

CHAPTER 259

CHANGE OF NAME, ADOPTION

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NOTE: Chapter 259 is excepted from the application of the Rules of Civil Procedure.

259.01-259.09 [Repealed, 1951 c 508 s 13]

CHANGE OF NAME

**259.10 PROCEDURE.** A person who shall have resided in any county for one year may apply to the district court thereof to have his name, the names of his minor children, if any, and the name of his wife, if she joins in the application, changed in the manner herein specified. He shall state in his application the name and age of his wife and each of his children, if any, and shall describe all lands in the state in or upon which he claims any interest or lien, and shall appear personally before the court and prove his identity by at least two witnesses. If he be a minor, his guardian or next of kin shall also appear. If he be under the age of 14 years, the application may be made by his guardian or next of kin. Every person who, with intent to defraud, shall make a false statement in any such application shall be guilty of a misdemeanor provided, however, that no minor child's name may be changed without both of his parents having notice of the pending of the application for change of name, whenever practicable, as determined by the court.

[*R L s 3620; 1917 c 222 s 1; 1943 c 28 s 1; 1943 c 292 s 1; 1951 c 535 s 1*] (8633)

**259.11 ORDER; FILING COPIES.** If it shall appear to the court to be proper, it shall grant the application and set forth in the order the name and age of his wife and each child of the applicant, if any, and shall state a description of the lands, if any, in which the applicant and said wife and children, if any, claim to have an interest. The clerk shall file such order, and record the same in the judgment book. If lands be described therein, a certified copy of the order shall be filed for record, by the clerk, with the register of deeds of each county wherein any of the same are situated. Before doing so he shall present the same to the county auditor who shall enter the change of name in his official records and note upon the instrument, over his official signature, the words "change of name recorded." Any such order shall not be filed, nor any certified copy thereof be issued, until the applicant shall have paid to the clerk the cost of such record. The fee of the clerk shall be as provided by law.

[*R L s 3621; 1917 c 222 s 1; 1941 c 178; 1943 c 28 s 2; 1959 c 250 s 2*] (8634)

ADOPTION

**259.21 DEFINITIONS.** Subdivision 1. **Terms.** For the purposes of sections 259.21 to 259.32 the terms defined in this section shall have the meanings respectively ascribed to them.

Subd. 2. **Child.** "Child" means a person under the age of 18 years.

Subd. 3. **Parent.** "Parent" means the natural or adoptive parent of a child.

Subd. 4. **Guardian.** "Guardian" means a guardian of the person of the ward appointed by a court of competent jurisdiction.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of public welfare of the state of Minnesota.

Subd. 6. **Agency.** "Agency" means an organization or department of government designated or authorized by law to place children for adoption or any person,

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group of persons, organization, association or society licensed or certified by the commissioner of public welfare to place children for adoption.

**Subd. 7. Petitioner.** "Petitioner" means a person and his spouse, if there be one, petitioning for the adoption of any person or persons pursuant to sections 259.21 to 259.32.

[1951 c 508 s 1; 1953 c 593 s 2; 1973 c 725 s 49]

**259.22 PETITION.** Subdivision 1. Any person who has resided in the state for one year or more may petition to adopt a child or an adult, and the same petitioner may petition for the adoption of two or more persons in one petition. The provisions as to length of residence in the state may be waived by the court whenever it appears to be for the best interest of the child.

Subd. 2. No petition for adoption shall be filed unless the child sought to be adopted has been placed by the commissioner of public welfare, his agent, or a licensed child-placing agency. The provisions of this subdivision shall not apply if

(a) the child is over 14 years of age;

(b) the child is sought to be adopted by a step-parent;

(c) the child is sought to be adopted by a relative related by blood or marriage within the third degree;

(d) the child has been lawfully placed under the laws of another state while the child and petitioner resided in that other state; or

(e) the court waives the requirement of placement in the best interests of the child or petitioners.

Subd. 3. This section shall not apply to placements made prior to August 1, 1974. Any placement made prior to that date may be finalized by a petition for adoption.

[1951 c 508 s 2; 1974 c 499 s 1]

**259.23 JUVENILE COURT, JURISDICTION.** Subdivision 1. **Venue.** Except as provided in section 260.111, subdivision 2, the juvenile court shall have original jurisdiction in all adoption proceedings. The proper venue for an adoption proceeding shall be the county of the petitioner's residence. However, if the petitioner has acquired a new residence in another county and requests a transfer of the adoption proceeding, the court in which an adoption is initiated may transfer the proceeding to the appropriate court in the new county of residence if the transfer is in the best interests of the person to be adopted. The court transfers the proceeding by ordering a continuance and by forwarding to the clerk of the appropriate court a certified copy of all papers filed, together with an order of transfer. The transferring court also shall forward copies of the order of transfer to the commissioner of public welfare and any agency participating in the proceedings. The judge of the receiving court shall accept the order of the transfer and any other documents transmitted and hear the case; provided, however, the receiving court may in its discretion require the filing of a new petition prior to the hearing.

Subd. 2. **Contents of petition.** The petition shall be signed by the petitioner and, if married, by his spouse. It shall be verified, and filed in duplicate. The petition shall allege:

(a) The full name, age and place of residence of petitioner, and if married, the date and place of marriage;

(b) The date petitioner acquired physical custody of the child and from what person or agency;

(c) The date of birth of the child, if known, and the state and county where born;

(d) The name of the child's parents, if known, and the guardian if there be one;

(e) The actual name of the child, if known, and any known aliases;

(f) The name to be given the child if a change of name is desired;

(g) The description and value of any real or personal property owned by the child;

(h) That the petitioner desires that the relationship of parent and child be established between petitioner and the child, and that it is to the best interests of the child for the child to be adopted by the petitioner.

In agency placements, the information required in (d) and (e) above shall not be required to be alleged in the petition but shall be transmitted to the court by the commissioner of public welfare.

Subd. 3. **Court rules.** The provisions of subdivision 2 shall be subject to rules of the court made pursuant to section 480.051.

[1951 c 508 s 3; 1959 c 685 s 45; 1965 c 558 s 1; 1967 c 45 s 1]

**259.24 CONSENTS.** Subdivision 1. **Exceptions.** No child shall be adopted without the consent of his parents and his guardian, if there be one, except in the following instances:

(a) Consent shall not be required of the parent of an illegitimate child not entitled to notice of the proceedings under either sections 259.26 or 259.261.

(b) Consent shall not be required of a parent who has abandoned the child, or of a parent who has lost custody of the child through a divorce decree, and upon whom notice has been served as required by section 259.26.

(c) Consent shall not be required of a parent whose parental rights to the child have been terminated by a juvenile court or who has lost custody of a child through a final commitment of the juvenile court or through a decree in a prior adoption proceeding.

(d) Consent shall not be required of a parent who has been adjudged insane or incompetent by a court of competent jurisdiction.

(e) If there be no parent or guardian qualified to consent to the adoption, the consent may be given by the commissioner.

(f) The commissioner or agency having authority to place a child for adoption pursuant to section 259.25, subdivision 1, shall have the exclusive right to consent to the adoption of such child.

**Subd. 2. Parents, guardian.** If a parent who consents to the adoption of an illegitimate child is under 18 years of age, the consent of his parents or guardian, if any, also shall be required; if either or both of the parents are disqualified for any of the reasons enumerated in subdivision 1, the consent of such parent shall be waived, and the consent of the guardian only shall be sufficient; and, if there be neither parent nor guardian qualified to give such consent, the consent may be given by the commissioner.

**Subd. 3. Child.** When the child to be adopted is over 14 years of age, his written consent also shall be necessary.

**Subd. 4. Adult adoptee.** In the adoption of an adult, his written consent only shall be required.

**Subd. 5. Execution.** All consents, except those by the commissioner of public welfare, his agent or a licensed child-placing agency, to an adoption shall be in writing, executed before a representative of the commissioner of public welfare, his agent or a licensed child-placing agency in addition to two competent witnesses and acknowledged by the consenting party, and shall be filed in the adoption proceedings at any time before the matter is heard provided, however, that a consent executed and acknowledged outside of this state, either in accordance with the law of this state or in accordance with the law of the place where executed, is valid.

**Subd. 6. Withdrawal of consent.** After a petition has been filed, the consent to the adoption may be withdrawn only upon order of the court after written findings that such withdrawal is for the best interest of the child.

**Subd. 7. Withholding consent; reason.** Consent to an adoption shall not be unreasonably withheld by a guardian, who is not a parent of the child, by the commissioner or by an agency.

[1951 c 508 s 4; 1953 c 593 s 2; 1959 c 685 s 46; 1969 c 428 s 1; 1974 c 66 s 2-4; 1974 c 113 s 1]

**259.25 AGREEMENT CONFERRING AUTHORITY TO PLACE FOR ADOPTION.** Subdivision 1. **Consents required.** The parents and guardian, if there be one, of a legitimate child may enter into a written agreement with the commissioner of public welfare or an agency, giving the commissioner or such agency authority to place the child for adoption. The parents of an illegitimate child also may enter into such written agreement, but, if he is under the age of 18 years the written consent of his parents and guardian, if any, also shall be required; if either or both of the parents are disqualified from giving such consent for any of the reasons enumerated in section 259.24, subdivision 1, then the written consent of the guardian shall be required. Such agreement and consent shall be in the form prescribed by the commissioner. The agreement shall be executed by the commissioner or agency, or one of their authorized agents, and all other necessary parties, and shall be filed, together with the consent, in the proceedings for the adoption of the child.

**Subd. 2. Revocation of agreement.** Such placement agreement may be revoked only upon the order of a court of competent jurisdiction after written findings that such revocation is for the best interest of the child.

[1951 c 508 s 5; 1974 c 66 s 5]

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**259.26 NOTICE, HEARING ON PETITION.** Subdivision 1. **To whom given.** Except as provided in subdivision 3, and subject to section 259.261, notice of the hearing upon a petition to adopt a child shall be given to:

- (1) The parents and guardian, if any, of any legitimate child;
- (2) The guardian, if any, of an illegitimate child;
- (3) The parent of an illegitimate child if
  - (a) The person's name appears on the child's birth certificate, as a parent, or
  - (b) The person has substantially supported the child, or
  - (c) The person either was married to the person designated on the birth certificate as the natural mother within the 325 days before the child's birth or married that person within the ten days after the child's birth, or
  - (d) The person is openly living with the child or the person designated on the birth certificate as the natural mother of the child, or both, or
  - (e) The person has been adjudicated the child's parent, or
  - (f) The person has filed an affidavit pursuant to section 259.261.

This notice need not be given to any above named person whose parental rights have been terminated, whose notice of intention to retain parental rights filed pursuant to section 259.261 has been successfully challenged, who have consented to the adoption or who have waived notice of the hearing. The notice of the hearing may be waived by a parent, guardian or other interested party by a writing executed before two competent witnesses and duly acknowledged. Such waiver shall be filed in the adoption proceedings at any time before the matter is heard.

**Subd. 2. Service.** Such notice shall be served, within or without the state, at least 14 days before the date of the hearing, in the manner provided by law for the service of a summons in a civil action. If personal service cannot be made, the court may order service by publication. The petitioner or his attorneys shall make an affidavit setting forth the effort that was made to locate the parents, and the names and addresses of the known kin of the child. If satisfied that the parents cannot be served personally, the court shall order three weeks published notice to be given, the last publication to be at least ten days before the time set for the hearing. Where service is made by publication the court may cause such further notice to be given as it deems just. If, in the course of the proceedings, the court shall consider that the interests of justice will be promoted it may continue the proceeding and require that such notice as it deems proper shall be served on any person. In the course of proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

**Subd. 3. Service, guardian only.** Where a child is adjudicated a dependent or neglected child and a court of competent jurisdiction has appointed a permanent guardian, or where a juvenile court has appointed a guardian after terminating parental rights, no notice of hearing need be given to the parents.

[1951 c 508 s 6; 1959 c 685 s 47; 1965 c 45 s 38; 1965 c 786 s 1; 1974 c 66 s 6, 7]

**259.261 RETENTION OF RIGHTS.** Subdivision 1. **Notice by illegitimate parent.** Any person not entitled to notice under section 259.26, shall lose his parental rights and not be entitled to notice at termination, adoption, or other proceedings affecting the child, unless within 90 days of the child's birth or within 60 days of the child's placement with prospective adoptive parents, whichever is sooner, that person gives to the division of vital statistics of the Minnesota department of health an affidavit stating his intention to retain parental rights.

**Subd. 2. Notice, contents.** Such affidavit shall contain the claimant's name and address, the name and the last known address of the other parent of the child and the month and the year of the birth of the child, if known.

**Subd. 3. Notice, effect.** Upon receipt of the aforementioned affidavit the division of vital statistics of the Minnesota department of health shall notify the other parent of same within seven days. This notice to the parent shall constitute conclusive evidence of parenthood for the purposes of this statute, unless within 60 days of its receipt, either the notified parent or some other interested petitioner denies that claimant is the parent of the child and files a petition pursuant to chapter 260 to challenge such notice of parenthood.

[1974 c 66 s 1]

**259.27 PETITION; INVESTIGATIONS; REPORTS.** Subdivision 1. **Commissioner's duties.** Upon the filing of a petition for adoption of a child the clerk of court shall immediately transmit a copy of the petition to the commissioner of

public welfare. The commissioner shall verify the allegations of the petition, investigate the conditions and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption, and make appropriate inquiry to ascertain whether the proposed foster home and the child are suited to each other. The report of the county welfare board submitted to the commissioner of public welfare bearing on the suitability of the proposed foster home and the child to each other shall be confidential, and the records of the county welfare board or the contents thereof shall not be disclosed either directly or indirectly to any person other than the commissioner of public welfare or a judge of the court having jurisdiction of the matter. Within 90 days after the receipt of said copy of the petition the commissioner shall submit to the court a full report in writing with his recommendations as to the granting of the petition. If such report is not returned within the 90 days, without fault of petitioner, the court may hear the petition upon giving the commissioner five days notice by mail of the time and place of the hearing. If such report disapproves of the adoption of the child, the commissioner may recommend that the court dismiss the petition.

**Subd. 2. Adoption agencies.** Notwithstanding the provisions of subdivision 1, if the child to be adopted has been committed to the guardianship of an agency pursuant to section 260.241, or if the child has been surrendered to an agency pursuant to section 259.25 the court, in its discretion, may refer the adoption petition to such agency, or, if the adopting parent has a step-parent relationship to the child, to the county welfare department of the county in which the adoption is pending. The agency or county welfare department, within 90 days of receipt of a copy of the adoption petition, shall file with the court a report of its investigation of the environment and antecedents of the child to be adopted and of the home of the petitioners. If such report disapproves of the adoption of the child, the agency or county welfare department may recommend that the court dismiss the petition.

**Subd. 3. Reports and records; confidential.** All reports and records of the commissioner of public welfare, county welfare board, or child placing agency bearing on the suitability of the proposed adoptive home and the child to each other shall be confidential, and the contents thereof shall not be disclosed either directly or indirectly to any person other than the commissioner of public welfare or a judge of the court having jurisdiction of the matter, provided, however, that a judge of the court having jurisdiction of the matter may, in his discretion, disclose any such report or record to a party to the proceedings or his counsel when such report or record disapproves the granting of the adoption petition.

**Subd. 4. Preadoption residence.** No petition shall be granted until the child shall have lived six months in the proposed home, subject to a right of visitation by the commissioner or an agency or their authorized representatives.

**Subd. 5. Residence and investigation waived; step-parent.** Such investigation and period of residence may be waived by the court when the petition for adoption is submitted by a step-parent or when, upon good cause being shown, the court is satisfied that the proposed adoptive home and the child are suited to each other, but in either event at least ten days notice of the hearing shall be given to the commissioner by certified mail. The reports of investigations shall be a part of the court files in the case, unless otherwise ordered by the court.

[1951 c 508 s 7; 1953 c 268 s 1; 1959 c 685 s 48; 1971 c 207 s 1]

**259.28 HEARING, DECREE.** Upon the hearing,

(a) if the court shall find that it is in the best interests of the child that the petition be granted, a decree of adoption shall be made and recorded in the office of the clerk of court, ordering that henceforth the child shall be the child of the petitioner. In the decree the court may change the name of the child if desired. After the decree is granted the clerk of court shall immediately mail a copy of the recorded decree to the commissioner of public welfare;

(b) if the court is not satisfied that the proposed adoption is in the best interests of the child, the court shall deny the petition, and shall order the child returned to the custody of the person or agency legally vested with permanent custody or certify the case for appropriate action and disposition to the court having jurisdiction to determine the custody and guardianship of the child.

[1951 c 508 s 8; 1959 c 685 s 49]

**259.29 EFFECT OF ADOPTION.** Upon adoption, such child shall become the legal child of the persons adopting him, and they shall become his legal parents with

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all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption he shall inherit from his adoptive parents or their relatives the same as though he were the legitimate child of such parents, and in case of his death intestate the adoptive parents and their relatives shall inherit his estate as if they had been his natural parents and relatives in fact. After a decree of adoption is entered the natural parents of an adopted child shall be relieved of all parental responsibilities for such child, and they shall not exercise or have any rights over such adopted child or his property. The child shall not owe his natural parents or their relatives any legal duty nor shall he inherit from his natural parents or kindred. Notwithstanding any other provisions to the contrary in this section, the adoption of a child by his step-parent shall not in any way change the status of the relationship between the child and his natural parent who is the spouse of the petitioning step-parent.

[1951 c 508 s 9]

**259.30 DECREE, ANNULMENT.** If within five years after his adoption a child develops feeble-mindedness, epilepsy, insanity, or venereal infection as a result of conditions existing prior to the adoption of which the adopting parents had no knowledge or notice, a petition setting forth such facts may be filed with the court which entered the decree of adoption and, if such facts are proved, the court may annul the adoption and refer the child for appropriate action and disposition to the court having jurisdiction to determine the custody and guardianship of the child. In every such proceeding it shall be the duty of the county attorney to represent the interests of the child.

[1951 c 508 s 10]

**259.31 HEARINGS, CONFIDENTIAL.** All hearings held in proceedings under sections 259.21 to 259.32 shall be confidential and shall be held in closed court without admittance of any persons other than the petitioners, their witnesses, the commissioner of public welfare or an agency, or their authorized representatives, attorneys, and persons entitled to notice by sections 259.21 to 259.32, except by order of the court. The files and records of the court in adoption proceedings shall not be open to inspection by any person except the commissioner of public welfare or his representatives, or upon an order of the court expressly so permitting pursuant to a petition setting forth the reasons therefor.

[1951 c 508 s 11]

**259.32 APPEALS.** Any order, judgment, or decree of a court pursuant to the provisions of sections 259.21 to 259.32 may be appealed to the supreme court by any person against whom any such order, judgment, or decree is made or who is affected thereby as are appeals from said court in other matters.

[1951 c 508 s 12; 1959 c 685 s 50]

**259.33 APPOINTMENT OF ATTORNEY AND GUARDIAN AD LITEM.** Subdivision 1. In any adoption proceeding, the court may appoint an attorney or a guardian ad litem, or both, for the person being adopted.

Subd. 2. The court may order the adopting parents to pay the costs of services rendered by guardians or attorneys appointed pursuant to subdivision 1, provided that such parents shall be given a reasonable opportunity to be heard.

[1974 c 383 s 1, 2]