



**PRE-PAID  
 LEGAL PLAN**

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***Adoptions in Pennsylvania***

**T**here are many ways to create a family in our modern world and many ways that the modern legal system can help couples become families or help families become the families they were meant to be.

In Pennsylvania, several types of adoptions are available. These are kinship adoptions, private or independent adoptions, and agency adoptions. **Private or Independent Adoptions** – These adoptions seem to receive the most press, but are actually not the most common type of adoption seen in the courts. A private or independent adoption is the classic “tv movie adoption” where the young couple who can’t have a biological child of their own goes to an attorney who specializes in adoption cases and he or she is able to give them access to one or more “birth mothers”. The parties may have some kind of contact and then start a process with each other to see if they will suit each other.

There are two basic categories of private adoptions - closed and open adoptions. In a closed adoption, (the traditional and only type of adoption that existed for decades), the parties involved, (the adoptive parents and the birth parents), do not know each other’s identities. This is intended to ensure total privacy and anonymity for the child being adopted. However, recent psychological studies have questioned whether there is a benefit to the adopted child in having little or no information about his or her birth family, or whether it is better to have the second type or, “open” adoption. In this adoption, there is some contact between the natural and adoptive families. It may be anything from photographs and letters to regular meetings, depending on the families. It is intended to give the child a sense of where he or she comes from.



**Agency Adoptions** - Agency adoptions are the most common types of adoption and involve children who frequently have already been placed into the care of a state run agency such as the Department of Human Services. There are many reasons why a child may be in agency care, such as abuse or neglect by the natural parent. The

child may also be in care because a parent has died and there is no one in the biological family willing or able to care for the child. Very often, there are multiple siblings or half-siblings that the agency would like to see adopted together. The state may provide a stipend when an agency adoption is completed.

**Kinship Adoption** - This is the second most common type of adoption. In a kinship adoption, a relative, most commonly a stepparent, seeks to adopt a child. These adoptions are generally the most straightforward type, although you should note that every adoption involves the termination of the birth parents’ rights – either by consent, a voluntary relinquishment, or by involuntary termination.

**International Adoptions** - We have all seen the television news programs about American couples who have made long and sometimes heartbreaking journeys to other countries in search of a child of their own. When they finally find that child, often the adoption procedure is done right there in the child’s home country. The American parents assume that the only thing they need to do upon arriving home is to apply for US citizenship for their new child. Most adoption experts however, advise that the safest course of action is to go through a local adoption here in the United States. The rights of the birth parents have already been terminated abroad, so the procedure is relatively easy and straightforward. The benefit to taking this extra step is peace of mind in the future.

It is interesting to note the rise in the number of kinship adoptions where the adopting parents are actually the child’s grandparents. In today’s society, many grandparents are left to raise their grandchildren and they may want to adopt the child for either emotional reasons or for purposes of health insurance or other financial issues that a custody order cannot address.

Lastly, please note that Pennsylvania does permit same sex, or second parent adoptions. In 2002, the Supreme Court of Pennsylvania held that nothing in the Adoption Act prevented a same-sex partner from adopting the biological or adopted child of his or her partner. However, you should be aware that different counties have vastly different procedures for second parent adoptions.

## BUYING A HOME?

**S**o you are ready to buy a house! In all likelihood it will be one of the most expensive and important purchases you will make; and one for which you are least prepared. Why would you be? Few people purchase real estate more than two or three times in a lifetime. Of course, there are professionals (realtors or lawyers) to guide you through the process. Nonetheless, it makes sense to have at least a basic understanding of the process.

**The "Offer"** - This is where the buyer offers to buy the property for a specific price. Typically the buyer completes an agreement of sale and delivers it to the seller who has a specified number of days within which to accept the offer by signing the agreement, or make a counter offer. Remember once the buyer makes the offer (signs the agreement and delivers it to the seller) the buyer is bound by the contract. So if you want the seller's draperies or their washer and dryer, or you want to have a home inspection or you want the zoning classification to be verified, those things must be included from the start. If there is any doubt as to whether something you want is included, better to write it in than assume.

**Contingencies in the Agreement** - These are paragraphs which would nullify the agreement if not met. The most often included contingency is the mortgage contingency. This clause sets the maximum terms that the buyer must accept from a mortgage lender in order to be required to go ahead with the sale. These terms include the interest rate, term of mortgage (number of years to pay the mortgage), amount of mortgage and number of points the buyer is expected to pay. These are maximums. If the buyer is not able to get the mortgage at or below the terms of the clause, the buyer is not bound by contract.

Remember these terms will vary depending on the mortgage rates, and the buyers' credit worthiness. A buyer who has an excellent credit rating and who is putting 20% or more down will likely only agree to a maximum slightly over the best going rate. On the other hand, a buyer whose credit is shaky may agree to a higher maximum, knowing he/she won't get the best mortgage rate and may have to pay points (points are nothing more than a cost of the mortgage).

Another common contingency is the home inspection contingency. A buyer is entitled to get the property at settlement in the same condition it was on the date the agreement of sale was signed. So, if there are no window screens or the garage door didn't work when the agreement is signed, you are not entitled to have them work at settlement. One hedge against doing a hands and knees search of the premises before signing the agreement of sale is to include a home inspection contingency. This clause allows the agreement of sale to be signed and conditions the sale on the buyer getting a home inspection. The clause usually provides a threshold aggregate amount below which the seller is not obligated to do anything. If the home inspection reveals the need for repairs in excess of the threshold, the seller has the option

of making the repairs, or asking the buyer to accept the property under the original terms; or perhaps negotiating some compromise.

No house is perfect. The home inspection is intended to tell the buyer things they might not know, such as what amp the electric service is or the condition of the roof. It is not necessarily a death blow to the agreement of sale that the inspector finds a problem. The buyer should see it as a way to get information. But, if it happens to reveal that the foundation is cracked or the roof is about to collapse, the buyer is saved from a costly purchase.



The bottom line is, if it is critical (a deal breaker) to the buyer that there be window screens or that the pool vacuum works, make sure it is in writing. For all you know, the seller may have been living without screens for years!

**Mortgages** - First, just because you have a mortgage doesn't mean you don't own your home. It simply means that the bank has a lien (mortgage) on the property. Most people know that mortgages come in many shapes and sizes. What they don't know is that the cost to obtain a mortgage also varies. Not only should you compare interest rates, but you should look at the APR and costs. The APR is the interest rate plus cost annualized over the term of the mortgage. The closer the APR to the interest rate, the lower the fees associated with the mortgage. In addition, not all mortgage companies charge the same fees for giving you a mortgage. It pays to call several lenders, including credit unions, full service banks and local banks. Ask for not only the rate, but all of their costs before you decide.

Mortgage companies, banks, and mortgage brokers are in the business of selling mortgages. They will charge various costs to you in connection with providing the mortgage. The fees charged by the mortgage providers are not all the same. Not only do the amounts charged vary from mortgage company to mortgage company, so too do the designations for the charges. This makes it somewhat difficult to compare mortgages. But what you need to keep in mind is that what a fee is called doesn't make any difference. The thing to do is ask for all of the fees and then you are in a position to compare which company is giving you the better deal.

What follows is a description and general ranges for these costs. Keep in mind that these costs are neither exclusive nor comprehensive. There is rarely a settlement we attend when we don't see a charge we haven't seen before. These however should give you a flavor for what to look for in obtaining a mortgage.

1. **Recording fees** - These vary by county but usually range in the 200.00 to 300.00 dollar range. These are fees the county charges to record the Deed and Mortgage.

2. **Transfer taxes** - Both the county and the state charge a transfer tax (like a sales tax on real estate.) The tax rate in Pennsylvania is 1% of the sale price; The county rate varies from 1% in most suburban counties to 3% in Philadelphia County. The total transfer tax is usually split

between buyer and seller in accordance with the agreement of sale. This is the norm, not the law. If it is a refinance, transfer taxes are not due.

3. **Title insurance** - Title insurance insures that the seller has authority to sell the property. It also provides information regarding any liens on the property. The purpose of determining liens is so that the mortgage company can be the first lien, giving them the highest interest in the property. Mortgage companies require title insurance. The cost is determined by the value of the property.

Title insurance is not homeowners insurance; it is not a survey of the property boundaries; it does not insure the buyer for claims by or against the seller. The cost is borne by the buyer as a condition of the mortgage company. Buyers who are NOT getting a mortgage may or may not purchase title insurance.

4. **Escrows** - At the time of settlement, the mortgage company will collect money from the buyer for "escrow". This money is an estimate of what the mortgage company will need when added to the monthly escrow payments to pay the buyers bill for taxes or homeowners insurance the next time, after settlement, that the bill is due. For example, if the buyers real estate taxes are 1,200.00 per year and he buys his house on June 1<sup>st</sup> - the mortgage company would likely escrow approximately 6 months of taxes (600.00) so that when January rolled around, that 600.00 escrow, plus the 100.00 per month paid by the buyer for July through December would give the mortgage company enough to pay the tax bill of 1,200.00. Mortgage companies may escrow on the high side, but the law won't allow them to hold too much so you may see the mortgage company make an adjustment to the figure they want to escrow. The amount of escrow is directly related to the amount of taxes. In addition to taxes, some mortgage companies require that homeowners insurance be escrowed. In that case, the monthly escrow would include approximately ½ of the annual homeowners insurance premiums. The law does not require that either taxes or insurance be escrowed. It is really up to the mortgage company.

5. **Points/loan origination fee** - Points are a cost of getting the mortgage. A point is equal to 1% of the amount you borrow. The more points, the more it is costing you to get the mortgage.

Some companies will call it a loan origination fee. No matter what it is called, it is a cost of getting the mortgage. These fees are usually paid at closing. In some financial climates mortgage companies may offer to lock in a rate with the payment of a point. Keep in mind that mortgage rates don't usually move that quickly; nor is the mortgage process the several month wait that it once was. That is not to say that rates don't move, only that you should weigh the cost of "locking in."

6. **Application fee** - Application fees are just that – the fee for processing the initial application. These fees are generally modest, running between \$75.00 and \$150.00.

7. **Tax service fee** - This is a one time fee charged by a mortgage company for escrowing your taxes. This fee usually runs \$50.00 - \$180.00.

8. **Credit report** - This is the fee that the mortgage company will charge for getting your credit report. Some mortgage companies may include this as a part of the application fee. If not, it will appear on the settlement sheet. This fee is usually \$15.00 - \$75.00.

9. **MIP** - Mortgage insurance premium (MIP) is a "premium" you pay for the privilege of NOT putting down a minimum of 20% on the purchase. When you don't pay a 20% down payment, the mortgage company charges a one time up front "premium" for giving you the mortgage. In addition, the mortgage company will charge a monthly fee. The one time fee and the monthly fee you are paying does not reduce your principal. It is a cost above the interest rate you are already paying.

MIP is NOT insurance of any kind for the purchaser. To the purchaser it is nothing more than an additional cost. One thing to remember is that when the purchaser's equity reaches 20% of the value of the house, the purchaser can request that MIP be stopped. The purchaser can reach the 20% equity if the house appreciates in value or by paying down the principal of the mortgage.

10. **Appraisal fee** - This is the fee the mortgage company charges to insure that the house is worth enough to support the mortgage. This fee ranges from \$175.00 to \$350.00. The mortgage company appraisal has nothing to do with the price of the house. Its sole purpose is to verify to the mortgage company that the house is worth enough so that should there be a default, the mortgage company is protected. Since your paid for it, make sure you get a copy from the mortgage company.

11. **Document preparation fee** - This is the fee the mortgage company charges for the preparation of your mortgage documents. Generally, this fee ranges \$75.00 to \$250.00.

The above are only those fees that are most likely to be associated with getting a mortgage. A mortgage company could charge some or none of the fees, and more or less than the ranges. In addition, you might find other fees such as warehousing fee, underwriting fee, brokers fee, or some other fee not mentioned here. The important thing is to compare not only the rate you are quoted but all of the costs.

So, now the question - "Do you need a lawyer?" Well, that depends - if you have not signed an agreement of sale, a lawyer can help with negotiations or drafting. If you have already signed, do you need a lawyer at settlement? We tell our clients: "If everything at settlement goes smoothly, you probably won't need me, but if something goes wrong you'll be glad I am there. The problem is, you won't know how settlement will be until you get there!!"

## **WORKERS' COMPENSATION: WHO TO QUESTION, WHO TO TRUST**

**W**orkers compensation is a state-administered benefit provided to workers injured on the job. The money paid in benefits actually comes from private insurance companies who take care of the day-to-day handling of all claims. Since the benefits are coming out of the pockets of large insurance companies, those companies have a comprehensive plan to control how much money gets paid in benefits. To protect your rights, it is important that you know as much as possible about the system before you need it.

When a claim is reported to an employer, the employer contacts its insurance company with information about the injury. The insurance company is then required to file a Notice of Injury report with the Bureau of Workers' Compensation in Harrisburg. The insurance company makes an initial determination as to whether the claim involves a claim for lost time or just medical bills. The person assigned to handle the claim will be a claims adjuster. The adjuster will contact the treating physician (who is typically assigned by the insurance company or your employer) to get information about the injury and the circumstances of the injury. The adjuster looks for information to deny the claim. Specifically, the adjuster looks for details of prior injuries to the same body part, when the symptoms first began, and any evidence of degenerative conditions like arthritis. The adjuster may tell you that your claim is denied if you had a prior injury, or if tests show evidence of arthritis. Neither may be a valid reason to deny a claim and you should not walk away from your right to make a claim.



The claims adjuster will likely consult with a medical case manager or nurse to evaluate the information collected from the employer and the treating doctor. The medical case manager usually has a nursing background and has some familiarity with medical tests. The medical case manager or nurse will review the information and give an initial opinion as to whether your injury is, in fact, related to work. If so, the manager or nurse may regularly contact the treating doctor for information or accompany you to medical appointments. You should instruct the nurse or medical case manager that you do not authorize them to speak with the doctor unless you are present. In addition, you have the right to prohibit the medical case manager or nurse from accompanying you in to see the doctor.

The only way to be sure that your claim has been accepted as a workers' compensation injury is to receive a Notice of Compensation Payable (NCP) from the insurance company. If you do not receive this document, you must assume that your claim has not been accepted. Unfortunately, receiving the NCP does not mean that you can rest easy. Once the insurance company starts to pay benefits, it begins to focus on how to limit or reduce how much it has to pay.

The claim adjuster utilizes additional resources to formulate a plan to limit how much benefits the insurance

company will have to pay. The adjuster will consult with not only the medical case manager, but also a vocational consultant and a lawyer. Together, this team is paid by the insurance company to formulate a plan to either reduce or stop your benefits. Typically, this starts with you being sent for an independent medical exam (IME) with a physician chosen by the insurance company. If the doctor places restrictions on your ability to work, the adjuster will likely refer your case to the vocational consultant to prepare a "labor market survey" to determine your earning capacity. If the doctor releases you with no restrictions, or gives an opinion that you are fully recovered, your case is referred to an attorney to file a petition alleging that you have fully recovered from your work injury and benefits should be terminated.

The team of people hired by the insurance company to handle your workers' compensation claim are not on your side. They work for the insurance company, not you. If you have a work injury, consult with an attorney to make sure that your rights are protected from the employer, its insurance company and the team of people they have hired. As a union member, you are entitled to a free consultation with the Workers' Compensation Department of Willig, Williams & Davidson at 1-866-413-COMP (2667)

**For information regarding benefits provided under the PFT Legal Services Plan, please visit the web at**

[www.pftls.org/benefits.htm](http://www.pftls.org/benefits.htm)

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### **CAUTION**

***These articles are not a substitute for individual legal advice from a lawyer. The information presented here is believed to be accurate, but laws vary between states and every legal situation is different.***