



Village

LAW GROUP

Surrogacy 101

A surrogacy journey is long and complicated. Often, the intended parents have been through a lot already. It's also a journey that (hopefully) ends with a beginning. After you get through all of the complexities of having your baby, you then have to raise him or her! It's important to keep your hope and energy up and your stress and anxiety down so that you're physically and emotionally available for your new baby.

This is a guide to help de-mystify this process. It is intended to introduce you to the basics of surrogacy as you get on your way.

It's not intended to provide and is not a substitute for knowledgeable and experienced medical, psychological, and legal advice.

What is surrogacy?

- Gestational surrogacy is when a woman carries an embryo that is not genetically related to her on behalf of another individual or couple, who intend to be the resulting child's parent(s).

How does gestational surrogacy work?

- The intended parent(s) find a gestational surrogate match either through an agency or on their own.
- Embryos are created at a fertility clinic using either donor eggs or the eggs of an intended mother and either donor sperm or the sperm of an intended father.
- The embryos are then implanted into the carrier's uterus for her to carry the pregnancy on behalf of the intended parents.
- This is all done under the careful supervision of a physician.

What should I look for in a gestational surrogate?

- At least 18 years of age (some agencies and states require that she be at least 21 years old)
- Married or in a stable committed relationship with someone who is supportive of her decision to be a surrogate
- Has had and is raising at least one child of her own
- Is in good physical and mental health (some clinics will not transfer embryos to carriers whose BMI is too high or who are taking anti-depressants or similar medications)
- Is satisfied with the size of her own family and/or does not desire to have additional children of her own
- Is comfortable with the sexual orientation of the intended parents
- Has health insurance and/or can easily obtain health insurance and access to quality healthcare
- Has compatible views with the intended parents on abortion and reduction
- Is not on public assistance or in financial crisis

- Does not have a criminal history (particularly in crimes such as fraud, extortion, financial crimes, child abuse, and/or prostitution)

What goes in a gestational surrogacy contract?

- The contract covers all aspects of the gestational surrogacy, and sets out the rights and obligations of each party before, during, and after the pregnancy.
- This assists parties in making ongoing conversations less awkward and setting framework and guidelines for what everyone can expect throughout the relationship and long into the future.

Topics include but are not limited to:

- Parental rights of intended parents (and lack of parental rights for the carrier and her partner)
- The way the embryos will be created and the conditions under which they will be implanted
- The conduct of the carrier during the pregnancy
- Abortion/reduction decisions
- The location and conditions of delivery
- Availability of medical history about the carrier (and her husband, if applicable)
- Presence of the intended parents at appointments
- Medical decision-making authority
- What will happen in the event of death or divorce
- Compensation and payment of expenses
- Future contact/relationship between the parties
- Confidentiality.... and much more!

How does the compensation part work?

- The buying and selling of biological material, parental rights, and especially children is illegal in every state and on the federal level. So the surrogacy contract explicitly makes it clear that those things are not happening in this scenario.
- Instead, the contract clarifies that the carrier will be compensated and/or reimbursed for her pain, discomfort, and pregnancy-related expenses. Some states also refer to these payments as “pre-birth child support.”

How much will a surrogacy journey cost?

- Think of it as **4 Major Buckets**. The total of your journey will be the cost of all four buckets added together. The 4 Major Buckets are:
 1. **Agency Fee** – if you use a surrogacy agency to find your surrogate match, expect to pay approximately \$20,000-\$50,000 in agency fees just to the agency.
 2. **Health Insurance** – if your surrogate’s health insurance excludes coverage for surrogacy, you will have to buy her a replacement policy. These generally range from \$15,000-\$30,000 in total. There are a lot of resources available to have your surrogate’s policy professionally reviewed to see if it covers or excludes surrogacy. Your attorney should be able to provide guidance on this.
 3. **Surrogate Compensation** – this is the “base compensation” payment to your carrier (usually \$25,000-\$45,000 depending on a wide variety of factors), plus any other stipends she may receive (maternity clothes, lost wages, fees related to invasive tests, embryo transfer, etc). The total here is usually \$50,000-\$80,000 depending on whether certain events (like a multiples pregnancy or a C-Section occur or don’t occur).
 4. **Medical and Legal Fees** – This is the cost of your IVF treatment through your clinic plus legal fees related to the contract stage of the process and the pre-birth parentage order process. Medical fees will vary widely depending on your unique situation, but are often \$18,000-\$30,000. Legal fees should be less than

\$10,000 if you're working with a surrogate in North Carolina and have an experienced attorney in assisted reproductive technology law.

What do I most need to consider when trying to match with a surrogate?

1. **Health:** Make sure she meets the minimum criteria above, and that her previous pregnancies were full-term and uncomplicated. Clinics will exclude surrogates who had pregnancy complications like pre-eclampsia, surrogates whose Body Mass Index is too high, and surrogates who delivered prematurely or have too many deliveries (check with your reproductive endocrinologist if your prospective match has delivered 5 or more times).
2. **Health Insurance:** If your gestational carrier doesn't have health insurance OR has health insurance that excludes coverage for surrogacy, you're likely going to be adding considerable cost to your journey to provide her with a policy that will cover the pregnancy. **Have a prospective match's health insurance reviewed professionally prior to moving forward.**
3. **Compatibility** on major issues like termination/reduction, relationship during and after the pregnancy, and compensation.
4. **Gut feeling** – This is a deeply personal and long journey. You and your surrogate should feel comfortable with each other on a “gut feeling” level. If your gut is telling you that something is “off,” you should listen and fully explore the match before making a commitment.

What do all the acronyms mean?

- **“IVF”** - In vitro fertilization - The union of eggs with sperm in a lab to create an **embryo** which is then transferred into the uterus of a woman
- **“ICI” or “IUI”** = Intracervical insemination or Intrauterine insemination
 - ICI – the placing of sperm directly into a woman's cervix or reproductive tract to improve chances of pregnancy
 - “Turkey baster method” – can be done at home

- IUI – the placing of sperm directly into a woman’s uterus while she is ovulating
 - Done by a physician – do not try this at home
- “**RE**” - Reproductive endocrinologist - the type of doctor that does this stuff
- “**GC**” – Gestational Carrier or Surrogate – the woman that carries a child on behalf of another individual or couple who intend to raise the child. A gestational carrier is NOT genetically related to the child that she carries.
- “**GCA**” – Gestational Carrier Agreement or “**GSA**” – Gestational Surrogacy Agreement – the contract that controls the relationship and the compensation
- “**IP**” – Intended Parent (the folks the intend to raise the baby)
- “**PBO**” – PreBirth Order (a parentage order that the attorney obtains to have the IPs declared to be the parents, and have their names (and not the GC and her spouse) placed on the baby’s birth certificate).