

Surrogate Parenting Provides Alternative to Adoption

Q: What is surrogate parenting?

A: Surrogate parenting generally refers to a situation in which a woman agrees to carry a child for another person or couple. The surrogate parent is not considered to be the child's mother. Rather, the other person (or couple) is intended to be the legal parent of the child born to the surrogate parent.

Q: What's the difference between surrogate parenting and adoption?

A: In a typical domestic adoption arrangement, the birth mother usually has an unexpected pregnancy and usually selects an unrelated family to adopt her child. In a surrogacy arrangement, all the details of the arrangement are planned in advance of the pregnancy, and the child usually has a biological relationship to the intended family. The financial and legal issues are also very different. In an adoption, a fee to the birth mother is illegal in Ohio. In a gestational or IVF (in-vitro fertilization) surrogacy arrangement, a fee to the surrogate is legal and customary.

Q: Are there different types of surrogate parenting arrangements?

A: Yes. There are two types of surrogate parenting arrangements. One is gestational or IVF, in which the surrogate does not use her own egg. Rather, the embryo is created with the egg of the intended parents or an egg donor. The second type is referred to as a "traditional" arrangement, or "AI" (artificial insemination), in which case the surrogate's egg is used.

Q: When might someone want the assistance of a surrogate mother?

A: Sometimes a woman is physically unable to carry a child, or the life of the intended mother might be jeopardized if she were to carry a child. Or, a same-sex male couple or a single man may wish to use a surrogate mother.

Q: Can I have a child that is genetically related to me with the help of a surrogate mother?

A: Yes. Through in vitro fertilization, doctors can extract the intended mother's egg and fertilize it with her husband's sperm. (An egg or sperm donor can also be used.) The resulting embryo is implanted into the surrogate mother.

Q: Are any surrogate parenting contracts legal in Ohio?

A: The Supreme Court of Ohio has determined that surrogate parenting contracts in which the child is not biologically related to the surrogate mother do not violate public policy, since Ohio currently has no state public policy against surrogate contracts. This means that, currently, surrogate contracts are not invalid and, therefore, they can be enforced. Ohio is the only state whose Supreme Court has determined IVF surrogate parenting contracts can be enforced. The

Court has not addressed artificial insemination or traditional surrogacy where the surrogate's egg is used.

Q: What happens if the surrogate wants to keep the baby after birth?

A: In Ohio, the surrogate would have to pay all the money she received plus the costs to the intended parents and damages for breach of the contract if she is not biologically related to the child.

The Supreme Court has not addressed custody issues. If, for example, the intended parents show themselves to be mentally unstable and unable to care for a particular child, then they, like any other natural parent, are subject to health and human services interventions.

Q: Must the family and the surrogate go through any testing before entering into a contract?

A: No, although it is wise for all parties to meet with a counselor to help ensure that they understand the arrangements and that all parties are mentally and emotionally stable. It is also wise for all parties to undergo physical health screenings.

Q: How much does a surrogate usually get paid?

A: Surrogate fees vary depending upon the circumstances. Fees generally range from \$7,000 to \$25,000.

Q: What should I consider when working with an attorney or an agency to set up a surrogate parenting arrangement?

A: Surrogate parenting arrangements are very complicated and many issues arise. It is wise to consult with competent counsel who has experience with such arrangements before entering into any contract. You should also ask if the person or agency of your choice is subject to a licensing body (as attorneys, psychologists, social workers and nurses are). While there are surrogate parenting agencies, there are no governing bodies to oversee these agencies.

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This "Law You Can Use" column was provided by the Ohio State Bar Association. It was prepared by Cleveland attorney Mary Catherine Barrett.

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