



DON'T TAX YOURSELF

A Publication of Bowditch & Dewey's Estate, Financial & Tax Planning Group

Modern Families, Modern Planning: Why IVF and Reproductive Technology Affect Your Estate Plan

BY JENIFFER BISPO • JULY 14, 2026

For decades, estate planning was relatively straightforward when it came to defining “children” and “descendants.” Traditional legal definitions assumed a timeline where children were born during a person’s lifetime or shortly after their passing.

Today, the landscape of family building has beautifully evolved. Thanks to Assisted Reproductive Technology (ART)—including In Vitro Fertilization (IVF), egg and sperm donation, and gestational surrogacy—families are being built in ways that traditional law never anticipated.

If you have used, or plan to use, alternative reproductive options, standard “cookie-cutter” estate planning documents can leave massive legal blind spots. Here is what you need to consider to ensure your family and your wishes are fully protected.

DEFINING “DESCENDANTS” IN THE AGE OF ART

Most standard wills and trusts use broad terms like “*to my surviving issue*” or “*to my children, per stirpes*.” Under older state laws, these terms may not automatically include children born via reproductive technology.

- **Donor Material:** If a family uses donor eggs, donor sperm, or donor embryos, who is legally considered a parent? While family law in many states establishes parental rights for the intended parents, your estate planning documents must explicitly define “children” to match your family structure so there is never a dispute over an inheritance.
- **The Intent:** Modern estate planning should clearly state your *intent* to treat any child born via ART as your legal, natural child for all inheritance purposes, regardless of genetic connection.

THE LEGAL STATUS OF “CRYOPRESERVED” MATERIAL

One of the most complex aspects of ART in estate planning is the disposition of cryopreserved (frozen) eggs, sperm, or embryos. Legally, these are often treated as a unique form of property rather than individuals, which means they must be accounted for in your planning.

- **Clinic Forms vs. Estate Plans:** When you undergo IVF, you sign a disposition agreement at the clinic stating what happens to the embryos in the event of divorce or death. However, these forms can sometimes conflict with a poorly drafted will or trust. Your estate plan should reference and align with your clinic agreements.
- **Posthumous Conception:** What happens if a child is conceived *after* you pass away using your frozen genetic material? Without explicit instructions, that child might be legally barred from inheriting from your estate or receiving benefits from a family trust. A well-drafted plan will include a specific “posthumous conception clause,” detailing whether such children are beneficiaries and setting a strict timeline (e.g., must be born within 1 to 2 years of your passing) so the estate doesn’t remain open indefinitely.

GESTATIONAL SURROGACY AND TRUST DRAFTING

If you are working with a gestational carrier, your parental rights are typically established via a Pre-Birth or Post-Birth Order. However, timing is everything.

If a tragedy occurs while the surrogate is pregnant, standard trust documents might not recognize the unborn child as a legal beneficiary yet. Your estate planning instruments need customized language to bridge the gap between the pregnancy, the legal parentage order, and your trust to ensure your future child is fully provided for from day one.

APPOINTING THE RIGHT GUARDIANS

Every parent of minor children needs to name a guardian, but ART introduces an extra layer of nuance. If you have frozen embryos or genetic material left over, you need to designate a specific person to have decision-making authority over that material.

- *Will the guardian be allowed to use the embryos to expand your family?*
- *Should they be donated to another couple, donated to scientific research, or thawed and disposed of?*

Leaving these decisions unaddressed can lead to painful, public court battles among surviving family members.

THE TAKEAWAY

Your family is unique, and your estate plan should be too. Relying on generic drafting can accidentally disinherit the very children you worked so hard to bring into the world.