specialist.

The clerk of court where the petition is filed sends a copy of the petition, the interlocutory order, and all exhibits to the CPA, whichever agency completed the home study required by [§ 63.2-1231](#). A copy is also sent to the Commissioner ([§ 63.2-1209](#)).

- The petition shall be signed by the petitioner and counsel of record, if any ([§ 63.2-1237](#)).
- In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath ([§ 63.2-1237](#)).

The circuit court shall not accept a petition in a parental placement unless:

- Copies of documents executing consent, transferring custody to the petitioners, and the home study are filed with the petition ([§ 63.2-1237](#)).
- The circuit court has determined that the findings required by law have been made by the juvenile and domestic relations court.

When all legal requirements related to executing consent pursuant to ([§ 63.2-1232](#)) have been met, the circuit court may dispense with the Order of Reference and enter an interlocutory order.

In those parental placements where an Order of Reference or an interlocutory order is entered, the circuit court shall expeditiously consider the merits of the petition upon receipt of the report ([§§ 63.2-1208 B](#) and [63.2-1212 A](#)).

The court may take any action it finds appropriate if the report is not submitted in the specified time.

When no action is taken by the court for at least one year from the entry of the last order, the clerk of court places the case on the docket for review by the court ([§ 63.2-1214](#)).

The clerk of court sends a copy of any order entered to the agency and to the Commissioner ([§ 63.2-1238 A](#)).

Upon entry of a Final Order of Adoption or any other final disposition, the clerk of court forwards all reports submitted with the Final Order of Adoption to the Commissioner for preservation ([§ 63.2-1246](#)).

When services have been provided by an LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not enter a Final Order of Adoption until proof of payment of fees has been received ([§ 63.2-1248](#)).

The court may not enter a Final Order of Adoption without the information needed to complete a Report of Adoption (VS-21); unless the court determines this information is unavailable or unnecessary ([§ 63.2-1213](#)). The Report of Adoption (VS-21) provides information that is needed to locate and identify the original birth certificate and to establish a new birth certificate (See [Section 3.11.1](#) for more information on the Report of Adoption form).

After the entry of a final order, the clerk of court sends to the State Department of Health, Office of Vital Statistics, a completed Report of Adoption, VS-21, and a completed application for a certified copy of a birth record, VS-6, with a check for the required fee ([§ 32.1-262](#)).

After the expiration of six months from the date of entry of any Final Order of Adoption from which no appeal has been taken to the court of appeals, the validity of the final order shall not be subject to attack in any proceedings, collateral or direct, for any reason, including fraud, duress, failure to give any required notice, failure of any procedural requirement, or lack of jurisdiction over any person, and the Final Order of Adoption shall be final for all purposes ([§ 63.2-1216](#)).

### **6.2.7 Duties of the attorney in a parental placement adoption after the adoption petition is filed in circuit court**

The following are duties of the attorney for the adoptive family. These duties do not fall under the purview of the agency and require no action on the part of the agency.

Some courts allow petitioners to represent themselves in adoption proceedings. The decision to require an attorney rests with the court. The attorney:

- Files the petition which shall state that the findings required by ([§ 63.2-1232](#)) have been met and shall be accompanied by the following documentation:
  - Copies of documents executing consent.
  - A copy of the court order transferring custody of the child to the prospective adoptive parents.

- A copy of the home study required by ([§ 63.2-1231](#)).
- Prepares appropriate orders.
- Informs the petitioners of the legal requirements.
- Assists the agency in obtaining necessary verifications.
- Assists the petitioners in obtaining a new birth certificate for the child.

### **6.2.8 Duties of the Commissioner in a parental placement adoption after the adoption petition is filed in circuit court**

The VDSS, *Adoption* Unit is the office which carries out the duties of adoption for the Commissioner. These duties include:

- Establishing a permanent record of all adoptions petitioned and providing post-adoption services to adult adoptees and adoptive parents seeking background information on the biological family ([§ 63.2-1246](#)).
- Accepting for preserving, adoption cases including related exhibits ([§§ 63.2-1238](#) and [63.2-1212](#)).
- Arranging through the ICPC for investigation and supervisory visits to be made when an out-of-state/country agency is involved ([§ 63.2-1240](#)).

### **6.2.9 Responsibilities of the agency in a parental placement after the adoption petition is filed in circuit court**

#### **6.2.9.1 Review the petition**

The petition is a written request filed with the court by prospective adoptive parents asking the court to legalize a relationship with a child.

The CPA may review the petition to be sure the petition is filed in the court having jurisdiction where the petitioners reside, or in the locality or city in which the birth parent executed a consent, or the locality or city in which the CPA that placed the child is located and the case has been referred to the proper agency. The petition must be signed by the petitioner and by counsel, if any.

In a parental placement, the petition shall state that the findings required by ([§ 63.2-1232](#)) have been met and should be accompanied by the following documentation:

- Copies of documents executing consent.

- A copy of the court order transferring custody of the child to the prospective adoptive parents.
- A copy of the home study required by ([§ 63.2-1231](#)).

#### **6.2.9.2 Acknowledge the interlocutory order**

In a parental placement adoption, if the other requirements of ([§63.2-1230 through 63.2-1240](#)) were met, the circuit court may dispense with an investigation and proceed with the entry of an interlocutory order. The agency which completed the home study required by ([§ 63.2-1231](#)) is responsible for providing supervision after the entry of the interlocutory order. The agency shall review and acknowledge to the court receipt of the interlocutory order. A copy of the acknowledgment should be sent to the VDSS Adoption Records Specialist in the VDSS *Adoption* Unit.

#### **6.2.9.3 Supervision of the placement**

The circuit court reviews the home study when it is satisfied that all the requirements have been complied with, the petitioner is financially able to maintain the child, is morally suitable and a proper person to care for and train the child, the child is suitable for adoption by the petitioner, and the best interests of the child will be met through adoption; the court shall enter an interlocutory order.

An interlocutory order declares that subject to the probationary period prior to the filing of the Final Order of Adoption that the child shall be for all purposes the child of the petitioner.

#### **6.2.9.4 Make supervisory visits**

The purpose of *supervisory* visits should be for regular and ongoing support, monitoring and counseling of the family, and to document the progress of the placement. Since the goal of these visits is to facilitate the integration of the child into the family, the number of visits should be determined by the special needs of the child and the family for a successful adoptive home.

The agency shall make at least three visits to the child within a six-month period following the date the interlocutory order is entered ([§ 63.2-1212](#)).

- The visits shall be in the presence of the child.
- One visit shall be in the home of the petitioners with the child and both petitioners present unless one of the petitioners is no longer residing in the home.

- Visits shall be scheduled at least 90 days elapse between the first and last visit.
- If one of the petitioners is no longer living in the home, the agency shall contact that petitioner to determine if he or she desires to remain a party to the proceedings. The report to court shall include the results of the contact.
- If the petitioners move from Virginia prior to completion of the three visits, the agency shall request assistance from an agency in the new state of residence in completing the visits through the ICPC.
  - An Interstate Compact form (100a) is completed and forwarded to ICPC at the VDSS with a cover letter clearly stating the needed services and any collateral materials the out-of-state agency may need.
- After the entry of the interlocutory order, the court is the sender and no longer the agency ([§ 63.2-1240](#)).
  - Collateral material would include social and medical information on the child and birth parents and the home study on the adoptive family. A copy of the interlocutory order is also included in the materials.

#### 6.2.9.5 Report of Visitation

The purpose of the visits is to determine for the court whether the best interest of the child will be met by finalizing the adoption. At a minimum, the Report of Visitation shall include a mutual assessment of the placement, the agency contacts, the adjustment of the child and family with the placement, and services the supervising child placement agency has provided or needs to be provided.

The questions specified in [§ 63.2-1238](#) shall be answered:

- Whether the petitioners are financially able, morally suitable, in satisfactory physical and mental health, and a proper person to care for and train the child.
- What the physical and mental condition of the child is.
- 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.

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- Whether the parents have abandoned the child, or are morally unfit to have custody over him.
- The circumstances under which the child came to live, or will be living, in the home of the petitioners.
- Whether the child is a suitable child for adoption by the petitioner.
- What fees have been paid by the petitioners or in their behalf which have assisted them in obtaining the child.
- Relevant physical and mental history of the birth parents, if known.

The report should include:

- Interviews with:
  - Adoptive parents.
  - Child, if of the age to participate.
  - All biological/legal parents to determine their attitude, physical and mental health history, and background information.
- If an interview is not possible, contact should be made by mail or telephone, or through another agency.
- When a letter is sent to the parents of a child born out-of-wedlock, it shall be sent by or certified mail.
  - The letter shall be delivered to the addressee only and a return receipt requested.
- Contact with professional persons concerned with the case.
- Home visits
- Medical statements on the child and adoptive parents in non-relative cases.
- Information on the adoptive parents' income in order to determine the fee assessed.

If unable to complete the investigation:

- The court and the *VDSS Adoption* Unit shall be notified if the investigation and report are delayed and cannot be completed within 60 days.
- A report should be sent to the court with a request for additional time to complete the report. The request should include the reasons for the delay or inability to complete the investigation, and the period of time needed to complete the investigation.
- If the petitioners cannot be contacted or located, the agency is to submit a report to the court and recommend the petition be dismissed.
- If the petitioners move from Virginia before completion of the investigation, the agency requests assistance from the new state of residence through ICPC.
  - An Interstate Compact Form (100A) is completed and forwarded to the ICPC with a cover letter clearly stating the needed services and any collateral materials the out-of-state agency may need in completing their services.
- Collateral materials would include social and medical information on the child and birth parents and the home study on the adoptive family.

#### 6.2.9.6 Prepare the Report of Visitation

Use the format for the home study required by [§ 63.2-1238](#) shown in the Forms section with the following changes:

- Title the report "Report of Visitation."
- Direct the report to the appropriate circuit court and the appropriate circuit court judge.
- Put the court chancery number and the Virginia adoption case number on the report if available.
- Cite the appropriate code section under which the agency was directed to do the report ([§§ 63.2-1208 B](#) and [63.2-1238](#)).
- Insert a section on consent after the section on separation from birth parents.
- State who consented to the adoption and the manner in which consent was executed.

- If applicable, state whose consent was not required or can be waived and why.
- The report shall include the physical and mental history of birth parents, if it is known.

#### 6.2.9.7 Distribute copies of the report

Send copies to:

- Original to the court with the Certificate of Service.
- *VDSS Adoption* Unit.
- Attorney.
  - If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for final disposition.
- A copy may be sent to the adoptive parents.

If a letter of opposition to the adoption is received from the biological parents, the letter is to be sent to the court with the report. A copy is sent to the attorney and to the *VDSS Adoption* Unit with the copy of the report. A copy is kept in the agency's file.

- Keep one copy in agency's file until final action by the court.
- The agency should submit any additional information requested by the *VDSS Adoption* Unit.
- In those instances where an LDSS has provided services and the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid. Proof of payment of the fee shall be provided by the LDSS to the court prior to the entry of the final order ([§ 63.2-1248](#)).

#### 6.2.9.8 Submit a Supplementary Report

Sometimes after the required report has been submitted, the agency receives factual information on a case that would influence the action to be taken by the court. The agency shall submit a Supplementary Report when factual information is received after making the required report and no court action has been taken or the case is pending as the result of a request for additional time to complete the investigation.

- Send the original to the court, a copy to the *VDSS Adoption* Unit, and a copy to the attorney. One copy is retained in the agency's file.
- Review the interlocutory order

#### 6.2.9.9 What should be done following final disposition

A final disposition is the final action taken by the court in an adoption, which means the case is closed. A final order granting an adoption means the child acquires parents other than his natural parents and a person acquires a child other than by birth. A final order is not subject to attack after six months from the date it was entered and is final for all purposes (§ [63.2-1213](#)).

#### 6.2.9.10 Acknowledgment and disposition of case material

The agency shall review and acknowledge receipt of the Final Order of Adoption or any other order of final disposition. A copy of the acknowledgment to the court should be sent to the *VDSS Adoption* Unit.

The agency should purge the record of duplicative material and send to the *VDSS Adoption* Unit for preservation original copies of all pertinent material that has not been sent (See [Section 3.10.2](#) for more information about sending the adoption file for preservation).

The agency may wish to work out a procedure with their circuit court whereby the circuit court will notify the juvenile and domestic relations court when the Final Order of Adoption is entered so that the juvenile and domestic relations court can remove the case from their docket.

#### 6.2.10 Adoption recommended by birth parents, physicians, Virginia licensed attorneys, and clergymen

A designated adoption is an adoption where the birth parents or a person other than a CPA recommends the prospective adoptive placement of a child. Birth parents, physicians, licensed attorneys in Virginia, and clergymen may recommend

prospective adoptive parents when they are familiar with such parent or child ([§ 63.2-1226](#)).

The birth parents can request the LDSS to accept custody of a child by signing a Permanent Entrustment Agreement or by petitioning the court to be relieved of their rights.

- When a CPA is requested to accept custody of a child for the purpose of placing the child with adoptive parents recommended by the birth parents) or a person other than someone recommended by a CPA, either the parental placement provisions or the agency provisions shall apply to the adoption at the election of the birth parents ([§ 63.2-1226](#)).

The agency shall:

- Provide information to the birth parents on the parental placement adoption procedures and the agency placement adoption procedures.
- Provide the birth parents with the opportunity to be counseled by a service worker.
- Provide the birth parents with the opportunity to be represented by independent legal counsel.
  - The documentation for the method chosen to provide these services should be kept with the child's record.
- The agency should determine if an approved home study has been completed on the prospective adoptive family.
  - If a home study has been completed, the agency should review the home study and determine whether it is in the best interest of the child.
  - If a home study has not been completed, a home study shall be initiated accordingly:
    - When the birth parents elect the LDSS placement adoption procedures, the agency initiates a home study of the prospective adoptive parents.
    - When the birth parents elect the non-agency placement adoption procedures, the LCPA initiates a home study of the prospective adoptive parents.

- If the prospective family lives out of state, the agency shall use the ICPC procedures to obtain an approved home study from the other state.

### 6.3 Close relative adoptions

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A close relative adoption shall be an adoption by the *child's adult relatives, including stepparents, stepbrothers, stepsisters, and all other adult relatives of the child by marriage or adoption.*

Chapter 12 of the Code of Virginia §§ [63.2-1242.1](#) through [63.2-1242.3](#) provides guidance on the provisions for close relative adoptions in the Commonwealth.

If a petition is filed while the child is under 18 years of age and the child then turns 18 years of age, the petition will not become invalid because the child reaches 18 years of age prior to the entry of a Final Order of Adoption.

In a close relative placement, the court may accept a written consent signed under oath by the birth parents and notarized. The birth parent does not have to execute consent in court.

#### 6.3.1 Close relative placement for a child who has been in the home less than *two* years

When a child who continuously resided in the home or has been in the continuous physical custody of a close relative for less than *two* years:

- The adoption proceedings, including the court approval of the home study, shall begin in the juvenile and domestic relations district court pursuant to the parental placement adoption provisions according to [§63.2-1232](#).

Exceptions to the parental placement adoption proceedings are:

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

The close relative may file in circuit court after the juvenile and domestic relations district court:

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- Issues an order accepting the consents or otherwise deals with the birth parents rights.
- Appoints the close relative custodians of the child.

**6.3.2 What is needed to file in circuit court**

- When the home study is filed with the circuit court an Order of Reference, investigation, and Report of Investigation shall not be made unless the circuit court in its discretion requires an investigation and Report of Investigation to be made.
- The circuit court may omit the probationary period and the interlocutory order and enter a Final Order of Adoption. The circuit court may waive appointment of a guardian ad litem (GAL) for the child who is subject to a close relative adoption ([§ 63.2-1242.2](#)).
- If the circuit court determines the need for an additional investigation, it shall refer the matter to the CPA that completed the home study. The CPA shall complete the report in the timeframe specified by the circuit court.
- No hearing is required in the juvenile and domestic relations court.

**6.3.3 Close relative placement for a child who has been in the home two or more years**

When a child who continuously resided in the home or has been in the continuous physical custody of a close relative for *two* years or more, the adoption proceeding of the parental placement provisions shall not apply and the adoption proceeding shall begin in the circuit court according to [§ 63.2-1242.3](#).

The circuit court may waive appointment of a GAL for the child who is subject to a close relative adoption ([§ 63.2-1242.3](#)).

**6.3.4 Finalizing the adoption**

An Order of Reference, investigation, and Report of Investigation shall not be made unless the circuit court in its discretion requires an investigation and Report of Investigation to be made.

The circuit court may omit the probationary period and the interlocutory order and enter a Final Order of Adoption.

In the event that the circuit court determines that there is a need for an investigation, it shall be referred to the local director of the LDSS for an investigation and report.

### 6.3.5 Responsibilities of the agency

When the Order of Reference and the interlocutory order are omitted and a Final Order of Adoption is entered at the time the petition and consent are filed, the CPA has no responsibility in this type of adoption.

However, the circuit court may order a thorough investigation of the matter and report to be performed by the applicable agency and submitted to the court within a time frame determined by the circuit court. In this case, the agency has the responsibility to complete the investigation and report to the circuit court as required in [§ 63.2-1208](#).

#### 6.3.5.1 Set up case records

A close relative adoption case record, where the circuit court has entered an Order of Reference and/or an interlocutory order, should contain the following documents:

- Service Application
  - When the Order of Reference and/or interlocutory order are received by the agency, the court order serves as the Service Application.
- All court orders.
- Report of Investigation/Home Study
- Report of Visitation
- All correspondence
- Narrative

#### 6.3.5.2 Review the petition

The petition is a written request filed with the court by prospective adoptive parents asking the court to legalize a relationship with a child.

The petition should be reviewed to verify the petition is filed in the locality the petitioner lives, in the locality the CPA that placed the child is located, in the locality the birth parent executed a consent pursuant to [§63.2-1233](#), or where the petitioners reside and the case has been referred to the proper agency ([§ 63.2-1201](#)).

The petition shall be signed by the petitioner and by counsel, if any ([§ 63.2-1201](#)).

### 6.3.5.3 Review the interlocutory order

In this type of close relative adoption case, the court may enter an interlocutory order after the investigation is completed, or omit the interlocutory order and enter a Final Order of Adoption.

If an interlocutory order is entered, the agency shall review and acknowledge to the court receipt of the interlocutory order. A copy of the acknowledgment shall be sent to the VDSS *Adoption* Unit.

### 6.3.5.4 Complete the investigation if ordered at the discretion of the circuit court

When the circuit court requires an investigation, the following areas shall be addressed (§§ [63.2-1208](#) and [63.2-1238](#)):

- Whether the petitioners are financially able, morally suitable, in satisfactory physical and mental health, and a proper person to care for and train the child.
- The physical and mental condition of the child.
- 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.
- Whether the parents have abandoned the child or are morally unfit to have custody over him.
- The circumstances under which the child came to live and is living in the home of the petitioners.
- Whether the child is a suitable child for adoption by the petitioners.
- What fees have been paid by the petitioners or in their behalf to persons or agencies which have assisted them in obtaining the child.

Ensure that the investigation required by § [63.2-1208](#) includes:

- Interviews with:
  - Adoptive parents.
  - Child, if of the age to participate.

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- All natural/legal parents to determine their attitude, physical and mental health history, and background information.
  - If an interview is not possible, contact should be made by mail or telephone, or through another agency.
  - When a letter is sent to the parents of a child born out-of-wedlock, it shall be delivered to the addressee only and a return receipt requested
- References shall be contact in person, by mail, or telephone.
- Professional persons concerned with the case.
- Visits to the adoptive home
- Information on the adoptive parents' income in order to determine the fee assessed

If unable to complete the investigation the court and subsequent report within 60 days or another time frame ordered by the court, the court and the VDSS *Adoption* Unit shall be notified. The notification to the court should include a request for additional time to complete the investigation and include the reasons for the delay or inability to complete the investigation and subsequent report in the allotted period of time.

If the petitioners cannot be contacted in order to conduct the investigation, the agency shall submit a report to the court and recommend the petition be dismissed.

If the petitioners move from Virginia before completion of the investigation, the agency should request the help of an out-of-state/country agency through ICPC.

- Send a copy to the attorney. If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for disposition. Do not send the petitioners a copy of the report.
- Keep a copy in agency's file until final disposition.
- If a letter of opposition to the adoption is received from the birth parents, the letter is to be sent to the court with the report. A copy is sent to the attorney and to the *VDSS Adoption* Unit. A copy is kept in the agency's file.

- The agency should submit any additional information requested by the VDSS *Adoption* Unit.
- In those instances where an LDSS has provided services and the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid. Proof of payment of the fee shall be provided by the LDSS to the court prior to the entry of the final order (§ [63.2-1248](#)).

#### 6.3.5.5 Submit a Supplementary Report

Sometimes after the required report has been submitted, the agency receives factual information on a case that would influence the action to be taken by the court. The agency shall submit a Supplementary Report when factual information is received after submitting the required report and no court action has been taken or the case is pending as a result of a recommendation for additional time to complete the investigation.

The original report shall be sent to the court, a copy to the VDSS *Adoption* Unit, and a copy to the attorney. One copy is retained in the agency's file.

#### 6.3.5.6 Conduct the supervisory visits

In a close relative adoption, the court at its discretion can omit the probationary period and an interlocutory order and enter a Final Order of Adoption. If the circuit court determines that there is a need for additional investigation and reports, the agency which completed the home study shall complete the supervision and reports in the time designated by the court. The interlocutory order supervisory visits shall be made in accordance with (§ [63.2-1212](#)):

- The agency shall make at least three visits to the child within a six-month period following the date the interlocutory order is entered.
- Visits shall be scheduled so that no less than 90 days elapse between the first and last visit.
- The visits shall be in the presence of the child. One visit shall be in the home of the petitioners with the child and both petitioners present unless the petition was filed by a single parent or one of the petitioners is no longer residing in the home.
- If one of the petitioners is no longer living in the home, the agency shall contact that petitioner to determine if he/she desires to remain a party to

the proceedings. The report to the court shall include the results of the contact.

- If the petitioners move from Virginia prior to completion of the three visits, the agency shall request the assistance of an agency in the new state of residence in completing the visits. This is done through ICPC.

#### **6.3.5.7 Complete the Report of Visitation**

The Report of Visitation is sent to the court within **15 days** of the last visit.

The format for the Report of Visitation shall be that recommended by the VDSS *Adoption Unit*.

#### **6.3.5.8 Distribute copies of the report**

Send copies to:

- Original to the court with the Certificate of Service
- VDSS Adoption Unit
- Attorney
  - If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for final disposition.
  - Do not send a copy of the report to the petitioners.
- Agency keeps a copy in the agency's file until the final action by the court.

#### **6.3.5.9 What should be done following final disposition**

Final disposition is the final action taken by the court in an adoption, which means the case is closed. A final order granting an adoption means the child acquires parents other than his natural parents and a person acquires a child other than by birth.

After the expiration of six months from the date of entry of the Final Order of Adoption from which no appeal has been taken, the validity of the Final Order of Adoption shall not be subject to attack for any reason including fraud, duress, failure to give any required notice, failure of any procedural requirement, or lack of jurisdiction ([§ 63.2-1216](#)).

#### 6.3.5.10 Acknowledgment

The agency shall review and acknowledge receipt of the Final Order of Adoption or any other order of final disposition. A copy of the acknowledgment to the court should be sent to the VDSS *Adoption* Unit. The agency should advise the court of any problem that could affect the legality of the adoption.

#### 6.3.5.11 Closing the case

The agency should purge the record of duplicate material and send to the VDSS *Adoption* Unit for preservation original copies of all pertinent material that has not been sent (See [Section 3.10.4](#) for more information about sending the adoption file for preservation).

### 6.3.6 Duties of the attorney

In this type of adoption, the attorney has primary responsibility for the work that should be done. The CPA should be aware of these responsibilities although it may have no responsibility to provide services in such cases.

The attorney:

- Files the petition for adoption ([§ 63.2-1201](#)).
  - The petition shall be signed by the petitioner and the petitioner's attorney, if any.
  - If the petition seeks entry of a final order without referral for investigation, the petition shall be under oath.
- Obtains required consents, which are to be filed with the petition for adoption. When the child has resided in the home of the prospective adoptive parents continuously for at least *two* years, consent is executed in accordance with [§ 63.2-1202](#).

The consent shall be in writing, signed by the birth parent under oath, and acknowledged by a notary public ([§ 63.2-1202](#)). Consent is from:

- The mother
- The legal father
  - The mother's husband is presumed to be the child's legal father. Even if he is not the child's birth father, his parental rights shall be addressed.

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- If the mother is divorced and the child was born within ten (10) months of the divorce decree, the former husband is considered the legal father.
- This presumption may be rebutted by sufficient evidence, satisfactory to the 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 this case, the consent of the mother's husband is not required.
- The birth father
  - The 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 required identifying information is filed in writing with the court.
  - The written consent can be signed prior to the birth or shall be executed after the birth of the child, shall advise the birth father of his opportunity for legal counsel and shall be presented to the court for acceptance.
  - The consent may waive further notice of the adoption proceedings.
- The child who is 14 years of age or older, unless the court finds that the best interest of the child will be served by not requiring such consent.

If consent cannot be obtained from at least one parent, the court shall deny the petition and determine custody of the child pursuant to [§ 16.1-278.2](#) unless all parents are deceased ([§ 63.2-1233.3](#)).

If both parents are deceased, the court, after hearing evidence to that effect, may grant the petition without the filing of any consent ([§ 63.2-1233.5](#)).

When the consent of one parent has been obtained, the consent of the other parent is not required:

- If the parent is deceased ([§ 63.2-1202](#));
- When the parents of a child born in wedlock are divorced and the residual parental rights and responsibilities of the parent have been terminated by the divorce decree or another order of a court ([§ 63.2-1202](#));

- When consent has been obtained from the birth mother, consent of the birth father who was not married to the birth mother at the time of the child's conception or birth is not required if ([§ 63.2-1202](#));
- The birth mother swears under oath and in writing that the identity of the birth father is not reasonably ascertainable ([§ 63.2-1233 1a](#));
- 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 fails to object to the proceeding with twenty-one days of the mailing of the notice ([§ 63.2-1233 1a](#)); or
- The putative birth father named by the birth mother denies under oath and in writing paternity of the child ([§ 63.2-1203](#)).

When the consent of one parent has been obtained, the consent of the other parent may be waived if the court determines that consent is being withheld contrary to the best interest of the child or is unobtainable ([§ 63.2-1203](#)):

- **Fifteen days** after personal service of notice of the petition for adoption (when personal notice is by certified or registered mail, there should be a returned postal receipt signed by the parent to indicate that notice was received.); or
- If personal service is unobtainable, **ten days** after the completion of the execution of an order of publication against the party or parties whose consent is required; or
- If the judge certifies on the record that the identity of any person whose consent is required is not reasonably ascertainable.

No consent shall be required from the birth father of a child placed for adoption through a parental placement when such father is convicted of rape or incest and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the adoption proceedings ([§ 63.2-1233 7](#)).

- Prepares the appropriate orders.
  - In this type of placement, neither an Order of Reference ([§ 63.2-1238](#)) nor an interlocutory order ([§ 63.2-1210 4](#)) needs to be entered. In most cases, a final order is filed with the petition and consent.
- Assists the petitioners in obtaining a new birth certificate for the child.

Before entering a Final Order of Adoption, the court shall require the preparation of a Report of Adoption form (VS-21) furnished by the state registrar of vital records (See [Section 3.11.1](#) for more information about the Report of Adoption form).

The report shall:

- Include such facts as are necessary to locate and identify the original certificate of birth.
- Provide information necessary to establish a new certificate of birth.
- Identify the order of adoption and be certified by the clerk of court.

### **6.3.7 Duties of the circuit court when the child has resided in the home of the prospective adoptive parents continuously for at least two years**

The following are duties of the circuit court regarding acting on petitions for adoption. These duties do not fall under the purview of the agency and require no action on the part of the agency. Pending certain actions taken by the circuit court as described below, documents generated in the course of the court acting on the petition may be required to be sent to the agency for filing and/or submission to the VDSS Adoption Unit, Adoption Records Specialist.

The clerk of court where the petition is filed sends a copy of the petition, Order of Reference, or interlocutory order and all exhibits to the LDSS. A copy is also sent to the Commissioner. The petition shall be signed by the petitioner and counsel of record, if any ([§ 63.2-1201](#)).

If, after considering evidence, the court finds that the valid consent of any person whose consent is required is withheld contrary to the best interests of the child or is unobtainable, the court may grant the petition without consent ([§ 63.2-1203](#)):

- **Fifteen (15) days** after personal service of notice of the petition on the party whose consent is required;
- If personal service is unobtainable, **ten (10) days** after the completion of the execution of an order of publication against the party whose consent is required; or
- If the judge certifies on the record that the identity of any person whose consent is required is not reasonably ascertainable.
- 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 which would refute such an affidavit ([§ 63.2-1203 A](#)).

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- The court may omit the Order of Reference and the interlocutory order and enter a Final Order of Adoption.
- In those parental placements where an interlocutory order is entered, visitations will be required ([§ 63.2-1212 A](#)), and the agency is required to furnish a report of the finding of the visitation. The court may take any action it finds appropriate if the report is not submitted in the specified time. The court may:
  - Enter a Final Order of Adoption;
  - Enter an interlocutory order;
  - Deny the petition;
    - If the court denies the petition and the child is without proper care, the court may appoint a guardian for the child or commit the child to a custodial agency ([§ 63.2-1209](#)).
  - Dismiss the petition;
  - Continue the proceeding; or
  - Schedule a hearing.

When no action is taken by the court for at least one year from the entry of the last order, the clerk of court places the case on the docket for review by the court ([§ 63.2-1214](#)).

The clerk of court sends to the agency and to the Commissioner a copy of any order entered. Upon entry of a final order or any other final disposition, the clerk forwards all reports submitted with the final order to the Commissioner for preservation ([§ 63.2-1213](#)).

When services have been provided by an LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not enter a Final Order of Adoption until proof of payment of fees has been received ([§ 63.2-1248](#)).

The court may not enter a Final Order of Adoption without the information needed to complete a Report of Adoption (VS-21), unless the court determines this information is unavailable or unnecessary. The Report of Adoption (VS-21) provides information that is needed to locate and identify the original birth certificate and to establish a new birth certificate.

After the entry of a final order, the clerk of court sends to the State Department of Health, Bureau of Vital Records and Health Statistics, a completed Report of Adoption (VS-21), and a completed Application for a Certified Copy of a Birth Record (VS-6), with a check from the petitioners for the required fee.

### 6.3.8 Duties of the Commissioner

The VDSS *Adoption* Unit and ICPC are the offices which carry out the duties of the Commissioner in adoptions. These duties include:

- Establishing a permanent record of all adoptions petitioned and providing post adoption services to adult adoptees and adoptive parents seeking background information on the biological family (§ [63.2-1246](#)).
- Monitoring and evaluating adoption cases and submitting reports to courts (§§ [63.2-1208 B](#) and [63.2-1212](#)).
- Arranging, through ICPC, for investigation and supervisory visits to be made when the petitioners move prior to completing the adoption.

## 6.4 Stepparent adoptions

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A stepparent adoption is when the spouse or former spouse of the birth or adoptive parent is adopting the child. The regulations governing parental placement adoptions are not applicable in stepparent adoptions because no placement occurs in a stepparent adoption. In a stepparent adoption, consent has either been obtained or is not required in certain circumstances as outlined in this section. However, when a former spouse is adopting, the consent of the birth parent is required (§ [63.2-1201.1](#)).

Chapter 12 of the Code of Virginia §§ [63.2-1241](#) through [63.2-1242](#) provides guidance on stepparent adoptions in the Commonwealth.

*When a stepparent files a petition for adoption in circuit court, a national criminal background check shall be completed on the stepparent at his/her cost (§ [19.2-392.02 H](#)). The court shall consider the results of the national background check to determine whether an investigation is necessary (§ [63.2-1242](#)).*

The investigation shall be undertaken only if the court determines that there should be an investigation before a Final Order of Adoption is entered (§ [63.2-1242](#)). If the court makes such a determination, the agency becomes involved when the adoption petition is filed and the circuit court enters the Order of Reference.

### 6.4.1 Case opening

A case is opened when a petition for adoption is received from the circuit court. A petition is a written request filed with the court by prospective adoptive parents asking the court to legalize a relationship with a child.

The steps for opening a case include the following:

#### 6.4.1.1 Set up a case record

The case record should contain the following documents, if applicable:

- All court orders.
- All required documentation.
- Report of Investigation.
- All correspondence.
- Narrative.

If two children are on the same petition, only one case is opened.

### 6.4.2 Review the petition and Order of Reference

The petition for adoption is usually accompanied by an Order of Reference, which is an order from the court directing an agency to make an investigation and report.

The petition and Order of Reference should be reviewed to ensure the petition is filed in the court having jurisdiction 1) where the petitioners reside, or 2) in the locality where the birth parents executed consent occurred ([§ 63.2-1201](#)) and the case has been referred to the proper agency. The petition shall be signed by the petitioner and by counsel of record, if any ([§ 63.2-1201](#)).

The petition shall ask permission to adopt a minor child who is not legally the petitioner's by birth.

If the agency receives an Order of Reference in either of the following cases, the agency should contact ICPC to request assistance with completion of the investigation.

- The petitioners are legal residents of Virginia but are living outside the state; or
- The petitioners move from the state after the petition is filed.

In some stepparent adoptions, the court has the option of dispensing with the investigation and entering a final order. If an Order of Reference is entered in these cases, the attorney should be contacted by the CPA to make sure he is aware the court may enter a final order without an investigation.

If the Order of Reference is not rescinded, the agency is responsible for making the investigation and report.

If the petitioners move from the agency's jurisdiction but within Virginia or if it appears to be in the best interest of the child for another agency to make the investigation, the agency should request that the court enter an amended order referring the investigation to another agency. If the court denies the request for an amended order, the agency shall complete the investigation and report. The services of another agency may be requested in writing by the agency ordered to make the investigation.

#### **6.4.2.1 Respond to inquiries made during the investigation**

If an investigation is required by the court, the following items from the Code of Virginia §§ [63.2-1208.D](#) and [63.2-1242](#) are to be addressed:

- Whether the petitioners are financially able, morally suitable, in satisfactory physical and mental health, and a proper person to care for and train the child. A child protective service check and references are not needed.
- The physical and mental condition of the child. Medical reports are not needed.
- 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.
- Whether the parents have abandoned the child or are morally unfit to have custody over him.
- The circumstances under which the child came to live and is in the physical custody the petitioner.
- Whether the child is a suitable child for adoption by the petitioner.
- What fees have been paid by the petitioner or in their behalf to persons or agencies which have assisted them in obtaining the child.

- The report shall include the physical and mental history of birth parents, if it is known.

A statement in the report of the efforts made to encourage birth parents to provide information related to all reasonably ascertainable background, medical, and psychological records of the child to the prospective adoptive parents. A list of reports given to the prospective adoptive parents shall also be submitted with the Report of Investigation.

#### **6.4.2.2 Perform the investigation**

The investigation includes interviews with:

- Adoptive parents.
- Child, if of the age to participate.
- Parents, to include the birth mother, the presumed father, acknowledged father, adjudicated father, and/or putative father whose identity is known to determine their attitude, physical and mental health history, and background information.

If a face-to-face interview is not possible, contact should be made by mail, telephone, or through another agency.

- When a letter is sent to the parents of a child born out of wedlock, it shall be sent by certified mail. The letter shall be delivered to the addressee only and a return receipt requested.
- Contact professional persons concerned with the case.

The investigation also includes:

- Home visits to describe for the court the physical environment in which the child will live, and to observe interactions between the parent and child in a familiar environment.
- Information on the adoptive parents' income in order to determine the fee assessed.

If unable to complete the investigation, the court and the VDSS *Adoption* Unit shall be notified if the investigation and report are delayed and cannot be completed within 60 days ([§ 63.2-1208 B](#)).

A report should be sent to the court with a request for additional time to complete the investigation. The report should include the reasons for the delay or inability to complete the investigation and the period of time needed to complete the investigation.

If the petitioners cannot be contacted or located, the agency should submit a report to the court and recommend the petition be dismissed.

If the petitioners move from Virginia before completion of the investigation, the agency should request the assistance of an out-of-state agency, through ICPC in completing the investigation.

#### **6.4.2.3 Prepare the Report of Investigation**

The format of the report should be that recommended by the VDSS *Adoption* Unit.

For purposes of confidentiality, the report shall not contain identifying information on the legal/birth parent who is not a party to the petition. The report should contain a recommendation as to the action to be taken by the court.

#### **6.4.2.4 Distribute copies of the report**

Send copies to:

- Original to the court with the Certificate of Service showing that a copy of report was sent to the VDSS *Adoption* Unit ([§ 63.2-1208](#)).
- VDSS *Adoption* Unit with a completed Commissioner's Confidential Report.
- Attorney.
  - If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for disposition.
- Keep a copy in the agency's file until final disposition.

If a letter of opposition to the adoption is received from the legal/birth parent, the letter is to be sent to the court with the report. A copy is sent to the attorney and to the VDSS *Adoption* Unit with the copy of the report. A copy is kept in the agency's file.

The agency should submit any additional information requested by the VDSS *Adoption* Unit.

In those instances where the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid. A receipt shall be provided to the court by LDSS which completed the investigation and court report, to provide proof of payment of the fee.

#### **6.4.2.5 Submit a Supplementary Report**

Sometimes after the required report has been submitted, the agency receives factual information on a case that would influence the action to be taken by the court. The agency shall submit a Supplementary Report when factual information is received after making the required report and no court action has been taken or the case is pending as a result of a recommendation for additional time to complete the report.

#### **6.4.2.6 What should be done following final disposition**

Final disposition is the final action taken by the court in an adoption which means the case is closed. A final order granting an adoption means the child acquires parents other than his natural parents and a person acquires a child other than by birth. A final order is not subject to attack for any reason after six months from the date it is entered and is final for all purposes ([§ 63.2-1216](#)).

#### **6.4.2.7 Acknowledgment and disposition of case material**

The agency shall review and acknowledge receipt of the Final Order of Adoption or any other order of final disposition. A copy of the acknowledgment to the court should be sent to the VDSS *Adoption* Unit. The agency should advise the court of any problem that could affect the legality of the adoption.

The agency should purge the record of duplicate material and send original copies of all pertinent material that has not been sent to the VDSS *Adoption* Unit for preservation.

#### **6.4.2.8 Case closing**

The case should be closed when the Final Order of Adoption is received.

### **6.4.3 Duties of the attorney**

The duties of the attorney do not require action by the agency but agencies should be aware of the responsibilities of attorneys in facilitating stepparent adoptions. Some courts allow petitioners to represent themselves in adoption proceedings. The decision to require an attorney rests with the court. The attorney:

- Files the petition, which shall be signed by the petitioner and counsel of record ([§ 63.2-1201](#)).
- Obtains required consents.
- Prepares appropriate orders.
- Informs the petitioners of the legal requirements.
- Assists the agency in obtaining necessary verifications.
- Assists the petitioners in obtaining a new birth certificate for the child.

#### 6.4.4 Duties of the Commissioner

The VDSS *Adoption* Unit carries out the duties of the Commissioner in stepparent adoptions. These duties include:

- Establishing a permanent record of all adoptions petitioned and providing post-adoption services to adult adoptees and adoptive parents seeking background information on the biological family.
- Monitoring adoption cases and submitting reports to courts when necessary.

#### 6.4.5 Duties of the circuit court

The duties of the circuit court do not require action by the agency but agencies should be aware of the responsibility of the court in facilitating stepparent adoptions.

If the petition is executed under oath and in writing, the court may, without an investigation, enter a final order in accordance with code [§ 63.2-1213](#) when:

- A natural parent, whose spouse has died, marries again, and the surviving parent and new spouse petition for adoption ([§ 63.2-1241 A](#)); or
- A legitimate child of a divorced parent is being adopted by a stepparent and the other natural parent has consented to the adoption ([§ 63.2-1241 B](#)); or
- A mother of an illegitimate infant marries, and her husband desires to adopt, provided ([§ 63.2-1241 C](#)):
  - The birth father consents;
  - The mother executes an affidavit that the identity of the father is not known or not reasonably ascertainable;

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- The putative father denies paternity under oath and in writing, according to [§ 63.2-1202](#);
- The child is 14 years of age and has lived in the petitioners' home for at least five years;
- The alleged father is deceased;
- The non-custodial birth parent executes a denial of paternity under oath and in writing; or
- The non-custodial birthparent:
  - Is not an acknowledged father.
  - Is not adjudicated father.
  - Is not a presumed father.
  - Is a putative father who has not registered with the Virginia *Birth Father Registry* and if his identity is reasonably ascertainable, he has been provided notice to register with the [Virginia Birth Father Registry](#) and has failed to register in a timely manner.
- A single person who adopted a child marries and files a petition with his or her spouse ([§ 63.2-1241 D](#)).

The investigation and report shall be undertaken only if the court in its discretion determines that there should be an investigation before a Final Order of Adoption is entered ([§ 63.2-1242](#)). If the court makes such a determination, it shall refer the matter to the local director of social services.

The clerk of circuit court where the petition is filed sends a copy of the petition, Order of Reference, and all exhibits to the director of the LDSS and to the VDSS *Adoption* Unit. The petition shall be signed by the petitioner and counsel of record, if any ([§ 63.2-1201](#)).

The court will expeditiously consider the merits of the petition when the report is received ([§§ 63.2-1208 A](#) and [63.2-1242.2](#)).

The court may take any action it finds appropriate if the report is not submitted in the specified time ([§§ 63.2-1242](#) and [63.2-1208 B](#)). The court may:

- Enter a final order;

- Deny the petition;
- Dismiss the petition;
- Continue the proceeding;
- Schedule a hearing; or
- Enter an interlocutory order. In stepparent adoptions, the interlocutory order is almost always waived by the court in accordance with [§ 63.2-1210 1](#)).

The court may dispense with parental consent if the court finds that consent is withheld contrary to the best interest of the child or is unobtainable ([§ 63.2-1203 A](#)) provided that:

- Twenty-one days have elapsed since personal notice of the petition was served on the persons whose consent is required (when personal notice is by certified or registered mail, there should be a returned postal receipt signed by the parent to indicate that notice was received); or
- If personal service is unobtainable, ten days have elapsed after the completion of the execution of an order of publication against the persons whose consent is required; or
- The judge certifies on the record that the identity of the person whose consent is required is unobtainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable is sufficient evidence provided that there is no evidence before the court to refute the affidavit.

The court does not require consent when:

- The birth father is convicted of:
  - Rape;
  - Carnal knowledge of a child between the ages of 13 and 15; or
  - Adultery or fornication with his daughter or granddaughter, or his mother; and
  - The child was conceived from this action ([§ 18.2-366 B](#)).
- A parent is deceased ([§ 63.2-1203 B](#));

- The parents of a child born in wedlock are divorced and the residual parental rights and responsibilities of one parent have been terminated by the divorce decree or another order of the court ([§ 63.2-1202](#));
- A birth father denies under oath and in writing the paternity of the child. The denial cannot be withdrawn after ten days. Once the child is ten days old, any denial of paternity is final and constitutes a waiver of all rights,
- The parent has not visited or contacted the child for a period of six months without any justification ([§ 63.2-1202](#));
- A child born outside wedlock ([§ 63.2-1202](#));
- The father's identity is unknown;
- The putative father consents to the termination of all of his parental rights before the child is born ([§ 63.2-1202](#));
- The father is given notice of the adoption proceedings by certified or registered mail at his last known address and fails to object within 15 days of the date the notice was mailed ([§ 63.2-1233 1c](#)); or
- Once proper notice has been given and the non-consenting parent fails to appear in court either in person or by counsel the non-consenting parent waives any objection and right to consent to the adoption ([§ 63.2-1202](#)).

A death certificate for a deceased birth parent can be submitted to the court as evidence that the consent is not required ([§ 63.2-1203 3](#)).

When no action is taken by the court for at least one year from the entry of the last order, the clerk of court places the case on the docket for review by the court.

The clerk of court sends to the agency and to the *VDSS Adoption* Unit a copy of any order entered. Upon entry of a final order or any other final disposition, the clerk forwards all reports submitted with the final order to the *VDSS Adoption* Unit for preservation.

When services have been provided by a LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not enter a Final Order of Adoption until proof of payment of fees has been received ([§ 63.2-1248](#)).

The court may not enter a Final Order of Adoption without the information needed to complete a Report of Adoption (VS-21), unless the court determines this information is unavailable or unnecessary. The Report of Adoption (VS-21) provides information that is needed to locate and identify the original birth certificate and to establish a new birth certificate.

After the entry of a final order, the clerk of court sends to the State Department of Health, Bureau of Vital Records and Health Statistics a completed Report of Adoption, VS-21, and a completed application for a certified copy of a birth record, VS-6, with a check for the required fee ([§ 32.1-262](#)).

## 6.5 Adult adoptions

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An adult adoption is the adoption of any person who is 18 years of age or older at the time that the adoption petition is filed.

Chapter 12 of the Code of Virginia §§ [63.2-1243](#) through [63.2-1244](#) provides guidance on adult adoptions in the Commonwealth.

### 6.5.1 Specifics for Adult Adoption

The circuit court may, without an investigation or supervisory period, enter a final order in the adoption of an adult if consent has been obtained from the person to be adopted, if the person to be adopted is:

- A stepchild parented by the petitioner at least three months;
- A child who is adopted by a close relative as defined in [§ 63.2-1242.1](#) as grandparent, great-grand parent, adult nephew or niece, adult *sibling*, adult uncle or aunt, or adult great uncle or great aunt;
- A birth child; or
- Any adult who has resided in the home at least three months before age 18.

The circuit court shall require an investigation and report when the petition for adoption is for a person 18 years of age or older when there is no relationship between the adoptee and the petitioner ([§ 63.2-1244](#)).

- The person to be adopted shall be at least 15 years younger than the petitioner.
- The petitioner and the person to be adopted shall have known each other for at least one year prior to the filing of the petition for adoption.

The circuit court may also, in its discretion, require an investigation in any adult adoption.

### **6.5.2 Responsibilities of the agency in adult adoption**

When the circuit court requires an investigation, the agency shall:

#### **6.5.2.1 Set up a case record**

A case record should contain the following documentations:

- Service Application (court order).
- All court documents.
- Report of Investigation.
- All correspondence.
- Narrative.

#### **6.5.2.2 Review the petition and Order of Reference**

The petition is a written request filed with the court by prospective adoptive parents asking the court to legalize a relationship with an (adult) child.

The Order of Reference is an order from the court directing an agency to make an investigation and report.

The petition and Order of Reference should be reviewed to be sure the petition is filed in the court having jurisdiction where the petitioners reside and the case has been referred to the proper agency. The petition shall be signed by the petitioner and by the counsel, if any ([§ 63.2-1201](#)).

If an Order of Reference is entered in one of the situations where an investigation is not required, the attorney should be contacted to make certain that he is aware the court may enter a final order without investigation. If the Order of Reference is not rescinded, the agency is responsible for making the investigation and report.

If the petitioners move from the agency's jurisdiction but within Virginia or if it appears to be in the best interest of the person being adopted for another agency to make the investigation:

- The agency requests that the court enter an amended order referring the investigation the agency in the location where the petitioner has taken up new residence.
- If the court denies the request for an amended order, the agency shall complete the investigation and report. The services of another agency can be requested by the agency ordered to make the investigation.
- The Order of Reference shall be acknowledged to the court with a copy to the *VDSS Adoption* Unit. The acknowledgement shall show the date of receipt of the order and the name of the agency ([§ 63.2-1208](#)).

### 6.5.2.3 Make inquiries during the investigation

In those cases in which an investigation shall be made, the report to the court shall be made within 60 days after the copy of the petition is forwarded ([§§ 63.2-1243](#) and [63.2-1208 B](#)).

The Code requires the following questions be answered ([§ 63.2-1244](#)):

- Whether the petitioners are financially able, morally suitable, in satisfactory physical and mental health, and a proper person to care for and train the person to be adopted.
- What the physical and mental condition of the person to be adopted is.
- Why the birth parent (if applicable) of the person to be adopted desire to be relieved of the responsibility for the custody, care, and maintenance for the person to be adopted and what their attitude is toward the proposed adoption.
- Whether the parents (if applicable) have abandoned the person to be adopted or are morally unfit to have custody over him.
- The circumstances under which the person to be adopted came to live and is living in the home of the petitioners.
- What fees have been paid by the petitioners or in their behalf, if appropriate.
- Relevant physical and mental history of the birth parents, if known to the person making the report.

- An investigation is not necessary to report the physical and mental history of the birth parents.
- This information is reported only if it is known to the agency.

#### 6.5.2.4 Perform the investigation

The investigation includes:

- Interviews with:
  - Adoptive parents.
  - The person being adopted.
  - References - contact in person, by mail, or telephone.
  - Professional persons involved with either the petitioners or person to be adopted.
- A home visit.
- Medical statements on the adoptee and adoptive parents in non-relative cases.
- Information on the adoptive parents' income in order to determine the fee assessed.

If unable to complete the investigation:

- The court and the VDSS *Adoption* Unit shall be notified if the investigation and report are delayed and cannot be completed within 60 days.
- A report shall be sent to the court requesting additional time to complete the investigation. The report shall include the reasons for the delay or inability to complete the investigation and the period of time needed to complete the investigation.
- If the petitioners cannot be contacted or located to complete the investigation, the agency is to submit a report to the court and recommend the petition be dismissed.

#### 6.5.2.5 Prepare the Report of Investigation

The format of the report shall be that recommended by the VDSS *Adoption* Unit.

For purposes of confidentiality, the report shall not contain identifying information on the biological family.

- The report shall contain a recommendation as to the action to be taken by the court (§§ [63.2-1208 C](#) and [63.2-1244](#)).

#### **6.5.2.6 Distribute copies of the report**

- Send original to the court with Certificate of Service showing copy of report was sent to the VDSS *Adoption* Unit.
- Send one copy to the VDSS *Adoption* Unit with the completed Commissioner's Confidential Report.
- Send one copy to the attorney. If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for disposition. Do not send the petitioners a copy of the report.
- Keep a copy in the agency's file until final disposition.

The agency should submit any additional information requested by the VDSS *Adoption* Unit. In those instances where the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid.

A receipt shall be provided to the court by the LDSS which completed the investigation and court report to provide proof of payment of the fee (§ [63.2-1248](#)).

#### **6.5.2.7 Submit a Supplementary Report**

Sometimes after the required report has been submitted, the agency receives factual information on a case that would influence the action to be taken by the court. The agency shall submit a Supplementary Report when factual information is received after making the required report and no court action has been taken or the case is pending as a result of an extension for additional time to complete the investigation.

Send the original to the court, a copy to the VDSS *Adoption* Unit, and a copy to the attorney. One copy is retained in the agency's file.

### 6.5.2.8 What shall be done following entry of an interlocutory order, if the court in its discretion decides to enter the order

#### 6.5.2.8.1 Conduct supervisory visits

The agency shall make at least three visits within a six-month period following the date the interlocutory order is entered ([§ 63.2-1212](#)).

- The visits shall be in the presence of the adopted person.
- One visit shall be in the home of the petitioners with the adoptive person and both petitioners present unless one of the petitioners is no longer residing in the home.
- Visits shall be scheduled so that at least 90 days elapsed between the first and last visit.

If one of the petitioners is no longer living in the home, the agency should contact that petitioner to determine if he or she desires to remain a party to the proceedings. The report to court shall include the results of the contact.

If the petitioners move from Virginia prior to completion of three visits, the agency should request assistance from an agency in the new state of residence in completing the visits.

Since this type of adoption does not involve the placement of a child across state lines, the requirements of ICPC does not apply.

### 6.5.3 Report of Visitation

The Report of Visitation is sent to the court **within 15 days** of the last visit.

The format for the Report of Visitation should be that recommended by the VDSS *Adoption Unit*.

### 6.5.4 Distribute copies of the report

- Send original to the court with Certificate of Service.
- Send one copy to the VDSS *Adoption Unit*.
- Send one copy to the attorney. If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for final disposition. Do not send the petitioners a copy of the report.

- Keep one copy in agency's file until final action by the court.

The agency should submit any additional information requested by the VDSS *Adoption* Unit.

In those instances where an LDSS has provided services and the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid.

Proof of payment of the fee shall be provided by the LDSS to the court prior to the entry of the final order ([§ 63.2-1248](#)).

### **6.5.5 What should be done following final disposition**

Final disposition is the final action taken by the court in an adoption which means the case is closed. A final order granting an adoption means the adult acquires parents other than his natural parents and a person acquires a child other than by birth. A final order is not subject to attack after six months from the date it was entered and is final for all purposes ([§ 63.2-1216](#)).

#### **6.5.5.1 Acknowledgement and disposition of case material**

The agency should review and acknowledge receipt of the Final Order of Adoption or any other order of final disposition. A copy of the acknowledgement should be sent to the VDSS *Adoption* Unit. The agency should advise the court of any problem that could affect the legality of the adoption.

The agency should purge the record of duplicate material and send to the VDSS *Adoption* Unit for preservation original copies of all pertinent material that has not been sent.

#### **6.5.5.2 Close the case**

The case should be closed when the Final Order of Adoption is received.

### **6.5.6 Duties of the attorney in an adult adoption**

The duties of the attorney do not require action by the agency but agencies should be aware of the responsibilities of attorneys in facilitating an adult adoption.

Some courts allow petitioners to represent themselves in adoption proceedings. The decision to require an attorney rests with the court. The attorney:

- Files the petition which shall be signed by the petitioner and by counsel, if any ([§ 63.2-1201](#)).

- Obtains required consents (in an adult adoption, only the consent of the person to be adopted is required) ([§ 63.2-1243 a](#)).
- Prepares appropriate orders.
- Informs the petitioners of the legal requirements.
- Assists the agency in obtaining necessary verifications.
- Assists the petitioners in obtaining a new birth certificate for the person being adopted.

### 6.5.7 Duties of the court

The CPA should be aware of these responsibilities of the court although it will have limited responsibility for providing services in these cases unless requested by the court.

The investigations and visitations shall not be required unless the court, in its discretion, so requires ([§ 63.2-1244](#)).

The clerk of court where the petition is filed sends a copy of the petition, Order of Reference, and all exhibits to the director of the LDSS and to the Commissioner. The petition shall be signed by the petitioner and by counsel, if any ([§ 63.2-1201](#)).

The circuit court shall expeditiously consider the merits of the petition upon receiving the Report of Investigations ([§ 63.2-1208](#)). The court may:

- Enter a final order;
- Deny the petition;
- Dismiss the petition;
- Continue the proceeding;
- Schedule a hearing; or
- Enter an interlocutory order (an interlocutory order is not required in an adult adoption and is seldom entered by the court).

When no action is taken by the court for at least one year from the entry of the last order, the clerk of court places the case on the docket for review by the court ([§ 63.2-1212](#)).

The clerk of court sends to the agency and to the Commissioner a copy of any order entered. Upon entry of a final order or any other final disposition, the clerk of court forwards all reports submitted with the final order to the Commissioner for preservation. ([§ 63.2-1213](#))

If the petition is executed under oath, the court may, without an investigation, enter a final order in the adoption of an adult if the person to be adopted is ([§ 63.2-1244](#)):

- A stepchild parented by the petitioner at least three months;
- A child adopted by a close relative as defined as a grandparent, great-grandparent, an adult nephew or niece, adult *sibling*, adult uncle or aunt, or adult great uncle or great adult who has lived in the home at least three months;
- A birth child; or
- Any adult who has resided in the home at least three months before age 18.

When services have been provided by an LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not enter a Final Order of Adoption until proof of payment of fees has been received ([§ 63.2-1248](#)).

The court may not enter a Final Order of Adoption without the information needed to complete a Report of Adoption (VS-21), unless the court determines this information is unavailable or unnecessary. The Report of Adoption (VS-21) provides information that is needed to locate and identify the original birth certificate and to establish a new birth certificate ([§ 63.2-1248](#)).

After the entry of a final order, the clerk of court sends to the State Department of Health, Bureau of Vital Records and Health Statistics a copy of the Final Order of Adoption, which incorporates a change of name.

### 6.5.8 Duties of the Commissioner

The *VDSS Adoption* Unit is the office which carries out the duties of the Commissioner in adoptions. These duties include:

- Establishing a permanent record of all adoptions petitioned and providing post adoption services to adult adoptees and adoptive parents seeking background information on the biological family ([§ 63.2-1246](#)).
- Monitoring and evaluating adoption cases and submitting reports to courts ([§ 63.2-1244](#)).

## 6.6 Intercountry adoptions

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An inter-country adoption is the placement into Virginia of a child already adopted in a foreign country or placement into Virginia of a child from a foreign country for the purpose of adoption. In most inter-country adoptions, the adoptive parents are encouraged to re-adopt in Virginia. Re-adoption, however, is not required to obtain a new birth certificate.

### 6.6.1 Pre-adoptive requirements

Prior to bringing a foreign born child into Virginia, the prospective adoptive parents should meet Virginia's pre-adoptive requirements as well as certain requirements of the Department of Immigrations. Families requesting information on Virginia's pre-adoptive requirements and requirements of the Department of Immigrations should be referred to the [Inter-Country Adoption Specialist](#).

An IR-3 visa is issued when a full and final adoption is completed abroad. It requires that the adoptive parents physically see the child prior to or during the adoption proceedings. Children with this visa automatically acquire citizenship if they enter the United States prior to their 18<sup>th</sup> birthday. If they are under 18 years old, they are automatically U.S. citizens upon admission to the United States and they reside with their parents in the United States.

An IH-3 visa is issued for children with full and final adoptions from a Hague Convention Country. Children with this visa automatically acquire citizenship if they have entered the United States prior to their 18<sup>th</sup> birthday, if they are under 18 years old, they are automatically United States citizens upon admission to the United States and they reside with their parents in the United States.

When a child enters the country with either an IR-3 or IH-3 visa as issued by the United States Citizenship and Immigration Services, the adoptive parents shall not be required to readopt the child in Virginia.

It is recommended for a child adopted in a foreign country that re-adoption in the state of Virginia be considered to obtain a Virginia birth certificate, this will assist in establishing a preserved adoption file in the state of Virginia.

### 6.6.2 Adoptive home study

In most inter-country adoptions, the family will obtain an adoptive home study from a private agency. In these cases, the private agency that completed the home study will be responsible for the investigation and supervision required to obtain a Final Order of Adoption in Virginia.

### 6.6.3 Responsibilities of the LDSS in inter-country adoptions

There may be times when no Virginia agency was involved in assisting the family with pre-adoptive requirements. In these rare cases, the circuit court will refer the matter for investigation to the LDSS in the locality where the petitioners reside.

#### 6.6.3.1 Open the case

A case is opened when a petition for adoption is received from the circuit court. A petition is a written request filed with the court by prospective adoptive parents asking the court to legalize a relationship with a child.

##### 6.6.3.1.1 Set up a case record

The case record should contain the following documents, if applicable:

- All court orders.
- All required documentation.
- Report of Investigation.
- All correspondence.
- Narrative.

If two children are on the same petition, only one case is needed.

#### 6.6.3.2 Review the petition and Order of Reference

The petition for adoption is usually accompanied by an Order of Reference, which is an order from the court directing an agency to make an investigation and report.

The petition and Order of Reference should be reviewed to be sure the petition is filed in the court having jurisdiction where the petitioners reside and the case has been referred to the proper agency. The petition shall be signed by the petitioner and by counsel of record, if any ([§ 63.2-1201](#)).

For 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.

If the petitioners move from the agency's jurisdiction but within Virginia or it appears to be in the best interest of the child for another agency to make the investigation, the agency is to request that the court enter an amended order

referring the investigation to another agency. If the court denies the request for an amended order, the agency shall complete the investigation and report. The services of another agency can be requested in writing by the agency ordered to make the investigation.

The Order of Reference shall be acknowledged to the court with a copy to the VDSS *Adoption* Unit. The acknowledgment should show the date of receipt of the order and the name of the agency.

### 6.6.3.3 Perform the investigation

The investigation includes:

- Interviews with:
  - Adoptive parents.
  - Child, if of the age to participate.
- Home visits to describe for the court the physical environment in which the child will live, and to observe interactions between the parent and child in a familiar environment.
- Information on the adoptive parents' income in order to determine the fee assessed.

If unable to complete the investigation:

- The court and the VDSS *Adoption* Unit should be notified if the investigation and report are delayed and cannot be completed within 60 days.
- A report should be sent to the court requesting additional time to complete the investigation. The report should include the reasons for the delay or inability to complete the investigation and the period of time needed to complete the investigation.

If the petitioners cannot be contacted or located, to complete the investigation, the agency is to submit a report to the court and recommend the petition be dismissed.

If the petitioners move from Virginia before completion of the investigation, the agency requests the assistance of an out-of-state agency in completing the investigation. All requests should be forwarded to ICPC.

#### 6.6.3.4 Prepare the Report of Investigation

The format of the report should be that recommended by the VDSS *Adoption* Unit.

The report shall contain a recommendation as to the action to be taken by the court.

#### 6.6.3.5 Distribute copies of the report

- Send the original to the court with the Certificate of Service showing that a copy of report was sent to the VDSS *Adoption* Unit.
- Send one copy to the VDSS *Adoption* Unit with the completed Commissioner's Confidential Report.
- Send one copy to the attorney. If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for disposition.
- Keep a copy in agency's file until final disposition.

The agency should submit any additional information requested by the VDSS *Adoption* Unit.

In those instances where the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid. A receipt shall be provided to the court by the LDSS which completed the investigation and court report to provide proof of payment of the fee.

#### 6.6.3.6 Submit a Supplementary Report

Sometimes after the required report has been submitted, the agency receives factual information on a case that would influence the action to be taken by the court. The agency shall submit a Supplementary Report when factual information is received after making the required report and no court action has been taken or the case is pending as a result of additional time granted for completion of the investigation.

#### 6.6.3.7 What should be done following final disposition

Final disposition is the final action taken by the court in an adoption which means the case is closed. A final order granting an adoption means the child acquires parents other than his natural parents and a person acquires a child other than

by birth. A final order is not subject to attack for any reason after six months from the date it is entered and is final for all purposes ([§ 63.2-1216](#)).

#### **6.6.3.8 Acknowledgement and disposition of case material**

The agency shall review and acknowledge receipt of the Final Order of Adoption or any other order of final disposition. A copy of the acknowledgment to the court should be sent to the VDSS *Adoption* Unit. The agency should advise the court of any problem that could affect the legality of the adoption.

The agency should purge the record of duplicate material and send original copies of all pertinent material that has not been sent to the VDSS *Adoption* Unit for preservation.

#### **6.6.3.9 Close the case**

The case should be closed when the Final Order of Adoption is received.

### **6.6.4 Duties of the attorney**

The duties of the attorney do not require action by the agency but agencies should be aware of the responsibilities of attorneys in facilitating intercountry adoptions. Some courts allow petitioners to represent themselves in adoption proceedings. The decision to require an attorney rests with the court.

The attorney:

- Files the petition, which shall be signed by the petitioner and counsel of record ([§ 63.2-1201](#)).
- Obtains required consents.
- Prepares appropriate orders.
- Informs the petitioners of the legal requirements.
- Assists the agency in obtaining necessary verifications.
- Assists the petitioners in obtaining a new birth certificate for the child.

### **6.6.5 Duties of the Commissioner**

The VDSS *Adoption* Unit carries out the duties of the Commissioner in adoptions. These duties include:

- Establishing a permanent record of all adoptions petitioned and providing post-adoption services to adult adoptees and adoptive parents seeking background information on the biological family.
- Monitoring adoption cases and submitting reports to courts when necessary.

#### 6.6.6 Duties of the circuit court

The following are duties of the circuit court regarding acting on petitions for adoption. These duties do not fall under the purview of the agency and require no action on the part of the agency. Pending certain actions taken by the circuit court as described below, documents generated in the course of the court acting on the petition may be required to be sent to the agency for filing and/or submission to the VDSS *Adoption* Unit, Adoption Records Specialist.

The petition and all exhibits shall be forwarded to the CPA which completed the home study or provided supervision. If no Virginia agency provided such services, the petition and all exhibits shall be forwarded to the local director of social services in the locality where the adoptive family resides, or resided at the time of filing the petition, or had legal residence at the time of the filing of the petition.

The clerk of circuit court where the petition is filed sends a copy of the petition, Order of Reference, and all exhibits to the local director of the department of social services and to the VDSS *Adoption* Unit. The petition shall be signed by the petitioner and counsel of record, if any ([§ 63.2-1201](#)).

The circuit court shall expeditiously consider the merits of the petition upon receipt of the report ([§ 63.2-1208](#)).

The court may take any action it finds appropriate ([§ 63.2-1208 B](#)). The court may:

- Enter a final order;
- Deny the petition;
- Dismiss the petition;
- Continue the proceeding; or
- Schedule a hearing.

The court may dispense with entry of the interlocutory order when ([§ 63.2-1210](#)):

- The child has been legally adopted according to the laws of a foreign country with which the United States has diplomatic relations ([§ 63.2-1210 5](#)):

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- If the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.
- The child has been in the physical custody of the petitioners for:
  - At least one year immediately prior to the filing of the petition.
  - 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; or
  - The child has 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 the LDSS three times within such six-month period with no fewer than 90 days between the first and last visits.
  - The last visit has occurred within six months immediately prior to the filing of the petition.
- The child was placed into Virginia from a foreign country in accordance with [§ 63.2-1104](#), and if ([§ 63.2-1210 6](#)):
  - The child has been in the physical custody of the petitioner for at least six months immediately prior to the filing of the petition.
  - Has been visited by a representative of a LCPA or the LDSS three times within such six-month period with no fewer than 90 days between the first and last visits.
  - The last visit has occurred within six months immediately prior to the filing of the petition. The circuit court may, in cases of an international placement, omit the requirement that three visits be made within a six-month period.

When no action is taken by the court for at least one year from the entry of the last order, the clerk of court places the case on the docket for review by the court.

The clerk of court sends to the agency and to the VDSS *Adoption* Unit a copy of any order entered. Upon entry of a final order or any other final disposition, the clerk forwards all reports submitted with the final order to the VDSS *Adoption* Unit for preservation.

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When services have been provided by an LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not enter a Final Order of Adoption until proof of payment of fees has been received ([§ 63.2-1248](#)).

The court may not enter a Final Order of Adoption without the information needed to complete a Report of Adoption (VS-21), unless the court determines this information is unavailable or unnecessary. The Report of Adoption (VS-21) provides information that is needed to locate and identify the original birth certificate and to establish a new birth certificate.

After the entry of a final order, the clerk of court sends to the State Department of Health, Bureau of Vital Records and Health Statistics, a completed Report of Adoption, VS-21, and a completed application for a certified copy of a birth record, VS-6, with a check for the required fee ([§ 32.1-262](#)).