

Embryo Donation

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Tennessee does have a statute addressing parentage of children born as a result of embryo donation.

36-2-401. Single means of establishing parentage -- Legislative intent.

This chapter provides a single means to establish parentage of children born of donated **embryo** transfer to recipient intended parent. It is intended to promote the interests of children who may be born as a result of donated **embryo** transfer. It is the intent that no adoption pursuant to chapter 1 of this title or no parentage pursuant to chapter 3 of this title shall be required to create parentage in recipient intended parent pursuant to this part.

36-2-402. Part definitions.

As used in this part:

- (1) "**Embryo**" or "human **embryo**" means an individual fertilized ovum of the human species from the single-cell stage to eight-week development;
- (2) "**Embryo** parentage" means the acceptance of rights and responsibilities for an **embryo** by a recipient intended parent;
- (3) "**Embryo** relinquishment" or "legal transfer of rights to an **embryo**" means the relinquishment of rights and responsibilities by the person or persons who hold the legal rights and responsibilities for an **embryo**;
- (4) "**Embryo** transfer" means the medical procedure of physically placing an **embryo** into the uterus of a female recipient intended parent;
- (5) "Legal **embryo** custodian" means the person or entity, including an **embryo** transfer clinic, who hold the legal rights and responsibilities for a human **embryo** and who relinquishes said **embryo** to another person; and

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(6) "Recipient intended parent" means a person or persons who receive a relinquished **embryo** and who accepts full legal rights and responsibilities for such **embryo** and any child that may be born as a result of **embryo** transfer.

36-2-403. Establishing embryo parentage -- Relinquishment of rights and responsibilities.

(a) (1) A legal **embryo** custodian may relinquish all rights and responsibilities for an **embryo** prior to **embryo** transfer. A written contract shall be entered into as appropriate when establishing **embryo** parentage prior to **embryo** transfer for the legal transfer of rights to an **embryo** and to any child that may result from the **embryo** transfer:

(A) Between legal **embryo** custodians and the **embryo** transfer clinic; or

(B) Between a legal **embryo** custodian and each recipient intended parent.

(2) The contract shall be signed, as appropriate, by each legal **embryo** custodian for such **embryo**, by the **embryo** transfer clinic or by each recipient intended parent in the presence of a notary public. Initials or other designations may be used if the individuals desire anonymity.

(b) If the **embryo** was created using donor gametes, the sperm or oocyte donors who irrevocably relinquished their rights in connection with in vitro fertilization shall not be entitled to any notice of the **embryo** relinquishment, nor shall their consent to the **embryo** relinquishment be required.

(c) Upon **embryo** relinquishment by each legal **embryo** custodian pursuant to subsection (a), the legal transfer of rights to an **embryo** shall be considered complete at the time of thawing or to such other time as the parties may agree, and the **embryo** transfer shall be authorized.

(d) A child born to a recipient intended parent as the result of **embryo** relinquishment pursuant to subsection (a) shall be presumed to be the legal child of the recipient intended parent; provided, that each legal **embryo** custodian and each recipient intended parent has entered into a written contract pursuant to this part.

(e) Any and all prior legal **embryo** custodians whose donation of an **embryo** has resulted in the birth of a child to a recipient intended parent pursuant to subsection (a) shall have no rights or responsibilities with such child and of the child to them.

The one item which is missing from Tennessee's embryo donation statute is a provision for surrogacy with donated embryos. This was a result of the expediencies of getting a bill drafted and passed in our legislature. As a result of this not being covered, if a Tennessean carries a baby as a surrogate for the Recipients of an embryo donation the surrogate will be considered the baby's mother. Since the

Recipient Husband has no genetic tie to the embryo, he will not be recognized as the legal father. The Surrogate's husband will be recognized as the father. The Recipient family will need to do a full-fledged adoption, including a home study, waiting periods, compliance with ICWA and the ICPC. It's expensive and time-consuming. Hence, surrogacy with donated embryos is not recommended in Tennessee.

Embryo Donation is a route to parenthood for many. Some of the families seeking embryo donation are doing so out of economic necessity, having expended all their resources on medical interventions trying to become pregnant with their own gametes. Others seek embryo donation out of a moral sense of providing an opportunity for life to babies who would, otherwise, not have this chance. Still others pursue embryo donation because they have determined that, if one partner can not be genetically-related to the child, then it is better for the family that neither of them are.

Embryo Donation is NOT adoption. An embryo can not be adopted, only children can be adopted and an embryo is not yet a child. Many people engaging in embryo donation described it as adoption because of their emotions surrounding the donation. For legal purposes, however, it is important to use proper terms.

As with surrogacy, egg donation, and sperm donation, negotiating the embryo donation contract is an opportunity to assess the mutual needs and values of the parties. The goal should not be a contract that's enforceable in Court but, rather, a process of contracting that helps keep people out of Court.

Some of the questions the parties may need our assistance in exploring are:

- How open do the parties want to be with one another?
- Will the embryos be moved from the donor parents' clinic to the recipient parents' clinic?
- What happens if the embryos are not used in a set period of time?
- Under what circumstances will the embryos revert back to the donor parents? Who pays for the shipping back to the donor parents' clinic if the embryos revert back to them?
- What happens if the recipients complete their family and have embryos left over?
- What happens if the recipients separate or divorce while they still have the embryos? What if one wants to use them still and the other doesn't?
- What happens if one of the recipients dies before the embryos are all used?
- What happens if the recipients need to use a surrogate? Are there legal issues if a surrogate is carrying a baby for a couple who has no genetic relationship with the embryo?
- Were the embryos formed with donated egg or sperm? Did the original sperm or egg donor agree that the embryos formed with their gametes could be donated beyond the original recipients?
- How much contact are you planning?
- How are you planning for your children to be able to access one another if the donor parents and

recipient parents lose contact?

- What are you planning to tell the children conceived through this embryo donation?
- What are the donor parents planning to tell their children about the children conceived through this embryo donation?
- Are you sharing identification and social security numbers with one another so you can find one another if you lose contact with one another?
- Have you considered securing background checks of each other?
- Have you signed medical release forms to let the recipients learn about the health of the donor families children and the donor parents?
- Have you signed medical release forms to learn about the recipient parents' health to make sure they are in good shape?

Embryos for donation can be secured from agencies or clinics, the most widely known of which is in Tennessee. The National Embryo Donation Center is in Knoxville Tennessee. Many parents have their supernumerary embryos sent there when their family is complete. Most fertility doctors know of NEDC and often do not know of other options.

NEDC does have significant restrictions on the patients whom they will assist in family formation. Patients must be in opposite-sex marriages for a sufficient period of time to meet NEDC's requirements. People who don't meet these requirements are accepted as embryo donors but they are not accepted as embryo recipients.

Embryo Donation International (Dr. Craig Sweet) has fewer restrictions than NEDC and may be a better choice for some Intended Parents seeking embryo donation.

CNY Fertility also has a strong embryo donation program and many people travel to them from around the world for their services.

As embryo donation has become more well-known, families are setting up independent arrangements for the donation of their embryos. One mother in Tennessee turned to Facebook to find the Recipients of the six embryos she and her husband had left after they gave birth to their four children (two sets of twins). This Mom did find a family and the journey of both the families was widely covered in the media. Ultimately, the donation did not result in a baby's birth but the families felt blessed to have found one another and to have given the embryos an opportunity at life.

FaceBook is a very important resource for families seeking independent embryo donation. The Embryo Adoption and Donation Support Group on FaceBook gives potential donors and potential recipients a place to connect as well as giving them other information about resources.