

UNIVERSITY OF BALTIMORE LAW REVIEW

ESTATE PLANNING FOR THE POSTHUMOUSLY CONCEIVED
CHILD: A BLUEPRINT FOR THE SPERM DONOR

Due to the ability to preserve frozen sperm for at least ten years and the growing use of reproductive technology, an increasing number of children are being conceived from their father's banked sperm after that parent's death. Whether these posthumously conceived children may inherit through the deceased father's estate implicates numerous concerns for legislators, families, and estate planners.

In light of the recent litigation spotlighting these posthumously conceived children and the emphasis on state law in determining their inheritance rights and eligibility for social security survivor benefits, Maryland amended its after-born heirs and definition of a child laws in 2012. This Comment examines the shortcomings of Maryland's 2012 legislative framework and recommends a model that will protect the inheritance rights of posthumously conceived children. Under the proposed solution, Maryland donors would complete a consent form at the time of the donation, creating a signed, written, and witnessed record that expresses the unequivocal intent for the posthumous reproduction to occur and the desire to financially provide for the child. Further, the donor would be required to engage in estate planning during his lifetime to ensure a source of funds for the child's inheritance.

The restrictive nature of the proposed statute ensures that posthumously conceived children do not receive a financial windfall every time a widow chooses to have a child using her deceased husband's banked semen. Only when a donor has taken calculated steps to ensure his after-born child is financially supported will the child have a claim to an inheritance.

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