



Navigating the Pitfalls of Known Sperm Donation

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It can be a truly wonderful thing when your college buddy, your family member, or your cousin's best friend offers to be a sperm donor for you—whether you're an LGBTQ couple embarking on family building, a single-by-choice female, or a couple with male factor infertility. But before you send them off to the cryobank or make use of an at-home insemination kit, there's a few things you should consider.

While you're probably thrilled to have found your generous donor and may plan to have them in your (and possibly your child's) life in one way, shape or form for decades to come, my guess is that you don't want your potential donor to have any actual parental rights or obligations to the child that you hope to bring into this world. And likely they feel the same way. But what does the law say about that? Is that possible? How do we go about doing that? Is it ok if we just have a mutual verbal agreement? How about if we write it on a napkin and we sign it? What if we do this at home—do donor statutes apply? Is there even a donor statute in my state? What if we're in different states? Or different countries? What if we're already pregnant? What if the pregnancy occurred through intercourse? Do we have to go to court for this? Like I said—lots to consider.

Every state is different in how they treat donors' rights, whether legally a donor can divest themselves of legal parental rights (or be found to have none to begin with) and the process required to accomplish this, if allowed. In New York for example, there is a very strong and very clear donor statute as of February 2021. But it won't apply to certain situations—for instance, where a pregnancy occurred through intercourse. In some states, a donor can't be considered "just a donor" for legal purposes if the insemination occurred at home rather than under doctor supervision or through a third-party clinic or cryobank. That's why it's so important to speak with an attorney in your state who handles Sperm Donation Agreements before you start moving forward with the process or before you're too far in.

Well-drafted Known Sperm Donation Agreements should cover several topics such as: the logistics concerning donation (when, where, how and how many times?), agreed upon changes to a donor's daily life aimed at keeping them as healthy as possible until the donation is complete, donative intent and expectations as to who will be and who will not be a "parent", references to the relevant laws, financial considerations, future contact, privacy, confidentiality, and a host of other areas to be addressed. Even when

the donor is your co-worker, cousin or best friend, it's crucial to take the time to enter into these agreements to allow you to hopefully avoid both legal and emotional pitfalls. And while it's tempting to use a two-page template agreement found on the internet for free, be forewarned that that's a very risky move when it comes to having any measure of security that your agreement is going to comply with a relevant state's laws or hold up in court if there is any dispute over your child or over the agreement itself. It's very important in New York and other states to work with an attorney who handles these kinds of agreements so that you have a complete and enforceable agreement, and so that you set yourself up in the best possible position to obtain a Judgment of Parentage later, naming the correct intended person or people as legal parents.

Even more important however than finding legal counsel to work with when planning your sperm donation arrangement, is ensuring you have the proper emotional support and have thought through the process fully, so everyone is on the same page about plans and expectations. I always recommend

that my clients speak openly with one another and with mental health professionals experienced in family building and donation arrangements, so they can iron out and work through any issues or concerns before the process is underway. I am a firm believer that open communication and a realistic look at the donation process including considerations for the future of the donor-conceived person (in addition to the donor and recipients) is crucial to a successful donation arrangement. While the immediate focus may be on the excitement of getting pregnant and having a baby, it's always important to think down the line a bit about your donor-conceived baby being a donor-conceived 8-year-old one day, then a donor-conceived 14-year-old, 25-year-old and donor conceived 40-year-old. An experienced mental health professional and compassionate attorney can help you through conceptualizing and planning for those years to come, in addition to planning for the immediacy of the donation itself.

Working with a known sperm donor (or a known egg or embryo donor, for that matter) can be an amazing way to build or expand your family, and I love when I get to help parties with their donation journeys! But it does take some careful planning. Consider the tips mentioned here, assemble your team of professionals to assist, and you'll be in a much better position for a smooth donation process of your own.

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*This is for informational purposes only, and not intended to be legal advice. Always seek the advice of an attorney licensed in your state to explain your options and decide what's right for you.