

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 17.1-275, 63.2-1201, 63.2-1208, 63.2-1210, 63.2-1228, 63.2-1241, and 63.2-1250 of the Code of Virginia, relating to adoption.*

[H 869]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 17.1-275, 63.2-1201, 63.2-1208, 63.2-1210, 63.2-1228, 63.2-1241, and 63.2-1250 of the Code of Virginia are amended and reenacted as follows:**

**§ 17.1-275. Fees collected by clerks of circuit courts; generally.**

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

1. [Repealed.]

2. For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, \$18 for an instrument or document consisting of 10 or fewer pages or sheets; \$32 for an instrument or document consisting of 11 to 30 pages or sheets; and \$52 for an instrument or document consisting of 31 or more pages or sheets. Whenever any writing to be recorded includes plat or map sheets no larger than eight and one-half inches by 14 inches, such plat or map sheets shall be counted as ordinary pages for the purpose of computing the recording fee due pursuant to this section. A fee of \$17 per page or sheet shall be charged with respect to plat or map sheets larger than eight and one-half inches by 14 inches. Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. Three dollars and fifty cents of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, \$20 for estates not exceeding \$50,000, \$25 for estates not exceeding \$100,000 and \$30 for estates exceeding \$100,000. No fee shall be charged for estates of \$5,000 or less.

4. For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, \$10.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, \$10. For recording an order to celebrate the rites of marriage pursuant to § 20-25, \$25 to be paid by the petitioner.

6. For making out any bond, other than those under § 17.1-267 or subdivision A 4, administering all necessary oaths and writing proper affidavits, \$3.

7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee shall be \$15 in cases not exceeding \$500 and \$25 in all other cases.

8. For making out a copy of any paper, record, or electronic record to go out of the office, which is not otherwise specifically provided for herein, a fee of \$0.50 for each page or, if an electronic record, each image. From such fees, the clerk shall reimburse the locality the costs of making out the copies and pay the remaining fees directly to the Commonwealth. The funds to recoup the cost of making out the copies shall be deposited with the county or city treasurer or Director of Finance, and the governing body shall budget and appropriate such funds to be used to support the cost of copies pursuant to this subdivision. For purposes of this section, the costs of making out the copies authorized under this section shall include costs included in the lease and maintenance agreements for the equipment and the technology needed to operate electronic systems in the clerk's office used to make out the copies, but shall not include salaries or related benefits. The costs of copies shall otherwise be determined in accordance with § 2.2-3704. However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

9. For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge \$2 and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional \$0.50.

10. In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251 which

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57 shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and  
58 Treatment Fund.

59 11. In any case in which a person is convicted of a violation of any provision of Article 1  
60 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk  
61 shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251,  
62 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and  
63 Treatment Fund as provided in § 17.1-275.8.

64 12. Upon the defendant's being required to successfully complete traffic school, a mature driver  
65 motor vehicle crash prevention course, or a driver improvement clinic in lieu of a finding of guilty, the  
66 court shall charge the defendant fees and costs as if he had been convicted.

67 13. In all civil actions that include one or more claims for the award of monetary damages the clerk's  
68 fee chargeable to the plaintiff shall be \$100 in cases seeking recovery not exceeding \$49,999; \$200 in  
69 cases seeking recovery exceeding \$49,999, but not exceeding \$100,000; \$250 in cases seeking recovery  
70 exceeding \$100,000, but not exceeding \$500,000; and \$300 in cases seeking recovery exceeding  
71 \$500,000. Ten dollars of each such fee shall be apportioned to the Courts Technology Fund established  
72 under § 17.1-132. A fee of \$25 shall be paid by the plaintiff at the time of instituting a condemnation  
73 case, in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in  
74 any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of  
75 a counterclaim or a claim impleading a third-party defendant. The fees prescribed above shall be  
76 collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be  
77 applicable to cases filed in the Supreme Court of Virginia.

78 13a. For the filing of any petition seeking court approval of a settlement where no action has yet  
79 been filed, the clerk's fee, chargeable to the petitioner, shall be \$50, to be paid by the petitioner at the  
80 time of filing the petition.

81 14. In addition to the fees chargeable for civil actions, for the costs of proceedings for judgments by  
82 confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or  
83 certified mail; (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the  
84 amount of the confessed judgment; (iii) for the sheriff for serving each copy of the order entering  
85 judgment, \$12; and (iv) for docketing the judgment and issuing executions thereon, the same fees as  
86 prescribed in subdivision A 17.

87 15. For qualifying notaries public, including the making out of the bond and any copies thereof,  
88 administering the necessary oaths, and entering the order, \$10.

89 16. For each habeas corpus proceeding, the clerk shall receive \$10 for all services required  
90 thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

91 17. For docketing and indexing a judgment from any other court of the Commonwealth, for  
92 docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of  
93 § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment  
94 pursuant to § 8.01-452, a fee of \$5; and for issuing an abstract of any recorded judgment, when proper  
95 to do so, a fee of \$5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee  
96 of \$20.

97 18. For all services rendered by the clerk in any court proceeding for which no specific fee is  
98 provided by law, the clerk shall charge \$10, to be paid by the party filing said papers at the time of  
99 filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the  
100 entry of a decree of divorce from the bond of matrimony.

101 19, 20. [Repealed.]

102 21. For making the endorsements on a forthcoming bond and recording the matters relating to such  
103 bond pursuant to the provisions of § 8.01-529, \$1.

104 22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or 57-15, \$10.

105 23. For preparation and issuance of a subpoena duces tecum, \$5.

106 24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name,  
107 \$20; however, this subdivision shall not be applicable in cases where the change of name is incident to  
108 a divorce.

109 25. For providing court records or documents on microfilm, per frame, \$0.50.

110 26. In all divorce and separate maintenance proceedings, and all civil actions that do not include one  
111 or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be  
112 \$60, \$10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132 to  
113 be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly  
114 certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the  
115 filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged  
116 for (i) the filing of a cross-claim or setoff in any pending suit or (ii) the filing of a counterclaim or any  
117 other responsive pleading in any annulment, divorce, or separate maintenance proceeding. In divorce

cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

27. For the acceptance of credit or debit cards in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeiture, penalties and costs, the clerk shall collect from the person presenting such credit or debit card a reasonable convenience fee for the processing of such credit or debit card. Such convenience fee shall not exceed four percent of the amount paid for the transaction or a flat fee of \$2 per transaction. The clerk may set a lower convenience fee for electronic filing of civil or criminal proceedings pursuant to § 17.1-258.3. Nothing herein shall be construed to prohibit the clerk from outsourcing the processing of credit and debit card transactions to a third-party private vendor engaged by the clerk. Convenience fees shall be used to cover operational expenses as defined in § 17.1-295.

28. For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit or debit card issuer that payment will not be made for any reason, the clerk may collect a fee of \$50 or 10 percent of the amount of the payment, whichever is greater.

29. For all services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, or 17.1-275.4, in an adoption proceeding, a fee of \$20, in addition to the fee imposed under § 63.2-1246, to be paid by the petitioner or petitioners. For each petition for adoption filed pursuant to § 63.2-1201, except those filed pursuant to subdivisions 5 4 and 6 5 of § 63.2-1210, an additional \$50 filing fee as required under § 63.2-1201 shall be deposited in the Virginia Birth Father Registry Fund pursuant to § 63.2-1249.

30. For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the same amount as the fee for the original license.

31. For the filing of any petition as provided in §§ 33.2-1023, 33.2-1024, and 33.2-1027, a fee of \$5 to be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § 33.2-1021, as well as for any order of the court relating thereto, the clerk shall charge the same fee as for recording a deed as provided for in this section, to be paid by the party upon whose request such certificate is recorded or order is entered.

32. For making up, certifying and transmitting original record pursuant to the Rules of the Supreme Court, including all papers necessary to be copied and other services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or 17.1-275.9, a fee of \$20.

33. [Repealed.]

34. For filings, etc., under the Uniform Federal Lien Registration Act (§ 55.1-653 et seq.), the fees shall be as prescribed in that Act.

35. [Repealed.]

36. For recordation of certificate and registration of names of nonresident owners in accordance with § 59.1-74, a fee of \$10.

37. For maintaining the information required under the Overhead High Voltage Line Safety Act (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

38. For lodging, indexing, and preserving a will in accordance with § 64.2-409, a fee of \$5.

39. For filing a financing statement in accordance with § 8.9A-505, the fee shall be as prescribed under § 8.9A-525.

40. For filing a termination statement in accordance with § 8.9A-513, the fee shall be as prescribed under § 8.9A-525.

41. For filing assignment of security interest in accordance with § 8.9A-514, the fee shall be as prescribed under § 8.9A-525.

42. For filing a petition as provided in §§ 64.2-2001 and 64.2-2013, the fee shall be \$10.

43. For issuing any execution, and recording the return thereof, a fee of \$1.50.

44. For the preparation and issuance of a summons for interrogation by an execution creditor, a fee of \$5. If there is no outstanding execution, and one is requested herewith, the clerk shall be allowed an additional fee of \$1.50, in accordance with subdivision A 44.

B. In accordance with § 17.1-281, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for courthouse construction, renovation or maintenance.

C. In accordance with § 17.1-278, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for services provided for the poor, without charge, by a nonprofit legal aid program.

D. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for public law libraries.

E. All fees collected pursuant to subdivision A 27 and § 17.1-276 shall be deposited by the clerk into

a special revenue fund held by the clerk, which will restrict the funds to their statutory purpose.

F. The provisions of this section shall control the fees charged by clerks of circuit courts for the services above described.

**§ 63.2-1201. Filing of petition for adoption; venue; jurisdiction; and proceedings.**

Proceedings for the adoption of a minor child and for a change of name of such child shall be instituted only by petition to a circuit court in the county or city in which the petitioner resides, in the county or city in which the child-placing agency that placed the child is located, or in the county or city in which a birth parent executed a consent pursuant to § 63.2-1233. Such petition may be filed by any natural person who resides in the Commonwealth, or who has custody of a child placed by a child-placing agency of the Commonwealth, or by an adopting parent of a child who was subject to a consent proceeding held pursuant to § 63.2-1233, or by intended parents who are parties to a surrogacy contract. The petition shall ask leave to adopt a minor child not legally the petitioner's by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, or persons who were previously married who are permitted to adopt a child under § 63.2-1201.1, the petition shall be the joint petition of the husband and wife or former spouses but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating consent to the prayer thereof only. If any procedural provision of this chapter applies to only one of the adoptive parents, then the court may waive the application of the procedural provision for the spouse of the adoptive parent to whom the provision applies. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents, and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

The petition for adoption, except those filed pursuant to subdivisions 5 4 and 6 5 of § 63.2-1210, shall include an additional \$50 filing fee that shall be used to fund the Virginia Birth Father Registry established in Article 7 (§ 63.2-1249 et seq.) of this chapter.

A petition filed while the child is under 18 years of age shall not become invalid because the child reaches 18 years of age prior to the entry of a final order of adoption. Any final order of adoption entered pursuant to § 63.2-1213 after a child reaches 18 years of age, where the petition was filed prior to the child turning 18 years of age, shall have the same effect as if the child was under 18 years of age at the time the order was entered by the circuit court provided the court has obtained the consent of the adoptee.

**§ 63.2-1208. Investigations; report to circuit court.**

A. Upon consideration of the petition, the circuit court shall, upon being satisfied as to proper jurisdiction and venue, immediately enter *either an interlocutory order referring the case to a child-placing agency to conduct a visitation and prepare a report of visitation or an order of reference referring the case to a child-placing agency to conduct an investigation and prepare a report of investigation*, unless no investigation is required pursuant to this chapter. *In agency adoption cases for which an interlocutory order is entered, the petition shall contain the provisional consent of the child-placing agency.* The court shall enter the *interlocutory order or order of reference* ~~prior to or~~ concurrently with the entering of an order of publication, if such is necessary. Upon entry of the *interlocutory order or order of reference*, the clerk shall forward a copy of the *interlocutory order or order of reference*, the petition, and all exhibits thereto to the Commissioner and the child-placing agency retained to provide investigative, reporting, and supervisory services. If no Virginia agency was retained to provide such services, the *interlocutory order or order of reference*, petition, and all exhibits shall be forwarded to the local director of social services of the locality where the petitioners reside or resided at the time of filing the petition or had legal residence at the time the petition was filed.

B. Upon receiving a petition and *interlocutory order or order of reference* from the circuit court, the applicable agency shall make a thorough investigation of the matter and report thereon in writing, in such form as the Commissioner may prescribe, to the circuit court. *In cases in which an order of reference was received, the agency shall file a report of investigation with the circuit court within 60 days after the copy of the petition and all exhibits thereto are forwarded. In cases in which an interlocutory order was received, the agency shall file a report of visitation within 30 days after the completion of all placement visits required pursuant to § 63.2-1212. In agency adoption cases, as long as the agency continues to recommend the adoption, the agency shall file its final agency consent with the report.* A copy of the *applicable* report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing ~~the~~ *such* report with the circuit court.

On the *applicable* report to the circuit court there shall be appended either acceptance of service or certificate of the local director, or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. The circuit court shall expeditiously consider the merits of the petition upon receipt of the *applicable* report and enter a final order of adoption.

C. If the *applicable* report is not made to the circuit court within the periods specified, the circuit court may proceed to hear and determine the merits of the petition and enter such order or orders as the circuit court may deem appropriate.

D. The *visitation* or investigation requested by the circuit court in an *interlocutory order* or *order of reference* shall include, in addition to other inquiries that the circuit court may require the child-placing agency or local director to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 13 (§ 63.2-1300 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) 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; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the physical custody of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; (vii) what fees have been paid by the petitioners or on their behalf to persons or agencies that have assisted them in obtaining the child; and (viii) whether the requirements of subsections E and F have been met. Any report made to the circuit court shall include a recommendation as to the action to be taken by the circuit court on the petition. A copy of any report made to the circuit court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.2-1200 or § 63.2-1218, the local director or child-placing agency shall so inform the circuit court and the Commissioner.

E. The *applicable* report shall include the relevant physical and mental history of the birth parents if known to the person making the report. The child-placing agency or local director shall document in the report all efforts they made to encourage birth parents to share information related to their physical and mental history. However, nothing in this subsection shall require that an investigation of the physical and mental history of the birth parents be made.

F. The *applicable* report shall include a statement by the child-placing agency or local director that all reasonably ascertainable background, medical, and psychological records of the child, including whether the child has been the subject of an investigation as the perpetrator of sexual abuse, have been provided to the prospective adoptive parent(s). The report also shall include a list of such records provided.

G. *The court may enter a final order of adoption under the following circumstances:*

1. *In cases in which an order of reference was entered and the report of investigation has been received, if (i) the child has been placed in the physical custody of the petitioner by a child-placing agency; (ii) the placing or supervising agency certifies to the circuit court that the child has lived in the physical custody of the petitioner continuously for a period of at least six months immediately preceding the filing of the petition and has been visited by a representative of such agency at least three times within a six-month period, provided that there are not less than 90 days between the first and last visit; and (iii) the court is of the opinion that entry of a final order of adoption would otherwise be proper.*

2. *In cases in which an interlocutory order was entered and both the report of visitation and final agency consent have been received, if (i) the child has been placed in the physical custody of the petitioner by a child-placing agency; (ii) the placing or supervising agency certifies to the circuit court that the child has been visited by a representative of such agency at least three times within a six-month period, provided that there are not less than 90 days between the first and last visit; and (iii) the court is of the opinion that entry of a final order of adoption would otherwise be proper.*

*In cases in which the court entered either an interlocutory order or order of reference and the child was placed by a child-placing agency, the circuit court may, for good cause shown, omit the requirement that the three visits be made within a six-month period, provided that not less than three visits were made.*

H. If the specific provisions set out in §§ 63.2-1228, 63.2-1238, 63.2-1242 and 63.2-1244 do not apply, the petition and all exhibits shall be forwarded to the local director where the petitioners reside or to a licensed child-placing agency.

**§ 63.2-1210. Probationary period, interlocutory order and order of reference not required under certain circumstances.**

The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption under the following circumstances:

1. If the child is legally the child by birth or adoption of one of the petitioners and the circuit court

is of the opinion that the entry of an interlocutory order would otherwise be proper. *In such cases, the court may also omit the order of reference if the petitioners meet the requirements set forth in § 63.2-1241.*

2. If one of the petitioners is a ~~step-parent~~ *stepparent* of the child and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. The court may omit the order of reference if the petitioners meet the requirements of § 63.2-1241.

3. ~~After receipt of the report required by § 63.2-1208, if the child has been placed in the physical custody of the petitioner by a child-placing agency and (i) the placing or supervising agency certifies to the circuit court that the child has lived in the physical custody of the petitioner continuously for a period of at least six months immediately preceding the filing of the petition and has been visited by a representative of such agency at least three times within a six-month period, provided there are not less than 90 days between the first visit and the last visit, and (ii) the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. The circuit court may, for good cause shown, in cases of placement by a child-placing agency, omit the requirement that the three visits be made within a six-month period.~~

4. After receipt of the report of investigation, if the child has been in physical custody of the petitioner continuously for at least three years immediately prior to the filing of the petition for adoption, and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.

5. 4. After receipt of the report of investigation, if the child has been legally adopted according to the laws of a foreign country with which the United States has diplomatic relations and if the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper, and the child (i) has been in the physical custody of the petitioners for at least one year immediately prior to the filing of the petition and 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 pursuant to § 63.2-1208 or (ii) 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 of the local department three times within such six-month period with no fewer than ninety days between the first and last visits, and the last visit has occurred within six months immediately prior to the filing of the petition.

6. 5. After receipt of the report of investigation, if the child was placed into Virginia from a foreign country in accordance with § 63.2-1104, the adoption was not finalized pursuant to the laws of that foreign country, and the child has been in the physical custody of the petitioner for at least six months immediately prior to the filing of the petition and has been visited by a representative of a licensed child-placing agency or of the local department three times within the six-month period with no fewer than 90 days between the first and last visits. The circuit court may, for good cause shown, in cases of an international placement, omit the requirement that the three visits be made within a six-month period.

#### **§ 63.2-1228. Forwarding of petition.**

Upon the filing of the petition, the circuit court shall, upon being satisfied as to proper jurisdiction and venue, immediately enter an *interlocutory order or an order* referring the case to a child-placing agency to conduct an investigation and prepare a report pursuant to § 63.2-1208. Upon entry of the *interlocutory order or the order of reference*, the court shall forward a copy of the petition and all exhibits thereto to the Commissioner and to the agency that placed the child. In cases where the child was placed by an agency in another state, or by an agency, court, or other entity in another country, the petition and all exhibits shall be forwarded to the local director or licensed child-placing agency, whichever agency completed the home study or provided supervision. If no Virginia agency provided such services, or such agency is no longer licensed or has gone out of business, the petition and all exhibits shall be forwarded to the local director of the locality where the petitioners reside or resided at the time of filing the petition, or had legal residence at the time of the filing of the petition.

#### **§ 63.2-1241. Adoption of child by spouse of birth or adoptive parent or other person with legitimate interest.**

A. In cases in which the spouse of a birth parent or parent by adoption or a person with a legitimate interest who is not the birth parent of a child wishes to adopt the child, the birth parent or parent by adoption and such parent's spouse or other person with a legitimate interest may file a petition for adoption in the circuit court of the county or city where the birth parent or parent by adoption and such parent's spouse or other person with a legitimate interest reside or the county or city where the child resides. The petition shall be the joint petition of the birth parent or parent by adoption and such parent's spouse or other person with a legitimate interest, but the birth parent or parent by adoption shall unite in the petition for the purpose of indicating consent to the prayer thereof only. The petition shall also state whether the petitioners seek to change the name of the child.

B. The court may order the proposed adoption and change of name without referring the matter to

the local director if (i) the birth parent or parent by adoption, other than the birth parent or parent by adoption joining in the petition for adoption, is deceased; (ii) the birth parent or parent by adoption, other than the birth parent or parent by adoption joining in the petition for adoption, consents to the adoption in writing and under oath; (iii) the acknowledged, adjudicated, presumed, or putative father denies paternity of the child; (iv) the birth mother swears under oath and in writing that the identity of the father is not reasonably ascertainable; (v) the child is the result of surrogacy and the birth parent, other than the birth parent joining in the petition, consents to the adoption in writing; (vi) the parent by adoption joining in the petition was not married at the time the child was adopted; or (vii) the child is 14 years of age or older and has lived in the home of the person desiring to adopt the child for at least five years. However, if the court in its discretion determines that there should be an investigation before a final order of adoption is entered, the court shall refer the matter to the local director for an investigation and report to be completed within such time as the circuit court designates. If an investigation is ordered, the circuit court shall forward a copy of the petition and all exhibits thereto to the local director and the provisions of § 63.2-1208 shall apply.

C. If an acknowledged, adjudicated, presumed, or putative birth parent or parent by adoption of a child refuses to consent to the adoption of a child by the spouse of the other birth parent or parent by adoption of the child or other person with a legitimate interest, the court shall determine whether consent to the adoption is withheld contrary to the best interests of the child. If the court determines that consent to the adoption is withheld contrary to the best interests of the child, the court may order the adoption and change of name without referring the matter to the local director. However, if the court in its discretion determines that there should be an investigation before a final order of adoption is entered, the circuit court shall refer the matter to the local director for an investigation and report to be completed within such time as the circuit court designates. The order of reference may include a requirement that the local director investigate factors relevant to determining whether consent of a birth parent is withheld contrary to the best interests of the child, including factors set forth in § 63.2-1205. If an investigation is ordered, the circuit court shall forward a copy of the petition and all exhibits thereto to the local director and the provisions of § 63.2-1208 shall apply.

D. In any case involving adoption of a child by a stepparent or other person with a legitimate interest pursuant to this section, the court may waive appointment of a guardian ad litem for the child.

E. *In cases in which both petitioners are listed as the child's parents on the child's birth certificate, the court shall permit the petitioners to obtain an adoption order under this section in order to secure the child's legal parentage.*

F. For the purposes of this section, "person with a legitimate interest" means the same as that term is defined in § 20-124.1.

**§ 63.2-1250. Registration; notice; form.**

A. Any man who has engaged in sexual intercourse with a woman is deemed to be on legal notice that a child may be conceived and that the man is entitled to all legal rights and obligations resulting therefrom. Lack of knowledge of the pregnancy does not excuse failure to timely register with the Virginia Birth Father Registry.

B. A man who desires to be notified of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption, or a proceeding for termination of parental rights regarding a child that he may have fathered shall register with the Virginia Birth Father Registry.

C. Failure to timely register with the Virginia Birth Father Registry shall waive all rights of a man who is not acknowledged to be, presumed to be, or adjudicated the father to withhold consent to an adoption proceeding unless the man was led to believe through the birth mother's misrepresentation that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) the child died when in fact the child is alive. Upon discovery of the misrepresentation, the man shall register with the Virginia Birth Father Registry within 10 days; *however, registration with the Virginia Birth Father Registry shall be untimely if 180 days have elapsed from the date the circuit court entered the final order of adoption.*

D. A man will not prejudice any rights by failing to register if:

1. A father-child relationship between the man and the child has been established pursuant to § 20-49.1, 20-49.8, or if the man is a presumed father as defined in § 63.2-1202; or

2. The man commences a proceeding to adjudicate his paternity before a petition to accept consent or waive adoption consent is filed in the juvenile and domestic relations district court, or before a petition for adoption or a petition for the termination of his parental rights is filed with the court.

E. Registration is timely if it is received by the Department within ~~(i)~~ 10 days of the child's birth ~~or~~ ~~(ii)~~ *unless* the time specified in subsection C or F *applies*. Registration is complete when the signed registration form is first received by the Department. The signed registration form shall be submitted in the manner prescribed by the Department.

F. In the event that the identity and whereabouts of the birth father are reasonably ascertainable, the

child-placing agency or adoptive parents shall give written notice to the birth father of the existence of an adoption plan and the availability of registration with the Virginia Birth Father Registry. Such written notice shall be provided by personal service ~~or by~~, certified mailing *with proof of service*, or *express mailing with proof of delivery* to the birth father's last known address. Registration is timely if the signed registration form is received by the Department within 10 days of personal service of the written notice or within 13 days of the certified *or express* mailing date of the written notice. The personal service or certified *or express* mailing may be completed either prior to or after the birth of the child. *When written notice is provided to a putative father before the birth of the child, the putative father's registration with the Virginia Birth Father Registry shall be untimely if received by the Department more than 10 days after personal service of the written notice or more than 13 days after the certified or express mailing date of the written notice, whichever occurs first.*

G. The child-placing agency or adoptive parent(s) shall give notice to a registrant who has timely registered of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption, or a proceeding for termination of parental rights regarding a child. Notice shall be given pursuant to the requirements of this chapter or § 16.1-277.01 for the appropriate adoption proceeding.

H. 1. The Department shall prepare a form for registering with the agency that shall require (i) the registrant's name, date of birth and social security number; (ii) the registrant's driver's license number and state of issuance; (iii) the registrant's home address, telephone number, and employer; (iv) the name, date of birth, ethnicity, address, and telephone number of the putative mother, if known; (v) the state of conception; (vi) the place and date of birth of the child, if known; (vii) the name and gender of the child, if known; and (viii) the signature of the registrant. No form for registering with the Virginia Birth Father Registry shall be complete unless signed by the registrant and the signed registration form is received by the Department in the manner prescribed by the Department.

2. The form shall also state that (i) timely registration entitles the registrant to notice of a proceeding for adoption of the child or termination of the registrant's parental rights, (ii) registration does not commence a proceeding to establish paternity, (iii) the information disclosed on the form may be used against the registrant to establish paternity, (iv) services to assist in establishing paternity are available to the registrant through the Department, (v) the registrant should also register in another state if conception or birth of the child occurred in another state, (vi) information on registries of other states may be available from the Department, (vii) the form is signed under penalty of perjury, and (viii) procedures exist to rescind the registration of a claim of paternity.

3. A registrant shall promptly notify the Virginia Birth Father Registry of any change in information, including change of address. The Department shall incorporate all updated information received into its records but is not required to request or otherwise pursue current or updated information for incorporation in the registry.