

# Reproductive Family Law Center

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### **What Intended Parents Need to Know The Legal Status of Using a Gestational Carrier**

Missouri and Kansas, like a majority of states, have no laws specifically governing the status of Gestational Carrier Agreements (“GCA”) or the status of the Intended Parents. Therefore, general contract law principles are applied to govern the GCA. This can be both a good and bad thing for Intended Parents. It is good because there are no legislative requirements that burden Intended Parents with wait times or court approval prior to beginning the medical treatment to the Gestational Carrier. But, Intended Parents do not automatically have parental rights to their Child. Missouri and Kansas laws put greater weight on genetic connection to the child over the presumption of parenthood given by birth alone.

#### **The Steps of the Legal Process for Parents Using a Gestational Carrier:**

1. Pick an attorney that you are comfortable with advising you. Trusting your attorney is key to a successful legal relationship.
2. Discuss with your attorney the parts of the GCA. Find out where you need to do more research and a list of questions to discuss with the agency, doctors, and the Carrier. For example, who decides when and if amniocenteses will be done; how will doctors be chosen; what is the maximum number of embryos to be transferred; who is responsible for managing the escrow.
3. After the Intended Parents are matched with a Carrier, the agency will send a letter telling the attorneys the name of the other party and attorney.
4. A letter of medical and psychological clearance for the Carrier and Intended Parents will need to be sent to the attorneys by the doctor and counselor. This can also be done by the agency.
5. The Intended Parents’ attorney will draft the GCA and get approval from the Intended Parents prior to sending to the Carrier’s attorney.
6. Once the GCA is sent to Carrier’s attorney, it is imperative that the Parties do not discuss the Agreement with the other party directly. Talking through your attorney ensures your wishes are clearly written into the final Agreement.
7. The Carrier and her attorney will review the document and propose changes to it, which will be sent to the Intended Parents’ attorney.
8. Once an Agreement is finalized and signed by all Parties, the attorneys will send a letter of legal clearance to the doctor and agency. The escrow manager will receive a copy of

- the GCA to administer the money according to the terms.
9. When the fetus becomes viable, legal counsel will petition the court for a determination of parentage. This is often referred to as the process to obtain a pre-birth order.
  10. Some judges in Missouri and Kansas have specific requirements for the Intended Parents to meet prior to issuing the Order. Your attorney will be able to explain this in detail to you.
  11. The Order will direct the Department of Vital Statistics to list the Intended Parents on the Child's birth certificate.
  12. It is a legally binding Order that other states must give full faith and credit to and comply with when administering any action involving the Child.
  13. If the situation dictates an adoption would be a better legal choice for the Intended Parents, prior to the birth of the Child, a temporary order placing the Child with the Intended Parents will be obtained. Once the Child is born, the court will make a determination regarding the adoption.

### **How do Intended Parents Become the Parents of Their Child:**

1. The Uniform Parentage Act as enacted in each state governs parentage of the Child.
2. The rights of the Intended Father will be established using the state's paternity statutes, just as paternity is established for non-married parties conceiving without the assistance of ART.
3. Typically, maternity is established by the birth of the Child to the woman giving birth. In the case of surrogacy, the genetic relation shows maternity to the Child for the Intended Mother. Missouri and Kansas laws put greater weight on genetic connection to the child over the presumption of parenthood given by birth alone.
4. A Determination of Parentage is routinely done by the courts prior to the birth of the Child or after the birth of the Child, depending upon the unique situation of the family. Your attorney will be able to advise you of the best course of action for your situation.
5. If one Intended Parent is not genetically related to the Child or if the Intended Parents are not married, then it may be in the best interest of the Child to be adopted by that Intended Parent. But, the legal strategy for establishing parentage should be discussed with your attorney.

### **Selecting Professionals to Help When Using A Gestational Carrier:**

1. Work with a reputable agency. The agency should have several carriers that it works with and has strict policies to screen all carriers. Court cases involving a carrier not relinquishing the child have been matches through internet ads or agencies without screening quality processes.
2. Ask the psychological evaluator about his/her experiences in screening Intended Parents and Carriers. This is highly complex and emotional for all involved. Your evaluator needs to understand the questions to ask and potential roadblocks in the process to be able to provide a thorough report of your compatibility.
3. When deciding on legal counsel, ask if the attorney has experience writing and negotiating GCAs. Find out if he/she is educated specifically on Assisted Reproductive Technology Law and maintains continuing education in the field of Assisted

Reproductive Technology.

4. Your attorney must also understand the medical process for your situation to adequately prepare your GCA. This document is the roadmap to guide all involved on handling issues that will arise during the process. It is imperative to have a resolution method in place.
5. **CARRIER MUST BE REPRESENTED BY A SEPERATE ATTORNEY OF HER CHOOSING!**
6. Be certain to work with professionals willing to take the time to fully explain the steps of the process in terms you understand.
7. Don't hesitate to ask questions until you fully understand.