

Gestational Carrier Agreements Are Now Legal In The State Of New Jersey

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For men and women who are unable to have children due to infertility or an inability to carry a child, there is newfound hope in New Jersey. A new law went into effect on May 30, 2018 that sets the process for entering into and enforcing gestational carrier agreements. In essence, this means that the carrier of the child is required to immediately relinquish all parental rights and obligations to the child, including the rights to custody, parenting time and support.

Here's how the new law works: After the gestational carrier becomes pregnant, the intended parent must file a complaint with the court for an Order of Parentage. If the court finds that the parties have complied with the requirements of the statute (described below), the court will enter an Order of Parentage naming the intended parent as a legal parent to the child immediately upon the child's birth.

To qualify as a gestational carrier, the statute requires that at the time of the agreement, the carrier has to (1) be at least 21 years old; (2) given birth to at least one child; (3) completed a medical evaluation approving her suitability to serve as a gestational carrier; (4) completed a psychological evaluation approving her suitability to serve as a gestational carrier; and (5) has retained an attorney, independent of the intended parent, but whose services the intended parent may pay, who has consulted with her about the terms of the gestational carrier agreement and the potential legal consequences of being a gestational carrier. Neither the gestational carrier, her spouse or partner, if any, shall be the legal parent of the child.

An intended parent can be single, married, partners in a civil union or domestic partnership, or a couple who are not married or in a civil union or domestic partnership, and includes both spouses or partners in a civil union or domestic partnership. To qualify as an intended parent, the statute requires that at the time of the agreement the intended parent has (1) completed a psychological evaluation approving the intended parent's suitability to participate in the gestational carrier agreement, and (2)

representation by an attorney who consulted with the intended parent about the terms of the gestational carrier agreement and the potential legal consequences.

To qualify as a gestational carrier agreement under the statute, the agreement must: (1) be in writing and signed by the gestational carrier, as well as her spouse or partner, if any, and each intended parent, to include both spouses if married or both partners if in a civil union or domestic partnership; and (2) be signed after the required medical and psychological screenings, but prior to the commencement of any other necessary medical procedures in furtherance of the implementation of the pre-embryo; and (3) all parties must be represented by separate attorneys and each attorney must provide an affidavit of such representation.

The gestational carrier agreement must also provide express terms that the gestational carrier shall undergo pre-embryo transfer and attempt to carry and give birth to the child; surrender custody of the child to the intended parent immediately upon the child's birth; and have the right to medical care for the pregnancy, labor, delivery and postpartum recovery provided by a physician, physician's assistant, advanced practice nurse or certified nurse midwife of her choice, after she notifies, in writing, the intended parent of her choice. The agreement must also provide express terms that the intended parent shall accept custody of the child immediately upon the child's birth and assume sole responsibility for the support of the child immediately upon the child's birth.

Finally, the gestational carrier agreement must include a provision setting forth the financial responsibilities of the parties, including that the intended parent pay the gestational carrier's reasonable expenses as defined by the statute, i.e., medical, hospital, counseling or similar expenses along with reasonable attorney fees and costs in connection with the gestational carrier agreement, together with reasonable living expenses during the period of pregnancy and post-partum recovery.

A gestational carrier agreement is not considered an adoption or a surrender of custody or a termination of parental rights.

If you are interested in the gestational carrier agreement, as a carrier or an intended parent, you should consult with an attorney to understand your rights and to determine what option (i.e., adoption or a gestational carrier agreement) is best for you.