

It's a New World...

How does Texas law affect families who use assisted reproduction?

Families look different than they used to. Some families have two parents. Some have one. Some families have a mother and a father. Some have two mothers or two fathers. Medicine has advanced to the point where a surrogate mother can actually give birth to another woman's child. Sperm donation makes it possible for a mother to have a child by herself.

As medicine and our culture have changed, laws have changed too. The *Uniform Parentage Act, Chapter 160 of the Texas Family Code*, tries to address these changes.

Assisted Reproduction

Science makes it possible for some people to become parents who once wouldn't have been able to. Assisted reproductive technology has answered many prayers, but does complicate the legal side of parentage. *Chapter 160, Subchapter H of the Texas Family Code* answers the legal questions that arise when children are born from assisted reproduction.

Assisted Reproduction is a method of causing pregnancy other than sexual intercourse. It includes:

- intrauterine insemination,
- egg donation,
- embryo donation,
- in vitro fertilization/transfer embryos, and
- intra cytoplasmic sperm injection.

Is a sperm donor or an egg donor a child's legal parent?

No. When a child is conceived by assisted reproduction, a donor is not the child's legal parent.

If I become a sperm donor, will I ever be legally responsible for any of the children that might be created from my sperm?

No. Neither a sperm nor an egg donor has any legal duty to support a child who is created from donated sperm or egg. Similarly, sperm and egg donors do not have any parental rights to children who are created from their sperm or eggs.

Who exactly is a donor?

A donor is some one who gives eggs or sperm for assisted reproduction. But a husband who provides his own sperm or a wife who provides her own eggs are *not* donors.

Who is a child's legal father if an unmarried woman undergoes assisted reproduction using sperm donation?

The child won't have a legally recognized father because the sperm donor cannot be the legal father.

Who are the child's legal parents when a married couple uses assisted reproduction?

The woman who gives birth to the child is the child's mother. If a husband provides sperm or agrees to his wife using assisted reproduction, he is the child's legal father.

Does the husband have to sign anything to show he agrees to assisted reproduction?

Yes. If a married woman undergoes assisted reproduction, she and her husband have to sign a consent form. The Court can make a finding that the husband is the father even if the consent form wasn't signed, as long as the child was born to the wife and the husband and wife openly treated the child as their own.

I want to be an egg donor. Does my husband have to agree?

No. A married woman can be an egg donor without her husband's consent.

My wife had a child using my sperm in assisted reproduction, without my consent. Is there anything I can do?

Yes. You have four years from the time you found out the child was born to file a court proceeding, challenging paternity.

You can challenge your paternity at any time if the court finds that:

- you didn't provide sperm, or didn't agree to assisted reproduction; and
- you didn't live with your wife after the time of the assisted reproduction; and
- you never openly treated the child as your own.

What happens if my ex-wife undergoes assisted reproduction with embryos created from my sperm after we divorce?

When a marriage ends before eggs, sperm, or embryos are placed, the ex-spouse is not the child's legal parent, unless you consented in writing to be a parent if assisted reproduction occurred after a divorce.

My husband died before we completed assisted reproduction. If I complete the process using his sperm, will he be considered my child's father?

If the eggs, sperm, or embryos weren't placed before your husband died, he will not be the child's legal father. Unless, he gave written consent that said he would be the child's father if assisted reproduction took place after his death. Of course, he would be your child's genetic father.

Gestational Agreements

Adoption was once the only choice for couples who weren't able to have children. But now, it's possible for a woman (a ***gestational mother***) to carry and give birth to a child for some one else (the ***intended parents***). The legal agreement between the couple and the woman is called a ***gestational agreement***. Children who are born of gestational agreements have to have their paternity and maternity defined. In Texas, these relationships are clarified in the Family Code, Chapter 160, Subchapter I.

A gestational agreement will be considered valid in Texas when a prospective gestational mother, her husband (if she's married), each donor, and each intended parent voluntarily sign a written agreement that states:

1. The gestational mother agrees to get pregnant with assisted reproduction.

2. The gestational mother and her husband (if she's married), and each donor (other than the intended parents) give up all parental rights and duties to each child conceived through assisted reproduction.
3. The intended parents will be the child's parents.
4. The gestational mother and intended parents agree to exchange medical information.

For Texas courts to validate a gestational agreement, the intended parents must be married to each other. Both must sign the agreement. The parties have to sign the agreement at least 14 days before eggs, sperm or embryos transfer to the gestational mother.

The agreement must include language about the doctor's responsibilities, and the parties' financial responsibilities for health care.

The gestational mother's eggs can't be used.

The agreement can't try to limit the gestational mother's right to make healthcare decisions for herself or the embryo. And the court must approve the agreement before the gestational mother becomes pregnant.

What's the legal term for a woman who gives birth to a child in a gestational agreement?

In Texas, we call her the "gestational mother." Some states refer to her as a surrogate.

What's the legal term for the couple who want to parent the baby?

They are called "intended parents."

Does a gestational mother have a legal relationship to the child she bears?

No. In a valid gestational agreement, the gestational mother gives up all parental rights to the child. Additionally, the agreement will state that the intended parents become the child's legal parents.

Can anyone become a gestational mother?

No. A woman has to have had at least one pregnancy and delivery and be in good physical and mental health to be a gestational mother.

Who can be intended parents?

In Texas, intended parents have to present medical evidence that the intended mother can't carry a pregnancy to term, or can't undergo a pregnancy without unreasonable risk to her physical or mental health or to the health of the unborn child.

Additionally, the intended parents may have to complete a home study, showing they qualify to be adoptive parents, unless the court. says otherwise.

Does the court have to be involved in a gestational agreement?

Yes. A court must validate a gestational agreement before the gestational mother becomes pregnant.

After a child is born, the court must confirm the parent-child relationship between the intended parents and the child.

Who is included in the petition to the court?

You should include the intended parents, the gestational mother and her husband (if she's married), and any donors used in the assisted reproduction.

Where do we file the petition?

File it in the county where either the gestational mother or the intended parents have lived for the preceding 90 days.

Will the court record be confidential?

Yes. The proceedings, records, and party identities in a gestational agreement petition are given the same standard of confidentiality as in adoption cases.

I entered into an agreement to become a gestational mother, but I've changed my mind. Is there anything I can do?

Yes. Before you become pregnant, any party to the agreement may end the validated agreement by giving each party written notice. You also have to file your notice to end the agreement with the court. After receiving a notice to end the agreement, the court will vacate its order, and the agreement will no longer be valid.

What about ending the agreement after the gestational mother gets pregnant?

The Texas Family Code doesn't specifically address ending the agreement after the gestational mother becomes pregnant. It does state that a gestational mother's right to make her own healthcare decisions can't be limited. If she wishes to terminate the pregnancy, she may be able to do so. But if a child is born, and the agreement was properly validated, the intended parents are the child's legal parents.

Once the court validates the agreement, do we have to do anything else?

After the child is born, the intended parents need to file a birth notice with the court. After receiving the birth notice, the court will confirm the intended parents the child's legal parents. The order can require the gestational mother to surrender the child to the intended parents, and can order the Bureau of Vital Statistics to issue a birth certificate naming the intended parents as the child's parents.

What if the intended parents won't file the birth notice?

The gestational mother or a state agency, like Child Protective Services, may file the birth notice. If this happens, the court will order that the intended parents are the child's parents and they are financially responsible for the child.

What if a gestational mother marries after a court validates the gestational agreement?

The gestational agreement is still valid. The new husband's consent isn't required. He isn't presumed to be the father when the child is born.

We had a gestational agreement, but didn't get the court to validate it. What does this mean?

A gestational agreement that isn't validated by the court isn't enforceable. In an invalid gestational agreement, the gestational mother is the legal mother. If married, the law presumes her husband is the legal father. Even though they have no parental rights, intended parents of an invalid gestational agreement may be required to financially support the child.

In an invalidated gestational agreement, if the gestational mother decides to keep the child, the intended parents have no legal rights to the child. If the parties agree the intended parents should be the legal parents, they will have to adopt to become legal parents.

Legal Assistance

Texas Paternity law has tried to change with our changing culture. But the consistent theme remains doing what's best for the child. Paternity and assistive reproduction law tries to insure that a child has parents to provide financial and emotional support. If you have difficulty navigating these laws by yourself, find an attorney who can help you. Your parental rights are at stake.