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To Turkey Baste or Not

Assisted reproduction can take on many forms. Many who decide to build their family through assisted reproduction use the services of a center. The center may be a fertility center, affiliated with sperm and egg banks, and medical facilities, while others are merely in the business of "matching" a person with an egg and or a sperm donor, or a person who carries the embryo to term. Others seek a more informal method, specifically for donor sperm; hence the turkey baster.

"Whatever method used, it is critical to have clear and unambiguous contracts with all of the parties and entities."

Many people fall into the trap of relying upon the off-the-rack contract, which often overlooks critical issues or includes provisions prohibited by public policy. And most of these stock contracts provide no remedies in the event the agreement sours, particularly when contracting with a center.

It is important for anyone embarking on creating a family through assisted reproduction to have a formal written contract, with each of the parties and entities involved in the process. There are some who choose not to go the formal route and are successful with the turkey baster. However, even in an informal arrangement, written contracts are critical.

Some aspects of the informal arrangement which may go overlooked without competent counsel can result in great intentions gone awry and a child caught up in a legal battle between and among disgruntled parents. All contracts must spell out the legal rights and responsibilities of each of the parties to the contract, during the pregnancy, immediately upon birth and thereafter. It is not enough for the contract to address the immediate concerns, such as custody and waiver of parental rights. It is crucial for the contract to also address the unfortunate circumstance if the parent(s) die before the child is emancipated and whether the donor may have any rights to the child at that time.

Another critical aspect often overlooked among friends is what, when and how to tell the child born of this contract as to how the child was conceived. Equally important is what role, if any, the known donor will take on in the child's life. Not only is this particularly sensitive and sometimes awkward among friends, it is also an important aspect in the child's development. Like a child adopted, a child conceived from assisted reproduction has the right to know.

When building a family through assisted reproduction, with or without a turkey baster, it's essential that all parties not only have a firm understanding of their rights and responsibilities but also arm themselves with a well written contract.

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Avoiding Family Feuds Over Inheritance

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When it comes to inheritance, family feuds are real. Regardless of the amount of inheritance at stake, it is a far too common occurrence for family disputes to arise over an inheritance after a parent dies. Otherwise rational people can quickly act like children fighting in the school yard over a perceived slight or unfair distribution of a parent's estate.

Let's be honest. Talking about death and money is difficult for some and awkward for most of us. Most estate plan clients I encounter struggle with how and whether to talk to their children about their estate plan. There are several ways to prevent or to minimize a family feud and it all comes down to being as prepared, open and transparent as possible.

First and foremost, you need to have an estate plan that reflects your wishes. At a minimum this includes a will, a trust if appropriate, a durable power of attorney, health care proxy, and living will. The will must name a personal representative and successor to administer your estate, as well as a guardian and conservator, and successors, for minor children. Once an estate plan is in place it is imperative to update these documents as family circumstances change such as births, deaths and divorce, changes in family dynamics and income.

Second, it is important to recognize that not all assets are controlled by a will or trust. For example, assets held jointly with rights of survivorship are not disposed of by your will, nor are assets that have named beneficiaries such as life insurance policies, individual retirement accounts, 401(k) plans and annuities. Keeping track of these assets and the beneficiaries named as they relate to your overall inheritance plan will minimize potential conflicts and disparities in the distribution of assets to your heirs.

Third, schedule a family meeting long before you are at death's door to talk openly about how you plan to dispose of your assets. But a word of advice: be fair. While it isn't always possible to treat each child equally, it is prudent to treat each child fairly as each has different needs and financial abilities. If your children know what to expect and understand the underlying reasons behind your decisions, they are less likely to dispute the inheritance after you're gone. It is the shock and disappointment that leads to inheritance litigation, tearing families apart. If there is already tension among family members, consider asking your estate attorney to facilitate the meeting, diffuse the tension and be available to answer questions. I have found these meetings to be both productive and therapeutic for the families involved.

When families feud, nobody wins and everyone suffers. To avoid family friction over inheritance, be proactive and take action while you can.

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For more information contact Arlene Kasarjian at alk@kongreen.com.

Let's Face It

"*Person to person, face to face, person to person, one to one, just you and me. . . person to person, that's just how it gets done.*" These lyrics from an old 70's funk band, Average White Band, remind me of the value of face-to-face communication. Why face-to-face versus all of the wonders that technology today has provided? The introduction of e-mail, instant messaging, social networking and other means of exchanging written messages has created additional alternatives to face-to-face communications. While modern technology has its place, nothing can match the power of face-to-face meetings with clients, colleagues and opposing counsel.

When you have a face-to-face meeting, you have the opportunity to observe. We tend to forget that body language plays a major part in our communication. It is not only just how you say something, but also your facial expressions and body posture. This is lost in a phone conversation, and can never be a part of an email. There is also the engagement. Who knows what people are doing while on conference calls. (You might not want to know.) However, face-to-face contact leads to engagement. It ensures that people are "in the conversation." When you are all in the same room, it forces people to participate, to be engaged. You can't turn your back to the meeting. Yet, this is exactly what many people do on conference calls. Although written, telephone and face-to-face communication all rely on words, only the latter provides the ability to both observe body language and hear tone of voice. These additional communication cues or signals can provide insights that are critical in gaining an understanding of others' perspectives.

One simple face-to-face could eliminate many back and forth emails, especially when you are pandering to your client with a "bcc." When you are in a meeting, there's more energy and, of course, more opportunities to participate and contribute. Oftentimes there's also a synergy that ignites discussion and innovative thinking. You can brainstorm more easily. Understand reactions to information being presented.

There is a personal touch: Plain and simple, it's just nice. We're better able to socialize and interact with one another. We quickly build a bond that can set the foundation for trust. Face-to-face communication provides opportunities to observe others reactions, adjust behavior, and clarify intent. As a result, the discussions can increase the likelihood of positive outcomes in preventing and resolving conflicts.

"Without verbal and non-verbal cues, using e-mails or other written communications there is an increased probability of miscommunication."

Conference calls can lead to misunderstandings either due to lack of communication or simply because the medium is not conducive to individuals asking for better meaning. It's much harder to "raise your hand" on a call than it is in person. Communication in person allows you to interact with the listener in a back-and-forth discussion. It also allows you to utilize nonverbal gestures, facial expressions and personal charisma to enhance the message.

Face-to-face discussions also allow those involved to establish parameters and determine an appropriate process for sharing confidential information. In situations of this nature, the use of e-mail normally is not an acceptable alternative. Confidentiality can be lost once an e-mail is sent, as it can be forwarded again and again. Face-to-face discussions can create an opportunity for those involved to examine their understanding of the information provided and to brainstorm pluses and minuses associated with alternative courses of action.

Whether it's gaining the trust of a new client, or finding a solution to resolve a conflict, face-to face communication: "*that's just how it gets done.*"

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How An Expert Can Help Your Divorce Case:
Insights from the 2016 Family Law Financial Forum

Recently, Attorney Karen Greenberg and I had the opportunity to attend the 2016 Family Law Financial Forum, an event hosted by Massachusetts Continuing Legal Education. This program featured a panel of experts in the financial aspects of divorce, and included attorneys, business valuators, and accountants with varying certifications and specialties. The all-day presentation allowed me, as a new lawyer, to learn from seasoned practitioners. Because the panelists have tested creative solutions in divorce cases, they could weigh in on the viability of innovative approaches; because the presenters had seen mistakes made in practice, they could impart lessons learned; and because the speakers have worked with many experts in the family law community, they could identify helpful resources.

"While there was a lot to learn at this event, the biggest takeaway for me was that, in some cases, retaining a financial expert can be critical."

Over time, families have become increasingly complex. Not only has family structure and division of caretaking responsibilities changed dramatically, but the financial supports for many families have also become more complicated. For example, a spouse may earn bonus income or receive stock options from his or her employer rather than simply receiving a regular salary. A couple may own assets that are more difficult to value than cars and bank accounts, such as trust interests or a closely held business. The need for a financial expert is heightened by such complex financial arrangements.

In cases such as these, proceeding without an expert means taking risks. A spouse risks receiving an inappropriate child support order because income has not been properly accounted for. There may be unforeseen tax consequences because the proper analysis was not undertaken. A party risks "overpaying" alimony to an ex-spouse because his or her income is misunderstood. Assets may be divided inequitably because their true value is unknown, and not presented to the court. This is especially dangerous given that orders of property division cannot be changed. These risks, however, can be mitigated by utilizing a financial expert.

There are several types of financial experts. For example, real estate appraisers, business valuators, forensic accountants, and CPAs would all fall under the general "financial expert" umbrella. Once employed, the expert could fill one of two roles. The expert could be what is called a testifying expert. Testifying experts analyze relevant information and communicate their opinion to the judge. Alternatively, an expert could be a consulting expert. A consulting expert works with the lawyer to better understand certain information and guide the attorney's inquiry. The type and role of the expert is determined by the needs of the particular case.

Many clients may wonder whether hiring an expert is really necessary; after all, they have already hired an attorney to handle this problem for them. In complex cases an expert may be the only means to obtain an accurate accounting of the marital assets. Of course, the additional cost of retaining a financial expert may be financially burdensome but there are ways to minimize the extra cost. For example, parties may agree to jointly retain an expert to value a marital asset or hire an expert to take preliminary steps and evaluate the need for further work as the engagement proceeds.

At the end of the day, an expert can minimize uncertainty and risk, and help to ensure that a party receives all that is coming to them. And that is priceless.

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