

**SUBJECT: Continuation of Adoption Petition When One Pre-Adoptive Parent Dies
Before Completion of the Adoption**

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PAGE: 1 of 1

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**IMPLEMENTATION RESPONSIBILITY:
Children's Services Family Permanency Services and Foster
Care Provider Agencies**

PURPOSE: It is now permissible for adoption petitions to proceed to completion after the death of one of the prospective adoptive parents. This guidance supports finalization of the adoption via the surviving petitioner in appropriate cases and permits the deceased applicant to be listed on the child's new birth certificate in order to be recognized as the child's legal parent.¹

SCOPE: This guidance applies to Children's Services Family Permanency and foster care provider agencies staff and should be used when a prospective adoptive parent who was petitioning for adoption of a child dies before the adoption is finalized.

POLICY: A prospective adoptive petitioner may continue his/her adoption petition without refiling a petition, following the death of the other prospective adoptive petitioner.² Prior to a recent amendment to the Domestic Relations Law (DRL), if two prospective adoptive parents petitioned to adopt a child and one of the petitioners died prior to the completion of the adoption, the surviving petitioner had to reapply for adoption of the child and consequently, only the name of the surviving adoptive parent could be added to the adopted child's birth certificate.

The amendment now states that the deceased adoptive parent must be considered one of the legal parents of the child. Therefore, unless the surviving adoptive parent requests otherwise, both the surviving and the deceased petitioners' names should be listed as parents on the adopted child's new birth certificate.³ However, because the death may affect the surviving petitioner's ability to care for the child and ultimately, the child's best interest, provider agencies are required to assess the surviving parent's ability to continue caring for the child and determine if the adoption is still feasible.

Once prospective adoptive parent(s) decide to adopt a child, it is suggested that the provider agencies inform the prospective adoptive parents of their rights as applicable to this guidance and include similar information in their adoption package or adoption related paperwork that is issued to inform them of the adoption process. This guidance should be read in conjunction with the *Adoption Information Registry Guidelines* Guidance # 2009/09.

For additional information on this procedure please contact Glen Anthony Henry, Procedures Writer, Policy and Procedures Unit at (212) 341-3192.

¹ 08-OCFS-INF-12-11/07/08.

² Chapter 160 of the Laws of 2008.

³ The original birth certificate and all adoption records are sealed under New York State law, and can only be unsealed pursuant to court order, as detailed in DRL §114.