By **Bobbi J. Bierhals** & **Kim Kamin**

Planning Considerations for the Post-Nuclear Family

Changing definitions can impact how advisors provide services and assist clients with estate and trust matters

For centuries, the traditional notion of family involved a heterosexual couple in a long-term marriage who conceived children the old-fashioned way during their marriage. Evolving social norms and new technological advances over the past 40 years have challenged these traditional notions of family. Primary changes include: (1) a dramatic increase in divorce and the creation of blended families; (2) legalization of same-sex marriage and an increase in unmarried cohabiting couples; (3) children born outside of marriage and the phenomenon of single mothers by choice; and (4) acceptance of adoption and sophisticated assisted reproductive technology (ART) (that is, the methods used to conceive a child other than by sexual intercourse).

A full exploration of all these topics is too much for one article, but exploring how some of these changes may particularly impact ultra-high-net-worth (UHNW) clients is a worthwhile endeavor. For advisors in the family office space and others who work with UHNW families, these changing definitions of family can impact: (1) family governance, (2) how services are provided, (3) how existing trusts are to be interpreted, and (4) how new estate-planning instruments should be drafted. These issues go to the very core of what it means to be a family.

Divorce and Blended Marriages

Studies suggest that divorce rates among UHNW clients may be lower than among the general population.[1] Nonetheless, given the wealth at stake, it's important to plan for the termination of a marriage and the disputes and claims that often accompany it. Many states' laws automatically revoke a will (and, in some cases, a trust instrument) with respect to any disposition of property made under the document to a former spouse, any provision conferring a power of appointment (POA) on the former spouse or any provision nominating the former spouse as a fiduciary.[2] To cover situations that fall outside of those statutes, such as roles in a family's irrevocable trusts, it may be a good idea to include a provision that automatically removes a spouse from controlling fiduciary roles on the filing of a divorce action.

Often with UHNW clients, particularly in situations of multi-generational wealth, most assets will be held in trust. Accordingly, the assets that are divisible on divorce may be limited. It's also become increasingly rare for trusts created by preceding generations to provide for descendants' spouses at all, except perhaps as permissible beneficiaries under a POA. Therefore, if a client family-member has created his own trust that includes the spouse as a permissible lifetime beneficiary (for example, a spousal lifetime access trust), it's generally preferable to build in flexibility with the use of POAs or decanting to authorize a third party to remove the spouse following a divorce. That flexibility enables the trust and its assets to be on the table while negotiating the divorce, which may be more desirable than an automatic removal of the spouse as a beneficiary on divorce.

Average life expectancies are nearing 80 years in the United States and are higher for the affluent, whose lifestyles and access to high quality health care lead to longer life expectancies.[3] This means that even for long-term marriages in which no divorce occurred, it's relatively common for one spouse to outlive the other long enough to remarry and potentially have another

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long-term marriage. Advisors should discuss with clients whether a surviving spouse who remarries should continue to be treated as a spouse under the former spouse's estate-planning instruments. Beware of tax considerations, however, when contemplating a limitation on the definition of "spouse." If a decedent creates a trust for the benefit of her surviving spouse, the trust won't qualify for the unlimited marital deduction if the surviving spouse's interest in the trust terminates on remarriage (or at any other time prior to the surviving spouse's death).

Although the relevance of domestic partnerships and civil unions has decreased now that same-sex marriage is permitted in every state, members of the family may nonetheless be in or choose one of these arrangements rather than marriage. Moreover, as social norms have relaxed, it's increasingly common for couples to choose long-term cohabitation over any formal arrangement, such as a civil union or marriage.[4] In the UHNW community, the decision not to marry is one way to avoid the need for a prenuptial agreement or the risk of an expensive divorce, particularly among older couples who may have already been through one.[5] To accommodate these long-term relationships, it may be desirable to provide flexibility to include unmarried cohabitants as potential beneficiaries. While most clients choose not to include cohabitants in the definition of "spouse," there may be exceptions in unique family circumstances.

Some clients may not want to include biological children who have no relationship with the family, particularly when significant multi-generational family wealth or a family business is involved.

Defining Children and Descendants

Historically, under common law, children born outside of marriage generally didn't inherit from either genetic parent.[6] In the 1970s, several decisions by the U.S. Supreme Court found that distinctions between inheritance rights for children based on the marital status of their parents violated the equal protection clause of the U.S. Constitution.[7] Absent a showing of contrary intent, a trust or other instrument is now generally assumed to include non-marital children within classes such as "descendants" or "issue."[8] Typically, a child born to a married couple is presumed to be the biological child of both spouses.[9] The presumption can be rebutted only by clear and convincing evidence.[10]

Modern arrangements for bringing children into this world and the increase in blended families result in complicated determinations regarding who can benefit from multi-generational trusts and who's entitled to receive services from the family office. Practitioners can rely on state law or draft new estate-planning instruments that define whether a parent-child relationship exists in or outside of marriage. While providing specifics is often desirable, one benefit of relying on state law is that it should adapt to changing social norms over time, whereas provisions of a trust instrument won't (absent decanting or other amendment options).

Advisors for UHNW clients may need to help family members with charges of paternity. In the UHNW space, these claims can bring unwanted publicity to a private family. Members of high profile families often worry that the significant others of their male descendants may have a financial incentive to become pregnant, and the family members may want to protect the family's wealth to the extent possible from the claims of a non-marital child.

State law typically establishes paternity in uncertain or contested cases with DNA testing. Estate-planning documents often follow the same approach. The primary benefit of the DNA testing approach for determining paternity is the certainty that it provides. While most testing isn't 100 percent conclusive, the degree of error is extremely small. This approach doesn't require the exercise of discretion by a fiduciary, which should make it more attractive to fiduciaries than other alternatives. Relying solely on DNA testing can result in a child inheriting from or through a parent that the child never actually knew or who intentionally never acknowledged the child. Some clients may not want to include biological children who have no relationship with the family, particularly when significant multi-generational family

wealth or a family business is involved. However, at least one study has indicated the contrary.[11]

There may nonetheless be circumstances in which DNA testing isn't practical or desirable. Often, the child doesn't make a claim of paternity until the alleged father dies. In these cases, exhumation may be required to facilitate a postmortem DNA test, which can have significant emotional consequences on the client's family. Refusal by the purported father (generally a client or a descendant of a client) to submit to testing may lead to his being subject to a paternity suit. For example, in spite of a Wisconsin presumption that a child's father is the mother's husband at the time of the child's birth, after DNA testing established that another man was the biological father, that other man was ordered to pay child support.[12]

An alternative to DNA testing is a requirement of formal acknowledgment of genetic paternity to establish parentage. An acknowledgment puts the determination in the father's hands of whether the child is "in" or "out." Often, this option is desirable for clients who prefer for their male descendants to be the ones to decide whether a non-marital child should be treated as a descendant.

If, however, parentage of a non-marital child isn't disputed, the father may neglect to execute such an acknowledgment. The father may not be aware of this requirement in family trusts, which could lead to unintended consequences. Permitting an informal or unwritten acknowledgment of paternity in place of a formal written acknowledgment generally isn't desirable, as it could lead to litigation over whether ambiguous acts or documents are sufficient to constitute an implicit acknowledgment. When the amounts at stake are large, there may be a tremendous financial incentive to litigate these cases.

As an alternative to the written acknowledgment, the Uniform Probate Code (UPC) and several states have adopted a test of whether the father "functioned as a parent" or have used similar concepts to determine whether a non-marital child should be treated as a descendant. The case law interpreting these concepts continues to grow.[13] Using the "functioned as a parent" standard has appeal because the intention of most settlors is to include the offspring of their descendants when their descendants act as parents to the offspring. What it means to "function as a parent," however, varies dramatically among families, and the case law developing in various jurisdictions may also differ substantially. The lack of objective criteria may encourage litigation and family discord, particularly if the fiduciary charged with making this decision is a family member. While there are downsides of having a family member make these often emotional determinations, implementing this fact-intensive standard isn't appealing to corporate fiduciaries, either.

Functional parentage doesn't necessarily entail biological parentage, meaning that children with no biological relationship to the purported parent may become trust beneficiaries under that standard. This outcome arises most frequently in stepparent relationships, and formalizing those relationships often results in strong feelings from family members. Determining how stepchildren will be classified is particularly important in families of great wealth, in which the child's lifestyle expectations may be set by the stepparent's wealth, the stepparent may have functioned as a parent and yet that stepchild isn't a trust beneficiary or able to partake directly in the family's wealth.

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Adoption and ART

Statutes now treat adopted children the same as biological children for most purposes.[14] But for older trust instruments, as clients with multi-generational wealth are more likely to have, advisors must be sensitive to the fact that such instruments may exclude adopted children as descendants. This exclusion may be by the instruments' express terms or because the instruments are deemed to be governed by the law at the time each instrument was executed, which excluded adopteds. Some jurisdictions require state law interpretations

based on definitions that were in effect when the trust was created, rather than current interpretations.

Restrictions on adoption may have been included in older trust documents because of cultural norms at the time, or they may have been put in place, for example, to ensure that the governance of a family business was entrusted only to blood descendants of the founder. In any case, the family office plays an important role in educating family members about these restrictions as younger family members consider how to build their families, and adopted children may face quite different financial futures than biological children.

Similarly, whether a child conceived with the use of ART will be included as a descendant in the family's trust agreements is a common concern. The use of ART has resulted in the concept of "parentage" being divided into three distinct types: (1) biological or genetic parentage—contributing gametes to the child (that is, sperm or egg); (2) gestational parentage—bearing the child; and (3) functional parentage—raising the child following birth. Older trust documents, and many new trust documents, don't contemplate these alternative definitions of parentage.

> Because posthumous conception is a recent phenomenon, it's highly unlikely that older instruments provide for this fact pattern.

In vitro fertilization (IVF) refers to any procedure that involves conception outside of the human body, followed by implantation of one or more fertilized eggs into the carrier's uterus. IVF may use the genetic material of one or both of the intended parents or that of male and/or female third-party donors.

Based on preliminary data, over 208,000 IVF or similar procedures were administered in the United States in 2014, resulting in over 57,000 deliveries and over 70,000 live born infants. These births account for approximately 1.6 percent of all infants born in the United States in 2014.[15] These procedures can be extremely costly and often require multiple attempts before resulting in a live birth. Given the significant expense associated with IVF, a disproportionate number of these births likely occur in UHNW families.

Artificial (or assisted) insemination involves sperm being transferred to a woman's uterus or cervix. Artificial insemination was the first ART to become widely used, and it remains popular.[16] Artificial insemination may involve the use of the intended father's own genetic material or genetic material from a donor.

Statutes granting parental rights over children born from artificial insemination or IVF generally create legal parent-child relationships between the child and the individuals requesting and consenting in writing to the use of the technique.[17] If a woman conceives through artificial insemination or other ART using sperm donated by a man who isn't her husband, the woman's spouse is treated as the natural parent of the child if the insemination or other ART was done under the supervision of a licensed physician and the conception was done with the consent of her spouse.[18]

Surrogacy arrangements add complexity by introducing a woman other than the "intended mother" to gestate the child. If the surrogate will be biologically related to the child, she would typically undergo artificial insemination with the intended father's sperm. On the other hand, a gestational carrier arrangement typically involves the surrogate carrying to term an in vitro fertilized embryo formed using an egg from the intended mother or a donor so that the surrogate has no genetic relationship to the child.

In surrogacy situations, the child's intended parents generally become the child's legal parents, either through adoption or through a petition to be named on the child's birth certificate.[19] The parental rights of others, including the surrogate, are terminated in connection with the adoption or petition. Surrogacy, however, is still illegal in many states and not well-defined in others.[20] In those cases, the rights of the parties to a surrogacy arrangement often aren't clear and can lead to unexpected consequences.[21]

Due to the increased use of ART and the evolution of family relationships, it's now possible for more than two individuals to have a parenting role. Historically, a child could have only two legal parents.[22] A few states and the District of Columbia currently recognize more than two people can have the legal responsibility of

parenting a child.[23]

Estate-planning documents should designate family relationships with defined terms that clearly prevent donors and surrogates from being treated as legal parents of the child conceived using their genetic material. The Uniform Parentage Act, which to date has been adopted in some form in 11 states, provides that a gamete donor isn't a parent of a child conceived by means of ART.[24] However, this doesn't necessarily prevent a donor from claiming parentage based on post-birth conduct.[25]

The UPC, which to date 18 states have adopted in some form, also contains definitions and presumptions pertaining to assisted reproduction and surrogacy.[26] The UPC provides that half-blood relatives inherit the same share they would inherit if they were whole blood.[27] Consider the implications for the meaning of family if one donor, typically a sperm donor, were to produce dozens of half-blood siblings.[28]

Contractual agreements are typically used prior to insemination or implantation to ensure that no rights are accidentally conferred on a donor or surrogate. The client's advisors should review these contracts to ensure that appropriate protections are in place and enforceable. Even if a contract is in place, parties should comply with any local statutory requirements to ensure that the parties' intent is carried out. Finally, the typical precautions regarding privacy and mental health screenings are even more important for UHNW clients. In addition to all the reasons any donor may be interested in a meeting or relationship with his offspring, the introduction of a famous family or substantial wealth may create additional incentives that could cause much emotional turmoil for the family if not addressed before the procedures are undertaken.

Posthumous Reproduction

Historically, posthumous birth was limited to the situation in which a married couple conceives a child before the death of the husband and the child is born after the husband's death, or in the rare case, rescued from its mother's womb on her death. Because the father in this situation is typically aware of his wife's pregnancy during his lifetime, there's generally little question about whether the child should be included in the class of "children" or "descendants" who may inherit from the father. The common law presumes that a child born to a widow within 280 days following her husband's death was fathered by the deceased husband. Statutes may extend the relevant timeframe to 300 days.[29]

A more complex issue arises with posthumous conception, in which case the child isn't conceived until after the parent's death. With the advent of cryopreservation and post-death retrieval of reproductive material, ART can be used to produce a child who's both conceived (or implanted) and born after the death of one or both parents.

In a typical situation, embryos or gametes may have been frozen during an individual's lifetime and then used after that individual's death to create a pregnancy. Common reasons for cryopreservation include wanting to preserve fertility before undergoing cancer treatments or prior to being deployed in the military. Cryopreservation is also commonly used to preserve genetic material remaining after pursuing ART.

> Drafters must be aware that they aren't only drafting for the family relationships currently known and contemplated by the settlor, but also for many future generations of the settlor's family.

Genetic material such as embryos and gametes can be successfully used to conceive children even after they're preserved for significant periods of time. Headlines have included children conceived with embryos and sperm that had been preserved for over 20 years.[30] A cryopreservation provider, Reprotech, issued a press release in 2012 claiming that a child had been born from sperm that had been cryopreserved for over 40 years.[31]

To address these complex issues and provide certainty for decedent's beneficiaries, some states now have statutes that expressly declare whether a posthumously conceived child is an heir of the deceased parent. Some states, like Florida and Illinois, have revised their laws to clarify that a posthumous child must have been in

utero at the time of the parent's death to be considered a descendant for default and heirship purposes.[32] Other states, such as Wisconsin, consider a posthumously born child part of a class if conceived by the time membership in the class is determined and subsequently born alive.[33] Generally, for the child to be an heir, the deceased parent must have consented to the posthumously conceived child being treated as his child and/or the child must be conceived or born within a certain period of time (one, two or three years) after the decedent's death.[34] Many states, however, offer no guidance on this issue.

The mere possibility that a posthumously conceived child could be born after a decedent's death can wreak havoc on an estate or trust administration. Advisors should consider discussing with clients if there's a time limit in which a posthumously conceived child must be conceived or born. The possibility of a child of the decedent being born long after the decedent's death leaves much uncertainty and has the potential to make all class gifts partially defeasible. When a personal representative or trustee has already distributed a bequest, a posthumous child may require the personal representative or trustee to reacquire the property from the beneficiaries.

Because posthumous conception is a recent phenomenon, it's highly unlikely that older instruments provide for this fact pattern. Instead, instruments will typically provide that members of a beneficiary class are ascertained on the parent's date of death (pre-conception). If a court isn't able to ascertain the donor's intention—and query how to determine a donor's intention with regard to something that the donor could have never imagined decades ago—the court may be forced to apply standard constructional preferences embodied in statutes or case law to determine whether the posthumously conceived child should be included as a beneficiary.[35]

In one of the few published cases addressing posthumous conception, the court held that a trust in question, drafted in 1969, evidenced an intent to benefit the settlor's entire bloodline and that the posthumously conceived child was therefore included among the settlor's "issue" and "descendants" and was a beneficiary of the trust.[36] These types of court decisions can have a profound impact on a wealthy family with significant trust assets.

Advisors need to be prepared that family members, including spouses, may disagree about these issues, which are often very personal and quite emotional. A client with preserved genetic material may wish to bequeath that material to a spouse or partner. If it's the client's intent that the material be used for posthumous conception, the client also should specifically state his intention to provide for posthumous children. In addition, it's important that any client with preserved genetic material carefully consider the individuals who are given the rights to determine whether the genetic material may be used. If a surviving spouse controls the genetic material in a state that recognizes post-death conception or under instruments that do, there can be a significant financial incentive for that surviving spouse to create additional beneficiaries with rights to be supported by family trust assets. When working with family offices and other UHNW families, the financial incentives are much greater and, unfortunately, unscrupulous behavior may be more likely.

State courts have reached conflicting results as to whether cryopreserved embryos constitute "property" subject to disposition on the decedent's death.[37] Louisiana has a statute specifically providing that embryos have personhood status.[38]

Because storage of frozen genetic materials can be costly, UHNW families may be more likely than others to preserve genetic material for a long time. A couple who froze genetic material in their 30s while having their family, whether to keep it in storage for possible creation of new descendants or to have stem cells available for future health procedures, could end up paying many tens of thousands of dollars during their lives. Continued costs associated with the storage of reproductive material may be an expense of the decedent's estate, to be paid in the estate administration process, but a family office will need to work with the family and any fiduciaries to consider what happens to the frozen genetic material following death. The contracts entered into with the storage facilities should clearly indicate who has the right to determine the use and disposition of genetic material. While some families may decide to destroy the material, others may have religious or other objections to destruction, in which case the material may remain in storage for multiple generations. Because of the complexity and emotional ramifications of these decisions, careful consideration should be given to selecting the decision maker and protecting that decision maker from liability.

The family office and other advisors play a

significant role in educating clients about the trusts that benefit them, including any restrictions on how they build their families. Often, family offices address these issues in the context of coming-of-age meetings or in connection with premarital agreement planning. The repercussions aren't limited to the adoption and ART scenarios addressed above. For example, when a family trust includes only "legitimately born" descendants as beneficiaries, as many older trusts do, a family member may think twice about creating a family outside of marriage because of the significant financial impact on the child. The choice of a single woman with significant family wealth to raise a family on her own could be significantly different if the family's wealth will only be available to her children if they're the product of a marriage. Educating family members is important, as younger family members typically wouldn't expect that marriage would be a requirement for their children being included as beneficiaries of the family trusts.

Drafters have opportunities to address these issues in the new trusts they create. Given the current popularity of perpetual trusts, advisors should strive to adapt documents for clients' unique circumstances and anticipate a wide variety of contingencies. Drafters must be aware that they aren't only drafting for the family relationships currently known and contemplated by the settlor, but also for many future generations of the settlor's family. Therefore, it's essential to anticipate further shifts and plan ahead to ensure that the donor's wishes are effectively carried out. For this reason, it's important to discuss with the client the desirability of including as much flexibility in the document as possible to account for cultural and scientific changes in the future. While not every change can be anticipated, providing POAs and other options to refresh a perpetual trust in the future will go a long way toward modernizing the UHNW family and its trusts.

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Endnotes

1. According to a 2010 study by the National Marriage Project at the University of Virginia, only 11 percent of highly educated Americans divorce within the first 10 years, compared with almost 37 percent for the rest of the population. The same study also found that making over $50,000 annually decreased a person's chance of divorcing by 30 percent compared to a person making less than $25,000 annually. *See* National Marriage Project, *The State of Our Unions: Marriage in America 2010* (2010), *http://nationalmarriageproject.org/wp-content/uploads/2012/06/Union_11_12_10.pdf.*
2. *See, for example*, Wis. Stat. Section 854.15.
3. According to the Centers for Disease Control and Prevention's (CDC) National Center for Health Statistics, the current average life expectancy is 78.8 years. *See* Jiaquan Xu, M.D. et al., "Deaths: Final Data for 2013, National Vital Statistics Reports" (Feb. 16, 2016), at p. 1, *www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_02.pdf.* Studies suggest that there's a strong correlation between wealth and life expectancy. A new *Journal of American Medical Association* study found that "the top 1 percent in income among American men live 15 years longer than the poorest 1 percent; for women, the gap is 10 years." *See* Neil Irwin and Quoctrung Bui, "The Rich Live Longer Everywhere, For the Poor, Geography Matters," *The New York Times* (April 11, 2016), *www.nytimes.com/interactive/2016/04/11/upshot/for-the-poor-geography-is-life-and-death.html?_r=0.* And, research shows that this gap is growing. *See* Sabrina Tavernise, "Disparity in Life Spans of the Rich and the Poor Is Growing," *The New York Times* (Feb. 12, 2016), *http://nyti.ms/1RwgE6h.*
4. A journal of marriage and family study entitled "Reexamining the Case for Marriage: Union Formation and Changes in Well-being" found that couples who cohabitate do "just as well and in some cases better" than couples who are married when it comes to health and psychological benefits. Based on this study, Larry Bumpass found that cohabitation can boost self-esteem because cohabitating couples have more autonomy and flexibility to create a relationship that works for them. *See* Vicki Larson, "How Living Together Beats Marriage," *The Huffington Post* (April 4, 2012), *www.huffingtonpost.com/vicki-larson/how-living-together-beats_b_1248423.html.* Other studies suggest that couples are choosing cohabitation over marriage due to a fear of a failed marriage, which stems from both the emotional and psychological repercussions of divorce as well as the financial repercussions. *See* Alice G. Walton, "The Marriage Problem: Why Many Are Choosing Cohabitation Instead," *The Atlantic* (Feb. 7, 2012), *www.theatlantic.com/health/archive/2012/02/the-marriage-problem-why-many-are-choosing-cohabitation-instead/252505/.*
5. Some examples of wealthy celebrity couples who haven't married include: Oprah Winfrey and Stedman Graham (together for 30 years), Goldie Hawn and Kurt Russell (together over 30 years) and Diane Kruger and Joshua Jackson (together for 10 years).
6. *Trimble v. Gordon*, 430 U.S. 762, 768 (1977).
7. *See, for example, Mathews v. Lucas*, 427 U.S. 495 (1976); *Trimble, ibid.*
8. *See Restatement (Third) of Property: Wills and Other Donative Transfers* Section 14.7.
9. *See, for example*, Cal. Fam. Code Section 7540; N.J. Stat. Section 9:17-43; *Michael H. v. Gerald D.*, 491 U.S. 110 (1989).
10. Cal. Fam. Code Section 7612(a).
11. A survey conducted by the Public Mind Poll found that 61.4 percent of men

would want their hypothetical never-known children to inherit and that 79.6 percent of women thought that never-known children should inherit from their father's estates. The survey further found that of those men who answered affirmatively, 83.3 percent would want their never-known children to inherit equally to their known children, and of the women who answered affirmatively, 87.8 percent thought that never-known children should inherit equally. Based on these findings, Adam J. Hirsch concluded that, "lawmakers should presume intent to provide a co-equal share for children omitted from wills because the testator never knew about them . . . [and] nonmarital children should have the right to prove paternity postmortem" to inherit as a never-known child. *See* Adam J. Hirsch, "Airbrushed Heirs: The Problem of Children Omitted from Wills," *Real Property, Probate and Trust Law Journal*, 229-37, Vol. 50 No. 2-3 (Fall 2015).

12. *Hendrick v. Hendrick*, 2009 WI App. 33.
13. *See, for example*, *Randy A. J. v. Normal I. J.*, 2004 WI 41 (father lost his rights to assert paternity when he hadn't taken affirmative steps to assume his parental responsibilities for the child); Cal. Prob. Code Section 6453 (applying Cal. Fam. Code Section 7611(d)); N.Y. Est. Powers & Trusts Law Section 4-1.2; *Estate of Burden*, 53 Cal. Rptr.3d 390 (Cal. App. 2d Dist. 2007) (citing the putative father's asking the mother to marry him as an example of having "held the child out as his own"); *Estate of Earnest Chambers*, 2011 WL 711854 (Cal. App. 2d Dist. March 2, 2011) (stating that having contact with the child, living with the child and buying the child gifts aren't necessary to hold the child out as one's own).
14. *See, for example*, Wis. Stat. Section 854.20; 755 ILCS 5/2-4(a).
15. *See* CDC, "Assisted Reproductive Technology (ART): ART Success Rates," (Feb. 24, 2016), *www.cdc.gov/art/reports/index.html*. A complete fresh transfer cycle in the United States averages $12,000. *See www.fertstert.org/article/S0015-0282(09)00873-5/fulltext#sec3.4.* Gestational surrogacy in India averages $25,000 per pregnancy, while in the United States gestational surrogacy can range from $98,000 to $140,000. *See* Susan D. James, "Infertile Americans go to India for Gestational Surrogates," *ABC News* (Nov. 7, 2013), *abcnews.go.com/Health/infertile-americans-india-gestational-surrogates/story?id=20808125*; ConceiveAbilities, "Surrogacy Fees & Costs," *www.conceiveabilities.com/parents/surrogacy-cost*.
16. Kristine S. Knaplund, "Children of Assisted Reproduction," 45 *U. Mich. J.L. Reform* 903 (2012).
17. *See, for example*, NC Gen. Stat. Section 49A-1; N.D. Cent. Code Section 30.1-04-19.6.
18. Cal. Fam. Code Section 7613. *See also* Wis. Stat. Section 891.40(1).
19. *See, for example*, *Culliton v. Beth Israel Deaconess Med. Ctr.*, 756 N.E.2d 1133 (Mass. 2001) (granting a pre-birth petition with respect to a child being carried by a surrogate).
20. *See, for example*, Mich. Comp. Laws Section 722.859 (making participating in a surrogacy arrangement an offense punishable by imprisonment).
21. *See, for example*, *Rosecky v. Schissel (In re Paternity of F.T.R.)*, 833 N.W.2d 634 (2013) (holding that a gestational surrogacy contract was partially unenforceable, thereby permitting the surrogate to maintain a parental relationship with the child).
22. *See, for example*, *In re M.C.*, 195 Cal.App. 4th 197 (2011); *Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005).
23. *See, for example*, Cal. Fam. Code Section 7601(b), *C.E.W. v. D.E.W.*, 845 A.2d 1146 (Maine 2004) (holding that a de facto parent could obtain award of parental rights and responsibilities despite not being the child's biological or adopted parent); *Jacob v. Shultz-Jacob*, 923 A.2d 473 (Pa. Super. 2007) (finding that the biological mother, her same-sex partner and sperm donor all have child support obligations); D.C. Code Sections 16-831.01, 16-831-03.
24. Uniform Parentage Act Section 702.
25. *See, for example*, *Jason P. v. Danielle S.*, 171 Cal Rptr.3d 789 (Ct. App. 2014) (permitting a sperm donor who established a familial relationship with the child to claim parentage).
26. Uniform Probate Code (UPC) Section 2-120.
27. UPC Section 2-107.
28. *See* Jacqueline Mroz, "One Sperm Donor, 150 Offspring," *The New York Times* (Sept. 6, 2011), *www.nytimes.com/2011/09/06/health/06donor.html?_r=0*.
29. Jesse Dukeminier et al., *Wills, Trusts, and Estates*, 8th ed. 115.
30. *See, for example*, Kate Snow, Rich McHugh, Mariecar Frias and Imaeyen Ibanga, "Frozen Sperm Still Viable Decades Later," *ABC News* (April 10, 2009), *http://abcnews.go.com/GMA/OnCall/story?id=7303722*; Rebecca Smith, "Baby born from embryo frozen 20 years ago," *The Telegraph* (Oct. 10, 2010), *www.telegraph.co.uk/news/health/news/8053726/Baby-born-from-embryo-frozen-20-years-ago.html*.
31. Reprotech Limited, "41 Years Ago, A Sperm Donation. Today, Twins" (May 2, 2013), *www.reprotech.com/41-years-ago-a-sperm-donation-today-twins-2013-05-02.html*.
32. *See* 755 ILCS 5/2-3 ("A posthumous child of a decedent shall receive the same share of an estate as if the child had been born in the decedent's lifetime; provided that such posthumous child shall have been in utero at the decedent's death"); Fla. Stat. Section 742.17(4) ("A child conceived from the eggs or sperm of a person or persons who died before the transfer of their eggs, sperm, or preembryos to a woman's body shall not be eligible for a claim against the decedent's estate unless the child has been provided for by the decedent's will.")
33. Wis. Stat. Section 854.21(5).
34. *See, for example*, Col. Rev. St. Section 15-11-120; N.D. Cent. Code Section 30.1-04-19.11.
35. *See, for example, Wielert v. Larson*, 404 N.E.2d 1111 (Ill. App. 1980).
36. *In re Martin B.*, 841 N.Y.S.2d 207 (2007).
37. *See* Igor A. Brusil, "Fifty Shades of Gray Area," 30 *Probate & Property* 58 (January/February 2016).
38. *See* Ellen Trachman, "I Want to Put a Baby in You: The Curious Case of Louisiana," *AbovetheLaw* (May 4, 2016), *http://abovethelaw.com/2016/05/i-want-to-put-a-baby-in-you-the-curious-case-of-louisiana/*.