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Paternity Suit FAQs

How is the father of a child legally determined?

Assuming that there is no agreement between the parents, either the mother, alleged father, or even in some cases the child, can bring a paternity suit to identify the father of the child. Most paternity suits are filed to establish financial or moral responsibility, gain visitation rights or settle other issues in controversy between the parents.

If the circumstances warrant, a judge in a paternity suit will order a blood test from which DNA testing can conclusively determine whether the alleged father is the biological father of the child. After a determination is made, the judge can make a ruling on the issues outlined above or the parties can come to a private agreement.

Is the biological father the only person who can be legally recognized as the father?

The short answer is no, a man other than the biological father may be legally designated as the father of the child. But determining legal paternity can be a complicated problem which attempts to find clarity in circumstances which range from the straightforward to byzantine. Making this determination in a paternity suit often involves heated arguments on both sides and the legal standard for paternity varies from state to state. While we'll cover the basics below, you should investigate your state's laws in order to make an informed determination about your situation.

There are several legal classifications of fathers, and once established, paternity is difficult to change and unless there is a private agreement between the father and mother to the contrary, fathers are obligated to pay child support.

Acknowledged Father

The most straight forward of the bunch, it's exactly what it sounds like. An acknowledged father is the biological father of a child born to unmarried parents who admits that he is the father. Acknowledged fathers are obligated to pay child support.

Presumed Father

Generally the most contested categorization of fathers, there are four circumstances in which a man is presumed to be the father of the child:

1. He was married to the mother when the child was either born or conceived.
2. He attempted to marry the mother when the child was either born or conceived.
3. He married the mother after the birth of the child and agreed to have his name put on the birth certificate or agreed to support the child.
4. He welcomed the child into his home after birth and openly holds the child out as his own.

Equitable Father

A father who is not the biological or adoptive father, but who has a close relationship with the child or where the relationship is encouraged by the biological parents. This legal claim is generally made by non-biological fathers during divorce proceedings.

The doctrine of the equitable parent derives from the understanding that a child and a non-biological parent may have such a close parent/child relationship that the court will grant the equitable parent custody rights. It seeks to take into account the love and support of a man serving as the true, day-to-day father of a minor child.

The three requirements to be recognized as an equitable father are:

1. the father and child mutually acknowledge a relationship as father and child;
2. the father desires to have the rights afforded to a parent; and
3. the husband is willing to take on the responsibility of paying child support.

Not all states recognize equitable fathers, so be sure to investigate your state's laws and/or contact an attorney in your state.

Unwed Father

A man who impregnates a woman but does not marry her. Historically, unwed fathers have enjoyed fewer rights with respect to their children. If an unwed father wishes to retain rights with a minimum of court intervention, he should acknowledge his paternity and if possible come to an agreement with the mother confirming his status. If another man becomes the presumed father, retaining full rights for the unwed father becomes difficult. Assuming that there is not another man who seeks to be named the child's father, the unwed father can retain visitation rights and seek custody of the child.

If I legally establish that a man is my child's father, is he responsible for child support and how do I get it from him?

If paternity is established by one of the methods above, the father is required to provide child support for the child. The father also gets visitation rights and can seek custody of the child.

Once paternity is established, if the father refuses to pay child support, or does not provide enough, he will be subject to enforcement measures. All states have child support or child welfare agencies which can track down "deadbeat dads" through a variety of methods, including social security numbers, employment records, DMV searches, etc. Courts can place liens on property, garnish wages and even imprison fathers who don't pay child support. You should explore all options through state and city agencies, or by contacting an attorney in your state who can do this as well as file a motion in court to compel the father to pay.

What if I can't afford to file a paternity suit?

Fees required to bring a paternity suit can be costly, although there is generally no fee for the paternity test itself. In almost all states there are mechanisms which allow paternity suits to be filed by the state at no cost to the mother seeking to establish paternity. State child support agencies will file the paternity suit on your behalf. Many of these agencies are funded by the federal Temporary Aid to Needy Families (TANF) program. Find out more about TANF and the state agencies which administer the program at www.acf.hhs.gov/programs/ofa/ . This is not an exhaustive list, so be sure to explore your city, county and state child support agencies to find out more.

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