

# Guide to Assisted Reproduction Technology Law

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## Important Tips for Family Lawyers

1. As of 2002, the Center for Disease Control's National Survey of Family Growth indicated that 7.3 million, or approximately 12% of, U.S. women and their partners were experiencing infertility.
2. Infertility is a profoundly private and personal matter for the persons experiencing it.
3. Accurate terminology is important when speaking to clients about their fertility history and procedures.
4. Stored sperm and embryos have been characterized as "property" (or quasi-property) for purposes of ownership, control, transfer, and bailment.
5. When embryos are created and stored by a couple for their own use in procreating and the couple subsequently separates and disagrees over the use of the stored material, the courts are moving toward enforcing any written agreement as to control and disposition of the genetic material as signed by the parties at the time the embryos were created. The right of the party not wanting to subsequently procreate may or may not prevail over the right of the party wanting to subsequently procreate depending on the terms of the agreement.
6. Patients undergoing fertility treatments sign many consents, authorizations, and disposition agreements at the fertility clinics or other storage facilities that purport to govern their rights in the genetic material created and stored.
7. Intent is a strong influencing factor in virtually all judicial decisions involving assisted reproduction.
8. Despite the lack of statutory guidelines in many ART matters, where there is an existing statute, the courts would often strictly apply the statute.
9. There are potential estate planning and probate issues for every client who has (or may have) children through ART.

## Sample Provision in Divorce Judgment for Stored Genetic Material

The parties' [amount/description of stored genetic material] presently stored at [name/address of storage facility] is hereby ordered to be disposed of exclusively according to the terms of the storage agreement on file at said storage facility.

### Optional provisions:

Neither Husband nor Wife is hereby awarded any right or authority to take possession or control of the [describe genetic material] or to use the [describe genetic material] to initiate the gestation of a child without the subsequent express written consent of the other party prior to any such use or disposition. Any such consent is hereby ordered to include an express agreement between the parties' regarding legal parentage of any children whose gestation and birth are commenced after the conclusion of this proceeding.

If the parties cannot agree to disposition of the [describe genetic material], the party/parties opposing its destruction shall pay any and all costs associated with the continued storage of [describe genetic material].

If the required mutual consent is not obtained, the resulting children are hereby ordered, pursuant to the express agreement of the parties in this proceeding, to be the legal children of only the party who initiated the gestation without the other party's prior knowledge and consent.

## SAMPLE QUESTIONS: Fertility History and Information

1. Have you or your spouse, if any, ever been diagnosed as infertile or treated for infertility? Yes \_\_\_ No \_\_\_  
If so, please state:
  - The name and address of each and every fertility physician who has treated you; and
  - Explain in detail what diagnosis was made and what kind of treatment each such physician performed.
2. Do you or your spouse, if any, have any stored genetic material (sperm, eggs, and/or embryos)? Yes \_\_\_ No \_\_\_  
If so, for each type of genetic material stored, please state:
  - What type of genetic material is stored;
  - Whose genetic material it is; and
  - The name and address of the storage facility at which it is currently stored.
  - Provide copies of any agreement with the storage facility.
3. Have you or your spouse, if any, had any children born to you as the result of any fertility treatments? Yes \_\_\_ No \_\_\_  
If so, are the children who were born genetically related to both you and your spouse, if any? Yes \_\_\_ No \_\_\_  
If not, please:
  - Identify each such child by name and date of birth;
  - Identify by name and address, if possible, the third party contributor (whether contributor of sperm, egg, or other genetic material);
  - Identify the type of genetic material he or she contributed;
  - State whether he or she contributed the genetic material as a donor for your and your spouse's, if any, exclusive use as the child's sole intended legal parents or as an intended parent to create his or her own child;
  - State the name(s) of the fertility clinic, agency, and/or other facility through or from which you obtained the third party genetic material; and
  - Whether you executed any documents in connection with the contribution. (If any such documents exist, please obtain and provide them for copying and inclusion in your file.)
4. Have you completed any legal proceedings to establish your parentage of the children who resulted from your fertility treatments? Yes \_\_\_ No \_\_\_  
If so, please:
  - State the name and address of any and all attorneys who represented you in any such proceedings.
  - Provide copies of any and all pleadings and/or court orders issued in connection with any such proceedings.
5. What is your intended use or other disposition of all stored genetic material at this time?



# Assisted Reproduction Technology Definitions

**ABA Model Act Governing Assisted Reproductive Technology.** A model act proposed by the American Bar Association Family Law Section Reproductive and Genetic Technology Committee which was approved by the ABA House of Delegates in 2008 and which sets out proposals for determining parentage and other issues arising in the context of assisted reproductive technology.

**Anonymous Donor.** A person who provides sperm or eggs for use by others to a provider of assisted reproductive services whose identity is not revealed to the recipients of the gametes.

**Artificial Insemination (abbrev. AI).** Insertion of sperm into female reproductive organs by any means other than sexual intercourse with the intent to cause a pregnancy. More properly called *Intrauterine Insemination (abbrev. IUI)*.

**Assisted Reproduction.** Any method by which a person or couple seek to conceive a child by means other than sexual intercourse.

**Assisted Reproductive Technology (abbrev. ART).** Any technology that is employed to conceive a child by means other than sexual intercourse.

**Blastocyst.** An early-stage (five day) embryo. Sometimes referred to as *Pre-embryo* or *Zygote*.

**Blended Intrauterine Insemination.** Insertion of sperm taken from a husband or male companion of a female who is an intended mother and is blended with additional sperm provided by a donor, or insertion of blended sperm of homosexual partners, into the recipient woman's reproductive organs by any means other than sexual intercourse with the purpose of causing a pregnancy. Sometimes also called *Combined Intrauterine Insemination* or *Combined Artificial Insemination*.

**Collaborative Reproduction.** An attempt to produce a pregnancy by or for intended parents which involves the participation of another person or other persons who are not intended parents.

**Cryopreservation.** A process by which gametes or embryos are treated and then frozen for potential future use.

**Donor.** A person who provides sperm or eggs for use by others in an attempt to conceive a child through assisted reproduction, whether known or not and whether for compensation or not (unless intended for use by a spouse or partner). Also referred to as *Gamete Donor*, *Egg (or Ovum) Donor*, or *Sperm Donor*.

**Egg.** Female reproductive cell prior to fertilization by sperm. Also called *Ovum* or *Oocyte*.

**Egg Donor.** See *Donor*.

**Embryo.** A cell containing a diploid complement of chromosomes or a group of such cells with the potential of becoming a live human being, i.e., an egg that has been fertilized and has thereafter developed for one to three days in a female uterus or that has been placed in cryopreservation for future transplant into a uterus. When in early stages of development or placed in cryopreservation, sometimes referred to as a *Pre-embryo*, *Zygote*, or *Blastocyst*.

**Embryo Adoption.** An arrangement by which embryo donors agree with embryo recipients that the latter will try to become pregnant and give birth using the donated embryo. Although called adoption, this is not a legal adoption, but after birth the recipients may petition to adopt the child.

**Embryo Agreement.** A written agreement governing the creation, use, and disposition of embryos created by the parties.

**Embryo Donation.** The act by a couple who have fertilized eggs in cryopreservation of providing them to others who can have them implanted and hopefully give birth to a child, whether for compensation or not.

**Embryo Transfer.** Fertilization of an egg by sperm in vitro or in the body of a female donor, followed by transfer of the embryo to the womb of the intended mother or a gestational carrier.

**Female Sterility.** Female inability to conceive a child.

**Fertility Helper.** Generic term used to refer to any third-party gamete donor and/or surrogate who assists intended parent(s) in having children through collaborative reproduction.

**Gamete.** A cell containing a haploid complement of DNA which, when combined with another gamete, can become an embryo. Commonly called an *Egg* or *Ovum* (female gamete) or *Sperm* (male gamete).

**Gamete Donor.** See *Donor*.

**Gamete Intrafallopian Transfer.** An attempt to fertilize eggs by placing them with sperm in the fallopian tubes of the recipient woman instead of attempting fertilization in vitro. Abbreviated as *GIFT*.

**Gamete Uterine Transfer.** Attempting to produce a pregnancy by placing sperm and egg into the uterus of the female recipient. Abbreviated as *GUT*.

**Gestational Carrier.** A woman who is not genetically related as parent to or the intended legal parent of the child to whom she gives birth for the benefit of the intended parent(s). Also called a *Gestational Surrogate*.

**Gestational Carrier (or Gestational Surrogacy) Agreement.** An agreement by which an embryo is placed in the reproductive organs of a potential gestational carrier who has no genetic connection with the embryo and who agrees to carry any resulting child to term on behalf of the intended parent(s) and to surrender custody of and parental rights to the child after birth.

**Infertility.** The inability or diminished capacity to produce a pregnancy or to carry a pregnancy to term. For purposes of determining eligibility for assisted reproductive services or insurance coverage, infertility is variously defined by statute in some jurisdictions. Generally defined as having unprotected sex for one year or more without a resulting pregnancy.

**Intended Parent.** The person(s) who initiate the assisted reproduction process and who intend at the outset of the process to be the legal parents of any children so conceived.

**Intracytoplasmic Sperm Injection (abbrev. ICSI).** The injection of a single sperm into a single egg in vitro.

**In Vitro Fertilization (abbrev. IVF).** Fertilization of an egg by sperm outside of the womb in a petri dish in order to produce an embryo that can be placed either in the potential gestational carrier's reproductive organs or in cryopreservation for future use.

**Oocyte.** See *Egg*.

**Ovum.** See *Egg*.

**Posthumous Reproduction.** Use of cryopreserved gametes or embryos of a deceased person to produce a pregnancy.

**Pre-embryo.** The early stages of the development of an embryo; the first three days following the fertilization of the egg. Sometimes called a *Zygote*. In many court decisions and legal literature, often included under the more comprehensive term *Embryo*.

**Pregnancy.** Development of an embryo or fetus in the female body after fertilization/implantation.

**Preimplantation Genetic Diagnosis (abbrev. PGD).** Biopsy on a cell taken from an embryo to determine its genetic characteristics and condition prior to implantation.

**Reproductive Cloning.** Transferring the product of somatic cell nuclear transfer in an attempt to initiate a pregnancy. See *Somatic Cell Nuclear Transfer*.

**Semen.** A viscous whitish secretion of the male reproductive organs containing sperm.

**Sperm.** Male reproductive cell contained in his semen that fertilizes the female egg. Sometimes called *Spermatozoa*.

**Spermatozoa.** See *Sperm*.

**Sperm Donor.** See *Donor*.

**Somatic Cell Nuclear Transfer (SCNT).** The process by which a nucleus extracted from a somatic cell and is transferred and fused with an enucleated oocyte. The fused entity is stimulated to divide in order to create an embryo.

**Sterility.** Inability to engage in human reproduction.

**Superovulation.** The process of inducing the production of multiple eggs for harvesting through use of fertility drugs in order to increase the potential for production of a pregnancy.

**Surrogate.** A woman who agrees to carry to term and deliver a child for another person or couple, whether she is a genetic mother of the child or not, and whether she does so for compensation or not. Sometimes referred to as a *Gestational Carrier*, *Gestational Surrogate* or *Traditional Surrogate*.

**Traditional Surrogate.** A woman who conceives a child which is genetically her own by intrauterine insemination using the sperm of a man other than her husband or partner in order to make the sperm provider a father and who agrees to carry the child to term in her own womb, whether for compensation or not. Sometimes called *Surrogate Mother*.

**Uniform Parentage Act (2000) (abbrev. UPA).** A uniform act proposed by the Commissioners on Uniform State Laws which, in Sections 7 and 8 as revised in 2002, sets out proposals for determining parentage issues arising in the context of assisted reproductive technology.

**Uniform Status of Children of Assisted Conception Act (abbrev. USCACA).** A uniform act proposed by the Commissioners on Uniform State Laws in 1988 to deal with legal issues arising from assisted reproductive technology. Approval of the Commissioners was withdrawn in 2000.

**Zygote.** A fertilized egg prior to implantation. Often referred to as a *Pre-embryo* or *Embryo* in court decisions or legal literature.