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Q: If a prospective birthmother decides not place her baby with us for adoption, can we get back the money we paid for her living expenses during the pregnancy?

A: The expenses that prospective parents can pay in connection with an adoption are regulated by state law, and vary from state to state. (See a summary of state law concerning payment of birthmother expenses at: www.adoptivefamilies.com/adoptionlaws.) In most states, adoptive parents can pay a birth family's reasonable medical, legal, and counseling expenses. Many also permit some assistance with living expenses (usually within specific guidelines).

Most adoptive parents are willing to help with living expenses, and many birthmothers need the help. Some birthparent advocacy groups argue that such payments result in moral pressure to place a child for adoption, despite birthparents' legal and ethical right to make a placement decision after the birth of the child. No contract can require birthparents to terminate their rights to their child, and, conversely, nothing can force prospective adoptive parents to accept a child offered to them for adoption.

Although adopting parents often agree to help with expenses quite willingly, many wonder: "If she decides not to place her child for adoption, can we get our money back?"

Again, the answer depends on state law. In some states, such as California, expenses paid on behalf of a birthmother are considered to be a gift and cannot be recovered. In other states, courts may refuse to enforce a contract requiring a birthmother to

DON'T EXPECT TO RECOVER MONEY SPENT ON BIRTHMOTHER LIVING EXPENSES.

reimburse adoptive parents, on the grounds that the provision offends public policy. In a few states, a reimbursement agreement with a birthmother is considered legal and enforceable. More often, however, states consider such contracts to be unenforceable, but a court may grant "equitable relief." In Virginia, for instance, a lawsuit for reimbursement can be filed against the birthmother for "unjust enrichment," claiming that she took money from the adoptive parents but did not follow through on her agreement.

Yet, even when adoptive parents have the option to bring legal action, the reality is that most birthmothers won't be able to repay them. In fact,

most adoptive parents hoping to recoup their money will only end up having spent more in legal fees, with little chance of success.

The question for many adoptive parents, then, is not the legality of entering into a contract with a birthmother and/or pursuing reimbursement of expenses via legal action, but rather the advisability of doing so. Research into open adoption shows that children do best when their birth- and adoptive parents have a warm, trusting relationship. These are the very adoptive and birthparents who know each other and who would be most likely to make a contract prior to the adoption. However, devising a contract with the goal of pursuing legal action is not the best way to begin a positive relationship built on mutual support.

Instead of hoping to recover money spent on birthmother expenses, take steps to minimize your financial risk in the event of a failed adoption: Pay only for essential living expenses, put money into escrow to repay the birthmother for expenses after the adoption has been finalized, and ensure that counseling is available.

In sum, don't expect to recover expenses paid for a birthmother unless the state in which the agreement is made permits legal action for repayment and the birthmother has assets from which she can repay. You may be better off preparing your adoption budget wisely, utilizing the federal adoption expense tax credit (which does not require that a domestic adoption be completed in order to claim the credit), and considering a failed adoption a learning experience.



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