

# Ohio Law Allows Attorney-Arranged Adoptions

**Q: I thought only an agency could arrange an adoption, but my friend says her attorney is handling hers. Is this legal in Ohio?**

**A:** Yes. Ohio law says that either an adoption agency or an attorney may handle an adoption. However, judges in some counties do not accept the birth parents' consent to the adoption of their child. In these counties an attorney can work with an agency. In such a cooperative arrangement (sometimes referred to as a "targeted adoption") the attorney handles or coordinates the preliminary work, including the matching of the birthparents with a family. The agency, rather than the court, accepts the birth parents' consent to the adoption of their child.

**Q: Isn't it more expensive to go through an attorney for an adoption?**

**A:** Generally, no. In Ohio, attorney-arranged adoptions are usually less expensive than private, agency-arranged adoptions. The average cost of a private agency adoption (assuming a healthy infant without special needs) ranges from \$12,000 to \$16,000. Attorney fees for a similar adoption range from \$3,000 to \$5,000. In addition, an agency home study costs between \$1,300 to \$2,500; a home study done through the court with attorney representation costs between \$200 and \$600 depending on the court.

A non-private or "public" agency adoption, such as might be handled by Health and Human Services, is subsidized by the state, so the cost to adoptive parents is very low or even free. In many public agency adoptions, parental rights have been terminated due to child abuse or neglect.

The Federal Adoption Tax Credit applies to domestic adoptions.

**Q: Can't attorneys charge whatever they want to handle adoptions?**

**A:** No. Your attorney's fees are based on the time spent on the case. This time must be documented and the court must approve these fees.

**Q: I've heard that attorneys sometimes give the birth mother gifts in order to encourage her to give her baby up for adoption. Is this legal?**

**A:** No. Ohio law is very clear and strict about what kinds of adoption expenses are allowed. The only expenses allowed have to do with doctor, hospital and other medical bills, and with attorney or agency fees. The birth parents are not entitled to be paid or to get gifts in connection with giving up a child for adoption; any such payment or gift is baby selling, and is illegal. Any attorney (or agency or potential adoptive parent) who offers money or gifts that are not allowed by law is acting unethically and risks overturning the adoption.

**Q: What happens if the birth mother does receive gifts or promises of gifts or money for her expenses outside what the law allows?**

**A:** If a birth mother consents to an adoption because she has received or has been promised gifts or

money, then her consent has been made “under duress,” and is, therefore, invalid. In such a case, the birth mother may withdraw her consent to the adoption, as long as she does so within one year after the final adoption decree has been filed. This one-year-after-finalization time limit prevents an adoption from being disrupted years after the consent was given.

**Q: I know that, in an agency adoption, the birth parents surrender their rights to the agency. Can the agency place a child with a family other than one selected by the birth parents?**

**A:** Yes. The agency has the power to decide where to place the child, and is not legally obligated to place the child with the birth parents’ family of choice, although agencies typically try to honor the birth parents’ wishes. Some birth parents decide to work through an agency rather than through a private attorney because most agencies will come to the hospital or to the birth parents’ home to receive the birth parents’ surrender of the child. In an attorney-handled adoption, the birth parents consent to the adoption in front of a judge, usually in the judge’s chambers. If both birth parents are consenting to the adoption of the child, they can do so in their attorney’s office. If only the mother is surrendering the child, she must go before a judge or magistrate.

Q: What happens in an attorney-handled adoption?

A: In an attorney-handled adoption, the birth parents select the adoptive family. Potential adoptive parents assemble information and pictures about their lives, values, and parenting philosophies for birth parents to use when choosing an adoptive family. The birth parents select the adoptive parents and make all the decisions about their child and the adoption. Following this selection process, the birth parents generally (though not always) meet with the prospective adoptive family, either in person or by phone.

In a private, attorney-arranged adoption where the surrender of rights occurs through the court, the birth parents make an “application to the court” to place their child with a particular family. Assuming the selected family has passed the home study requirements, the court only has the authority to place the child with the family designated in the birth parents’ “application for placement.” The court is not allowed to place a child with a family other than the one chosen by the birth parents.

8/27/2008

*Law You Can Use is a weekly consumer legal information column provided by the Ohio State Bar Association. This article was prepared by Mary Catherine Barrett, a private adoption and surrogate attorney located in Cleveland.*

*Articles appearing in this column are intended to provide broad, general information about the law. Before applying this information to a specific legal problem, readers are urged to seek advice from an attorney.*