

The Importance of the ARTs Contract

(Adapted from "Surrogacy: The Written Agreement" by Timothy F. Brewer)

The laws of most states have not kept pace with the substantial medical advances that have been made, and continue to be made, with regard to Assisted Reproduction Technology (ARTs). Existing state law often provides little guidance with regard to these complex relationships. Thus, the written contract forms the legal bedrock of most ARTs relationships. *The importance of this contract cannot be overstated.*

Many professionals and their clients do not understand this importance. ARTs practitioners often use poorly drafted, confusingly organized, and hard to read one-size-fits-all forms as the basis for their contracts. Intended families often use fill-in-the-blank templates found on the internet or elsewhere. Surrogates and gestational carriers often accept and sign form contracts that they don't understand and have not adequately reviewed. Often, no one knows or fully understands the potential legal effect of these contracts.

Why the Written Agreement Matters

- A good ARTs contract ensures that everyone is on the same page. The contracting process can help surface unspoken assumptions and expectations, negotiate them, and make them explicit.
- A good ARTs contract anticipates and creates a plan for contingencies before they happen. Parties to the ARTs contract are best served if they "hope for the best and prepare for the worst."
- A good ARTs contract creates a record of what was agreed. Surrogacy relationships are complicated, involving complex obligations that can take place over many months. It can be helpful to have a written roadmap of what's ahead, and a reminder of what everyone agreed to.
- A good ARTs contract creates accountability and recourse. It's difficult to enforce an oral agreement (or a poorly drafted one). A good written agreement makes clear everyone's mutual expectations and what happens when someone does not meet those expectations.

Why it Should be a Well-Written Agreement

- The agreement concerns important emotional, physical, and financial issues, literally involving life, death, health and substantial sums of money.
- The agreement may govern your relationship over an extended period of time.
- It is important that everyone know and understand their rights and obligations.

- A bad agreement may be worse than none at all, since it may create obligations that you would not otherwise have.

Conclusions

- Every part of the ARTs contract matters. If it's important enough to put in writing, it's important to get it right, and to understand what it means. The ARTs agreement should be well-written, well-organized, and understandable.
- Be prepared and willing to spend a substantial amount of time and energy on the written agreement.
- Think of the written agreement as a roadmap for the months ahead, and a guide through potentially difficult issues.
- Don't use forms or "canned" contracts.
- Retain and consult an attorney with experience and knowledge in this field. Avoid limits on the amount of work that attorney can do for you.
- Don't think that contract language doesn't matter. Make certain you understand and are comfortable with what the agreement says.