



We offer the following Assisted Reproductive Technology services:

- [Traditional Surrogacy Agreements](#)
- [Gestational Carrier Agreements](#)
- [Pre-Birth Orders and Post-Birth Orders](#)
- [Sperm Donor Services Agreements](#)
- [Egg Donor Services Agreements](#)
- [Embryo Donation and Adoption Agreements](#)

The options for family formation have expanded due to developments in assisted reproductive technologies. Intended Parents can achieve parenthood through egg donation, sperm donation and embryo transfers to traditional surrogates or gestational carriers. However, the laws governing surrogacy are unsettled, vary significantly from one state to the next, and may vary depending on the type of surrogacy agreement. Surrogacy is permitted in the District of Columbia provided that parties to a surrogacy agreement comply strictly with the statute. Maryland is a surrogacy “friendly” state.

Surrogacy arrangements have resulted in successful births across the world. Family formation through assisted reproductive technology is an option. If you are considering expanding your family through surrogacy or helping someone else achieve parenthood, let us guide you through the complex legal issues involved in your decision.

Surrogacy – Traditional and Gestational

Assisted Reproductive Technology services are growing in demand because they offer

individuals, including lesbian and gay individuals (LGBT), seeking to achieve parenthood additional choices to help achieve that dream. Both traditional and gestational surrogacy offer individuals a way to build a family with the possibility of having a genetic connection to their child, as well as a way to be involved in the child's pre-natal care.

Traditional Surrogacy

Traditional surrogacy is typically accomplished via intrauterine insemination (IUI) with the sperm of a known or unknown sperm donor. A physician with a fertility clinic will introduce a donor's or the intended father's sperm into the surrogate's reproductive organs with the intent of producing a pregnancy using the surrogate's egg. Therefore, the surrogate has a genetic connection to the resulting child. If you are considering entering into a traditional surrogacy arrangement, whether it is with a recruited surrogate or family member, there are many legal considerations that should be discussed and memorialized in contract. Chief among those considerations is what future role, if any, the donor will have with any resulting child's life, and memorializing in contract the parties intent in jurisdictions that accord sperm donor's parental rights. Similarly, traditional couples using the intended father's sperm should establish the paternity of the intended mother's partner to ensure that the partner's name is listed on the birth certificate, and not the surrogate's husband if the surrogate is married. The intended father's partner will need to petition the court for a post-birth declaration of parentage and complete a second-parent adoption so that he or she can be listed on the birth certificate. Finally, traditional surrogacy arrangements should detail all necessary consents and clearly identify the parental rights and obligations of each party to the arrangement. In Maryland, an Attorney General's Opinion has cast grave doubt on the validity of such arrangements. If you are considering entering into a surrogacy arrangement, call us to discuss your options.

Gestational Surrogacy

Gestational surrogacy is a complex arrangement governed by state law. Gestational surrogacy is a more recent development and is roundly considered a safe alternative to Traditional Surrogacy from a legal perspective, because the gestational carrier has no genetic relationship with any resulting child. Gestational surrogacy occurs where a woman agrees to both be implanted with fertilized embryos via In Vitro Fertilization (IVF) and to carry a child (who is genetically unrelated to her) for the Intended Parents. The Intended Parents may or may not have a genetic connection to the child. Gestational surrogates are often used when the Intended Mother has viable eggs, but cannot carry a child to term. In other instances, when the Intended Parents cannot produce the necessary egg or sperm, then donor egg, sperm or embryos created from donor gametes are used. To transfer an embryo via IVF, the surrogate will follow a protocol involving hormone injections established by a fertility clinic. Most states have yet to enact laws establishing parentage in gestational carrier cases, though in some states, including Maryland, the Intended Parents are able to obtain a pre-birth order so that their names go directly on the birth certificate. The District of Columbia enacted the Collaborative Reproduction Amendment Act, which enables intended parents to form families through

gestational surrogacy provided they strictly comply with the requirements in the statute.

Gestational Carrier Agreements for Gestational Surrogacy

Surrogacy is largely unregulated and contracts typically raise numerous weighty legal issues, including:

- Confidentiality
- Consent to medical and psychological assessment of the Gestational Carrier
- Rights and responsibilities of the parties
- The number of embryo transfers or artificial insemination attempts
- Storing, donating or disposing of frozen embryos
- Views on selective reduction, abortion and medical complications
- The amount and purpose of life insurance coverage to be obtained by the Gestational Carrier
- What fees and costs will be reimbursed by the Intended Parents
- Payments for birthing and special circumstances such as a C-section
- Increases for multiples
- Management of escrowed funds
- Circumstances in which the contract may be terminated

- The disposition of unused embryos upon termination of the agreement, divorce or death

If you have made the weighty decision to engage in a gestational carrier arrangement, we can assist you in creating a contract between the parties involved, tailored to your particular arrangement. In addition, we can coordinate your surrogacy arrangements by contacting your hospital's administration, social worker and doctors to ensure that the decision-making, delivery and transfer are smooth, contacting providers for counseling and mediation if necessary, and obtaining pre-birth or post-birth orders, birth certificates, as well as durable healthcare powers of attorney and living wills.

Pre-Birth and Post-Birth Orders

We can assist couples obtain a court order to place the Intended Parents' names on the birth certificate before the child is born. Petitions for pre-birth or post-birth orders include a request for judgment from the court declaring the Intended Parents are the child's genetic and legal parents, and an order instructing the hospital or state department of vital records to issue a birth certificate reflecting the same. Specifically, the court order should instruct the hospital to treat the Intended Parents as the child's legal parents for security, access and custody purposes. The petition should clearly describe the roles of all parties to and professionals involved in the gestational carrier arrangement, the details of the arrangement, whether the Intended Parents are married (if required by the home state), the medications prescribed to the gestational carrier, the result of any home study conducted (where required), and affidavits from the IVF physician attesting to the identity of the genetic parents and from the parents describing their infertility challenges, their relationship with the gestational carrier as well as the details and scope of consents to the arrangement. Absent a pre-birth order declaring parentage, the Intended Parents may not have decision-making rights with regard to the child in the event of an emergency. In Maryland, a pre-birth order is required for any gestational carrier arrangement, including ones involving a single male parent or a same sex couple. To obtain a pre-birth order in Maryland, the Intended Parent(s) or surrogate should live in Maryland, or the surrogate should give birth in Maryland. In the District of Columbia, an intended parent may file for a pre-birth order if a party to the signed and enforceable surrogacy agreement has resided in D.C. for at least one year prior to the filing of the petition.

Egg and Sperm Donor Services Agreements

Egg and sperm donation enables Intended Parents to experiencing infertility to engage in a surrogacy arrangement. We can assist you in obtaining egg or sperm donations through our relationships with fertility clinics, egg donor programs or other private agencies that recruit and

screen egg donors, and we will negotiate and draft your egg and sperm donation agreements on your behalf. Over forty states regulate the donation of sperm, but significantly fewer states have laws regarding egg donation and they vary greatly in scope. If you are interested in using known donor egg or sperm, it is critical that you describe in contract the rights, responsibilities and relationship of each party, parental rights or obligations and the relinquishment of such rights as related to any resulting embryos or children, the donation procedures, medical risk, confidentiality, as well as the timing and amount of any compensation.

Embryo Donations and Adoption

In many instances, individuals that have undergone IVF will have unused pre-embryos that will be cryopreserved for future use or because the Intended Parents do not wish to destroy them. These embryos may be donated to (or less frequently, adopted by) an Intended Parent. Although state laws vary, the consensus among courts is that embryos generally fall into an “interim” classification due to their potential to develop into human life. Therefore, those that maintain surplus cryopreserved embryos should address the access, control and disposition those embryos in an agreement and a Will in the event of a divorce or death, including death or divorce during IVF treatment, specifically addressing permissible uses of the embryos after a divorce or death, and if so the time period and other parameters of consent, and whether they would want any child born from those embryos after a divorce or a death to inherit.

Additional Information

- The American Surrogacy Center - <http://www.surrogacy.com>
- The Center for Surrogate Parenting - <http://www.creatingfamilies.com>
- Circle Surrogacy - <http://www.circlesurrogacy.com>
- Infertility Resources - <http://www.ihr.com/infertility/provider/donoregg.html>
- Creative Family Connections - www.surrogacymap.com