

Superseded 5/12/2015

78B-6-121 Consent of unmarried biological father.

- (1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to Subsections (5) and (6), with regard to a child who is placed with prospective adoptive parents more than six months after birth, consent of an unmarried biological father is not required unless the unmarried biological father:
 - (a)
 - (i) developed a substantial relationship with the child by:
 - (A) visiting the child monthly, unless the unmarried biological father was physically or financially unable to visit the child on a monthly basis; or
 - (B) engaging in regular communication with the child or with the person or authorized agency that has lawful custody of the child;
 - (ii) took some measure of responsibility for the child and the child's future; and
 - (iii) demonstrated a full commitment to the responsibilities of parenthood by financial support of the child of a fair and reasonable sum in accordance with the father's ability; or
 - (b)
 - (i) openly lived with the child:
 - (A)
 - (I) for a period of at least six months during the one-year period immediately preceding the day on which the child is placed with prospective adoptive parents; or
 - (II) if the child is less than one year old, for a period of at least six months during the period of time beginning on the day on which the child is born and ending on the day on which the child is placed with prospective adoptive parents; and
 - (B) immediately preceding placement of the child with prospective adoptive parents; and
 - (ii) openly held himself out to be the father of the child during the six-month period described in Subsection (1)(b)(i)(A).
- (2)
 - (a) If an unmarried biological father was prevented from complying with a requirement of Subsection (1) by the person or authorized agency having lawful custody of the child, the unmarried biological father is not required to comply with that requirement.
 - (b) The subjective intent of an unmarried biological father, whether expressed or otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been met, shall not preclude a determination that the father failed to meet the requirements of Subsection (1).
- (3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is six months of age or less at the time the child is placed with prospective adoptive parents, consent of an unmarried biological father is not required unless, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, the unmarried biological father:
 - (a) initiates proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act;
 - (b) files with the court that is presiding over the paternity proceeding a sworn affidavit:
 - (i) stating that he is fully able and willing to have full custody of the child;
 - (ii) setting forth his plans for care of the child; and
 - (iii) agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;
 - (c) consistent with Subsection (4), files notice of the commencement of paternity proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and

- (d) offered to pay and paid, during the pregnancy and after the child's birth, a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless:
 - (i) he did not have actual knowledge of the pregnancy;
 - (ii) he was prevented from paying the expenses by the person or authorized agency having lawful custody of the child; or
 - (iii) the mother refuses to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)(d).
- (4) The notice described in Subsection (3)(c) is considered filed when received by the state registrar of vital statistics.
- (5) Unless his ability to assert the right to consent has been lost for failure to comply with Section 78B-6-110.1, or lost under another provision of Utah law, an unmarried biological father shall have at least one business day after the child's birth to fully and strictly comply with the requirements of Subsection (3).
- (6) Consent of an unmarried biological father is not required under this section if:
 - (a) the court determines, in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological father's rights should be terminated, based on the petition of any interested party;
 - (b)
 - (i) a declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded under Section 78B-15-306; and
 - (ii) the unmarried biological father fails to comply with Subsection (3) within 10 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78B-15-306; or
 - (c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to preserve his rights in accordance with the requirements of that section.
- (7) Unless the adoptee is conceived or born within a marriage, the petitioner in an adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating:
 - (a) that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (3)(c); and
 - (b)
 - (i) that no filing has been found pertaining to the father of the child in question; or
 - (ii) if a filing is found, the name of the putative father and the time and date of filing.