

WHAT SHOULD A FOSTER PARENT DO IF THE BIRTH PARENTS SAY THEY ARE WILLING TO CONSIDER A CONDITIONAL SURRENDER?

By Margaret A. Burt, Esq. Copyright - 3/17

1. **Consider hiring a lawyer** right away if you can - ask the lawyer to be come involved in the negotiations. Try to find an attorney who has done this kind of thing before and knows about terms that will be helpful to you. Insist that you and/or your attorney need to be present at any negotiations. You will be living with this agreement long after the agency is no longer involved.
2. **Don't let discussions occur without you.** If the surrender is going to be conditional on you adopting the child, then it has to be signed by you. That means you should be discussing the conditions as well. The caseworker should not just "present" you with the conditions that are going to be offered to the parent nor should the caseworker tell you that they have already reached the agreement and you "have" to agree to the terms. You should also not agree to conditions in some "private" way with the birth parent. The law requires that all conditions be open and written on the surrender agreement.
3. **Take your time** - this is a very important consideration - think carefully about what is being asked of you and your family, both emotionally and timewise - can you do this? Do not let yourself be "talked into" a deal in the hallway at court without having had time to think it over and discuss it calmly with your spouse and your lawyer. Understand that although many birth parents do not in fact continue to seek the visitation in a conditional surrender, do not be talked into doing one because someone says "you know the birth parent(s) won't follow through on this". Assume that the birth parent will honor all the terms - can you do what the agreement says?
4. **Consider the alternatives.** Would it be better for the child and your family to have a termination occur with no terms so that you would be in total control of if or how any contact occurred with the birth family? Ask what the agency's/court's timetable would be for that alternative as well as the likelihood of a successful outcome.
5. **Ask questions until you understand** exactly what terms are being proposed.
6. **Ask to see the full agreement in writing in advance before you sign anything.** If you have trouble understanding what some terms means - will the birth parent understand it? Make sure everything is spelled out in the agreement as specifically as you think it needs to be so no one will have to wonder or question later what everyone agreed. For example saying there will be 2 visits a year is not the same as saying there will be one visit a year in January and one visit a year in July. **Make sure they give you a copy of the agreement at the time it is signed.**
7. **The devil is in the details.** If there is going to be exchanges of photos or information, who is actually obligated to provide them? Can the birth parents post things on social media? How will people be kept aware of changing addresses? If there are going to be

visits, how long will they be, where will they be, will anyone supervise them, will anyone other than the birth parents be allowed to be at them? How long will you have to wait if the birth parent is late for a visit? Will there be make-ups for missed visits? What if your family wants to move? Can presents or cards be exchanged? How will you reach each other? Will there be controls on certain behaviors during the visits? Will the child be able to refuse visits? Under what circumstances can visits be ended – the opinion of a therapist or a certain number of missed visits?

8. When will you expect to be able to **finalize** the adoption? Will the birth parent be notified if there is a problem before the adoption or has this right been waived? Will the parent be able to revoke the surrender if there are problems before the adoption or has this right been waived?

LOOK BEFORE YOU LEAP