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# In The Event Of A Divorce, Who Keeps The Embryos Created From IVF?

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Whether your divorce is an amicable or contentious one, [dissolving a marriage when you have children](#) is complicated. In your agreement, you will need to make decisions regarding custody and child support, among a multitude of other considerations that impact a child's well-being. Most states even have guidelines in place to ensure parents meet their children's basic needs. But what happens if those children have not yet been born? More specifically, what happens to the embryos you and your spouse created during in-vitro fertilization (IVF), now cryogenically stored and awaiting implantation?

When beginning IVF, most storage facilities require that prospective parents sign a consent agreement authorizing preservation of the embryos created during the process. Typically, these documents only briefly address what happens to stored embryos in the event the couple, married or not, breaks up or dies, giving couples a choice to continue freezing them, donate them to someone else, donate them to medical research, or destroy them.

Often, because a couple is so anxious to become parents and eager to get the ball rolling, they give little thought to other outcomes like divorce or death. Then if they do split, the couple faces making life-altering decisions with a person now estranged from them.

Different from [child custody disputes](#), little protection presently exists for those seeking a remedy for disposition of their preserved embryos nor is much case law available to offer them guidance when a legal inquiry ensues, leaving adjudicating couples in uncharted waters with multiple issues to resolve. There is likewise controversy regarding whether agreements from IVF facilities are legally enforceable in the first place. Regardless of how airtight those documents appear, until implantation of frozen embryos in the mother's uterus, a couple can change their minds.

Considered personal property under the law, frozen embryos belong to both parents. Not so for single women pursuing IVF on their own. Sperm donors retain no legal rights whatsoever to stored embryos.

Unlike other forms of personal property, ownership of cryogenically stored embryos can affect one spouse to the potential detriment of the other if the couple's parenting goals are suddenly no longer aligned. Courts generally take the position that one spouse cannot compel the other spouse to become a parent against his or her will. With lifelong financial and emotional issues at stake, courts remain reluctant to impose parenthood if both potential parents refuse to consent. However, courts are increasingly examining extenuating



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circumstances where the destruction of frozen embryos would prevent an individual from ever parenting a child biologically.

Disputes regarding the disposition of frozen embryos often take years to resolve. Cryogenic facilities will continue to preserve frozen embryos so long as couples remain current with their annual storage fees, which can cost as much as \$1000 per year and vary from facility to facility. If fees do lapse, cryogenic facilities will destroy discarded embryos on their own, though not immediately. Therefore, it is important that couples check the fine print to avoid being caught by surprise that the embryos they have been fighting over no longer exist.

Before undergoing IVF, it is critical couples discuss with one another in detail what can potentially become of their frozen embryos in the event of a divorce. Though it is unpleasant to imagine the [possibility of a breakup](#) when planning a family and life together, having a discussion beforehand and then memorializing it in a legal document can save time and money and guard against more heartache down the road. Marriage may not be forever, but parenthood is.

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**Vikki Ziegler is the star of Bravo TV's** [Untying the Knot](#), the founder and CEO of [DivorceDating](#), Author of [The Pre-Marital Planner: Your Complete Legal Guide to a Perfect Marriage](#), and a co-founder of and partner at [Ziegler & Zemsky, LLC](#). To learn more about Vikki, visit [www.vikkiziegler.com](#) or follow her on [Twitter](#) and [Facebook](#).

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