# ARTIFICIAL REPRODUCTIVE TECHNOLOGY

The use of artificial reproductive technology ("ART") is increasing. In addition to conceiving the old-fashioned way, it's now possible to rely on artificial insemination, egg and embryo donation, and post-death gamete harvesting or conception. As the median age for women giving birth rises and more same-sex couples want to have a child, the use of these methods has become more frequent. Approximately 250,000 babies are born annually using some form of ART.

If you're contemplating conceiving a baby using ART, you need to factor it into your estate plan. And so do that baby's grandparents.

ART can affect a person's right to inherit when someone dies without a will or trust. In addition, it can affect who is an heir under a will or trust when, rather than naming specific individuals who are to inherit, estate planning documents use general terms (e.g., "children," "heirs," "issue," or descendants"). Furthermore, ART can affect whether a person is a dependent for purposes of a retirement plan and government programs such as Social Security. Because most of these issues are determined based on state law, the answer differs from one state to another

Here are some questions to consider:

1. Do you intend to donate or "bank" reproductive material?
2. If you've already done so, where has it been "deposited" and who owns it?
3. Did you consent to using your genetic material to conceive a child after you become disabled or die? If so, would you consider a child an heir? Some states require a written

consent for a posthumously conceived child to be considered an heir. Because genetic children conceived after the death of a parent aren't necessarily eligible for survivor benefits such as Social Security unless they are also considered children, this is a developing and disputed area of law.

**4.** If donated genetic material isn't used before you die, do you want it destroyed? If not, who should control it? If you are in a relationship, who gets it after the dissolution of your marriage, termination of your relationship, or your death? What may they do with it?

**5.** Is there is a contract between a donor and a recipient that permits the donor to control his or her reproductive matter? Does that contract allow the reproductive material to be given away by will or trust? Does state law allow or prohibit that type of transfer?

**6.** Who is paying the bill to store the material and what if they stop paying?

**7.** If a couple was given genetic material from a donor, did the donor retain any rights to be a parent? If parental rights were given up, is that waiver in writing? Even a written waiver isn't necessarily enforceable. In all states, sperm donation must take place through a licensed medical provider or the donor cannot be shielded from liability for care of a resulting child. (In fact, in some states, entering into a private contract regarding genetic material can be considered a criminal offense.)

**8.** If you leave money outright or in a trust for descendants, do you want to distinguish between children or even grandchildren already born at the time of your death and descendants conceived using frozen genetic material after your death?

**9.** For how long after your death may an heir be conceived using frozen genetic material and still be considered your heir for purposes of inheriting under your will or trust?