

USLegal Guide to Surrogacy



INTRODUCTION

A surrogate mother is a woman who carries and gives birth to the child of another woman, who is usually infertile, by way of a pre-arranged legal contract. There are several types of surrogacy:

- Gestational Surrogacy In gestational surrogacy, the client family typically creates embryos via embryo transfer. The child may be conceived via sexual intercourse, home artificial insemination using fresh or frozen sperm or impregnated via IUI (intrauterine insemination), or ICI (intracervical insemination) which is performed at a fertility clinic. These embryos are implanted into the uterus of the surrogate mother. The surrogate mother, who is not genetically related to the child in any way, carries the child on behalf of the client family. The surrogate mother may be

called the gestational carrier. The client family, with the assistance of an attorney, petitions the court to issue the birth certificate reflecting the client couple as legal parents.

- Gestational Surrogacy using an Egg Donor. This program is to the gestational surrogacy program, however, another woman donates the eggs used in In Vitro Fertilization.

- Traditional Surrogacy (Artificial Insemination Surrogacy). The surrogate mother is inseminated in the physician's office with the sperm of the client husband or a sperm donor. The child may be conceived via sexual intercourse (NI), home artificial insemination using fresh or frozen sperm or impregnated via IUI (intrauterine insemination), or ICI (intracervical insemination) which is performed at a fertility clinic. Sperm from the male partner of the 'commissioning couple' may be used, or alternatively, sperm from a sperm donor can be used. The client family completes a stepparent adoption process and the client

wife becomes the legal mother of the baby.

Surrogacy arrangements have a variety of accompanying legal issues and are not legally permitted or recognized in all states. Where it is legal, it is important to establish the rights and responsibilities of parentage as soon as is practically possible to prevent legal controversies and furnish children with a measure of stability. For example, a pre-conception contract by which a woman agrees to serve as a surrogate mother for a married couple for a fee was found by one court to violate public policy and be unenforceable. However, the court did grant custody to the biological father after applying the "best interests of the child" test. The biological mother, who was the surrogate, was allowed visitation rights. Local law should be consulted for applicability in your area.

EGG DONOR AGREEMENT

Egg donation involves the removal of eggs from a donor and the transfer of those eggs

into either the intended mother or a surrogate who will carry the baby to term for the intended mother.

SURROGACY AGREEMENT

Typical surrogate agreements cover a number of issues which may include:

- The Biological parents' right to be advised of and attend any medical exams and to review any and all medical records of the surrogate (even those not related to the pregnancy).
- STD testing for parties including the surrogate and biological parents.
- Medical evaluations of all parties to determine whether there are any genetic risks.
- Psychological counseling for the surrogate mother paid by the biological parents.
- A determination of parental rights or contract for adoption.
- A confidentiality agreement to prevent public disclosure of this private and sensitive information.
- Compensation agreements for the surrogate mother (Most often in excess of \$10,000).

-Terms regarding how and when the agreement may be terminated.

SPERM DONOR AGREEMENT

When the sperm donor is known to the parties, it is important that the parties enter into an agreement outlining their rights and obligations in relation to who will be raising the child.

PRE-BIRTH ORDERS

In some states, a family law attorney may draft a joint petition for an order of the court declaring "John Doe" and "Jane Smith" the legal parents of "Baby Doe." The content of such a petition is very detailed and requires the gestational carrier to join in the petition in order to relinquish her claim to the child. An affidavit by the physician who presided at the in vitro fertilization, affirming that there is no possibility that the fertilized ova came from the gestational carrier, but came from an anonymous donor. An affidavit by the gestational carrier is also attached, stating that she has no genetic connection to the child.

If the gestational carrier is married, an affidavit from her husband is also required. Both of the intended parents must also execute affidavits to accompany the joint petition.

The executed petition with affidavits attached are sent to the state Department of Health for the signing of a stipulation by the department that a pre-birth order is recommended and that the department will issue a birth certificate at the time of child's birth with the names of the intended parents as the legal parents of the child. This step helps remove the legal status as the parent from the gestational carrier.

Once a stipulation from the Department of Health is received, counsel for the intended parents must secure an order of court in the county where the birth will take place that approves the pre-birth order and declares that the intended parents are the legal parents of the child to be born.

The pre-birth order prevents naming the gestational carrier as

"mother" on the birth certificate and having to have her parental rights legally terminated. A pre-birth order also avoids the necessity of the partner who did not genetically participate in the creation of the child going through adoption of the child.

The Uniform Parentage Act (UPA) which defines and sets out all the terms and conditions of assisted reproduction technology and surrogacy has been adopted by 19 states.

You can secure an electronic version of the UPA at

[http://www.law.upenn.edu/bll/ulc/upa/final2002.](http://www.law.upenn.edu/bll/ulc/upa/final2002.htm)

[htm](http://www.law.upenn.edu/bll/ulc/upa/final2002.htm). For further information about individual state surrogacy laws, please see the information at the following link:

http://www.americanprogress.org/issues/2007/12/surrogacy_laws.html/