

## Marital Status: Married/Not Married

An important item on each child's birth record is mother's marital status at conception, birth, or any time during the pregnancy. Marital status is required by law in order to establish the birth record.

### 1. Married.

The Code of Iowa specifies that if a woman is married at the baby's conception, birth, or any time in-between, then her legal spouse is the only person who can be designated as the other parent on the baby's birth certificate.

*"144.13(2) If the mother was married at the time of conception, birth, or any time during the period between conception and birth, the name of husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered by the department."*

### 2. Not Married.

If a woman is not married at the baby's conception, birth, or any time in-between, the spouse's information is left blank on the birth certificate.

*"144.13(3) If the mother was not married at the time of conception, birth, or at any time during the period between conception and birth, the name of the father shall not be entered on the certificate of birth unless a determination of paternity has been made pursuant to section 252A.3, in which case the name of the father as established shall be entered by the department. If the father is not named on the certificate, no other information about the father shall be entered on the certificate."*

Written consent to name the biological father on the baby's birth certificate is achieved through a mutual agreement called a 'Voluntary Paternity Affidavit.' Affidavit forms are available at the hospital, along with a booklet entitled "Establishing Paternity by Affidavit" and published by the Iowa Department of Human Services, Child Support Recovery Unit. Forms also are available at county registrar offices or the state Office of Vital Records.

Paternity may also be determined by a legal action through the court system, known as a Court Determination of Paternity.

Only the Iowa Department of Public Health has the authority to enter the father's information on the birth certificate after a paternity affidavit or other legal court order has been submitted to the state Vital Records office.

*"144.40 Paternity of children—birth certificates. Upon request and receipt of an affidavit of paternity completed and filed pursuant to section 252A.3, or a certified copy or notification by the clerk of court of a court or administrative order establishing paternity, the state registrar shall amend a certificate of birth to show paternity if paternity is not shown on the birth certificate. Upon written request of the parents, the surname of the child may be changed on the certificate to that of the father. The certificate shall not be marked 'amended.'"*

## Marital Status: Refuses

### 3. Refuses.

By Iowa law, the legal spouse is the legal parent. To refuse, the birth mother must 'yes' to the marital status on the worksheet to establish the birth certificate if she is still legally married. She must then make a large X across the fields that ask for the spouse's information to indicate that she refuses to provide the information.

The system still sees her as legally married; therefore, a court order is required stating that the legal spouse is not the biological parent of this child before the biological father can be added through a paternity affidavit.

Divorce decrees are considered court orders; however, it must be very specific in naming this child and/or pregnancy and declaring that the child was not conceived in this marriage and the legal husband did not father the child. A certified copy of the court order must be submitted to the Office of Vital Records along with the Voluntary Paternity Affidavit in order to have the biological father named on the birth certificate as the legal father.

Other options are court orders to dis-establish paternity to remove the legal husband, or a Court Determination of Paternity to place the biological father on the birth record.

### NOTES:

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### General public accessibility

Records of birth prior to July 1, 1995, that have been determined to be single parent births are not in the custody of the county registrar or accessible to the public as a right of public inspection pursuant to Administrative Code 641—95.7(7). A "single parent birth" is any record in which mother's marital status was 'not married'; or either parent's name is listed as 'unknown,' 'anonymous,' or refused; or father's name is omitted pursuant to Administrative Code 641—95.1.

## Voluntary Paternity Affidavit

Paternity may be established at any time, regardless of the age of the child. In Iowa, a Voluntary Paternity Affidavit is a no-cost legal action entered into by mutual agreement of the parents. Parents should make sure that they properly complete the affidavit form and sign in front of a notary public, who is often available at the hospital of delivery. The notary will ask for identification and must also sign the form.

**CHILD'S NAME CHANGE.** Through the Voluntary Paternity Affidavit, parents may also change the last name (i.e., surname) of the child to that of the father. Any subsequent name change would involve court costs for a Legal Change of Name.

For a legal change of name court order, a statement reflecting the last name change is added to the birth certificate and the original last name remains, whereas with a Voluntary Paternity Affidavit the record is re-established and only the new last name is shown on the birth certificate.

**STATE VITAL RECORDS OFFICE REVIEWS.** The original completed Voluntary Paternity Affidavit must be submitted to the state Office of Vital Records at the Iowa Department of Public Health. The hospital is required by law to mail it in for the parent IF the Affidavit has been notarized by hospital staff. A photocopy may be made of the completed form for the parents as long as it is clearly marked "Copy" and it is understood by the parents that the copy does not indicate that the Affidavit was filed and accepted by the State.

After it is received by the state office, the Voluntary Paternity Affidavit is reviewed to ensure completion and compliance. The mother's information on the Voluntary Paternity Affidavit must match the information she provided for the child's birth certificate. In addition, the parent's names on their photo identification must match their current legal names.

If the affidavit request is denied as submitted, the parents will receive a denial letter and asked to resubmit the form.

**UPON APPROVAL, NEW CERTIFICATE CREATED.** If the affidavit request is approved, a new certificate is created that includes the father's name and other information, then the original certificate and the Voluntary Paternity Affidavit are sealed in a special file that can only be opened with a court order.

**FEES.** There is no charge to process a Voluntary Paternity Affidavit. Parents must return to the state vital records office any original certified copy that does not have the father's name with a notarized statement requesting a replacement copy and a photocopy of their valid, current government photo identification. Parents receive letters with the that explains how to get a replacement if there are typographical errors or a Voluntary Paternity Affidavit has been filed but the father's name is not listed.

**Note:** By Iowa law, section 144.13(4) the state child support recovery unit may request verification copies from the state vital records office of a child's birth certificate, the social security numbers of the mother and the father, and a copy of the Paternity Affidavit.

## Legal Consequences of Adding the Father's Name to the Birth Certificate

### **RIGHTS AND RESPONSIBILITIES.**

Adding the father's name to the birth certificate gives him the same rights to certified copies of the child's birth certificate record as the mother. In other words, now that his name is on the birth record, he and his parents have what's called "direct and tangible interest" in that record because they are considered immediate family. Other agencies often look toward the birth certificate and the fact that he is now considered the legal father to help determine other issues involving the family.

Parents are encouraged to seek legal counsel if they are unsure of the legal rights of either parent should they agree to sign a Voluntary Paternity Affidavit. The Affidavit is the father's opportunity to voluntarily acknowledge that he is the biological father of the child on the birth certificate without having to pay legal costs. It also indicates that the mother recognizes that man as both the biological and legal father of the child.

### **MUTAL AGREEMENT.**

Voluntary Paternity Affidavits are *MUTUAL* agreements. Neither parent can be forced to sign. However, either parent, or the Department of Human Services if the mother enrolls for public assistance, may file a Court Determination of Paternity through the court system if they want to pursue paternity establishment and the other parent is uncooperative.

### **COURT ORDERED PATERNITY**

**ESTABLISHMENT.** Court Determination of Paternity through the court system may also be pursued if one parent dies before a Voluntary Paternity Affidavit can be signed. In such cases, the surviving parent should seek legal counsel. Generally, the surviving parent needs to approach the court to find out what evidence would be accepted, then obtain the requested evidence. Evidence may include signed affidavits from the deceased parent's immediate family or DNA tests, if available. Once submitted to the state Office of Vital Records, the court order is treated the same as a Voluntary Paternity Affidavit.

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### **Notes:**

## Declaration of Paternity Registry

Pursuant to Iowa Code section 144.12A, a Paternity Registry is available for any man who thinks he may be the father of a child born in Iowa. In such cases, a completed Declaration of Paternity form may be registered with the state Office of Vital Records “prior to the birth of the child and no later than the date of filing of any petition for termination of parental rights.”

There is no cost involved and registration is strictly voluntary. Registrants are responsible for notifying the state office in writing of any change in address. Registry forms are available from any local county registrar or the state Office of Vital Records, c/o Iowa Department of Public Health, Lucas State Office Building, 1st Floor, 321 E. 12<sup>th</sup> St., Des Moines, Iowa 50319.

Registration does not require the signature of the biological mother; however, a copy of the declaration is sent to the mother. Although a declaration of paternity does not constitute a Voluntary Paternity Affidavit, it may be used as evidence in a Court Determination of Paternity or to determine if there are any child support obligations.

The main purpose of the registry, however, is to ensure that the father is notified should the mother choose to put the baby up for adoption. As a matter of course, lawyers handling adoption cases must submit requests to search the registry for matches. There is a fee for registry searches whether or not a match is found.

Upon request and good cause, the Office of Vital Records is required by law to do searches and provide the identifying information of registry matches to:

- the biological mother of the child;
- a court;
- the department of human services;
- child support recovery; and
- attorneys representing adoptions, termination of parental rights, child support actions, or determinations of paternity.

Information from searches is strictly confidential; therefore, the recipient is instructed not to divulge it to any other person except upon court order. If no match is found in the search, a written statement to that effect is sent to the person making the inquiry.

Registrants may revoke their declaration at any time after the birth of the child by submitting an affidavit signed by a notary public to the state Office of Vital Records. The affidavit must specify that the registrant now believes he is not the father of the named child or that paternity of the true biological father has been established. Once a revocation has been acknowledged by the state office, the registrant’s information will be removed from the registry.

# Establishing Paternity

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## Summary of Paternity Establishment

When a person asks about paternity establishment or requests a paternity affidavit, provide the following information orally, according to the Child Support Recovery Unit, Iowa Department of Human Services.

Paternity establishment means determining a child's legal father.

### Ways to Establish Paternity:

- If a man and a woman are married when the child is conceived, born, or any time in between, that man is the "legal" father. This is true even if the biological father is a different person.
- If the father and mother fill out and sign a Voluntary Paternity Affidavit form, the man becomes the legal father.
- A court order or Child Support Recover Unit order can declare that a man is the legal father.

### Good Reasons to Establish Paternity:

- It helps develop the relationship between the father and child.
- If gives the child a sense of belonging from knowing who the father is.
- It can possibly help the child if there are medical problems. By knowing the parents and their medical histories, doctors might be able to treat the child's medical problems more effectively.
- It increases the chance of financial and emotional support of the child.
- It ensures there is financial support if the father dies (through Social Security).

### Parents who are under legal age:

Minor parents have the same right as everyone else to sign the Voluntary Paternity Affidavit. However, a minor father can declare that the paternity affidavit is not valid up to 30 days after he turns 18 (refer him to the Child Support Recovery Unit, Department of Human Services).

### Parents have the Right to:

- Obtain a Voluntary Paternity Affidavit, along with written and oral information about the paternity process.
- Ask for and get assistance in completing a Voluntary Paternity Affidavit.
- Contact an attorney to help them understand the paternity establishment process before completing a paternity affidavit.
- Cancel paternity (i.e., rescind) up to 60 days after the last signature on the Voluntary Paternity Affidavit or 20 days after they are served notice or petition that a legal action has started which involved the child, whichever is earlier.
- Decide not to complete a Voluntary Paternity Affidavit. If they are not sure who the father is, they should not sign the form.

### Parents who complete a Voluntary Paternity Affidavit are responsible for:

- Financially supporting their children.

### When Parents sign a Paternity Affidavit:

- The man named is **legally** the father of the child.
- The name of the man is placed on the birth certificate as the legal father.
- The legal father can file a petition with the court to get visitation or custody rights.
- The legal father has a responsibility to help financially support the child. This means the signed Voluntary Paternity Affidavit can be used to get an order for child and/or medical support.

## Photocopy of Registered Voluntary Paternity Affidavit

Pursuant to Iowa Code section 144.40, a photocopy of a Voluntary Paternity Affidavit filed pursuant to Iowa Code section 252A.3A and clearly labeled as a copy may be provided to a parent named on the Affidavit. A non-refundable fee of \$20.00 is charged for the search and preparation of such supporting documentation on file in the state registrar's office pursuant to Iowa Administrative Code 641—95.6(1)"b".

The "Affidavit to Obtain Photocopy of Child's Paternity Affidavit" form must be completed, notarized, and submitted to the Bureau of Health Statistics and Vital Records in order to obtain the photocopy of the processed Voluntary Paternity Affidavit. The official form is available from either the Bureau or the County Recorder.

### Entitled Applicant:

Application to obtain a photocopy of the processed Paternity Affidavit form may only be made by:

- Either parent named on the Voluntary Paternity Affidavit, or
- Either parent's legal representative

### Completing the Form:

- The form requires completion of the information as shown on the child's birth certificate after the Paternity Affidavit and at birth, as well as the applicant's name and mailing address.
- The application form must be signed in the presence of a Notary Public, with the presentation of a current, government-issued photo identification. The Notary must apply a legible signature and notary seal to this form only.

### Cost:

- A fee of \$20 is charged for the search and preparation of the document, which is payable in U.S. funds by check or money order to the Iowa Department of Public Health. The fee is non-refundable if a search is done, but no Paternity Affidavit is found to have been filed.
- A vital records seal will be affixed to the copy and the copy will be clearly marked as a "Copy."

### Submit to State:

- The completed notarized application must be submitted to the Iowa Department of Public Health at the address listed on the bottom of the application form.
- The applicant must include a clear photocopy of the applicant's current, government-issued photo identification and the \$20 processing fee made payable to the Iowa Department of Public Health (or, IDPH).

## Rescission of Paternity Affidavit

Effective July 1, 1997, a completed Voluntary Paternity Affidavit may be rescinded (i.e., canceled) by completing and notarizing a Rescission of Paternity Affidavit form. This form must be received by the Iowa Department of Public Health, Bureau of Vital Records, within the **earlier** of either

- 60 days after the last notarized parental signature on the original Voluntary Paternity Affidavit, or
- Entry of a court order regarding the child by the Iowa Child Support Recovery Unit.

**APPLICATION TO RESCIND.** Application to rescind a Voluntary Paternity Affidavit may only be made by either the mother or the alleged father who originally completed and signed the original affidavit. By completing and notarizing the rescission form, the applicant is attesting that the previously alleged father is not the biological father as previously agreed.

When the rescission form is completed and received within the required time frames, it voids the original Voluntary Paternity Affidavit. By voiding the Affidavit, the man named on the original affidavit is removed from the birth certificate and the child's last name is returned to that of the original certificate prior to the Voluntary Paternity Affidavit.

**NOTIFICATIONS.** Upon approval of the completed Rescission of Paternity Affidavit, the Bureau of Vital Records will send a notification to the mother and the alleged father at their last known addresses. A replacement copy of the record without the father's information will be forwarded to the local County Recorder/ County Registrar Office.

**NO OTHER AFFIDAVIT DONE.** Once a Voluntary Paternity Affidavit has been rescinded, the mother and that same alleged father may not file a subsequent Voluntary Paternity Affidavit for that child.

**FORMS AVAILABLE.** Rescission of Paternity Affidavit forms are available from the state Bureau of Vital Records, any local County Recorder Office, or any local Child Support Recovery Unit.

**FEE.** A \$20 administration fee is required to register and process the Rescission of Paternity Affidavit. All fees are payable in U.S. funds by check or money order to the Iowa Department of Public Health. Any certified copy previously issued to the parent must be returned with the completed rescission form. A replacement copy will be issued to the entitled holder of the certificate at no cost.

Additional certified copies may be acquired by entitled persons for the regular \$20.00 fee. Note that once the alleged father's information has been removed from the birth record, he and his family are no longer entitled to any certified copy of this record.

**EXAMPLE:**

*Mr. A and Ms. B signed a Voluntary Paternity Affidavit in June. Ms. B gave the child her own last name when completing the birth worksheet for the original registration of the birth certificate. Mr. A and Ms. B, however, agreed to change the child's last name to the same as the father's when they completed the Voluntary Paternity Affidavit.*

*In July, Mr. A filed a rescission within the timelines and his name was removed from the birth certificate. The child's last name was changed back to the same as the mother's.*

*Mr. A and his parents are now no longer entitled to a certified copy of the child's birth certificate.*



## “Common Law” Union

### ❖ For Income Tax Purposes:

Under Iowa Code for Revenue and Finance<sup>1</sup>, common law marriage in Iowa is legal for the purposes of filing income taxes (Administrative Rule, Chapter 39 [701]) and property tax exemptions (Administrative Rule, Chapter 73 [701]).

#### **Iowans may claim common law marriage status if:**

- ❑ a present intent of both parties freely given to become married exists;
- ❑ both parties publicly declare themselves as common law married;
- ❑ the parties have lived together continuously and consummated the marriage (no special time limit, however); and
- ❑ both parties are legally capable of entering into a marriage relationship; that is, both are of legal age and neither is legally married to someone else at the time.

### ❖ For Birth Certificate Purposes:

For the purposes of establishing a birth certificate, the mother must indicate ‘No,’ not married, and complete a Voluntary Paternity Affidavit with the alleged biological father. The marital status does not appear on any part of the legal certificate that is issued as a certified copy, nor is that particular piece of information available for open viewing at the county registrar’s office. Marital status is required by law to establish the birth certificate. Thereafter, it is used for statistical and public health research purposes only.

### ❖ For Marriage Certificate Purposes:

Only legally solemnized marriage ceremonies pursuant to Iowa Code chapter 595 are registered as an Iowa vital event. Such marriages permit the parties to legally change their surname through the marriage certificate. Common law unions are not registered in Iowa.

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<sup>1</sup> **Administrative Code, Revenue Department [701], Chapter 73 Property Tax Credit and Rent Reimbursement, 701—73.25(425) Common law marriage.** *A common law marriage is a social relationship between a man and a woman that meets all the necessary requisites of a marriage except that it was not solemnized, performed or witnessed by an official authorized to perform marriages. The necessary elements of a common law marriage are: (a) a present intent of both parties freely given to become married, (b) a public declaration by the parties or a holding out to the public that they are husband and wife, (c) continuous cohabitation together as husband and wife (this means consummation of the marriage), and (d) both parties must be capable of entering into the marriage relationship. No special time limit is necessary to establish a common law marriage. This rule is intended to implement Iowa Code section 425.17 [Homestead Tax Credits and Reimbursement: Definitions].*