



*Susan Katzman heard many such stories at hospital seminars during her own quest to be a parent. Now the mother of twins, Susan Katzman is a California-based attorney practicing exclusively in the areas of egg donation and surrogacy.*

### Making Legal Decisions in Egg Donation

Since I've been practicing law in the area of egg donation, I've heard many, many stories, but I will always remember my first client, who is the reason I continue in this field. Maybe parts of her story will sound like yours. She had a few long-term relationships, but the man she finally married came to her late in life. They met at a seminar in the pharmaceutical industry, had a small intimate wedding, and purchased a house shortly afterwards. She already knew that chances of conceiving at her age were close to nil, but their house had a hollow ring to it and she was not ready, or willing, to give up having children.

She had already done her homework and explored various options of infertility treatments when she brought the subject up while having coffee with her husband at a Border's bookstore. She couldn't hold it back anymore because she had passed through the children's book section, and had overheard a mother recommending the classic *Goodnight Moon*\* to a browsing, pregnant woman. She and her husband agreed to seek the assistance of a doctor specializing in reproductive medicine, knowing they would face some very difficult decisions.

The option of using an egg donor had been mentioned early in their journey, but they weren't listening at the time. It was unacceptable, even unthinkable. They said "never," even though a doctor told them that it was their best chance of conceiving. So, after undergoing various medical procedures and paying bill after bill, without success, they dropped the idea of children. That is, until the next time they were in the bookstore, and this time the husband overheard a mother telling another woman, "When I bought my first copy of *Goodnight Moon*, it was only a few dollars. Now I see the hardback is \$22.95." The mother continued to the mom-to-be, "It's still worth it--I couldn't be without the story at bedtime."

The couple reflected that they didn't want to be without children; they returned to the doctor's office and began their search for an egg donor.

By the time you decide to create your family with the help of an egg donor, you may be a walking encyclopedia on your medical condition and have prepared yourself emotionally, but what about the legal aspects of egg donation, an expanding area of law? The intended mother and intended father need to have a written agreement with the egg donor (and the donor's husband, if she is married) that clearly details the intentions, rights, duties, and obligations of the parties. This may sound a bit overwhelming, scary, and even intimidating. But the legal process should not be an anxiety-raising experience. Having some prior information about an egg donation agreement should provide some comfort when it comes time to speak to an attorney. When my first client started viewing donor profiles and talking to agencies, she had no idea of the far-reaching implications in such an agreement. What are the intentions of the parties participating in the egg donation procedure? This may seem obvious, but the egg donor may have other ideas than yours. What the egg donor is relinquishing and what she is being compensated for should be in the agreement. As to the intended parents, the agreement should detail what responsibilities and obligations the intended parents are agreeing to take on. In California, you can be reasonably assured that your intentions to be parents of a child conceived with the donor's eggs, as detailed in your agreement will be upheld. (Note: consult an experienced attorney.)

After searching for months, my first client thought it would be easiest if she used a friend's eggs, raising the question to be addressed in the agreement of the anonymous donor vs. a non-anonymous donor. This is a personal choice. There is no formula that works for everyone. When you use eggs from an anonymous donor, the donor and intended parents have agreed to have no contact and to exchange no identifying information, other than first names. The intended parents generally still have access to certain information regarding the donor, e.g., a photograph of her and her children, if any, and a profile detailing such things as her personal characteristics, fertility history, health history, work history, education, and family health history. (My client ultimately did not use her friend for her donor.)

Once you have settled on a donor, probably the largest step in the entire process, there is the issue of the financial responsibility of the intended parent. In addition to the egg donor's fee, the intended parents generally agree to be responsible for all of the costs of the egg retrieval procedure. This includes the cost of the physician, medications, medical testing, anesthesia, and anesthesiologist. Intended parents also generally agree to be responsible for the egg donor's travel expenses, attorney's fees for the egg donor's independent legal consultation, the donor's psychological evaluations; an insurance policy to cover medical complications attributable to the egg retrieval procedure, and any insurance deductible or co-payment for a claim, in the event that one is made.

What about contact with the donor for the purpose of obtaining medical information from her, if necessary, after a child (or children) is born from the donated eggs? What will be the disposition of any embryos that will not be transferred to the intended mother or a surrogate? When will the donor receive her compensation? You will have to make these decisions when negotiating your agreement with the egg donor.

There is no "one right solution" for everyone facing infertility. I recommend that you speak to professionals to sort out any questions you may have. With the help of assisted reproductive medicine and egg donors, many couples can increase the likelihood of starting a family and obtaining a hand-me-down or new hardback of *Goodnight Moon*. And having prior knowledge of the medical, psychological, and legal aspects of egg donation helps the process go more smoothly.

\**Goodnight Moon*, by Margaret Wise Brown, pictures by Clement Hurd, Harper Collins Publishers, first copyright 1947 by Harper & Row, Publishers, Inc.