

THE NEW JERSEY FAMILY LAW HANDBOOK

A REFERENCE
GUIDE TO
NEW JERSEY CASE
LAW AND STATUTES
GOVERNING:

- Marriage
- Children & adoption
 - Parentage
- Divorce & alimony
- Custody & child support



John M. B. Balouziyeh, JD

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2010

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PREFACE

I am pleased to present *The New Jersey Family Law Handbook* to New Jersey residents and others who may have an interest—professional, academic, or otherwise—in navigating New Jersey’s legal provisions as they relate to the family.

This *Handbook* is comprehensive and thorough while providing clarity to lawyers and non-lawyers alike. It takes a methodical approach towards explaining the various sections of the New Jersey Code relating to the family, marriage, divorce, children, and parentage, while exploring how these statutes have interacted with the New Jersey and federal Constitutions. The *Handbook* aptly discusses key decisions of the United States and New Jersey Supreme Courts, from *Maynard v. Hill* (U.S.) defining marriage in 1888 to *Lewis v. Harris* (N.J.) deciding on same-sex marriage in New Jersey in 2006, and how these decisions shape the family in New Jersey today.

This book does not discuss ideas in the abstract only; it also delves into the practical issues that affect New Jersey families and others with ties to the state. It goes into questions of when a marriage is valid, how the application for a restraining order may be filed, where the adoption process begins, and many others pertaining to prenuptial agreements, marital dissolution, alimony and child support payments, and so forth.

I am confident that this book will be a valuable resource to New Jersey residents seeking to exercise their legal rights and better familiarize themselves with the procedures involved therein. It will also serve as an important guide to attorneys seeking an overview of New Jersey family law.

The *Handbook's* meticulous citations allow readers to easily find primary sources in order to delve into further research. Also included are useful excerpts of the major New Jersey family law regulations, such as the Uniform Premarital Agreement Act and the Child Abuse Prevention and Treatment Act.

Well-structured, clearly organized, and easy to navigate, this *Handbook* is a must-have on the bookshelf of any person involved in a New Jersey family law matter.

- Lynne Marie Kohm
John Brown McCarty Professor of Family Law
Regent University School of Law

INTRODUCTION

Family law occupies a position of special importance in American society. Legal questions pertaining to family law are among the most debated in academia, politics, and the media. Political candidates often center their campaigns on critical family law questions, such as whether there is a right of women to choose an abortion or of same-sex couples to marry.

Family law, perhaps more than any other area of the law, affects our daily lives in many ways. Whether it is marriage and prenuptial agreements, the family and parentage, children, adoption, or assisted reproductive technology, almost all of us will in some way come into contact with family law.

This book provides a framework that facilitates a clear understanding of New Jersey family law. It will help New Jersey residents to more effectively use the services of attorneys and other professionals with whom they may consult in order to better understand or exercise their legal rights.

WHY A BOOK ON NEW JERSEY FAMILY LAW?

While publications laying out the legal framework of the family exist in other states, such texts in New Jersey are

limited to scholarly treatises designed for academics or legal practitioners. No book lays out New Jersey family law in a clear, concise text that is easily accessible to the non-lawyer.

This book now fills that void, providing New Jersey residents with a clear, concise summary of New Jersey family law. The main objective of this book is to serve the people of New Jersey by building their confidence in navigating and understanding the New Jersey legal system to make informed decisions. This book seeks to supply information on the state of the law in New Jersey and on the rights of New Jerseyans and to provide a reliable overview of the leading cases and principal statutes that shape New Jersey family law. Although this book cannot replace legal advice tailored to individual needs, it will enable readers to enter legal consultations with more knowledge and familiarity of their legal options and thus more confidence. It may also show readers when they may resolve conflicts on their own and when they should hire an attorney.

This book will further help students and practitioners as a quick reference on a particular point of law or as a starting point for further research.

THE N.J. FAMILY COURT SYSTEM

Basic Structure of the New Jersey Court System

Any person involved in a family law matter will likely come to use the courts of the State of New Jersey, and will thus be well served by a basic understanding of the structure and hierarchy of the New Jersey judicial system.

The courts of New Jersey, as provided by the New Jersey Constitution,¹ are divided into three classes:

¹ N.J. Const. art. VI, § I.

- *The New Jersey Supreme Court.* Formerly the “Court of Errors and Appeals,” this is the highest appeals court in the state;
- *The New Jersey Superior Court.* This is a statewide court with appellate jurisdiction (Appellate Division) and trial jurisdiction (Law and Chancery Divisions). It was formerly comprised of the “Supreme Court,” “Court of Chancery,” and “Prerogative Court”;
- *Various lower courts.* These courts hold limited jurisdiction and include county and municipal courts and tax courts.

The New Jersey Superior Court is governed by article VI, § III of the New Jersey Constitution. The court exercises its trial and appeals jurisdiction through three Divisions:

- *Appellate Division.* With its eight parts (A through H), it hears appeals from the Law and Chancery Divisions, as well as from administrative agencies.
- *Law Division.* This is the trial court in law, and is divided into a Civil Part and a Special Civil Part, which in turn has a Landlord/Tenant section, a regular Special Civil section hearing claims of \$3,000 - \$15,000, and a Small Claims section hearing claims for up to \$3,000 or \$5,000 if a tenant is demanding the return of a security deposit;
- *Chancery Division.* This is the trial court in equity, and is divided into three parts: (i) the *General Equity Part*, handling cases where equity is primarily sought; (ii) the *Probate Part* handling probate matters, guardianship, and related matters; and (iii) the *Family Part*, handling all family-related matters.

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MARRIAGE

In *Maynard v. Hill*, the U.S. Supreme Court defined marriage as “something more than a mere contract, though founded upon the agreement of the parties.” The rights and obligations of marriage depend “not upon their agreement, but upon the law.”⁶ Marriage is thus a societal institution regulated and controlled by public authority. Because it is not a mere contract, legislation may affect the institution and even annul the relation between the parties without violating the U.S. Constitution.

In this chapter, we will examine the regulations of the institution of marriage, as provided by the New Jersey law under the confines of the U.S. Constitution.

REQUIREMENTS FOR ENTRY INTO MARRIAGE

Age and Consent

In order to enter into marriage, both parties must be eighteen years of age or older. Otherwise, the consent of the parents is necessary. If the minor is under sixteen years of age, the consent of a judge in addition to the consent of the parents is necessary. The judge’s approval must be delivered to the licensing officer.

⁶ *Maynard v. Hill*, 125 U.S. 190 (1888).

The consent of the parents or judge is not required for a male under eighteen years of age if: (i) the male has been arrested for having sexual intercourse with a woman of good repute for sexual chastity; (ii) the woman has become pregnant; and (iii) he applies for a marriage license.⁷

Prohibited Degrees of Familial Relation

Furthermore, the parties may not be within prohibited degrees of familial relation. Specifically, an individual may not marry an ancestor, descendent, brother or sister, aunt or uncle, or niece or nephew.⁸ New Jersey does, however, permit marriage between cousins, whether first cousins or cousins more distantly related (second cousins, first cousins once removed, etc.). In this respect, New Jersey is like nineteen other states.

Bigamy/Polygamy

At the time of marriage, neither party may already be married. If a party was at one time married, a divorce or annulment must be registered with the relevant civil authorities, either in New Jersey or elsewhere.

Competence/Venereal Disease

Each party must be neither mentally incompetent nor have any venereal disease in a communicable stage.⁹ The New Jersey Statutes provide that the person issuing marriage licenses “shall make information available to applicants concerning places where such applicants may be tested for genetic diseases,”¹⁰ yet it does not state that applicants are required to undergo such testing. Furthermore, there

⁷ N.J. Rev. Stat. § 37:1-6.

⁸ *Id.* § 37:1-1.

⁹ *Id.* § 37:1-9.

¹⁰ *Id.* § 37:1-27.

appears to be little evidence that municipalities issuing marriage licenses enforce the prohibition on applicants with venereal diseases in a communicable stage from marrying or that such applicants are penalized for contracting marriage. Applications for marriage licenses in New Jersey required applicants to attest as to whether they carried such diseases as of 2002, but in the revised form used at the time of writing,¹¹ no reference is made to venereal diseases. Furthermore, applicants are not required to undergo blood tests in order to marry in New Jersey.

Ceremony

The marriage must be solemnized by a person, institution, religious society, or organization authorized by the New Jersey code. State law authorizes New Jersey federal and state judges, state clerks, mayors, deputy mayors, chairs of New Jersey township committees, and religious ministers to solemnize marriages.¹² If the parties fail to meet this element, their marriage will be held absolutely void.¹³

Obtaining and Delivering the Marriage License

The parties being married must obtain a marriage license from the municipality in which the ceremony will be performed and deliver it to the person or religious society or institution that will solemnize the marriage.¹⁴ There is generally a seventy two-hour waiting period between when the parties apply for the marriage license, and when it is issued. The marriage license is valid for thirty days from the date of issuance.¹⁵

¹¹ Form REG-77, FEB 07, is used as of 2010.

¹² N.J. Rev. Stat. § 37:1-13.

¹³ *Id.* § 37:1-10.

¹⁴ *Id.* § 37:1-2.

¹⁵ *Id.* § 37:1-4.

Failure of the parties to apply for and obtain a valid marriage license renders the marriage absolutely void,¹⁶ unless the marriage was entered into before December 1, 1939, when common law marriages were permitted.¹⁷

COMMON LAW MARRIAGES

As previously discussed, in order to obtain the rights and responsibilities of marriage, couples must obtain a marriage license and deliver it to the person or society officiating the ceremony. However, marriages entered into before December 1, 1939 are granted an exception to this rule. Such marriages are legally recognized as common law marriages even if the parties failed to obtain a marriage license.¹⁸

To qualify for marriage under the common law, the parties must: (i) be in agreement to put themselves out as husband and wife; (ii) actually put themselves out as married while having capacity to marry; and (iii) be in an exclusive relationship.

For all marriages contracted after December 1, 1939, a marriage license is required in order for the marriage to be recognized as such under the state law. There is an exception for the common law marriages of other states, which New Jersey recognizes when the common law requirements of the respective state were met by the couple while they were living in that state.

¹⁶ *Id.* § 37:1-10.

¹⁷ See *infra.*, “Common Law Marriage,” for more detailed treatment.

¹⁸ N.J. Rev. Stat. § 37:1-10.

ANNULMENTS

Introduction

Like divorce, annulment voids the validity of marriage. However, unlike divorce, which voids the validity of a marriage already in existence, annulment treats a marriage as though it never occurred or existed. When a marriage is annulled, it is considered to never have had any validity from its beginning.

In order to obtain an annulment, the marriage must either be void or voidable.

Void Marriage

A void marriage¹⁹ is one that is prohibited by public policy and the law. Thus, the annulment of void marriage applies only when there is a defect in the marriage so serious as to render the marriage void as against public policy. Nothing that either party can do will have the effect of validating the marriage. Examples of void marriages include the following:

- *Bigamous marriages*, in which one spouse was married at the time of the second marriage; and
- *Marriages between related parties* (i.e., marriage with an ancestor, descendent, sibling, aunt or uncle, or niece or nephew). The validity of a marriage between related parties will not, however, be questioned after the death of either spouse if, during the lifetime of the spouses, the marriage was not annulled.

In order to obtain an annulment of a void marriage, the party seeking the annulment must prove that circumstances

¹⁹ N.J. Rev. Stat. § 2A:34-1.

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THE FINANCIAL CONSEQUENCES OF DIVORCE

THE DIVISION OF PROPERTY: EQUITABLE DISTRIBUTION

Introduction

There are two approaches to property division in divorce actions in the United States; every state has adopted either the community property (also known as *marital property*) or equitable distribution (also known as *separate property*) approach. New Jersey, like the majority of states, has adopted the separate property approach. Within this approach, all *marital property* is divided between the parties according to a set of factors encompassed in the equitable distribution scheme (*see infra.*).

The separate property approach adopted by New Jersey can be contrasted with the marital property approach, where marital property (property legally or beneficially acquired during the marriage, regardless of who holds title) is split according to equitable distribution factors. Many of the separate property exceptions in the separate property approach as to what constitutes marital property, such as personal injury awards to one spouse, are also excluded from marital property in community property states.

However, community property states employ a different set of guidelines. For example, in California, a community property state, the mere use and representation of transmutation is an insufficient basis for the transformation of separate property into marital property. Unlike in separate property states, in California, a written agreement is necessary for the operation of transmutation.

The following states have adopted the community property approach: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

Distinguishing Marital Property from Separate Property

Defining Marital Property

Introduction

Marital property is defined as all property legally acquired by the parties *during the marriage*, regardless of how title is held, with some exceptions, such as gifts, inheritances, and personal injury awards awarded to only one of the spouses. Marital property to be distinguished from separate property, which is defined as any property brought into the marriage by either party prior to the marriage or which was awarded to only one of the spouses during the marriage (*e.g.*, a gift intended for only one of the spouses that was given during the marriage).

Future Property

Marital property includes all property acquired during the marriage, and *does not include future income*. Therefore, the value of future income based on a professional degree obtained during the marriage may not be used in calculating equitable distribution. New Jersey thus follows the *majority approach* with respect to the calculation of marital property

for the purpose of equitable distribution: *future property is not marital property*.

This was made clear in the case *Mahoney v. Mahoney*,⁶⁴ where the plaintiff filed for divorce from the defendant, who had supported the marriage for sixteen months while the plaintiff pursued his MBA. The defendant sought reimbursement for the support she provided while the plaintiff pursued his degree. The court held that the plaintiff's degree was not marital property and therefore may not be distributed as such. However, since the defendant's contribution to the plaintiff's professional degree was made with the expectation of deriving future benefits, equity entitled the defendant to reimbursement alimony.

This case can be compared with *O'Brien v. O'Brien*,⁶⁵ which demonstrates the contrasting approach taken by New York State, which follows the minority approach as to future income. The Court held that the plaintiff's medical license was marital property as long as the defendant relinquished opportunities so that the plaintiff could pursue the degree.

The Transformation of Separate Property into Marital Property

Some property may be classified by a court as marital property or may come to be transformed into marital property by the title holder even if it was acquired prior to the marriage. This may occur through either *transmutation* or *commingling*.

Transmutation. Though rarely invoked in New Jersey, this doctrine causes separate property to become transformed into marital property. Although it is not dealt with in detail in the New Jersey common law, there appears

⁶⁴ *Mahoney v. Mahoney*, 453 A.2d 527 (N.J. 1982).

⁶⁵ *O'Brien v. O'Brien*, 498 N.Y.S. 743 (1985).

to be two elements: (i) the transformation must occur through *use* of the separate property; and (ii) the title-holding spouse must represent to the other party that the separate property is to be *shared* and *treated* as marital property.⁶⁶

For example, a home that one spouse inherited would become marital property if the inheriting spouse tells the other that the home is to be used as their marital home and the couple moves into the home and uses it as the marital home.

Commingling. Separate property can also be transformed into marital property through commingling, which occurs when the following elements are met: (i) the title-holding spouse *mixes* his separate property with the marital property (or with the other spouse's separate property); and (ii) the title-holding spouse *intends* for the separate property to be transmuted into marital property. Thus, if separate property is sold and the proceeds are mixed with the marital property by placing them in a joint bank account, the funds will remain separate property if the parties did not intend for the proceeds to become marital property.

An example of commingling would be if one party gives to the other the proceeds from a personal injury award with the intent that it be used to purchase a residence in their joint names, and it is used for that purpose.

The presumption that separate property has been transmuted into marital property is rebuttable.⁶⁷

⁶⁶ *Coney v. Coney*, 207 N.J. Super. 63, 75, 503 A.2d 912 (Ch. Div. 1985).

⁶⁷ *In re Marriage of Smith*, 86 Ill. 2d 518, 530, 427 N.E.2d 1239 (Ill. 1981).

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DOMESTIC VIOLENCE

THE PREVENTION OF DOMESTIC VIOLENCE ACT

Recognizing that domestic violence is a serious issue in New Jersey, that the elderly as well as children are affected by it, and that thousands of New Jersey citizens were beaten, tortured, or killed by their spouses, the New Jersey Legislature passed the Prevention of Domestic Violence Act of 1991 (PDVA).⁹⁷

The PDVA protects against domestic violence, defined in New Jersey as the occurrence of homicide, assault, terrorist threats, kidnapping, criminal restraint, false imprisonment, criminal sexual contact, lewdness, criminal mischief, burglary, criminal trespass, harassment, or stalking by an emancipated minor or adult. To qualify as an act of domestic violence under the PDVA, the victim must be either:

- an *adult* or *emancipated minor* who: (i) is or was the abuser's spouse; or (ii) is or was living in the same household as the abuser; or
- *any person, regardless of age*, who: (i) has a child in common with the abuser or who is expecting to

⁹⁷ N.J. Rev. Stat. § 2C:25-17 *et. seq.*

have a child in common with the abuser; or (ii) has or has had a dating relationship with the abuser.⁹⁸

By passing the PDVA, the Legislature intended to “assure the victims of domestic violence the maximum protection from abuse the law can provide.”⁹⁹

LAW ENFORCEMENT PROCEDURES

When a law enforcement officer responds to a domestic violence call, his primary duty is to enforce the law and protect the victim. He must give the victim a notice in English and in Spanish explaining the victim’s rights under the PDVA, including the rights to a temporary or final restraining order. The law enforcement officer must also complete a domestic violence offense report, which is forwarded to the Municipal Court where the offense was committed or to the Superior Court.¹⁰⁰

When a law enforcement officer, responding to an incident, has reason to believe that domestic violence has occurred, he may arrest the abuser and sign a complaint against him. If the victim shows evidence of injury or if there is probable cause that the attacker either violated a restraining order or used a weapon in attacking the victim, the officer must arrest the attacker.

RIGHTS UNDER THE ACT

Victims of domestic abuse may file a criminal complaint or a civil complaint against the abuser. Criminal complaints could lead to the imprisonment or other punishment of the abuser. Civil complaints, which are filed in the Family Part

⁹⁸ *Id.* § 2C:25-19.

⁹⁹ *Id.* § 2C:25-18.

¹⁰⁰ *Id.* § 2C:25-24.

of the Chancery Division of the New Jersey Superior Court or in a Municipal Court, may lead to civil remedies, such as civil restraining orders against the abuser. In addition, victims of domestic violence may file for protective orders, temporary restraining orders, and final restraining orders.

Reasonable force in self-defense is not to be construed as prosecutable violence under the PDVA. No one who in self-defense resisted an attacker can be charged under the Act.¹⁰¹

RESTRAINING ORDERS UNDER THE ACT

Introduction

A victim of domestic violence may seek a restraining order in order to enjoin the defendant from harassing, threatening, or contacting her in any way. The order may be used to keep the attacker away from the scene of abuse, whether it is the workplace or home of the victim or some other place.

A party seeking a restraining order may do so in the Family Part of the Chancery Division. To obtain a restraining order for domestic violence, the applicant must prove the applicant was the victim of domestic violence by a co-habitant, a parent of a child in common, or a current or former dating partner. Otherwise, the victim may be able to obtain a restraining order under some other law, such as the criminal law on stalking.

Temporary Restraining Orders

Overview

Temporary restraining orders may be granted to protect the life and well-being of victims of abuse. When emergency relief is necessary, the judge may award an *ex parte*

¹⁰¹ *Id.* § 2C:25-21.

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ABORTION

UNITED STATES CONSTITUTIONAL BACKGROUND

Abortion is perhaps the most controversial subject in American family law. From arguments on the morality of having an abortion, to discussions on whether the U.S. Constitution recognizes a woman's right to choose abortion, to questions on the personhood of the fetus, abortion has been the subject of much heated debate over recent decades. Justice Blackmun, who wrote the landmark decision of *Roe v. Wade*,¹¹⁹ considered the opinion to be his *magnum opus*, one that would finally and forever put an end to the abortion debate. Far from achieving that vision, the infamous case came to the fore of a major division in American political life and fanned the flames of the abortion controversy.

The decision had a great impact on the lives of American women. After *Roe*, every state was required to recognize the right of a woman to choose an abortion during the first trimester. During the second and third trimesters, state regulations had to be reasonable. Laws that banned a woman's right to choose an abortion were held to be unconstitutional, even if they allowed for exceptions to

¹¹⁹ *Roe v. Wade*, 410 U.S. 113 (1973).

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CHILDREN, CUSTODY, AND VISITATION

INTRODUCTION

General Overview

Custody battles can be among the most difficult and emotional of the consequences of divorce. Determining custody requires parents already under the stress of a divorce to determine which one will have legal control over the care and residence of their child or children. Courts must determine which parent will become the custodial parent and which will become the non-custodial parent with visitation rights.

When deciding on custody, courts are primarily concerned with the best interests of the child. Courts therefore do everything they can to lessen the emotional and psychological impact on the children. When the parents cannot agree on who should have custody, or if the parents come to an agreement but the court believes that the agreement is *not* in the best interests of the child, the court may establish custody and visitation of its own accord.¹⁶⁹

In custody battles, the rights of both parents will have equal weight absent evidence of misconduct.¹⁷⁰ However,

¹⁶⁹ N.J. Rev. Stat. § 9:2-4.c to 4.f.

¹⁷⁰ *Id.* § 9:2-4.

even with all other factors being equal, there is a presumption that “the child’s well-being is better safeguarded in the hands of the mother.”¹⁷¹ This theory is commonly referred to as “the tender years doctrine.” Although it has been challenged as violating equal protection and statutory requirements that parents be given equal rights absent abuse or neglect,¹⁷² the theory continues to hold sway in New Jersey custody actions.

According to the doctrine, children are best cared for when custody is given to the mother, since she is usually the primary caregiver who feeds, dresses, and cares for them during their tender years. This presumption may be rebutted by the father if he can prove that the mother is so physically or morally deficient that the child’s welfare and best interests will not be served by awarding her custody.¹⁷³

Courts may choose between several alternatives when awarding custody, including sole custody to one parent and joint and divided custody to both parents. In addition, temporary custody may be awarded in emergency situations, generally between when the couple separates and when a final divorce and custody order is granted. During that period, courts try to avoid making changes in temporary custody awards until final custody is awarded.

Sole custody is custody granted to one parent, with “appropriate parenting time,” or “visitation,” granted to the other parent.¹⁷⁴ Under this arrangement, the custodial parent alone holds all of the legal rights, privileges, and responsibilities relating to the child.

¹⁷¹ *Wojnarowicz v. Wojnarowicz*, 137 A.2d 618, 620 (N.J. Ch. Div. 1958).

¹⁷² N.J. Rev. Stat. § 9:2-4.

¹⁷³ *Id.*

¹⁷⁴ *Id.* § 9:2-4.b.

Joint (shared) custody, on the other hand, is custody granted to both parents. Under joint custody, the parents have joint rights, duties, and responsibilities over the child. It can be legal, physical, or both legal and physical and nature. Joint legal custody refers to a situation where the child lives with one of the parents but both parents share in the rights, duties, and responsibilities relating to the child. Joint physical custody refers to a situation where the child spends time living with both parents, alternating between households. Joint and legal custody is a combination of both of these forms.

Courts rarely award joint physical custody, since it is presumed that the child's best interests are served when she lives with one parent and has visitation with the other. When joint custody is granted, one parent generally remains the primary caretaker, the other is awarded visitation rights, and both share in the duties and obligations related to child rearing. The parents will make decisions together regarding the child's health, education, and welfare.¹⁷⁵

In deciding whether to award joint custody, courts consider several factors, including (i) the ability of the parents to agree and cooperate on issues relating to the child's upbringing and well-being; (ii) whether both parents are willing and able—physically and psychologically—to accept custody of the child; and (iii) the child's own preference, when she is sufficiently mature to make an intelligent decision.¹⁷⁶

¹⁷⁵ *Id.* § 9:2-4.a.

¹⁷⁶ *Id.* § 9:2-4.c.

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ADOPTION

INTRODUCTION

Adoption is the process of placing a child with non-biological parents not related by blood. It involves a legal proceeding that creates a new parent-child relationship. The adoptive parents are given all of the rights and responsibilities legally linked with parentage and the child is entitled to all of the rights belonging to a natural child of the adoptive parents. These rights include, for example, the right to inherit.

Any person may adopt in New Jersey, but if the adoptive parent is married, she must first obtain the consent of her spouse, unless the couple brings the adoption action jointly.²¹⁹ In addition, absent special approval by the court, the adoptive parent must be at least eighteen years old and at least ten years older than the child.²²⁰

Before a child may be adopted, the parental rights of the child's natural parents must be terminated. However, under some circumstances, the child may be adopted without this termination. For example, a stepparent may adopt a child without terminating the biological parents' parental rights if he is married to one of the biological parents. This

²¹⁹ N.J. Rev. Stat. § 9:3-43.a.

²²⁰ *Id.* § 9:3-43.b.

demonstrates a public policy of protecting “the best interests of the child above rigid constructions of the term ‘family.’”²²¹

Parental rights may be terminated in several ways, including by placing the child for adoption in an adoption agency or for private adoption. Furthermore, parental rights can be terminated by the Division of Youth and Family Services (DYFS) of the Department of Children and Families.²²² The DYFS must file a guardianship petition in the Family Part of the Chancery Division. It will do so on any of the following grounds²²³:

- A conviction of the parents for abuse, abandonment, neglect, or cruelty;
- A showing that termination of the parental rights serves the best interests of the child;
- The failure of the parent for a period of one year to remedy conditions that led to the child’s being removed and accepted by the Division of Youth and Family Services or placed with an authorized agency, despite the Division’s reasonable efforts to keep the family together and the parent’s ability to remedy the situation;
- The parent’s abandonment of the child; or
- A finding that the parent committed murder, aggravated manslaughter or manslaughter of one of her children; or committed another of a series of serious crimes defined by the New Jersey statutes on care, custody, and guardianship.

²²¹ *In re Adoption of a Child by J.M.G.*, 632 A.2d 550, 553 (N.J. Super. Ct. Ch. Div. 1993).

²²² N.J. Rev. Stat. § 30:4C-15 *et seq.*

²²³ *Id.* § 30:4C-15.

TYPES OF ADOPTIONS AND PROCEDURES

The procedures for obtaining an adoption vary according to whether the adoptive parents are applying for adoption through the Division of Youth and Family Services (DYFS) or through a private agency. Some elements, such as the requirement that the biological parents terminate their parental rights, are common to both kinds of adoptions. The termination of parental rights may occur voluntarily, through a judicial order for neglect or unfitness, or by operation of law (*e.g.*, for rape of the child). Furthermore, for both kinds of adoptions, the court must grant approval to the adoptive parents. In evaluating the application for DYFS adoption, the court considers the home study conducted by the DYFS; for private agency adoptions, the court considers the complaint filed by the adoptive parents.

Division of Youth and Family Services Adoptions

To adopt through the DYFS, a child must first be placed with the DYFS by his parents. In placing a child with the DYFS, the parent gives up his or her parental rights. The agency must inform the parent that the surrender of rights is permanent and irrevocable, except at the discretion of the approved agency or by court order.²²⁴

After the child is placed with the DYFS, the adoptive parents must file a complaint in the Chancery Division, Family Part. If the adoption agency approves the adoption and the court finds it in the best interests of the child, the adoption will be granted.

Private Adoptions

In order to obtain a private adoption, adoptive parents must file a complaint in the Chancery Division, Family Part. The

²²⁴ *Id.* § 9:3-41.

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United States Constitution

Fifth Amendment - Liberty Interest, Due Process

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment - Citizenship Rights

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

...

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

New Jersey Constitution

Article 1 – Rights and Privileges

1. All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.
2. a. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

Article VI – Judicial, Section III

1. The Superior Court shall consist of such number of judges as may be authorized by law, each of whom shall exercise the powers of the court subject to rules of the Supreme Court. The Superior Court shall at all times consist of at least two judges who shall be assigned to sit in each of the counties of this State, and who are resident therein at the time of appointment and reappointment.
2. The Superior Court shall have original general jurisdiction throughout the State in all causes.
3. The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division, which shall include a family part. Each division shall have such other parts, consist of such number of judges, and hear such causes, as may be provided by rules of the Supreme Court. At least two judges of the Superior Court shall at all times be assigned to sit in each of the counties of the State, who at the time of their appointment and reappointment were residents of that county provided, however, that the number of judges required to reside in the county wherein they sit

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