

LGBT Family Building Through Surrogacy, ART, or Adoption



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LGBTQ FAMILY BUILDING

SURROGACY, ASSISTED REPRODUCTION, ADOPTION

Presented by: Attorney Vicki Ferrara

About the Presenter

- Hello, my name is Vicki Ferrara. I am an Attorney admitted to practice in the States of New York and Connecticut. I went to St. John's University School of Law and graduated in 1984 (yikes, I have been a lawyer for 30 years!).
- I am the founding partner of Ferrara Hayden PC in Fairfield, Connecticut. I also own and operate a surrogacy matching agency, Worldwide Surrogacy Specialists, LLC

Personally ...

I am gay, I have a spouse named Michelle
and we have two sons, Sal and Nick.
Here we are on Block Island.



Assisted Reproduction

1. Using a sperm donor
2. Using an egg donor
3. IVF (in vitro fertilization)
4. Using a surrogate
 1. Traditional surrogacy
 2. Gestational surrogacy

USING A SPERM DONOR

- **Intracervical Insemination (ICI)**, also known as vaginal insemination, is the placement of sperm in a woman's vagina, close to her cervix.
- **Intrauterine Insemination (IUI)** is a procedure in which sperm is placed directly in a woman's uterus.
- **In-Vitro Fertilization (IVF)** is the insemination of a woman's egg with sperm in a laboratory dish (the term "in-vitro" means outside the body). Fertilization occurs when the sperm has entered the egg. IVF is a major fertility treatment performed in fertility centers and is typically used when other, less expensive and less invasive methods have failed.

LEGAL ISSUES IN SPERM DONOR CASES

- If a known donor, must have sperm donation contract; SHOULD DO MEDICAL PROCEDURE IN A REPRODUCTIVE CLINIC to avoid legal risk
- If a known donor and do “turkey baster” insemination, high legal risk even with contract
- Should always do termination of parental rights after the baby is born (for known donors)

Anonymous Sperm Donor

Pros and cons:

No legal risk.

No potential intrusions into family life

No need for legal proceedings to terminate rights

But, no known father.



Egg Donation

- Some similarities to Sperm Donation:
 - Can be known donor or anonymous donor
 - Need egg donation contract
 - Can choose egg donors from agencies or medical clinics
- Some differences:
 - Must always be done in medical clinic (egg retrieval; making embryos)
 - More intrusive for egg donor
 - More expensive

Legal Issues in Egg Donation

Must have an egg donation contract.

If lesbian couple chooses to use eggs of one mom, while the other mom gives birth, **MUST** have separate agreement between them stating their intentions to be co-parents.

MUST NOT SIGN THE USUAL FORMS IN THE MEDICAL CLINIC



SURROGACY

- Traditional surrogacy: The surrogate mother becomes pregnant using her own egg. She is therefore the legal and genetic mother of the baby (HIGH LEGAL RISK)
- Gestational surrogacy: Embryos made from sperm of intended father(s) and eggs from egg donor. These embryos are transferred to the uterus of the gestational surrogate

Legal Requirements for Surrogacy

- Must have gestational surrogacy contract
- Surrogate must reside and give birth in surrogacy-friendly State (for example, CT, RI, MA, MD, IL, OH, CO, ID, TX, CA, NC, UT, FL and others) (for example, NOT in NY, NJ, LO, AZ and others)
- Must get court order of legal parentage that will name intended parents as legal parents and remove surrogate's name from birth certificate

Intended fathers create embryos
from the sperm of both fathers



Additional Legal Issues

- May need paternity tests
- May need second parent adoption
- If not married, should consider co-parenting agreement
- If married, still need second parent adoption.
 - Why?

Post-Windsor Legal Landscape

- The U.S. Supreme Court struck down a key DOMA provision last year resulting in the federal government recognizing same sex marriages from the states where same-sex marriage is possible (now 16 states)
- Must still pay attention to non-recognition states and the impact the laws of these states may have on our families and our status as legal parents

Birth Certificates

- In baby born to married lesbian couple in recognition state, the non-birth parent can go on B/C at time of birth.
- BUT, since parentage recognized by virtue of marriage, **MUST** still do second-parent adoption.
- The same is possible with gay male couples depending on state law where legal parentage was created.

ADOPTION

- DOMESTIC ADOPTION (find agency or agencies you are comfortable working with and apply)
- INTERNATIONAL ADOPTION (possible, but can be difficult and frustrating)
- Foster Care and Adoption (legal risk, can be rewarding and amazing, could also be heartbreaking)

International Adoption

- In considering, exploring international adoption, should avoid entering into a same-sex marriage
- Must have home study done by gay-friendly social worker

Possible Legal Issues

1. Need to do second parent adoption because only one parent at a time may adopt.
2. Need to make sure birth parents' rights are legally and properly terminated



Family Building

- To be successful:
 1. Must be diligent and have faith
 2. Must gather information
 3. Make a plan and stick to it, being able to adjust the plan as necessary with advice and support
 4. Choose a professional team you can trust and that will be your guide for legal, medical, emotional support

I would be happy to ...

- Answer questions
- Be a resource for you
- Refer you to knowledgeable professionals
- Thank you,
Vicki Ferrara



Questions?

Please enter your questions for Victoria Ferrara
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