

Assisted Reproduction and Gestational Agreements

Families look different than they used to. Some families have two parents; some have one. Some have a mother and a father. Some have two mothers or two fathers. And now with modern medicine, a woman can use donated sperm and egg(s) to have a child by herself.

As medicine and culture have changed, family law in Texas has changed to address the new legal questions that come up. But, the basic role of the law has remained the same: to protect and promote what is best for the child.

This information sheet provides answers to the most common questions about assisted reproduction and gestational agreements.

What is assisted reproduction?

Assisted reproduction is when a woman becomes pregnant without sexual intercourse. The different methods include:

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

If a woman uses assisted reproduction to have a baby, who are the legal parents?

The woman who gives birth to the child is always the mother. This is true even if another woman donated the egg(s).

If the woman **is not** married, the child does not have a legal father.

If the woman **is married**, and she receives sperm from another man or an egg from another woman, the husband is the legal father only if he agrees.

Does the husband have to agree in writing?

Yes. When a married woman goes to a doctor for assisted reproduction, both she and her husband must sign a legal paper, called a consent form. When the husband signs a consent form, he is agreeing to be the legal father.

Is a sperm or egg donor ever the legal parent?

No. An egg or sperm donor is never the legal parent. This means the donor is not responsible for the child and has no parental rights to the child.

What if the husband is the sperm donor?

A husband who provides his own sperm is not a “donor.” A donor is someone who is not the husband who gives sperm to help a woman become pregnant. An egg donor is a woman who is not the wife who gives eggs to help a woman become pregnant.

What if the wife uses donor sperm to get pregnant without her husband’s agreement?

The husband can tell a court that he does not want to be the legal father. In most cases, the husband must ask the court within 4 years of knowing that the child is not his. But the 4-year limit does **not** apply if the husband can prove that:

- He did not provide the sperm, and he did not agree to the sperm donation, and
- He did not live with his wife after the sperm donation, and
- He never openly treated the child as his own.

What if an ex-wife gets pregnant with the husband’s sperm after a divorce?

If the marriage ended before the pregnancy started, the husband is not the child’s legal parent, unless he agreed in writing to be the father even if they divorced.

What if a husband dies, and after his death the wife gets pregnant using his sperm?

The child would be the husband’s genetic child. But he would not be the legal father unless the husband gave written consent before he died.

Can a wife be an egg donor if her husband does not agree?

Yes.

Where can I get more information?

You can read the Texas law that talks about assisted reproduction (Texas Family Code, Chapter 160, Subchapters D–G). Or talk to a lawyer with experience in family law.

Gestational Agreements

Sometimes a couple asks another woman to have a baby for them. In Texas, the woman is called the *gestational mother*. (In other states, she is called the surrogate mother.) The couple – called the *intended parents* – must be married. The woman and the couple make a written agreement, called a *gestational agreement*.

Can any woman be a gestational mother?

No. A woman must have been pregnant and delivered a healthy baby at least once. She must also be in good physical and mental health.

Who can be intended parents?

In Texas, intended parents must show medical proof that the wife cannot physically have a baby of her own. Also, the intended parents may have to meet the qualifications of adoptive parents, including a home study.

What does a gestational agreement say?

The agreement explains the legal relationship that each person has with the child. It **must** say who will pay for health care for the mother and baby during the pregnancy. It must also say:

- The woman agrees to get pregnant with assisted reproduction using eggs from the intended mother or an egg donor. The gestational mother's womb will carry the fertilized embryo, but her eggs **cannot** be used to create the embryo.
- The gestational mother gives up all parental rights to the child. If she is married, both she and her husband give up all parental rights and will have no parental duties.
- If other donors are involved, they also give up parental rights and will have no parental duties.
- The intended parents and the gestational mother must sign a gestational agreement at least 14 days before eggs, sperm, or embryos are transferred to the gestational mother.
- The gestational mother and intended parents agree that the gestational mother has the right to make all healthcare decisions for herself and the embryo and that they will exchange medical information.
- After the child is born, the intended parents will become the child's legal parents.

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

Yes. You must ask the Court to approve the agreement *before* the gestational mother becomes pregnant. To do this, ask a lawyer to help you file a Petition at Court. It must be filed in the county where

the gestational mother **or** the intended parents have lived for the last 90 days. The Petition must identify:
the intended parents,
the gestational mother and her husband (if she is married), and
any donors used in the assisted reproduction.

After the child is born, the intended parents **must** file a birth notice with the court. The court will make these orders:

The intended parents are the child's legal parents.

The gestational mother may be ordered to give the child to the intended parents.

The court can order the Bureau of Vital Statistics to issue a new birth certificate naming the intended parents as the child's parents.

What happens if the court does not approve our gestational agreement?

Your gestational agreement will not be valid. When the child is born, the gestational mother is the legal mother. If she is married, her husband is the legal father. If the gestational mother decides to keep the child, the intended parents have no legal rights to the child. If they want to become the legal parents, they would have to adopt the child.

Will the court information be confidential?

Yes. The proceedings, records, and people included in a gestational agreement are kept confidential, just like adoption cases.

Can the gestational mother change her mind?

A gestational mother can end the agreement *before* she becomes pregnant. To do this, she must file papers at court and give legal notice to the intended parents. The Court will make an order, and the agreement will no longer be valid.

Can the gestational mother change her mind after she is pregnant?

Texas law does not give a clear answer to this question. But it does say that a gestational mother can make her own healthcare decisions. This means she may be able to end the pregnancy. But if a child is born, and there is a valid agreement, the intended parents **are** the child's legal parents.

Where can I get more information?

You can read the Texas law that talks about gestational agreements (Texas Family Code, Chapter 160, Subchapters D–G). Or talk to a lawyer with experience in family law.