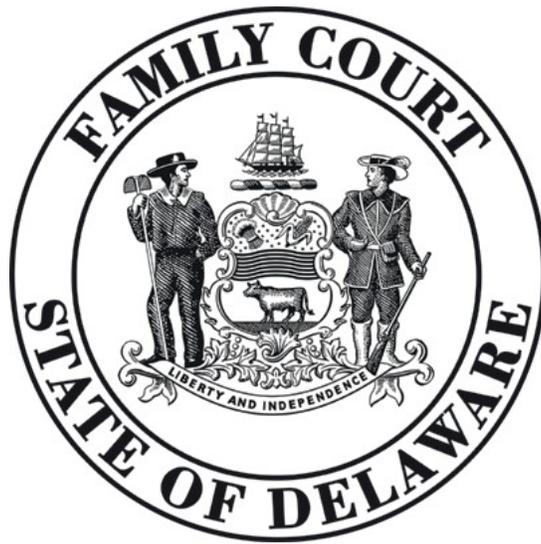


TERMINATION OF PARENTAL RIGHTS (TPR) INSTRUCTION PACKET



<https://courts.delaware.gov/family>

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TERMINATION OF PARENTAL RIGHTS INSTRUCTION PACKET

Use this Termination of Parental Rights Packet Only When:

- ✓ You are at least 18 years old (please note one must be at least 21 years old to adopt); **AND**
- ✓ You are seeking to terminate someone's parental rights to a child for the purposes of adoption; **AND**
- ✓ You are the mother, father (established or presumed), a relative, or a guardian or permanent guardian of the child; **AND**
- ✓ The child is **younger than 18 years of age** (Family Court can only terminate parental rights if the child is a minor); **AND**
- ✓ The child has been living in Delaware for **AT LEAST SIX (6) CONSECUTIVE MONTHS BEFORE** filing your Petition to Terminate Parental Rights. (There are exceptions to this 6-month requirement. If the child has not lived in Delaware for at least 6 months, talk to an attorney to see if an exception applies to your situation).
- ✓ You may file to Terminate Parental Rights singly or jointly with another person. If you file jointly with another person, the other person must also be at least 18 years old.

This Instruction Packet will explain termination of parental rights as if you wanted to file to terminate parental rights for one child. If you would like to terminate parental rights of more than one child and all of the children have the same mother **AND** the same father, you may file to terminate parental rights of all of the children on the same petition. **PLEASE NOTE** that if any of the children for which you are seeking to terminate parental rights have different fathers or mothers, you must file separate petitions to terminate parental rights. For example, if two of the children have one father and one of the children has a different father, you would be required to file two petitions, one for each father.

HOW TO USE THIS PACKET

This packet contains general information about the process of filing a Petition for Termination of Parental Rights and basic instructions on how to complete the Court forms you must file. Blank and sample forms are provided at the Family Court Resource Center in each county, are included in the TPR Forms Packet, and can also be found on the Family Court website at <https://courts.delaware.gov/family/>.

You should read the instructions and look at the sample forms carefully **before** filling out any forms. All of the forms must be neatly filled out by hand in ink or typed. **ONLY FILE THE FORMS THAT YOU FILL OUT.** The sample forms are to help you understand how to fill out the forms you intend to file. Do not file the sample forms.

YOU DO NOT HAVE TO COMPLETE ALL THE SECTIONS AT ONCE. For example, you do not have to file the forms in Section 2 at the same time as the forms in Section 1. Read the information carefully to be sure that you know what you are supposed to do and when.

Please look for the shaded written instructions and the following symbols throughout the packet. They will help guide you.



READ THIS SECTION CAREFULLY



THIS DOCUMENT MUST BE FILED.



FILL IN THE BLANKS OR WRITE INFORMATION HERE.



YOU DO NOT HAVE TO TAKE THESE STEPS NOW.



TIPS AND REMINDERS ...

Make sure to read the **Frequently Asked Questions (FAQ)** on Termination of Parental Rights. The FAQ is located at the Resource Center in each courthouse and is also available on the Family Court website at <https://courts.delaware.gov/family/tpr/index.aspx>. The FAQ will help you to better understand the termination of parental rights process.

- ✓ **Remember** who is the Petitioner and who is the Respondent.
 - The **PETITIONER** is the person who filed the Petition for Termination of Parental Rights, in other words, you.
 - The **RESPONDENT** is the person(s) replying (responding) to the Petition.
- ✓ **Remember** that just because you fill out the forms correctly does not necessarily mean that the Court will give you (grant) what you want. It is up to you at the court hearing to prove why the Court should give you what you want.
- ✓ Representing yourself may take a lot of time, may be difficult, and may be confusing. The Court will expect you to follow the same rules that attorneys must follow. **If at any point throughout the Court process you are not sure about representing yourself, you should talk to an attorney.**
- ✓ Please remember that **COURT STAFF CANNOT GIVE YOU LEGAL ADVICE**. Should you have a question about what options you have or what you should do, you should talk to an attorney. Just because you talk to an attorney does not necessarily mean that you must hire that attorney to represent you. Ask the attorney if he or she is willing to meet with you and answer your questions without having to hire that attorney for full representation. Before you meet with the attorney, ask what fees may be involved for such limited services.
- ✓ If you would like assistance finding an attorney, or to see if you qualify for free legal assistance, you can visit <https://courts.delaware.gov/help/legalassistance.aspx>.
- ✓ Always bring your photo identification with you (such as your driver's license or a state-issued photo identification card) whenever you need a Court form notarized. The identification must be current, have a photo, the signer's physical description, and the signer's signature.

**THERE IS A LOT OF PAPER IN A COURT CASE AND
HAVING THE COURT MAKE YOU COPIES CAN BE EXPENSIVE**



PLEASE READ AND REMEMBER THESE IMPORTANT TIPS

REMEMBER

- ❖ Keep a copy of every document and court paper.
- ❖ Keep all notes, documents, and court papers together and organized in a folder with the most recent papers on top.
- ❖ Bring the folder with your papers with you every time you go to Court.
- ❖ When you file a document with the Court, bring the required number of copies of each paper and an extra copy for you to have "clocked-in." Keep the clocked-in copy in your folder so you have proof of the time and date you filed each document. You may make copies at the Resource Center, but there is a fee.
- ❖ When you complete a document or form for filing with the Court, always include the full case name and file and petition numbers (if there are any).
- ❖ When you must mail something, we suggest that you use regular mail AND "certified mail, return receipt requested" so that you have proof that the other party received the envelope. If you cannot afford to pay for "certified mail," we suggest you get a "certificate of mailing" at the post office to prove that you mailed the envelope to the other party. You may purchase stamped envelopes at the Resource Center and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.

TERMINATION OF PARENTAL RIGHTS & ADOPTION



The Definition of Termination of Parental Rights

The intent of Termination of Parental Rights (“TPR”) is to legally and permanently terminate the relationship between a child and his or her parent. The law about TPR is found within Chapter 11 of Title 13 of the Delaware Code.



Transfer of Parental Rights and Definition of Adoption

After the Court issues a TPR Order, parental rights are usually then transferred to another person through an Adoption Order. The prospective adoptive parent must file a Petition for Adoption. **Unless the TPR petition is filed under Section 1103(b) of Title 13, a Petition for Adoption must be filed with the TPR petition when neither DSCYF nor a licensed agency is a party to the TPR petition.** Once an Adoption Order is issued, the adoptive parent then becomes the permanent legal parent of the child and will have all of the rights, duties, privileges, and obligations recognized by the law between parents and their children. The law about adoption is found within Chapter 9 of Title 13 of the Delaware Code.



Effect of Losing One's Parental Rights

The decision to terminate a person’s parental rights is an important one. Once parental rights are terminated, the individual will no longer be a legal parent to the child. This means that all of the individual’s rights and obligations to the child are extinguished (with the exception of outstanding child support arrearages). Once parental rights are terminated, other individuals may adopt the child and become the child’s legal parent. The new legal parents will have all of the rights and obligations that the natural parent once had.



Effect of Losing One’s Parental Rights on Inheritance

Both the individual whose parental rights were terminated and that individual’s relatives lose all rights of inheritance from the child. Accordingly, the child will no longer have rights of inheritance from the individual whose rights were terminated or from that individual’s relatives.

If the individual whose parental rights were terminated still wants the child to inherit from him or her, then he or she must include the child in his or her will. For more information on wills and inheritance rights, you should talk to an attorney. Wills and inheritance rights are not handled in Family Court. For more information, please see Section 1113 of Title 13 of the Delaware Code.



Child's Health and Welfare Consideration

Section 1103 (c) of Title 13 of the Delaware Code provides that Family Court may not terminate an individual's parental rights solely because the individual, in good faith, provides for his or her child by **spiritual means alone through prayer** in accordance with the tenets and practice of a recognized church or religious denomination as opposed to seeking medical treatment. However, in such a situation, Family Court may immediately assume custody of a child and order whatever action may be necessary, including medical treatment, to protect the child's health and welfare.



Who Can Ask the Family Court for a TPR (i.e., who can Petition for TPR)?

A Petition for TPR may be filed in the State of Delaware by any of the following:

- A parent or presumed father of the child;
- A relative of a child as defined in Section 901 of Title 10;
- A guardian or permanent guardian;
- The Department of Services for Children, Youth and Their Families (the "Department");
- Any agency granted a license by the Department to place children for adoption (a "licensed agency");



Who Can Seek to Adopt (i.e., who can Petition for Adoption)?

- A Petition for Adoption may be filed in the State of Delaware IF you are: Over 21 years old: **AND**
- A Delaware resident or person with whom a child has been placed for adoption under Section 904 of Title 13; **AND**
 - An unmarried person petitioning individually; **OR**
 - A divorced or legally separated person petitioning individually; **OR**
 - A married couple jointly seeking to adopt who are NOT legally separated or living apart from each other; **OR**
 - A non-married couple petitioning jointly, provided that they are cohabiting.

"*Cohabiting*" means regularly residing with an adult of the same or opposite sex, if the parties hold themselves out as a couple. 13 *Del. C.* § 1512(g).

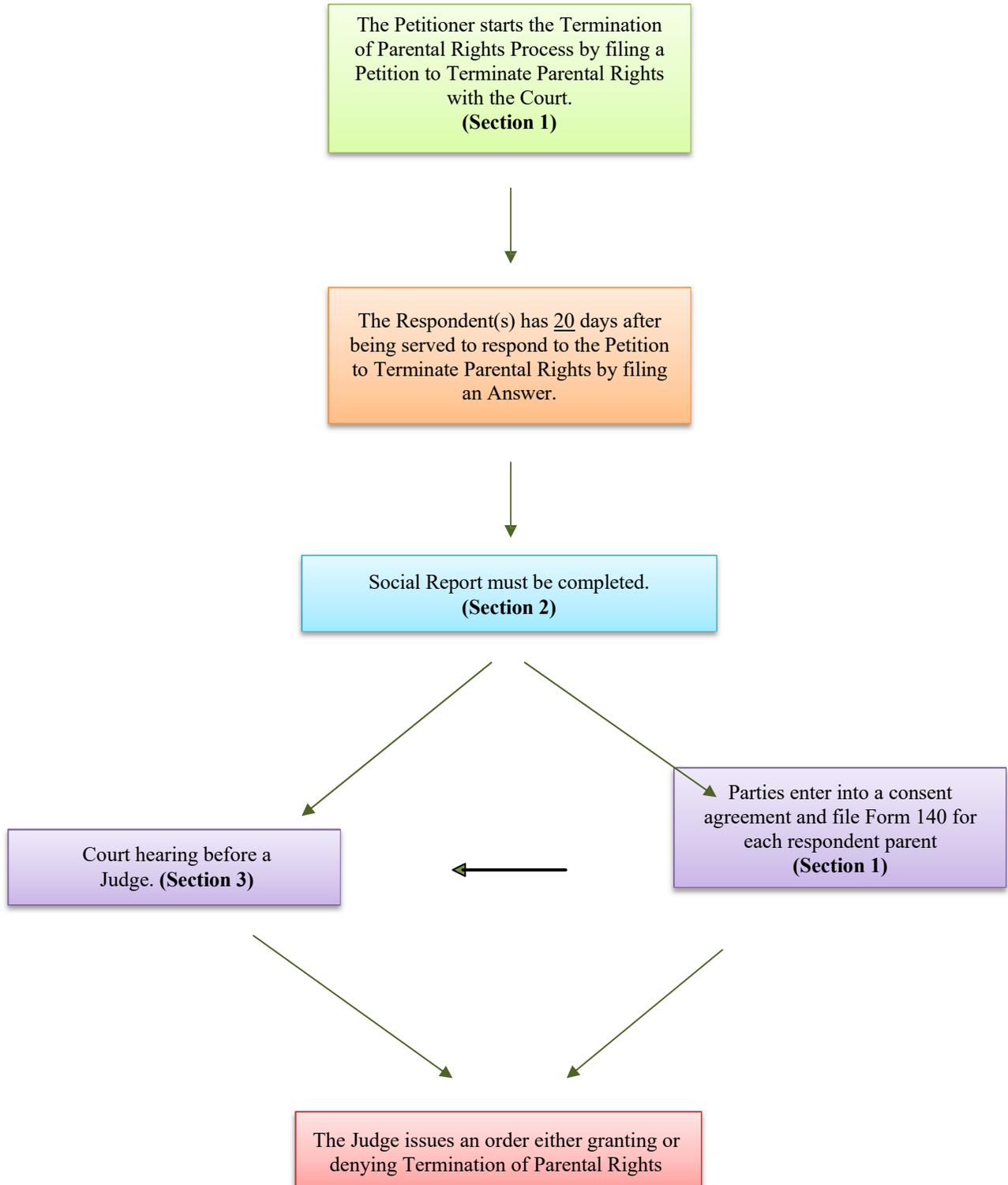


It is recommended that you use the TPR Instruction Packet **ONLY IF** the Department is **NOT** a party to the TPR proceeding. This means that the Department does **NOT** have custody of the child (i.e., the child is **NOT** in foster care) and the Department is not a party to the TPR proceeding. You are advised to use the TPR Instruction Packet IF:

- You are seeking to terminate someone's parental rights over a child so that you or another individual may pursue adoption of such child, **AND**
- You are representing yourself in the TPR action (i.e., proceeding *pro se*); **AND**
- You are:
 - The mother of the child; OR
 - The father or presumed father of the child; OR
 - A relative of the child (as defined in Section 901 of Title 10); OR
 - The guardian or permanent guardian of the child.

NOTE: When the Department or a licensed agency is not a party to the TPR proceedings, unless you are filing the TPR petition under Section 1103(b) of Title 13, a Petition for Adoption (Form 112) must be filed with the TPR petition. For instructions on how to file a Petition for Adoption, please review Family Court's Adoption Instruction Packet.

THE TERMINATION OF PARENTAL RIGHTS PROCESS FLOWCHART



SECTION 1

STARTING THE TERMINATION OF PARENTAL RIGHTS PROCESS

To File for Termination of Parental Rights, the following requirements must be met:

- ✓ You are seeking to terminate someone's parental rights to a child so that you or another person may pursue adoption of that child; **AND**
- ✓ The child has been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** the Petitioner filed the Petition for Termination of Parental Rights (There are exceptions to this 6 month requirement. If the child has not lived in Delaware for at least 6 months, talk to an attorney to see if an exception applies in your situation.); **AND**
- ✓ The Petitioner is at least 18 years of age (please note one must be at least 21 years old to adopt); **AND**
- ✓ The Petitioner is the parent or presumed father of the child, the relative (as defined in Section 901 of Title 10), or guardian or permanent guardian of the child.



You **MUST** file the **ORIGINAL and ONE 1 COPY FOR EACH RESPONDENT** of each form listed on the next few pages.

- ✓ Make a copy of each completed form for your records.
- ✓ Have your set of copies "clocked-in" for your file. Having a paper "clocked-in" means that the Court will stamp on the copy the time and date you filed your papers. Your clocked-in copy will serve as proof of the time and date you filed the paper.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.



Petition for Termination of Parental Rights (Form 112 - *file the original and one copy*)

- ✓ Only the following **individuals** can petition the Court to Terminate Parental Rights:
 - **Parents or presumed father of the child;**
 - **Relative (as defined in Section 901 of Title 10) to the child;**
 - **Guardian or permanent guardian of the child.**

- ✓ The U.S. and Delaware State Constitutions require that whenever a petition is filed with the Court, **ALL** of the people involved with the case must be notified. By naming a person as a Respondent, you are asking the Court to notify him or her of the petition. In Termination of Parental Rights cases, the following people should be named as Respondent(s):
 - The natural parent(s) of the child;
 - Any guardian of the child or the person with whom the child is living;
 - Any child attorney of the child;
 - Any organization having custody of the child (i.e., the Department).

If you fail to notify any of the necessary parties, your petition may be considered deficient and you may have to start the process over.

- ✓ You **MUST** list **the natural parent(s)** as Respondents, even if one of the parents has never had any contact with the child. If the child lives with a stepparent, you **must list the natural parent**, not the stepparent as the Respondent. For example, if the child lives with his mother and stepfather and has had no contact with his natural father, you must name the natural father, not stepfather, as a respondent on your petition.
- ✓ If one or both parents are deceased, list the deceased parent(s) as a Respondent(s), indicate on the petition that he or she is deceased and the date of death.
- ✓ If the Respondent(s) **voluntarily consent** to the Termination of Parental Rights, they must each complete a **Consent to Termination and Transfer of Parental Rights (Form 140)**. For more information, please see page 17.
- ✓ You must sign your Petition for Termination of Parental Rights in the presence of a notary public or authorized Court staff.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.

Grounds for Termination of Parental Rights

When alleging facts in your Petition for Termination of Parental Rights, you must indicate at least one Ground for Termination of Parental Rights for each child. The Petition for Termination of Parental Rights lists the grounds and you should place an “x” in front of all the grounds

that apply. The grounds can be found on the last three pages of the Petition for Termination of Parental Rights, and on page 29 of this packet.



Custody Separate Statement (Form 346 - file the original and one copy)

The Custody Separate Statement explains to the Court a child's past and present living arrangements, so that the Court can determine if it has authority to decide your Petition for Termination of Parental Rights. If all of the children included in your petition have had the **same living arrangements as one another** for the past five years, then you may include all children on a single form. However, if the children have **lived apart** from each other sometime during the past five years, you must complete a separate form for each child. For example, if last year, one child resided with one parent and one child resided with the other parent, it would be necessary to file two Custody Separate Statements, explaining where each child lived.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.



Information Sheet (Form 240 – file the original and one copy)

This form provides the Court with general information about the parties, which allows the Court to adequately notify the parties about upcoming proceedings and to maintain up-to-date records.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.



Praecipe in a Termination of Parental Rights Action (Form 115 - file the original and one copy)

- ✓ This form instructs the Clerk of Court to serve copies of the Petition for Termination of Parental Rights on the Respondent(s) and publish notice of the Petition in a local or foreign newspaper if necessary.
- ✓ For information on publication, please see page 17.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.



TPR Order of Reference for Termination of Parental Rights (Form 110T – file the original and one copy)

- ✓ The Order of Reference is a form that includes the information about the agency you have chosen and an Order for the Judge to sign.
- ✓ On the Order of Reference, you will list the name of the licensed child-placing agency that you have selected to complete the Social Report.
- ✓ Once you have completed this form and submitted it to the Court, along with all other forms, a Judge will sign it. A Clerk of Court will then forward the Order to the agency listed on the Order. The agency can then begin preparing the Social Report.
- ✓ You **MUST** pay the licensed child-placing agency to complete the Social Report. This is not a Court fee and cannot be waived by the Court. You are responsible for the entire cost of preparing the Social Report.

The Social Report can be very expensive so you may want to find out how much different agencies charge before deciding which one to use. For more information on the Social Report, please see Section 2

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.



Order for a Hearing (Form 118A - file the original and one copy)

You will only partially fill it in as indicated on the sample form. The Court will fill in the rest of the information once it determines the date for a Court hearing. This form will become the Court's Order for a Hearing in your TPR case.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.



Final Order (Form 107 – file the original and one copy)

This form is used by the Court if it grants your Petition for TPR after a hearing. You will only partially fill in this form as is indicated on the sample form. The Court will fill in the rest of the information if the Judge issues the Order.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.



Affidavit of Consent Accepting Transfer of Parental Rights in accordance with 13 Del. C. §1105(d) (Form 200) – file the original and one copy

This form is signed by the person to whom parental rights are requested to be transferred indicating that the person agrees to temporarily accept parental rights over the child.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.

OPTIONAL FORMS

ONLY file the following forms if the situation applies to you.

If You Do Not Know Where Respondent(s) Lives, *file*:



Affidavit that a Party's Address is Unknown (Form 241 - *file the original and one copy*)

- ✓ You must provide the Court with each Respondent's current address. If you do not know where the Respondent(s) currently lives, you must **try to locate** him or her. Ways to do this include talking to the Respondent's friends or relatives or checking the Internet. If, after looking for the Respondent(s), you cannot find his or her current address, you must complete this form. **Do not complete** this form until you have made an effort to locate the Respondent(s).
- ✓ You must complete this form before we publish notice of the matter in the newspaper. Please see page 21 for more information regarding Notice by Publication.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.

If All Parties Agree on the Termination of Parental Rights, *file*:



Consent to Termination and Transfer of Parental Rights (Form 140 - *file one original*)

- ✓ File this document only if a Respondent has already agreed upon the termination and transfer of parental rights to another person for purposes of adoption.
- ✓ This form must be signed by a Respondent who agrees to have his or her parental rights terminated. If there are 2 Respondents agreeing to have their parental rights terminated, they must each sign separate forms.
 - The birth mother may sign this form only after the child is born. The father or presumed father may sign this form either before or after the child is born.
- ✓ On this form, the Respondent will describe for the Court:
 - To whom parental rights will be transferred for the purpose of adoption.

- ✓ On this form, the Respondent will acknowledge that:
 - he or she understands the rights that are being terminated; **AND**
 - he or she understands that after the consent is signed, it cannot be revoked unless the requirements of 13 *Del. C.* §1106B(a) have been met.
- ✓ Before the Respondent signs this form, he or she **MUST** be in the presence of any of the following persons who are authorized to take consents:
 - A Judge or Commissioner of a Court of record; OR
 - An individual designated by a Judge to take consents; OR
 - An employee designated by an authorized agency to take consents; OR
 - An attorney other than the attorney(s) representing the adoptive parent(s) or representing the agency to which parental rights will be transferred; OR
 - A commissioned officer on active duty in military service of the United States, if the individual executing the consent is in military service; OR
 - An officer of the foreign service or a consular officer of the United States in another county, if the individual executing the consent is in that country.

***NOTE* - A NOTARY PUBLIC IS NOT AN AUTHORIZED PERSON TO TAKE CONSENTS**

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.

If Respondent(s) is in the Military, file:



Waiver of Rights under the Servicemembers' Civil Relief Act (Form 420 - file the original and one copy for each Respondent)

- ✓ If a Respondent is in the military, that Respondent must file an Answer, and Affidavit of Appearance or YOU must have the Respondent sign a Waiver of Rights under the Servicemembers' Civil Relief Act. If the Respondent does not file one of these documents, you must file a Motion to Appoint an Attorney. You should start this process as soon as possible because it takes time. The Court will not schedule your Termination of Parental Rights hearing until you complete this process.
- ✓ If there are multiple Respondents who are in the military, you must file a separate form for each Respondent.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.

**If the Father is Unknown, or the Biological Mother is
Unwilling to Disclose the Name of Father, *file*:**



Petitioner's Supplemental Affidavit Regarding Unknown Father in a Termination of Parental Rights Proceeding (Form 239 - *file the original and one copy*)

- ✓ If the father's name is unknown or Mother is unwilling to disclose the father's name, Form 239 should be completed and filed with the Court.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.



BE SPECIFIC WHEN COMPLETING THE FORMS and make sure that you address **ALL** of the grounds found at the last three pages in your petition. When you complete a form, write in blue or black ink **AND** write neatly.



File the forms at the Family Court **in the County where the child currently lives, the county in which a parent of the child currently lives, or the county in which the organization having legal or physical care, custody or control of the child is located.** If the child does not currently live in Delaware, you should talk to an attorney before filing to make sure the Delaware Family Court is the right Court to hear your case and to find out in which state and county you should file.

- ✓ In Kent and Sussex Counties, you may file your papers at the Resource Centers on the first floor of the Family Court buildings.
- ✓ In New Castle County, you may file your papers at Family Court Intake on Lower Level 1 (LL1) of the Leonard L. Williams Justice Center.
- ✓ If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does **NOT** accept filings that are faxed.



FILING BY EMAIL

You may also file your petition and required forms by email. The required forms are those referenced beginning on page 12 in this packet. To file by email, you must send the petition and required forms to FC_CDN_TPR_Adoption@delaware.gov. For more information on filing by email, please review the Civil Filing by Email FAQ located on Family Court's website at <https://courts.delaware.gov/family/>.



FILING FEES

A filing fee is charged for each petition that is filed. If filing in person, the filing fee can be paid in cash, by credit card, by check or by money order made payable to "Family Court." If you are filing by email, you may only pay by credit card. Family Court staff will call you for credit card information. It is important that you include your phone number in the email communication to the Court. Your petition will not be considered filed until the filing fee is paid. If you are unable to pay by credit card, you may file by mail enclosing a check or money order with your petition. If you are filing by mail, you may only pay by check or money order. There are additional costs if you must publish notice of this action. See the next section for additional information about when publication is necessary.

- ✓ **Can the fee(s) sometimes be waived?**
 - You may be able to have the filing fees waived by the Court if your financial situation makes it difficult for you to pay the costs. If you are indigent, fill out an Affidavit in support of Application to Proceed In Forma Pauperis (fee waiver) Form 257P. This is a detailed financial information form, which requires supporting documentation of your financial situation.



ADDITIONAL INSTRUCTIONS FOR TERMINATION OF PARENTAL RIGHTS

SERVICE OF PROCESS AND PUBLICATION

Each Respondent must receive a copy of the Petition for Termination of Parental Rights. The delivery of the Petition for Termination of Parental Rights and any other forms you file is called **service of process**. The way that the Court accomplishes service of process depends on how much information you can provide the Court about where the Respondent lives. Determine from the following options how service of process should be accomplished in your case:

- ✓ **The Respondent Lives in Delaware and You Know His or Her Address:** If the Respondent lives in Delaware **AND** you know his or her address, a **Process Server** (someone whose job involves delivering Court papers) will give a copy of your petition and other papers to the Respondent. This is called **personal service** and the Court will do this for you.
- ✓ **The Respondent Does Not Live in Delaware and You Know His or Her Address:** If a Respondent does **NOT** live in Delaware **AND** you know the Respondent's address, the Court will mail your papers to the Respondent by certified mail, return receipt requested. **THE COURT** will also publish **AT YOUR EXPENSE** legal notice of your petition in one (1) or more newspapers for three consecutive weeks. You must provide the name of the newspaper for an out-of-state Respondent.
- ✓ **You Do Not Know Where the Respondent Lives or Works:** If you do **NOT** know where a Respondent lives or works so that the Process Server can deliver your petition to that Respondent, **THE COURT** will publish **AT YOUR EXPENSE**, legal notice of your petition in 1 or more newspapers for three (3) consecutive weeks in the county and state where the Respondent's last known address was located. You must also complete an Affidavit that a Party's Address is Unknown (Form 241) (see page 17).



THE ANSWER:

- ✓ Once the Respondent(s) has been served with the Petition for Termination of Parental Rights, each Respondent has **20 days** from the date of service (the date that the court papers are delivered to the Respondent) to respond by filing an **Answer** to your Petition for Termination of Parental Rights. If there is more than one Respondent in your case, each Respondent must file his or her own separate Answer. You should receive a copy of the Respondent's Answer in the mail.
- ✓ On the Answer to your Petition for Termination of Parental Rights, the Respondent must **admit** (agree with) or **deny** (disagree with) each of the statements you made in your petition. The Respondent may explain why he or she disagrees with the statement.

SECTION 2

SOCIAL REPORT

FOR TERMINATION OF PARENTAL RIGHTS, A SOCIAL REPORT IS MANDATORY



A Social Report ("Report") is a report that provides detailed information about you and the child, which will **help the Court determine whether parental rights should be terminated and transferred**. A worker from a child placing agency will talk to all of the people involved with the case including you, the child's parents, and the child. The worker will then write a report and submit it to the Court. The Report must consider the best interest factors under Section 722 of Title 13. The Report will include the following:

- Information regarding the child and the child's background;
- The history of the child's custody, visitation, and living arrangements;
- Information regarding the parents;
- Information regarding the petitioner(s);
- Information regarding the efforts at reunification with the parents if the petition is filed under Section 1103(a)(5) of Title 13;
- Information regarding the allegations of dependency and neglect if the petition is filed under Section 1103(a)(6) of Title 13;
- The plan for the child if the petition is granted; and
- A statement that the person preparing the report or the Petitioner has advised each birth parent of the birth parent's right to file a written notarized statement with the Office of Vital Statistics denying the release of identifying information under Section 923(b) of Title 13;

Because the Report must contain a lot of information, the worker investigating and preparing the Report will probably need to get some information from you. The worker will likely ask you for the **names of people** that he or she can speak with to find out more information about **you**, the **child**, and the child's situation. Furthermore, the worker may want to visit the home and see the environment where the child will be living. The worker may also ask you to provide him or her with documents and papers that are needed to prepare the Report. It is **VERY IMPORTANT** that you cooperate with the worker and comply with his or her requests to the best of your ability. Remember, that the information in the report will guide the Court when deciding whether to terminate and transfer parental rights.



YOU must **select** a licensed child-placing agency to do the Report. A list of child-placing agencies is available in the Family Court Resource Centers located in each courthouse or can be found online at <https://courts.delaware.gov/family/tpr/index.aspx>. You select the agency by filing the Order of Reference (Form 110) described in Section 1, page 15.

- ✓ The agency preparing the Report has **6 months** to file the completed Report with the Court.



SECTION 3 WILL BEGIN NEXT

SECTION 3

HEARING WITH A JUDGE



A Court Hearing will be scheduled by the Court

You do not need to file any additional paperwork to have your hearing scheduled. The Court will notify you when your hearing is scheduled by mailing you a **Notice** to inform you of the time and date of the **CourtHearing**.

If You Cannot Attend the Scheduled Hearing, file:



Motion for Continuance (Form 196 – file the original and mail one copy to each Respondent)

- ✓ Once you receive your notice and you cannot attend the scheduled Termination of Parental Rights Hearing, you must **IMMEDIATELY** file a **Motion for Continuance** (Form 196). **DO NOT CALL THE COURT.** On this Motion, you must state **very specific reasons** why you cannot attend the hearing. You must have a legal and unavoidable reason for needing to reschedule the hearing. You cannot request a continuance simply because it is not convenient for you to attend the hearing on the scheduled day. Before you file the Motion for Continuance, you must contact each of the Respondents regarding the continuance and then **tell the Court in your motion how each Respondent feels about the continuance. Because the law is very strict when it comes to rescheduling, these Motions are not always granted.**

- ✓ You will be notified by the Court if your Motion for Continuance has been granted. **UNLESS THE COURT GRANTS A CONTINUANCE OF THE HEARING, YOU MUST APPEAR AT COURT ON THE DAY OF YOUR SCHEDULED HEARING.** If you fail to appear at your hearing, the Court can dismiss your petition or enter an order by default granting the relief requested by the Respondent(s).

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.

THE DAY OF THE HEARING



If the Respondent(s) has not filed an answer or otherwise appeared in the termination of parental rights matter, please complete the following form and bring it to Court with you on the day of your hearing:



Affidavit of Non-Military Service (Form 405 – file the original and one copy)

ONLY complete this form if the Respondent(s) is **NOT** in the military and has not filed an answer or otherwise appeared in this Termination of Parental Rights matter.

- ✓ If there is more than one Respondent, you must complete a separate form for each person.

NOTE: Blank and sample forms are included in the TPR Forms Packet. The forms can also be found at the Family Court Resource Center in each county and on the Family Court website at <https://courts.delaware.gov/family/tpr/forms.aspx>.



The Court Hearing is a trial in front of a Judge. At the Court Hearing, you and each Respondent will be given an opportunity to tell your sides of the case and ask witnesses questions. During the Court Hearing, the Judge expects you to follow a certain procedure. It is important that you are familiar with this procedure so that you know what you are allowed to do, when you are allowed to talk, and how to tell your side of the story.



Family Court has developed ***Preparing for Your Court Hearing***, which explains generally what to expect during the Court Hearing and should answer many of the questions you may have about the hearing process. Family Court also has developed a series of ***Frequently Asked Questions*** to help you prepare and organize for your Court Hearing. It would be helpful to read this information before your scheduled hearing. This information can be found in the Resource Center in each courthouse and on the Family Court website at https://courts.delaware.gov/help/proceedings/fc_CourtHearing.aspx.

Unless the parent(s) consent to the termination of parental rights, it is up to **YOU** at the hearing to prove the following:

- ✓ Petitioner must show that at least one of the grounds for Termination of Parental Rights has been met. These grounds are the last 3 pages of the TPR Petition. Review that information before the hearing so that you are prepared to present your case to the Court; **AND**

- ✓ It is in the best interests of the child to terminate parental rights. The Court will consider the following 8 factors pursuant to Section 722 of Title 13 in determining what is in the best interests of the child:
 - (1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
 - (2) The wishes of the child as to his or her custodian or custodians and residential arrangements;
 - (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
 - (4) The child's adjustment to his or her home, school and community;
 - (5) The mental and physical health of all individuals involved;
 - (6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of Title 13;
 - (7) Evidence of domestic violence as provided for in Chapter 7A of Title 13; and
 - (8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.



After both sides have presented all of their evidence, one of two things can happen:

- ✓ The Judge can **announce his or her decision** at the conclusion, or end, of the hearing, in which case you will leave knowing the decision; **OR**
- ✓ The Judge can **reserve decision**. When the Judge reserves decision, he or she will consider all of the information presented during the hearing and will issue a written Order explaining why the termination of parental rights was granted or denied.
- ✓ Regardless of how the Judge issues the Order, you should receive a copy of the Judge's decision, or Court Order, in the mail or by email if you have opted to receive orders by email.



SECTION 4 WILL BEGIN NEXT

SECTION 4

APPEAL

RIGHT OF APPEAL



A parent may not petition the Court to change a termination of parental rights order once it has been granted.



If you believe the Court's decision was wrong based on what happened at the Court Hearing, you only have **30 DAYS AFTER** the **Order** was docketed to **file** an **Appeal** with the Supreme Court. An appeal does **NOT** grant you a new trial and it does **NOT** grant you a chance to reargue your case. It only asks the Supreme Court to examine the record and decide if the Judge applied the law correctly to the facts presented at the hearing.



If you want to file an Appeal, we strongly recommend you speak to an attorney. Just because you disagree with the Judge's decision does not necessarily mean you have one of the legal grounds to file an Appeal. Appeals can be very expensive and an attorney can help you decide whether filing an Appeal is advisable.



SECTION 5 WILL BEGIN NEXT

SECTION 5

SAFE ARMS FOR BABIES ACT

The **Safe Arms for Babies Act** allows a person to voluntarily surrender a baby to an employee or volunteer working in the emergency department of a Delaware hospital so long as the baby is surrendered alive and unharmed. Abandonment of a baby as provided under the Safe Arms for Babies Act **shall be final 30 DAYS after such abandonment.**



Once the abandonment under the Safe Arms for Babies Act is final, the person surrendering the baby will be deemed to have consented (agreed) to the termination of all parental rights. Such consent is irrevocable, meaning that the person cannot change his or her mind. Furthermore, such person will not be legally entitled to notice of, or an opportunity to participate in, any TPR proceeding involving the child, unless such person demonstrated an intent to exercise parental rights and responsibilities regarding the child before the abandonment became final (within 30 days of the abandonment).



GROUNDS FOR TERMINATION (FORM 112) WILL BEGIN NEXT

GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

Complete a separate *Grounds for Termination of Parental Rights* form for **each child** named in the *Petition for Termination of Parental Rights*. If there are 2 children, then 2 *Grounds for Termination of Parental Rights* forms MUST be completed and attached to the Petition.

CHILD'S NAME: _____

Indicate the grounds for Termination of Parental Rights (Place an "X" next to the grounds that apply). At least one of the boxes numbered 1 through 9 must be checked.

CONSENT:

1. A parent of the child, or a person or organization holding parental rights over the child, agrees (consents) that this Petition should be granted.
 A *Consent to Termination and Transfer of Parental Rights* (Form 140) is attached to the Petition.

INTENTIONAL ABANDONMENT:

2. Respondent(s) have intentionally abandoned the child as evidenced by the fact that (If you check box 2, you must place an "X" next to at least one of the following that apply):
 - a. The child is younger than 6 months old at the time of filing this Petition and Respondent(s) FAILED to:
 - Pay reasonable prenatal, natal and postnatal expenses for the child; **AND**
 - Visit regularly with the child or file a petition for visitation with the child; **AND**
 - Manifest (show) an ability and willingness to assume legal and physical custody of the child (if the child was NOT in the physical custody of the other parent).
 - b. The child is at least 6 months old at the time of filing this Petition **AND** for at least 6 consecutive months (6 months in a row) of the 12 months preceding the filing of this Petition, Respondent(s) FAILED to:
 - Communicate or visit regularly with the child; **AND**
 - Manifest (show) the ability and willingness to assume legal and physical custody of the child (if the child was NOT in the physical custody of the other parent).
 - c. The child is younger than 6 years old at the time of filing this Petition **AND** Respondent(s) have placed the child in circumstances leaving the child in substantial risk of injury or death and, therefore, has manifested (shown) the unwillingness to exercise parental rights and responsibilities.

UNINTENTIONAL ABANDONMENT:

3. Respondent(s) have unintentionally abandoned the child because for 12 consecutive months (12 months in a row) in the 18 months before filing this Petition, Respondent(s) FAILED to:
 - Communicate or visit regularly with the child; **AND**
 - File or pursue a pending Petition to establish paternity or to establish a right to have contact or visitation with the child; **AND**
 - Manifest (show) an ability and willingness to assume legal and physical custody of the child (if the child was NOT in the physical custody of the other parent).

AND at least one of the below applies (**Place an “X” next to at least one of the following that apply**):

- The child is not in the other parents’ legal and physical custody and Respondent(s) are not able or willing promptly to assume legal and physical custody of the child, and to pay for reasonable support for the child.
- The child is in the legal and physical custody of the other parent and a stepparent, and the stepparent is the prospective adoptive parent, and Respondent(s) are not able or willing promptly to establish and maintain contact with the child and to pay reasonable support for the child in accordance with the Respondent(s)’ financial means.
- Placing the child in Respondent(s)’ legal and physical custody would pose a risk of substantial harm to the child’s physical or psychological well-being. Respondent(s) are unfit to maintain a relationship of “parent and child” with the child because of at least one (1) of the following reasons:
 - i. The circumstances of the child’s conception; **OR**
 - ii. Respondent(s)’ behavior during pregnancy; **OR**
 - iii. Respondent(s)’ behavior after the child was born; **OR**
 - iv. Respondent(s)’ behavior with respect to another child.
- Failure to grant the Petition for Termination of Parental Rights would be detrimental to the child.

DETRIMENTAL TO THE CHILD

In determining whether failure to grant the termination of parental right would be detrimental to the child, the Court will consider all relevant factors, including the following:

- A. The respondent’s efforts to obtain or maintain legal and physical custody of the child.
- B. The role of another person in thwarting the respondent’s efforts to assert parental rights.
- C. The respondent’s ability to care for the child.
- D. The child’s age.
- E. The quality of a previous relationship between the respondent and child, and between the respondent and another child.
- F. The duration and suitability of the child’s current custodial environment.
- G. The effect on the child of a change of physical custody.

CONVICTION OR ADJUDICATION:

4. Respondent(s) have been convicted or adjudicated of the following (or a substantially similar offense in another jurisdiction) (**if you check box 4, you must place an “X” next to at least one of the following that apply**):
- A felony level offense against the person under Subchapter II of Chapter 5 of Title 11, in which the victim was a child; **OR**
 - Aided, abetted, attempted, conspired or solicited to commit a felony level offense against the person under Subchapter II of Chapter 5 of Title 11, in which the victim was a child; **OR**
 - Dealing in Children or attempting to deal in children under § 1100A of Title 11; **OR**
 - Felony level endangering the welfare of a child under § 1102 of Title 11; **OR**
 - Murder or manslaughter of the other parent of the child who is the subject of the petition; **OR**
 - Aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of the other parent of the child who is the subject of this petition.

FAILURE TO PLAN:

5. **DSCYF OR LICENSED AGENCY:** the child is in DSCYF custody or placed by a licensed agency and the Respondent(s) are not able or have failed to plan adequately for the child's physical needs or mental and emotional health and development; **AND** at least **ONE (1)** of the following conditions are met (**CHECK ALL THAT APPLY**):
- The child has been in DSCYF custody or placed by a licensed agency for at least 1 year.
 - The child has been in DSCYF custody or placed by a licensed agency for at least 6 months and the child came into care as an infant.
 - DSCYF previously had custody of the child or another child of the Respondent(s).
 - The Respondent(s) have a history of dependency, neglect, abuse, or lack of care of the child or another child.
 - The Respondent(s) are incapable of discharging parental responsibilities due to extended or repeated incarceration (the Court may consider the Respondent(s)' postconviction conduct).
6. **PRIVATE:** at the time of the Termination of Parental Rights Hearing, the child will be a dependent child or neglected child in the Respondent(s)' care and **ALL** of the following are true:
- The Petitioner is the child's parent, guardian, permanent guardian, or relative.
 - The child has resided in the Petitioner's home for at least 1 year.
 - The Respondent(s) failed to discharge parental responsibilities for at least 12 of the 18 months preceding the filing of the petition.
 - The Respondent(s) are unlikely to be able to remedy the dependency or neglect in the near future. ***NOTE*:** *in making this determination, the Court shall consider the Respondent(s)' efforts to remedy the dependency or neglect.*

You must also include a detailed statement of why the child would be a dependent child or neglected child in the Respondent(s)' care:

7. **PRIOR INVOLUNTARY TERMINATION:** Respondent(s)' parental rights over another child have been involuntarily terminated in a prior proceeding.
8. **ABUSE:** The Respondent(s) have subjected a child to torture, chronic abuse, sexual abuse, or life-threatening abuse.
9. **UNEXPLAINED SERIOUS INJURY OR DEATH:** A child has suffered unexplained serious physical injury, near death, or death under circumstances indicating that the injuries, near death, or death resulted from the Respondent(s)' intentional or reckless conduct or willful neglect.