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Sperm Donor Legalities: Using (or becoming) a Known Donor vs an Anonymous Donor

In addition to co-parenting, where both adults contemplate sharing the legal rights and responsibilities of being a parent, another form of parenting partnerships may involve a “known sperm donor” – sometimes just referred to as a “known donor”.

From a literal use of the terminology, one might assume that a “known donor” is a person who does not plan to take an active role in their child’s life, but has volunteered simply to be “known” as the donor to the child at some point in time. However, in practice, the line between what constitutes a “co-parent” and a “known donor” is often fuzzy, as the parties may contemplate the known donor having an active role in their child’s life. Or – in some cases – active participation in the child’s life may not have been contemplated, but may nonetheless naturally develop over time. (Refer to our article on co-parenting vs. sperm donation for more information on the distinction between co-parenting and known donors.)

If you are thinking about having a child using a sperm donor – or you were thinking about becoming a sperm donor – then the first question is whether to use (or be) a “known” sperm donor or an “unknown” one.

Perhaps, the easiest way to resolve this question is to ask: “Do I want (or wish to be) someone present in the child’s life at some point?” If the answer is “yes”, then your consideration should be that of a known donor. If the answer is “no”, then you should seek (or become) an anonymous donor. Nevertheless, regardless of which route you choose, you should be aware of the legal implications of a sperm donor arrangement.

Anonymous sperm donor

If you want no parenting involvement by a donor, wish to preserve the donor’s anonymity, and diminish the possibility that a sperm donor could be found to have

sufficient legal standing to exercise parental rights or be labeled as a father by a court, then you should consider a sperm bank to select an anonymous donor.

By choosing to use an anonymous donor selected through a sperm bank, you will be given the opportunity to review traits such as race, religion, complexion, education and family medical history.

Sperm banks in the U.S. are known for the quality of their testing procedures for both acquired and hereditary diseases. However, a disadvantage of using an anonymous donor is that, were your child to develop a genetic disease, you may not be able to obtain further medical information about the donor at a later point in time.

In many cases, modern technology is eroding the concept of anonymity. With the widening availability of DNA testing and the scope of the Internet, people have been able to track donors and pierce their anonymity. The Internet has also led to the proliferation of donor sibling registries. These websites bring together children who were conceived using the same 'anonymous' donor. Donors are identified by the name of the sperm bank and the donor's identifier. Occasionally, anonymous donors use the website to locate their offspring.

There is some controversy around the use of anonymous donors. In addition to the potential inability for medical follow-up questions in later years, recent news stories have described cases in which sperm from anonymous donors has been used to create dozens of children. Some columnists have argued that a child has the right to know who their biological father is (or in the case of an egg donor, their biological mother). And it is not always clear if the child of an anonymous donor who seeks out their biological parent will be welcomed by the "anonymous" donor.

Known sperm donor

Using a known sperm donor, in which the donor agrees to become "known" to the child, provides both the donor and the recipient the opportunity to include the donor as a part of the child's life, in a manner for the parties to the relationship to agree upon.

However, it is important for those contemplating a known donor arrangement to pay particular attention to the laws of their state. Depending on the state and the fact pattern of the donor arrangement, a known donor may either be seen as a donor with no legal rights as a parent, or may be seen as the legal parent of the child. Therefore,

the legalities of structuring a known donor relationship need to be considered carefully, as state laws on the use of a known donor vary widely.

Married opposite-sex couples are generally well-protected by state laws regarding the use of a known donor against any claim of legal parentage by the donor, if they carefully follow the wording in their state's statutes. However, most state laws do not contemplate how a known donor "fits in" with the needs of persons not in a married opposite-sex relationship. Therefore, if you are either single, a same-sex couple, or an unmarried opposite-sex couple, you have to take special care to learn the sperm donor laws in your state. (Even then, a court could potentially find that the "best interests of the child" override the existing state statute.)

The first step, of course, is for the parties to a known donor arrangement to determine exactly what the role of the known sperm donor will be – both in terms of the amount of contact with their child, as well as the legal standing (or lack thereof) that the donor will have to the child. Once this role has been agreed upon, then the parties can determine how the laws in their state have been interpreted for people seeking a similar situation.

For example, if you are a woman considering a known donor, do you want a potential "father figure" for your child with some regular contact with the child who shares a role in raising the child? Or are you looking for a known donor who has no visitation rights to the child and is insulated from financial responsibility? Or perhaps you want something in between?

If you are a man thinking about becoming a known sperm donor but who want to be the child's legal father with all of its rights and responsibilities, then you should consult your state's laws on the legal rights of known donors. If you are not married to the mother and don't live in one of the few states with laws that cover the unmarried, then the birth mother and the father should sign a voluntary acknowledgment of paternity or paternity declaration which is available in all 50 states if they wish to protect the father's legal rights. On the other hand, if the donor does not wish to be considered a legal parent, then the laws of your state should be consulted to understand the circumstances under which a donor's legal rights and responsibilities are extinguished.

Assuming that both the donor and the recipient have the same outcome in mind in relation to the donor's legal relationship to the child (and the ensuing rights and responsibilities), then it is imperative that you both follow your state's statutes and

cases exactly to achieve the results you want. Otherwise, unanticipated troubles can ensue. For example, if one does not comply with the exact wording of a statute, a known donor could later be able to exercise rights and be held responsible for support even if that was not the intention of the parties.

Here are some important factors which may affect the legal status of the donor:

- The legal position of the known donor may depend on whether the insemination was done under the supervision of a physician. In some states, if the physician acts as “intermediary” in the child’s conception, this will eliminate the donor’s legal position as a parent. Check your state statute.
- Using sexual intercourse as the means of creating the child has definite consequences. In this case, the donor’s rights cannot be erased through a written contract. Generally, when intercourse was the method for conception, the male will be considered the father unless his rights are terminated by a court. However, a court may be unwilling to free the male from his legal duty as a father when the only other parent is a single mother.
- Some state laws address the use of artificial insemination, but do not address other forms of assisted reproductive technology (ART). Since other types of ART are not covered, the legal positions of couples using these techniques are ambiguous. Eight states (AL, DE, NM, ND, TX, UT, WA, WY) currently have laws that cover all types of assisted reproduction technology; four of them (DE, NM, ND, WY) cover unmarried as well as married couples.
- If a conflict around legal position of the known donor ends up in court, one factor a judge may consider is the amount of post-birth contact between the sperm donor and the child, with the permission and encouragement of the mother. For example, in Colorado a court ignored its state statute extinguishing a sperm donor’s parental rights in a case where the sperm donor had frequent contact with the child in accordance with the unmarried parties’ pre-conception intention. In a California case with similar facts, a court ruled that the father’s rights were terminated because the parties faithfully followed the state statute.
- Some courts have looked to the parties’ intent when determining legal parentage, making marriage and statutes irrelevant. In other states, a known sperm donor can be found to be a parent even if such a finding is contrary to the intention of the parents and a written agreement to that effect.

- If you are considering using “fresh” sperm from a known donor, the Food and Drug Administration requires that the sperm donor must undergo expensive testing prior to donating his sperm for insemination. If you fail to abide by FDA regulations, civil penalties can be imposed. Testing includes a medical examination as well as blood and urine analysis, which can cost up to \$800. With each donation, new testing is required. One strategy to cost-control could be to obtain a large donation and freeze the excess specimens in order to avoid the need for repeated retesting and to ensure that the donor’s sperm is available for additional children in the future.

Finally, just like co-parents should draft a co-parenting agreement to put their intentions in writing, the known donor and the sperm recipient should put their intentions together in a “donor agreement”. See our article on donor agreements for more information.

In summary, you should spend some time deciding whether to select (or deciding to be) an unknown donor, a known donor, or a “true” co-parent. Contemplate how you will feel about the difference between known and unknown donors and how it might affect your child. Learn about the relevant laws in your state and whether there have been any cases decided about people in similar circumstances. You should also put your intent in writing through a donor agreement; while courts may vary in how much deference they give to this type of written document, it is a very useful tool for promoting open discussion of each party’s goals and expectations.