

GETTING STARTED WITH SURROGACY



You're reading this because you need to start or complete your family through surrogacy -- or you are or would like to be a gestational carrier or surrogate -- and knowing as much as you can about what to expect along the way can make an unfamiliar process a little bit less intimidating.

This guide contains valuable information about the legal steps you should take on your surrogacy journey, factors that may influence the timeline, and answers to additional questions we frequently hear from clients. For simplicity's sake, throughout this guide we have sometimes condensed "gestational carrier or surrogate" to "surrogate." Please understand that there are technical differences between a gestational carrier (who is not genetically related to the child she is carrying) and a surrogate (who provides the egg and is thus the genetic mother of the child) and legal differences that only an attorney experienced in the field can advise on.



UNDERSTANDING THE FIVE STEPS IN THE LEGAL SURROGACY PROCESS

There are many elements to surrogacy that can impact prospective parents and surrogates in different ways. At The Surrogacy Law Center, we help individuals and couples navigate the legal aspects of surrogacy arrangements, helping to protect their rights – and the rights of the future children.

There are essentially five distinct steps prospective parents and surrogates should take to make their experience as seamless as possible:

Step 1: Find and consult with a reputable surrogacy attorney

If you have never worked with an attorney before, you might be hesitant to involve one at the beginning of your surrogacy journey. After all, attorneys are only needed if a dispute arises, right? Wrong! Working with an experienced reproductive law attorney from the very start may help avoid legal issues down the road. You should look for an experienced attorney whose practice focuses on advising prospective parents and surrogates on the legal issues that come with surrogacy.

A skilled surrogacy attorney will be able to help you understand the laws controlling your legal agreement. Those laws may be from the state where the intended parents reside, where the in vitro fertilization (IVF) or embryo transplant procedures occur or where the surrogate or gestational carrier will give birth. Each case is different and needs to be carefully reviewed based on its specific details. With the exception of a few places, surrogacy is not typically practiced outside the United States and Canada.

For attorneys working with parents from other countries, understanding the laws where the parents are from and where the child will grow up is critical to helping protect your rights throughout the surrogacy process; while attorneys cannot advise on the laws of states or countries in which they are not licensed, working closely with the attorney you've chosen from your home country and understanding the implications for when you return with your child is crucial.

Many states' laws, including those of the state of California, mandate that each party to a surrogacy arrangement be represented by an attorney, and that the same attorney cannot legally represent both the intended parent(s) and the gestational carrier or surrogate. Regardless of the law in your state, we feel these are best practices that should be followed.

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Step 2: A written surrogacy agreement

The surrogacy agreement is the legal contract between you – the intended parent(s) – and the gestational carrier or surrogate who will help bring your child into the world. California law requires that the parties sign and notarize the surrogacy agreement before the gestational carrier begins her injectable cycle preparation medication.

Your agreement should be tailored to address your specific situation. In general, you can expect it to:

- Identify both parties (the intended parent(s) and the gestational carrier or surrogate and spouse, if applicable);
- State the parties' intentions;
- Identify the rights each party has under the agreement;
- Include a statement that the gestational carrier and her spouse (if she is married) agree that the intended parent(s) are the child's legal parent(s);
- Document the obligations of each party, and the promises made between parties upon signing the agreement. These promises include financial obligations like agreed-upon payments, if any, expenses and fees, and various reimbursements;
- Specify the time period covered by the agreement; and
- Explain how either party may terminate the agreement before it expires.

As with any type of legal agreement, there is usually some back and forth between the future parents and surrogate through their attorneys. The intended parent(s)' attorney typically creates the initial draft and discusses with them. The gestational carrier's attorney, working with his or her client(s), then reviews the contract, making any proposed revisions. When both sides are comfortable with the terms of the agreement, the parent(s) and surrogate sign it in the presence of a notary public.



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Step 3: Work through the court so the intended parent(s) are legally declared the parent(s) of their child

Even though you have an agreement stating that the intended parent(s) are the only legal parents of the child and that the gestational carrier is not a parent despite giving birth to the child, you still need to work through the judicial system to make it official. The document the court issues is typically called a “Judgment of Parentage,” and it’s the legal order giving you parental rights to your new baby.

Depending on which state’s law governs the agreement, the parent(s) may be able to obtain a Judgment of Parentage before their child is even born. Don’t overlook this step, as it’s what gives the parent(s) the legal rights to have physical custody of, and make important decisions for, their child. It also directs that the intended parent(s) should be listed as parents on the child’s birth certificate. If you have an experienced attorney working for you, he or she should be able to guide you through this legal process.

Step 4: Complete and obtain your child’s birth certificate

Now that your child is finally here, you will need to complete the birth certificate, which may seem daunting, especially if the United States is not typically your home. Hospital staff and your agency, if you’re working with one, can help you. The Judgment of Parentage provides birth certificate instructions for the state’s Vital Records office and the hospital to follow. Keep in mind that you, as the parent(s), often complete the birth certificate application yourselves, including the name of your child; we recommend that you take your time in filling it out and carefully check for accuracy, as changing the birth certificate can be time consuming. There is a lot going on after your child is born, making it easy to make mistakes in your paperwork.

Your surrogacy attorney can advise you on potential issues related to the birth certificate process and can help you obtain accurate documentation.

Step 5: Bring your baby home!

If you live in the USA, bringing your baby home is a bit easier for you. If you live in another country, you will need to obtain a passport (and in some cases, travel documents, including a Visa) before you can travel home with your child. In some countries and under certain circumstances, you may need additional documents to bring your new baby home. Be sure you understand your country-specific requirements ahead of time so you don’t run into any unwanted surprises. It is always a good idea to speak with an attorney in your home country who is experienced in advising parents of children born through surrogacy abroad. He or she will help guide you through this process and let you know of any additional requirements for an uneventful journey home.

The Surrogacy Timeline

Most intended parents want to become parents now. After all, when you know you are ready to add to your family, you want to make that happen as soon as possible. The reality is that surrogacy takes time, and it’s something you don’t want to rush. Most gestational carriers take years to decide to carry someone else’s child. It is a momentous decision and not one to be taken lightly.

WHAT PROSPECTIVE PARENTS SHOULD KNOW ABOUT THE SURROGACY PROCESS

Your attorney's job is to help you navigate the legal aspects of surrogacy. However, a surrogacy attorney can also be a valuable resource in helping you understand the ins and outs of the process and what you can expect in terms of out-of-pocket costs.

Choosing a Gestational Carrier or Surrogate

Aside from protecting your rights contractually, one of the most important steps you'll need to take is choosing a gestational carrier or surrogate to help turn your family dreams into reality. You--or your agency--should conduct due diligence and ensure that background checks on your surrogate and other members of the household, if applicable, have been completed, and that the appropriate medical and mental health screenings have been performed.

If you're working with an agency, the agency should handle those aspects of your journey. However, make sure you're working with a reputable agency! Your attorney can help you spot potential red flags and identify situations that are typical and those that might require further investigation before proceeding – as well as situations where you should walk away.



Surrogacy is Expensive

Prospective parents should also go into the surrogacy process fully aware that it is not an inexpensive endeavor. When all is said and done, it is not uncommon to spend in the six figures, including fees associated with IVF and medical care, attorneys' fees, surrogate's fees, and more.

The cost is usually lower if you choose a family member or friend as your gestational carrier or surrogate, but know that it is still a costly process.

WHAT SURROGATES SHOULD KNOW ABOUT THE PROCESS

Surrogacy is a Lengthy Process

You've thought long and hard about becoming a gestational carrier and you've done extensive research about what it entails and you may already have chosen an agency to work with. You're excited to get going to help someone achieve the dream of having a family. It's not something that every woman can do or would do, so you are one in a million. And, now, you wait.

Surrogacy is a process and while you've taken the first steps, getting matched with prospective parents, undergoing medical and psychological screening and reviewing and finalizing the contract with your attorney takes time--probably more than you thought! Every step has a purpose and cannot be overlooked, so call on your patience and enlist the support of those around you as you navigate through your journey, even if it moves more slowly than you anticipated.

Agency or Independent?

Our firm has worked with surrogates who are with surrogacy agencies and those who wish to embark on their surrogacy journeys independently, and both paths can be fulfilling. We cannot stress the importance of doing your research before you decide how you would like to proceed, as there are many agencies and also many avenues to finding intended parent(s) to connect with for an independent journey. In order to gain perspective and make an informed decision, talk to as many people as possible, including other surrogates, surrogacy and egg donation agency staff, IVF physicians and surrogacy attorneys.



HOW A SURROGACY ATTORNEY CAN HELP

When you work with an attorney who provides legal services related to surrogacy, he or she should do the following:

- Draft or review the surrogacy agreement to ensure it is in accordance with your case details and applicable law and work with you to negotiate changes as needed;
- Provide tailored legal advice based on your specific situation, helping guide you through the legalities of surrogacy;
- Explain how applicable laws may impact your surrogacy plans, calling out potential legal risks and seeking to mitigate those risks;
- Help to establish the parent(s)' parental rights through the court; and
- If working with the parent(s), provide guidance with any birth certificate, passport, or travel document questions, or otherwise point clients to the appropriate resources for determining those needs.

Your surrogacy attorney will play an invaluable role in helping you through the legal aspects of the process and will work to protect your rights contractually. The goal is to ensure that your surrogacy journey is as seamless and stress-free as possible so that you can focus on your new child.

About The Surrogacy Law Center

The Surrogacy Law Center was established in 2012 and assists clients in reproductive law matters including gestational and traditional surrogacy as well as egg, sperm and embryo donation. Services include drafting and finalizing contracts, consulting with clients regarding their agreements, and establishing parentage for intended parents at the end of their surrogacy journeys.

Since its inception, the firm has represented thousands of clients from over 25 countries. To aid international clients, standard legal documents are translated into Mandarin, French, Italian and Spanish, and the office's multilingual staff members speak six languages.

Contact Us

2701 Loker Ave. West, Suite 280
Carlsbad, CA 92010
(760) 438-0558

www.surrogacy-lawyer.com
stephanie@surrogacy-lawyer.com

