

## Surrogacy & Assisted Reproductive Technology

Greenspoon Marder LLP's Surrogacy and Reproductive Technology Practice Group assist our clients with all legal aspects of third-party reproduction. We emphasize a holistic approach that takes into account all our clients needs, concerns, desired outcomes and also legal considerations. As a parent of twin boys born via surrogacy, Partner Marla Neufeld understands the challenges you are facing and the rewards to come.

### Services Provided

- Draft Gestational Surrogacy and/or Traditional Surrogacy Agreements on behalf of heterosexual or same sex married couples
- Review Gestational Surrogacy and/or Traditional Surrogacy Agreements on behalf of surrogates
- Draft Pre-Planned Adoption Agreements on behalf of heterosexual and LGBTQ (Lesbian, Gay, Bisexual, Transgender, Questioning) community and unmarried couples
- Review Pre -Planned Adoption Agreements on behalf of surrogates
- Draft and review egg, sperm, and embryo donor contracts
- Prepare and obtain pre or post birth orders; establishment of parental rights
- Administer various adoptions such as traditional adoption, second parent adoption, and stepparent adoption for heterosexual and same sex married couples, heterosexual and LGBTQ community
- Name change agreements
- Escrow services for gestational surrogacy arrangements
- Recommendations for reputable surrogacy agencies, egg, and sperm donation agencies, fertility clinics, therapists and other related recommendations

### Services Defined

- Gestational Surrogacy Agreement and Pre Planned Adoption Agreements
  - Both a Gestational Surrogacy Agreement (only for use by heterosexual and same sex legally married couples in Florida) and a Pre-Planned Adoption Agreement (commonly used by heterosexual and LGBTQ individuals and unmarried couples in Florida) are between the commissioning couple and the surrogate and her partner/spouse, if applicable. These agreements are intended to detail the parties' rights, obligations, intentions and expectations in connection with their third party reproductive technology arrangement, and cover topics such as parental rights, custody issues, compensation, location of delivery, future communication between the parties, insurance, control over medical decisions during the pregnancy, payment of medical bills, liability for medical complications, and other provisions required by Florida law.
- Gestational Surrogacy Agreements Under Florida Law
  - In Florida, gestational surrogacy is governed by Florida Statute 742.15 and can only be utilized by heterosexual and same sex married couples. Gestational surrogacy refers to a process by which a commissioning couple's eggs and/or sperm are fertilized *in-vitro* and the resulting embryo is then transferred into another woman's uterus. Because of the legal protections under the Florida statute, intended parents can be certain that the surrogate has no legal connection to the child (child or children) through their Gestational Surrogate Agreement. Under Florida law, the "commissioning couple" is "the intended mother and father of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents." Therefore, Florida's gestational surrogacy differs from traditional surrogacy as the statute requires the genetic material of at least one of the commissioning parents, but none from the surrogate.

- Pre Planned Adoption Agreements Under Florida Law
  - Pre-Planned Adoption Agreements are governed by Florida Statute 63.213 and are defined as an agreement in which a surrogate agrees to bear a child and relinquish parental rights to the intended parent(s). Pre-Planned Adoption Agreements allow heterosexual and LGBTQ individuals and unmarried couples to legally use a surrogate. Florida law has mandatory requirements of what must be included in this type of agreement to effectively terminate the surrogate's parental rights and avoid Florida's adoption laws.
  - Pre-Planned Adoption Agreements do not require the surrogate to be biologically related to the child, and it can be used in either a "traditional surrogacy" (where the surrogate becomes pregnant with the use of her own egg) or a "gestational surrogacy" (where the surrogate becomes pregnant without the use of her own egg).
  - Pre-Planned Adoption Agreements are enforceable in Florida, provided the agreement complies with the precise requirements of Florida law, the necessary consents are obtained, and no party terminated the agreement before the final transfer of custody. Florida law specifically requires a separate attorney for both the intended parents and the surrogate, both at the expense of the intended parents. Our attorneys can provide legal services for both intended parents and the surrogate (although not in the same surrogacy journey).
- Same Sex Married Couples, LGBTQ Individuals, and Unmarried Couples Using Surrogacy and Adoption
  - Adoption has been an option in Florida for the lesbian, gay, bisexual, transgendered, and questioning (LGBTQ) community since 2010, however, with the help of assisted reproductive technology (ART), the LGBTQ individuals can utilize ART to build a family with a genetic connection and place both parents on the child's birth certificate. In Florida, the laws do not prohibit same sex couples or LGBTQ singles from using a surrogate or donated egg, sperm or embryos. All answers below are based on the assumption that the ruling allowing same sex marriage in Florida is not overturned by the U.S. Supreme Court.
- Egg, Sperm, and Embryo Donation Agreements
  - The donation of eggs, sperm and embryos are governed by Florida Statute 742.14. The statute expressly provides that the donor of any egg, sperm or embryo (except as otherwise provided) shall relinquish all maternal or parental rights and obligations with respect to the donation or the resulting child. Laws around the county are constantly changing in third party reproductive technology law, therefore, it is important to consult with a lawyer before entering into any type of egg, sperm, or embryo donation agreement.
  - The donation agreements between recipients and the donor specifically detail the parties' obligations and rights with regard to the donation, and cover issues that arise in third party reproductive technology including, but not limited to, parental rights of the intended parents and relinquishment of parental rights by the donating party, confidentiality, required medical testing, future communication between the parties, expenses, liability for complications, and the rights of the child.
  - Couples considering egg, sperm, and embryo donation need to consider whether they want an open donation. This allows for the ability to contact the donor in the future if the child wants additional information on the donor for purposes such as genetic health conditions or general curiosity.
- Egg Donation
  - Egg donation is indicated when a woman has a healthy uterus and is able to carry a pregnancy to term but does not have an adequate supply of viable eggs. Premature ovarian failure, damaged or absent ovaries, age, and previous chemotherapy or radiation treatment are all reasons why a woman may not have useable eggs. Egg donation is also an option when a woman carries a detrimental genetic condition. Those seeking the use of a surrogate can also use donated eggs to create the embryo that is ultimately transferred into the surrogate. Donated eggs are commonly used by gay men utilizing assisted reproductive technology.
  - An egg donor is a woman who donates her egg to use in the conception of a child conceived through the process of *in-vitro* fertilization. Our attorneys can assist recipients by referring them to reputable egg donor agencies or clinics. Once recipients have selected an egg donor and are ready to retain the donor agency, we review the agreement between the intended parents and the agency as well as draft and negotiate the Egg Donation Agreement between the intended parents and the egg donor.
- Sperm Donation
  - Donor sperm is commonly used when a man seeking to start a family has no sperm, has poor semen analysis, or when a man carries a detrimental genetic condition. Donated sperm is also commonly used by lesbian women utilizing assisted reproductive technology.
  - Information about a sperm donor's physical characteristics, race, ethnic background, educational background, career history, and

health (including test results of infectious/sexually transmitted diseases) are generally available at sperm banks. Some sperm banks are open to providing non-identifiable information about the donor (including photographs) as well as providing a service for adult offspring to obtain information about the donor in the future.

- Generally, the sperm donation agreement by the donating man is entered into with the sperm bank. Intended parents considering using donated sperm need to consider whether they want the ability to contact the sperm donor in the future in the event the child wants to contact the donor or in the event of needing genetic information on the donor. Our lawyers assist recipients by referring them to reputable sperm donation banks.
- Embryo Donation
  - Storing frozen embryos is expensive; instead of destroying embryos, unused embryos are commonly donated. Once the embryos are donated, the patients no longer have the financial burden of storage and based on an Embryo Donation Agreement, the patients can be released of any parental rights associated with the embryos. We assist with the legal documentation involved with both embryo donation and the receipt of embryos from a donor.
- Pre and Post Birth Orders
  - Intended parents who use the services of a surrogate must obtain a court order determining legal parentage for the child once the child is born. The pre-birth order directs the hospital where the child is born and the post birth order allows the appropriate state department of vital records to place the intended parents' names on the birth certificate of the child that was delivered by the surrogate.
  - In Florida, when using a Gestational Surrogacy Agreement (not applicable to Pre-Planned Adoption Agreement), the law provides an expedited procedure to affirm the child's parentage. This procedure is an expedited, non-adversarial process that will result in the issuance of a new birth certificate with the intended parents being designated as the parents.
- Adoption
  - Most standard adoptions in Florida are a two-step process, first, termination of parental rights of the birth parent(s) (except in Stepparent Adoption) and, second, adoption of the child by the adoptive parent(s). This process both severs the legal relationship between the child and the birth parent(s) and creates a legal relationship between the child and the adoptive parent(s). Florida Statutes Chapter 63 provides the legal framework for adoption, which is intended to, "protect and promote the well-being of persons being adopted and their birth and adoptive parents." Under Florida law, the following are permitted to adopt: adults who live and work in the state, are of good character, and have the ability to nurture and provide for a child. Single adults, as well as heterosexual and same sex couples or individuals can adopt a child. A stepparent may adopt his or her spouse's children, which includes a stepparent in a same sex married couple. A person may not be prohibited from adopting solely because of a physical disability unless it is determined that the disability renders the person incapable of being an effective parent.
  - Many potential adoptive parents wonder whether a birth parent can change their mind to keep the child once they are born. The answer varies depending on the age of the child being placed for adoption. Under Florida law, when a child under the age of six months is placed for adoption, the biological mother may not sign her consent for adoption until forty-eight hours after the child's birth or on her date of discharge from the hospital whichever time is earlier. The birth father may consent to the adoption at any time after the child's birth. Additionally, a legal or biological father may sign an irrevocable Affidavit of Non-Paternity at any time, before or after the child's birth, relinquishing his parental rights. When a child is six months of age or older, the birth mother and father may sign the consent to adoption at any time, however, their consent is subject to a revocation period of 3 business days. Regarding all termination of parental right consents, once the consents are properly signed by the birth parents, and the revocation period has passed (if applicable), only the court can overturn the consents to adoption upon a finding that the consents were taken by fraud or duress.
- Second Parent Adoption
  - Since Gestational Surrogacy Agreements are limited to heterosexual and same sex married couples and cannot be used by individuals or unmarried couples, the process in which the non-biological partner obtains full parental rights to the child (and the biological parent retains all parental rights) is through the process of Second Parent Adoption. Without utilizing a Second Parent Adoption, the non-biological parent in the same sex relationship has no legal rights to the child. Therefore, it is important to consult with a lawyer familiar with this process to ensure that all parties are adequately protected and both same sex partners obtain full parental rights to the child.
  - The process for Second Parent Adoption, which can take approximately 2-3 months from filing the adoption petition, is similar to a standard adoption (however the biological parent maintains all parental rights with a Second Parent Adoption) which involves filing

an adoption petition, fingerprinting, background checks, a home study, obtaining the necessary consents to terminate parental rights from the necessary parties, a search of the putative father registry to ensure nobody else claims parents' rights to the child, a final adoption hearing and judgment, and ultimately placing both parents on the child's birth certificate.

- Stepparent and Relative Adoption
  - Florida law provides an expedited procedure for adoptions involving stepparents and relatives waiving many of the formal requirements applicable to non-relative adoptions, most notably being that a separate proceeding for termination of parental rights is not required and the final judgment of adoption terminates parental rights and grants the adoption.
  - A stepparent may adopt his/her spouse's child with the spouse's consent along with the other birth parent's consent to termination of his/her parental rights. Unless otherwise ordered by the court, the consent of the adoptive child is also required if over the age of 12. If the absent parent to consent to the stepparent adoption cannot be obtained, an option may be to file to terminate the parental rights of the absent parent.

## **Lead Attorney**

- Marla Neufeld

## **Related Areas**

- Private Client Services
- Marital & Family
- Wills, Trusts & Estates

## **News**

- Greenspoon Marder Partner Marla Neufeld Feature Speaker for Resolve Meeting on Third Party Reproduction
- Greenspoon Marder Supports The Men Having Babies Surrogacy Conference & Expo
- Greenspoon Marder Hosts The Nicklaus Children's Hospital Genes & Cocktails Reception
- Greenspoon Marder Partner Marla Neufeld To Be Featured Speaker At The American Bar Association's Annual Conference On Emerging Issues In Healthcare Law
- Greenspoon Marder Surrogacy Practice Group Recognized as an Innovative Practice Group by the Daily Business Review for 2018
- Greenspoon Marder Promotes Two Attorneys To Partner and Senior Counsel in 2018
- Greenspoon Marder Senior Counsel Marla Neufeld Speaking at Assisted Reproductive Technology Presentation and Q&A
- Greenspoon Marder Hosts Reception Spotlighting Assisted Reproductive Technology Book At Books & Books In Coral Gables
- Assisted Reproductive Technology Issues and Pathways to Success Panel Discussion, January 14, 2017
- Greenspoon Marder is Proud to Support the 12th Annual Men Having Babies Conference in New York
- Marla Neufeld of Greenspoon Marder and Jeffrey A. Kasky of Kasky & Kasky Release Comprehensive Consumer Guide on Assisted Reproduction
- Greenspoon Marder Senior Counsel Marla Neufeld Featured on Community News and Review Program
- Boca Raton Synagogue's Infertility/Miscarriage Support Group to Host Greenspoon Marder Attorney Marla Neufeld
- Greenspoon Marder Law Attorney Marla Neufeld Appointed to Board of Directors of Uprooted
- Marla Neufeld to Speak at the Broward County Matrimonial Lawyers' Luncheon
- DADsquared discusses Florida Same Sex Surrogacy laws with Family Attorney Marla Neufeld
- Marla Neufeld Heads Up Greenspoon Marder's Surrogacy Law Practice Group

## **Videos**

- ICIID: Baby Steps to Surrogacy: An Interview with Attorney Marla Neufeld, Esq.

## Meet the Team

- Marla Neufeld

## Sub-Practices

### Guardianship

When a person becomes incapacitated and unable to care for him or herself, and there has been no prior incapacitation planning, the probate courts become involved. Judges oversee all aspects of the incapacitated person's life; including the individual's care and finances. This legal proceeding is known as a guardianship, and is applicable to both the elderly and to young people under the age of 18 in Florida.

Our team represents both individuals in need of an appointed guardian under Florida law and individuals contesting the appointment of a guardian. Judicially supervised guardianships are subject to rigid statutory and procedural requirements, and our attorneys have the extensive administrative and litigation experience necessary to ensure the appointment of proper a guardian and also ensure that the guardian satisfies the state requirements.

While many guardianship proceedings are not vigorously contested, they can become adversarial when the subject of the proceeding challenges the allegations of incapacity or when the suitability of a guardian comes into question.

Our attorneys can assist in the following areas:

- Contested Appointments of Guardians
- Contested Determination of Capacity
- Establishment of Annual Budgets
- Guardianship Administration
- Guardianship-Related Litigation
- Petition for Appointment of Guardian
- Petition to Determine Incapacity
- Preparation of Annual Plans and Annual Accountings
- Preparation of Initial Plan and Inventory

