Q. I want to have a child by donor insemination, but am not sure whether I want to use someone I know as my donor or not. What are my options?

A. There are three types of donors to choose from: known donors, identity release donors, and anonymous donors. Known donors are men who are known to you at the time of conception – often friends or loved-ones; identity release donors are men who donate to sperm banks, and whose sperm you purchase anonymously, but who have agreed that their identities can be released to any children conceived from their sperm once those children turn 18 years old; and anonymous donors are men who donate to sperm banks with no agreement that their identities ever can be released to any children conceived from their sperm. Each has its advantages and disadvantages; the choice of which type of donor to use is a very personal one, with no “right” answer. If you aren’t sure what’s best for you, I suggest you consult with a therapist or attorney who is experienced with sperm donation and can help you make the best possible choice for you and the family you are creating.

Q. I’ve heard that the legal difference between a sperm donor and a father is whether the child is conceived through artificial insemination or sex. Is this true?

A. The law about what makes a man a sperm donor varies from state to state. Some states have donor insemination statutes, and others do not. A few states have donor statutes that differentiate between donors and fathers based on whether conception was sexual or not, but this is the exception and not the rule. It is far more common for states to distinguish between donors and fathers based on the way the sperm was donated. For example, California has a donor insemination statute (Family Code § 7613(b)) which provides that a man who donates his sperm to a physician or sperm bank for purposes of inseminating (or in vitro fertilizing the eggs of) any woman other than the donor’s wife is treated in law as if he were not the natural father of any child conceived from his sperm. There is an exception to this statute: if prior to conception the donor and recipient have declared, in a writing, that they both intend for the donor to be a father, he will be treated in law as a father and not a donor. So in California, a man who provides his sperm directly to a woman – rather than through a medical facility – is a father whether or not the sperm is provided for purposes of artificial insemination or through sex. But again, this varies from state to state – some states don’t have sperm donor laws at all, and any man providing sperm will be a father. There is no shortcut to learning the law of your state, as well as the law of your donor’s state if you don’t live in the same place, so you can figure out what rules will apply.
Q. If I have a written contract with my sperm donor, will that keep him from having legal rights to my child?

A. No. Although there have been a few court decisions around the country where paternity has been determined based on a written sperm donation agreement, in most states the courts don’t distinguish between donors and fathers based on legal contracts. (This generally is because they are concerned that if they did, too many men would try to contract out of their support obligations for children they have fathered.) So in most states, there are strict legal rules that must be closely followed if you want your sperm donor to be a legal donor rather than a legal father.

Q. If a written contract won’t keep my donor from having legal rights, why is it important to have a written donor agreement?

A. Written donor agreements serve several important functions:

(1) The process of reaching a full agreement, putting it in writing, and signing it assures that donor and recipient are on the same page about their intentions regarding the insemination process and the parenting of any resulting children. Most people honor their written agreements, whether or not a court would require them to. So donor agreements have great preventive value.

(2) If a situation should arise in the future where a court has to choose between multiple people who could potentially be found to be a child’s second parent (e.g. the mother’s intimate partner or the donor), a contract that makes clear that the donor and recipient had agreed in advance that the donor would have no parental rights to or responsibilities for the child can be very convincing to a court. Similarly, a contract that clearly states an intention that the donor would have a parenting role in the child’s life would be very persuasive to a court. Having a strong written document in place, to avoid disagreements about roles turning into a “he said, she said” situation at some later date, can save everyone a great deal of time, money and heartbreak.

Q. I am a single woman, and I have a friend who is willing to give me his sperm. Our plan is for me to have primary custody of the child, but for him to have regular visitation. He also will contribute to the child’s education, although I will pay all day-to-day expenses. What can we do to make this arrangement legal?

A. At the outset, the two of you need to decide whether he will be a legal father or a legal sperm donor. Legal fathers have a court-enforceable right to shared custody and visitation with their children, and they also have a court-enforceable responsibility for contributing to their children’s financial support. Donors have neither the rights nor the responsibilities of fathers. If you want to be able to enforce your donor’s promise to contribute to your child’s education, he will need to be a father; but if he is a father, he will have a right to go to court to seek more time with the child than you may be intending. You need to seek the advice of legal counsel to help you figure out what is best.
Q. I had a child using a known sperm donor. He donated his sperm through a physician, so I understood he would have no legal rights. After my child was born, I let my donor visit my child every weekend, and my child started spending overnights at my donor’s house when my child was a year old. I always have referred to my donor as my baby’s “dad,” even though we both knew he was really a sperm donor, because I wanted my child to fit in with other kids. Now my child is three, and I am feeling like my donor has gotten overly attached to my child. I am trying to cut back on his time with my child, and he is threatening to take me to court. What can I do?

A. Under California law, a man who receives a child into his home and holds that child out publicly as his own child is presumed to be the child’s legal father. This is true regardless of whether the man actually is the child’s biological father or not. No court has yet issued an official ruling on whether a man who started out as a statutory sperm donor, but who has gone on to receive the child into his home and hold the child out as his own child, has thereby become a legal father. My professional opinion is that he probably has. The reason is that, if a sperm donor could not become a legal father by receiving the child into his home and holding the child out as his own child, he would literally be the only person on the planet who is precluded from proving legal parentage by showing an established parental relationship with the child. I don’t think it can be true that any other person in the world beside a child’s actual biological father can establish paternity through parental conduct, but the child’s biological father can’t.