



NATIONAL CENTER FOR LESBIAN RIGHTS



FACT SHEET

California's New Assisted Reproduction Law (AB 960) & California Statutory Forms for Assisted Reproduction

The Facts About California's New Assisted Reproduction Law (AB 960)

Background

Beginning January 1, 2016, California will have a new law, AB 960, that better protects families having children through assisted reproduction. The law extends protections to families who conceive through at-home insemination and to unmarried parents. Any prospective parent can start using the forms updated by this law even before January 2016.

California statutes include forms that can be used to show the intentions of parents and donors involved in the conception of a child and help protect their rights. Those forms are included below. You should sign these forms before you conceive.

These forms can help parents who are not able to consult with an attorney protect their rights, but the law about parental rights is complicated. We strongly encourage all parents conceiving through assisted reproduction to speak to an experienced California family law attorney before becoming pregnant to discuss their options and what legal protections they need and can put in place.

IMPORTANT: These forms help protect your rights under California law. However, if you move or travel to another state, you may not be recognized as a parent if you are not a genetic or birth parent. **We strongly recommend that all non-genetic and non-birth parents get an adoption or judgment of parentage to protect their rights if they move or travel outside of California.** This is needed even if you appear on the birth certificate and even if you are married.

We are considering having a child through assisted reproduction, and one of us will be giving birth. How do we protect the parent who is not giving birth?

Where two people intend to have a child together using assisted reproduction, and one of them will give birth, they can protect the non-birth parent's parental rights by signing a written agreement that the non-birth parent consented to the assisted reproduction. As of January 1, 2016, this protection applies to any two people, whether they are married or unmarried. Families in this situation should use **California Statutory Forms for Assisted Reproduction Form 1** below to protect the non-birth parent's rights.

If you are also using a known sperm donor and/or a known egg donor, you should also use **California Assisted Reproduction Form 4** below.

We are unmarried and considering having a child using insemination to conceive, and one of us will be providing the sperm to conceive and the other will be giving birth. Is there anything we need to do to protect our rights even though we are both going to be biological parents?

Yes! California law treats any person who provides sperm that is used for assisted reproduction as a sperm donor and not a parent if they are not married to the person giving birth. If the person providing sperm to a doctor actually intends to be a parent of the child conceived, they should have a signed, written agreement with the birth parent saying so signed *before they conceive*. Otherwise, they may be inappropriately treated as a sperm donor without any parental rights. The two parents can use **California Statutory Forms for Assisted Reproduction Form 2** below for this purpose.

We are considering having a child together through assisted reproduction. One of us will provide the egg/ovum to conceive, and the other parent will carry and give birth to the child (AKA Ovum Sharing). How do we make sure we are both parents?

California courts have already ruled that parents using ovum sharing are protected, but this law was not clearly explained in California statutes. As of January 1, 2016, both the person providing the egg and the birth parent are legal parents if a court finds satisfactory evidence that they both intended for the person providing the egg to be a parent.

If you are planning to conceive through ovum sharing you should use **California Statutory Forms for Assisted Reproduction Form 3** below to protect the rights of both parents.

We are considering using a known sperm donor. How can we make sure the donor is not a legal parent?

Couples or single women who plan to have a child using sperm from a friend (a “known donor”) should be aware of California law about when a sperm donor is considered a parent. Parental rights are determined by statute and by the courts. To ensure that a donor is not a legal parent, it is very important to comply with the California family law statute that discusses the use of a sperm donor and artificial insemination to have children.

As of January 1, 2016, there are three ways that parents and the sperm donor can avoid the donor being a legal parent. Note that these will also apply to children conceived before January 1, 2016 once the law goes into effect.

- 1) Using a medical doctor or sperm bank:** If the sperm is given to a medical doctor or sperm bank before the insemination (and the donor isn’t married to or

registered domestic partners with the birth parent), the donor will not be a legal parent. This law doesn't necessarily require the doctor to actually do the insemination, but some courts have interpreted it to require that the sperm must be provided to a doctor before the birth parent is inseminated.

NOTE: As mentioned above, if the person providing sperm to the doctor actually wants to be a parent of the child conceived, they need to have a written agreement with the birth parent saying so before conception, or they may be inappropriately treated as a sperm donor. There is a statutory form (Form 2 below) that the two parents can use for this.

OR:

- 2) **A signed donor agreement before conception:** The sperm donor will not be a legal parent if the donor and the birth parent signed a written agreement *before conception* that the donor will not be a parent and that the birth parent conceived through assisted reproduction. There is a statutory form that a parent and a known donor can use to establish in writing their agreement that the donor will not be a parent (**California Statutory Forms for Assisted Reproduction Form 4** below).

OR:

- 3) **Clear and convincing proof of an oral agreement:** If there is no signed written agreement before the conception, a donor will not be a legal parent if a court finds "clear and convincing" proof that there was an oral agreement before the conception that the donor would not be a parent and that the child was conceived through assisted reproduction. It is best to sign a written agreement before birth (**Form 4**) if possible.

Even where the parties have complied with the law, however, the donor may have a claim to being a legal parent if the donor lives with the child and holds themselves out to the world as the child's parent. If the donor is or could be a legal parent, the donor can voluntarily give up those rights as part of an adoption by the birth parent's partner.

Should we complete an adoption or get a court judgment of parentage?

Using the forms below protects the legal rights of non-biological or non-birth parents in California if you meet all the requirements of the law. However, NCLR still strongly recommends that all non-biological parents adopt their child or obtain a judgment of parentage as soon as possible after their children's birth. This is extremely important. It is possible that non-biological or non-birth parents who do not have parentage or adoption judgments will not be recognized as parents if they move or travel to other states.

“Parentage judgment” is a gender-neutral term for paternity judgments. A parentage judgment is a court order saying that a person is a legally-recognized parent under state law. You can file a petition to establish parental relationship with the superior court in the county where the child lives. Also, in California, a parentage judgment can be entered pre-birth, becoming automatically effective upon birth of the child.

In addition to parentage judgments, there are two types of adoptions available in California: step parent/domestic partner and second parent adoption. If there is a known sperm or egg donor, any parental rights they may have can be voluntarily terminated as part of an adoption. It is important to follow the court rules about notifying donors or anyone who may be a legal parent about an adoption petition.

Domestic partner/stepparent adoptions are available only to registered domestic partners or married couples and are cheaper and faster. .

Also, if you are not married to the birth parent, you may qualify for a federal tax credit for the costs associated with a second parent or domestic partner adoption.

More information

If you need more information about assisted reproduction law or have other legal questions, or if you want help finding an LGBT-friendly attorney in your area, you can contact the National Center for Lesbian Rights at www.nclrights.org/gethelp or by phone at 1-800-528-6257.

California Statutory Forms for Assisted Reproduction

How to use these forms

If you are thinking about having children through assisted reproduction (artificial insemination, surrogacy, etc.) OR if you are thinking of donating your sperm or eggs for somebody else to be a parent, you can fill out these forms to make your intentions clear before conception.

Be sure to select the form that applies to your situation, and be sure to read any form language carefully before signing to make sure it accurately reflects your intentions. Also, make sure that everybody who signs the form has read the form, and understands what they are signing. Once you have filled out a form, you can bring the form to sign in front of a notary. Once signed, it is a good idea to make copies of the form for each person who signed the form, and to keep copies in a safe place.

It is also important to know that signing these forms alone will not guarantee that you will be (or that you will not be) a parent. It is recommended that you speak with a family law attorney in your area. A family law attorney can discuss what legal protections you need or can put in place before conception, as well as after the child is born.

Also, please note that notary requirements have changed since the drafting of the notary acknowledgment portion of these forms. We encourage you when you have these forms notarized to have your notary attach their own notary acknowledgment which complies with current California law.

This fact sheet above provides some basic legal information to help answer common questions involving assisted reproduction, and may also help you decide what form is right for common assisted reproduction situations.

If you are unsure what form to use or have other legal questions relating to assisted reproduction, you can contact a family law attorney in California, or contact the National Center for Lesbian Rights at www.nclrights.org/gethelp or by phone at 1-800-528-6257.

California Statutory Forms for Assisted Reproduction, Form 1:
Two Married or Unmarried People Using Assisted Reproduction to Conceive a Child

Use this form if: You and another intended parent, who may be your spouse or registered domestic partner, are conceiving a child through assisted reproduction using sperm and/or egg donation; and one of you will be giving birth.

WARNING: Signing this form does not terminate the parentage claim of a sperm donor. A sperm donor's claim to parentage is terminated if the sperm is provided to a licensed physician and surgeon or to a licensed sperm bank prior to insemination, or if you conceive without having sexual intercourse and you have a written agreement signed by you and the donor that you will conceive using assisted reproduction and do not intend for the donor to be a parent, as required by Section 7613(b) of the Family Code.

The laws about parentage of a child are complicated. You are strongly encouraged to consult with an attorney about your rights. Even if you do not fill out this form, a spouse or domestic partner of the parent giving birth is presumed to be a legal parent of any child born during the marriage or domestic partnership.

This form demonstrates your intent to be parents of the child you plan to conceive through assisted reproduction using sperm and/or egg donation.

I, _____ (print name of person not giving birth), intend to be a parent of a child that _____ (print name of person giving birth) will or has conceived through assisted reproduction using sperm and/or egg donation. I consent to the use of assisted reproduction by the person who will give birth. I INTEND to be a parent of the child conceived.

SIGNATURES

Intended parent who will give birth: _____ (print name)

_____ (signature) _____ (date)

Intended parent who will not give birth: _____ (print name)

_____ (signature) _____ (date)

This statutory form is taken verbatim from Cal. Fam. Code § 7613.5, effective January 1, 2016. This form is not legal advice. Completing and/or notarizing one or more of these forms can help establish who your child's parents are under the law, but signing these forms alone does not guarantee that you will be (or will not be) a legal parent. If you are considering having a child through assisted reproduction, it is recommended that you speak with a family law attorney in your area. A family law attorney can discuss what legal protections you need or can put in place before conception, as well as after your child is born.

For basic legal information about assisted reproduction law in California, and for assistance in finding an LGBT-friendly attorney in your area, you can contact the National Center for Lesbian Rights at www.nclrights.org/gethelp.

NOTARY ACKNOWLEDGMENT

State of California

County of) _____

On _____ before me, _____ (insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature(Seal)

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California Statutory Forms for Assisted Reproduction, Form 2:
Unmarried, Intended Parents Using Intended Parent's Sperm to Conceive a Child

Use this form if: (1) Neither you or the other person are married or in a registered domestic partnership (including a registered domestic partnership or civil union from another state); (2) one of you will give birth to a child conceived through assisted reproduction using the intended parent's sperm; and (3) you both intend to be parents of that child.

Do not use this form if you are conceiving using a surrogate.

WARNING: If you do not sign this form, or a similar agreement, you may be treated as a sperm donor if you conceive without having sexual intercourse according to Section 7613(b) of the Family Code.

The laws about parentage of a child are complicated. You are strongly encouraged to consult with an attorney about your rights.

This form demonstrates your intent to be parents of the child you plan to conceive through assisted reproduction using sperm donation.

I, _____ (print name of parent giving birth), plan to use assisted reproduction with another intended parent who is providing sperm to conceive the child. I am not married and am not in a registered domestic partnership (including a registered domestic partnership or civil union from another jurisdiction), and I INTEND for the person providing sperm to be a parent of the child to be conceived.

I, _____ (print name of parent providing sperm), plan to use assisted reproduction to conceive a child using my sperm with the parent giving birth. I am not married and am not in a registered domestic partnership (including a registered domestic partnership or civil union from another jurisdiction), and I INTEND to be a parent of the child to be conceived.

SIGNATURES

Intended parent giving birth: _____ (print name)

_____ (signature) _____ (date)

Intended parent providing sperm: _____ (print name)

_____ (signature) _____ (date)

NOTARY ACKNOWLEDGMENT

State of California

County of) _____

On _____ before me, _____ (insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature(Seal)

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California Statutory Forms for Assisted Reproduction, Form 3:
Intended Parents Conceiving a Child Using Eggs from One Parent and the Other Parent Will Give Birth

Use this form if: You are conceiving a child using the eggs from one of you and the other person will give birth to the child; (2) and you both intend to be parents to that child.

Do not use this form if you are conceiving using a surrogate.

WARNING: Signing this form does not terminate the parentage claim of a sperm donor. A sperm donor's claim to parentage is terminated if the sperm is provided to a licensed physician and surgeon or to a licensed sperm bank prior to insemination, or if you conceive without having sexual intercourse and you have a written agreement signed by you and the donor that you will conceive using assisted reproduction and do not intend for the donor to be a parent, as required by Section 7613(b) of the Family Code.

The laws about parentage of a child are complicated. You are strongly encouraged to consult with an attorney about your rights.

This form demonstrates your intent to be parents of the child you plan to conceive through assisted reproduction using eggs from one parent and the other parent will give birth to the child.

I, _____ (print name of parent giving birth), plan to use assisted reproduction to conceive and give birth to a child with another person who will provide eggs to conceive the child. I INTEND for the person providing eggs to be a parent of the child to be conceived.

I, _____ (print name of parent providing eggs), plan to use assisted reproduction to conceive a child with another person who will give birth to the child conceived using my eggs. I INTEND to be a parent of the child to be conceived.

SIGNATURES

Intended parent giving birth: _____ (print name)

_____ (signature) _____ (date)

Intended parent providing eggs: _____ (print name)

_____ (signature) _____ (date)

NOTARY ACKNOWLEDGMENT

State of California

County of) _____

On _____ before me, _____ (insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signature(Seal)

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California Statutory Forms for Assisted Reproduction, Form 4:
Intended Parent(s) Using a Known Sperm and/or Egg Donor(s) to Conceive a Child

Use this form if: You are using a known sperm and/or egg donor(s), or embryo donation, to conceive a child and you do not intend for the donor(s) to be a parent.

Do not use this form if you are conceiving using a surrogate.

If you do not sign this form or a similar agreement, your sperm donor may be treated as a parent unless the sperm is provided to a licensed physician and surgeon or to a licensed sperm bank prior to insemination, or a court finds by clear and convincing evidence that you planned to conceive through assisted reproduction and did not intend for the donor to be a parent, as required by Section 7613(b) of the Family Code. If you do not sign this form or a similar agreement, your egg donor may be treated as a parent unless a court finds that there is satisfactory evidence that you planned to conceive through assisted reproduction and did not intend for the donor to be a parent, as required by Section 7613(c) of the Family Code.

The laws about parentage of a child are complicated. You are strongly encouraged to consult with an attorney about your rights.

This form demonstrates your intent that your sperm and/or egg or embryo donor(s) will not be a parent or parents of the child you plan to conceive through assisted reproduction.

I, _____ (print name of parent giving birth), plan to use assisted reproduction to conceive using a sperm and/or egg donor(s) or embryo donation, and I DO NOT INTEND for the sperm and/or egg or embryo donor(s) to be a parent of the child to be conceived.

(If applicable) I, _____ (print name of sperm donor), plan to donate my sperm to _____ (print name of parent giving birth and second parent if applicable). I am not married and am not in a registered domestic partnership (including a registered domestic partnership or a civil union from another jurisdiction) with _____ (print name of parent giving birth), and I DO NOT INTEND to be a parent of the child to be conceived.

(If applicable) I, _____ (print name of egg donor), plan to donate my ova to _____ (print name of parent giving birth and second parent if applicable). I am not married and am not in a registered domestic partnership (including a registered domestic partnership or a civil union from another jurisdiction) with _____ (print name of parent giving birth), or any intimate and

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nonmarital relationship with _____ (print name of parent giving birth) and I DO NOT INTEND to be a parent of the child to be conceived.

(If applicable) I, _____ (print name of intended parent not giving birth), INTEND to be a parent of the child that _____ (print name of parent giving birth) will conceive through assisted reproduction using sperm and/or egg donation and I DO NOT INTEND for the sperm and/or egg or embryo donor(s) to be a parent. I consent to the use of assisted reproduction by the person who will give birth.

SIGNATURES

Intended parent giving birth: _____ (print name)

_____ (signature) _____ (date)

(If applicable) Sperm Donor: _____ (print name)

_____ (signature) _____ (date)

(If applicable) Egg Donor: _____ (print name)

_____ (signature) _____ (date)

(If applicable) Intended parent not giving birth: _____ (print name)

_____ (signature) _____ (date)

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