

# WHAT YOU NEED TO KNOW REGARDING UTAH SURROGACY LAW

## KIRTON McCONKIE

50 East South Temple, 4<sup>th</sup> Floor

Salt Lake City, Utah 84111

(801) 328-3600

[lrich@kmclaw.com](mailto:lrich@kmclaw.com)

**Validating a Gestational Agreement:** There is a defined process under Utah law to obtain legal recognition of a gestational agreement so that the intended parents will be considered the legal parents of a child born as a result of a surrogacy arrangement. The statutory requirements for this process are found in Part 8 of the Utah Uniform Parentage Act, Utah Code §§ 78B-15-801 *et seq.* The process involves filing a petition with the court after the gestational agreement has been drafted, and requesting a court order validating the agreement. After the child is born, the filing of a notice with the court of the child's birth results in the court entering an order confirming that the intended parents are the legal parents of the child and directing the Office of Vital Records to issue a birth certificate naming them as the child's parents.

**Parties and Representation:** The intended parents, the gestational carrier, and her husband (if any) are all necessary parties to the petition. The gestational carrier and her husband will need to be represented by a different lawyer than the lawyer that represents the intended parents. Either the gestational carrier or the intended parents must have resided in Utah for at least 90 days.

**Who Can Be An Intended Parent?** The intended parents must be married to each other and be at least 21 years old. There is also a requirement that medical evidence show the intended mother is unable to bear a child or unable to do so without unreasonable risk to her or the child. This requirement does not apply to gay married couples.

**Who Can Be A Gestational Carrier?** The gestational carrier must be at least 21 years old, have had at least one pregnancy and delivery, and may not currently be receiving Medicaid or any other state assistance.

**Prohibitions Regarding Genetic Material:** Neither the gestational carrier's eggs may nor her husband's sperm may be used in the assisted reproduction procedure. If the intended parents are unable to use their own eggs and sperm in the procedure, however, they may use donor eggs or sperm from persons other than the gestational carrier or her husband.

**Counseling:** All parties must participate in counseling by a mental health professional so that they understand their options and the potential consequences of the agreement.

**Home Study:** Intended parents will need to obtain a home study, unless the court waives the requirement. For a home study, the intended parents are interviewed by a social worker or other qualified professional in their home to determine if the intended parents can provide a safe home environment for a child. Criminal background checks, child abuse screenings, doctor's recommendations, and reference letters from family and friends are also part of the home study.

**Fees:** Utah allows for the gestational carrier to be paid for her services. In addition to compensation for the pregnancy and delivery, gestational agreements often include provisions requiring the intended parents to pay for the gestational carrier's travel expenses, lost wages, legal fees, counseling costs, life insurance premiums, medical expenses not covered by insurance, and other miscellaneous expenses.