WHEN CAN A CHILD BE ADOPTED?

According to section 230(3) of the Children's Act, a child is a adoptable if:

a) the child is an orphan with no guardian or caregiver who is willing to adopt them

b) whereabouts of the child's parents/guardians cannot be established

c) child has been abandoned

d) child's parents/guardians **abused/deliberately neglected** or allowed the child to be **abused/deliberately neglected**

WHO CAN ADOPT?

SECTION OF 231(1) OF THE CHILDREN'S ACT child may be adopted by:

a) *husband and wife jointly,* partners in a permanent domestic life-partnership*, or other persons sharing a common household and forming* permanent family unit*

b) a widow/widower, divorced or unmarried person

c) married person whose spouse is the parent of the child; a person is permanent domestic partnership, whose life-partner is the parent of the child

d) biological father of the child born out of wedlock

e) foster parent of the child

SECTION 231(2)(a) lists criteria for suitable adoptive parents

a) **fit and proper** to be trusted with full parental responsibilities in respect of the child

b) **willing and able** to *undertake, exercise, and maintain* those responsibilities and rights, over the **the age of 18 years old**, and

c) **properly assessed by an adoption social worker**

*husband and wife does not only refer to opposite-sex couples. Includes same-sex couples or civil partners in terms of the **Civil Unions Act** and spouses married in terms of **customary law or religious law**

WHO MUST CONSENT?

SECTION 233(1) child can only be adopted if the following give their consent

a) each parent of the child, regardless of whether or not they are married, provided that **if the parent is a child, the parent is assisted by their parent/guardian**

b) any person who holds guardianship of the child

c) the child; if the child is **10 years old or older, or under the age of 10 years old**, but is of an *age, maturity and stage of development to understand the implications of consenting to their adoption*

CONSENT FROM ANY OF THESE PEOPLE MAY BE WITHDRAWN WITHIN **60 DAYS OF HAVING SIGNED THE CONSENT** - once they do this, consent is **FINAL**

Children's Act *makes provision for a social worker to counsel parents of the child on the decision to make child available for adoption. They may also counsel the child where applicable*

WHEN CONSENT IS NOT REQUIRED

ITO **CHILDREN'S ACT** consent from parents is not needed when:

a) parent is incompetent to give consent due to *mental illness*

b) parent has abandoned the child, parents of the child cannot be found or identity of the parent/s is unknown

c) has **abused/deliberately neglected the child** or allowed for abuse/neglect to take place

d) has consistently failed to perform their parental responsibility towards the child for the last **12 MONTHS**

e) has received a court order that has divested them of the right to consent

f) has failed to respond to notice of the proposed adoption with **30 DAYS** of service of the notice

WHEN CONSENT IS NOT REQUIRED (cont)

If the parent is the **BIOLOGICAL FATHER** of the child, his consent is unnecessary if:

a) he is not married to the child's mother/ they were not married at the time of **conception**

b) child was conceived from an **INCESTUOUS** relationship between the biological parents

c) the court, following allegations from the mother, finds on a **BALANCE OF PROBABILITIES** , that the child was conceived as a result of **rape**. **Such a finding shall not constitute a conviction of the crime of rape**

Consent is also not necessary if the child is an orphan and has no caregiver/guardian willing to adopt the child, and the court has been provided with certified copies of the death certificates or any such documentation required by the court.

EFFECTS OF AN ADOPTION ORDER

An adopted child is regarded as the child of the adoptive parents. The adoptive parents acquire full parental rights and responsibilities.

Legal ties between child and biological family are cut and the **biological** parents no longer have parental responsibilities and rights in respect of the child.

There could, however, be a **POST-ADOPTION AGREEMENT** which allows the biological parents and child rights to communicate and visit each other.

SECTION 424 OF THE CHILDREN'S ACT sets out the effects of the adoption order:

1. Unless provided otherwise in the order or in **post-adoption agreement** confirmed by court, an adoption order terminates:

a) all parental rights and responsibilities any person, including *parent, step-parent or partner in a domestic life partnership*, had in respect of the child immediately **BEFORE** the adoption

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EFFECTS OF AN ADOPTION ORDER (cont)

b) all claims to contact with the child by any family member of a person referred to in (a)

c) all rights and responsibilities the child had in respect of a person referred to in (a) and (b) immediately **BEFORE** the adoption

d) any previous order made in respect of the placement of the child

2. An adoption order:

a) confers full parental responsibilities and rights in respect of the child upon the adoptive parents

b) confers the surname of the adoptive parent on the child, except if otherwise is provided in the order

c) **prohibits any marriage or sexual relationship** between the child and any other person which would have been prohibited had the child not been adopted

d) does not affect any **rights to property** the child acquired **BEFORE** the adoption

3. An adopted child is regarded as the child of the adoptive parents, and the adoptive parent is regarded as the parent of the child

In **Centre for Child Law v Minister of Social Development**:
court gave a declaratory order the this section does not automatically terminate all parental rights and responsibilities of the guardian of the child whose spouse or permanent domestic partner wishes to adopt the child.

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