

## **Surrogacy Contracts are an ART Form: Issues in Assisted Reproductive Technology Agreements**

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Modern science and medicine are opening paths to parenthood for all types of couples. Assisted Reproductive Technology (“ART”) – such as surrogacy, artificial insemination, and invitro fertilization, among many others – makes it possible for many couples to have genetically-related children when they would not been able to ten or twenty years ago. From heterosexual couples with fertility issues to same-sex couples of either gender, more families than ever are taking advantage of these options.

### **ART Agreements in General**

The legal system plays a small but important role in solidifying these family relationships. ART law is the growing body of law addressing parentage and agreements surrounding reproductivetechnology. In Kentucky, there is little in the way of updated legislation to accommodate these changing relationships, so the courts are left to plot this new map of parental relationships. Kentucky’s family courts have done an admirable job of trying to adapt to serve new types of families. Unfortunately, they still must work with limited precedents, so careful consideration of agreements between donors, surrogates, and intended parents is an essential part of any surrogacy plan. Without updated legislation, anything is up for dispute – even the definition of “mother.” For example, if two women, A and B, decide to become parents together, and A donates her eggs, which are fertilized and implanted in B, who is the “natural” mother? Kentucky statutes provide no clear answer. In the absence of updated legislation, a good agreement is the key to success.

### **Gestational Surrogacy Agreement**

A gestational surrogacy agreement or gestational carrier contract is an agreement between intended parents and a gestational carrier, a person who agrees to have a fertilized embryo implanted in her uterus. These agreements should also cover common family law issues that may occur, such as what happens in the event the intended parents divorce or one of the intended parents dies. The carrier should fully understand the waiver of parental rights, as well as any rights the intended parents have with regard to the fetus and pregnancy. All parties must understand what constitutes breach of the agreement, as well as the consequences. And all of this is true regardless of the genders of the intended parents.

### **Sperm Donor Agreement**

These agreements generally involve fewer legal issues, but that doesn't mean they aren't as important or require less thought and thoroughness. Donors may be known to the intended parents, or they may be anonymous. When using a known donor, the most discussed issue in these agreements is whether the donor will be identified to the child or children, and if so, how and when that would take place. Donors must know how the agreement will affect or waive any rights or responsibilities, as well as what legal proceedings may occur once the child is born. As the Kentucky Supreme Court noted more than thirty years ago in *Surrogate Parenting Associates, Inc. v. Com. ex rel. Armstrong*, "The courts should not shrink from the benefits to be derived from science in solving these problems simply because they may lead to legal complications. The legal complications are not insolvable." This still rings true today. While there are still myriad legal issues affecting surrogacy, there are also ways to mitigate problems through careful planning.