

Ross & Zuckerman LLP

By: Heather E. Ross, Esq.

Your search for an egg donor is complete. You have located a donor who has agreed to help you in your family building efforts. Now what? One of your first steps should be to enter into a written agreement with your donor setting forth the expectations and intentions of both you and the donor before, during, and after the egg retrieval attempt. Addressing these issues up front will hopefully avoid conflict or surprise later on in the process.

An attorney may be recommended to you either through your fertility clinic or egg donation agency, or, you can choose an attorney on your own. It is a good idea to work with an attorney who has experience in this area. Because states have different laws governing egg donation, and parties may reside in different states, make sure your attorney is knowledgeable about which state law should apply, the law in that state, and the law in your own state, including what you may need to do to legally establish parenthood.

The agreement should confirm that the intended parents and egg donor have met with a physician and mental professional and are informed of and knowingly accept the medical and mental health risks related to egg donation. Most fertility clinics will require you to pay for the placement of an insurance policy on behalf of the donor in the event she suffers a medical complication directly related to the egg donation. The cost of this policy is between \$200.00 and \$400.00, and should be referenced in the egg donation agreement. The agreement should also state that it is the intent of the parties that the intended parent(s) shall be the legal parents of the child conceived (“Child”) immediately at the time of conception and that the donor has no legal or other rights or obligations to the Child even though she is genetically related to the Child. The donor should specifically waive and relinquish any right she may have to the Child and this waiver should be irrevocable once the egg and sperm are combined. The intended parent(s) and donor should agree that parentage cannot be contested despite any change in circumstance to either party. The agreement should also provide that the intended parent(s) and donor agree to cooperate should any future legal action be required to establish intended parent(s) legal parentage to the Child. The donor’s relinquishment of rights, and intended parent(s) corresponding obligations should also extend to any excess/cryopreserved embryos.

The parties should also set forth their expectations with respect to confidentiality and potential future contact for medical necessity or curiosity of the Child regarding non-medical issues. You should ask your attorney to include a provision setting forth how the parties can contact each other in the future if necessary for a medical reason. If the arrangement is anonymous, the parties should designate a third party to retain both parties identities and act as an intermediary for the future exchange of information.

Depending on your arrangement, the agreement may also include provisions addressing compensation or reimbursement for the Donor. If the donor is being compensated, it should be clear in the Agreement that compensation is for the donor's time and inconvenience, and is not payment for her eggs. The agreement may also include a section on the disposition of excess/cryopreserved embryos. Anonymous egg donation agreements often include language addressing how the parties can attempt to prevent inadvertent consanguinity of their offspring, i.e., by exchanging birthdates.

After you have reviewed your egg donation agreement with your attorney and are comfortable with and understand the terms of the agreement, the agreement should be forwarded to the donor's attorney to review with her. Although separate legal counsel for the egg donor may not be required by the fertility clinic or agency, many attorneys will not represent both parties. Hiring a separate attorney for the donor provides her with her own advocate and eliminates any concern that the donor did not have the opportunity to receive independent advice and representation concerning the egg donation arrangement. It is in the best interests of everyone involved in this process that the egg donation agreement is fully explained to the donor by an independent attorney prior to signing.

Once the egg donation agreement is reviewed by each party with an attorney, and any changes have been negotiated and agreed to, your attorney should prepare a final egg donation agreement for each party to sign. If it is an anonymous arrangement there will typically be two sets of signature pages. One page will provide for the parties' anonymous signature (i.e., "Intended Mother X" and/or "Donor Z") and another page will provide for the parties' actual signatures. The parties should only exchange anonymous signature pages and should retain their actual signature pages for their own records (and submit their actual signature to their attorney and the agency or fertility clinic). Most fertility clinics will require that your attorney send notice that the egg donation agreement has been signed by both parties.

It is a good idea to keep your egg donation agreement in a safe place (consider a safety deposit box at your bank). You may also want to give a copy of it to a trusted friend or family member with detailed instructions concerning how and when you wish to disclose the arrangement to the Child or contact the donor in the future should something happen to you. Finally, you should consider consulting an estate and trust attorney to discuss the best way to protect your intentions in a will or estate planning document.