§ 581-306. Effect of embryo disposition agreement between intended parents which transfers legal rights and dispositional control to one intended parent. (a) An embryo disposition agreement between intended parents with joint dispositional control of an embryo shall be binding under the following circumstances:

(1) it is in writing;

(2) each intended parent had the advice of independent legal counsel prior to its execution, which may be paid for by either intended parent; and

(3) where the intended parents are married, transfer of legal rights and dispositional control becomes effective upon: (i) living separate and apart pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded; or (ii) living separate and apart at least three years; or (iii) divorce; or (iv) death.

(b) The intended parent who transfers legal rights and dispositional control of the embryo is not a parent of any child conceived from the embryo unless the agreement states that he or she consents to be a parent and that consent is not withdrawn consistent with subdivision (c) of this section.

(c) If the intended parent transferring legal rights and dispositional control consents to be a parent, he or she may withdraw his or her consent to be a parent upon written notice to the embryo storage facility and to the other intended parent prior to transfer of the embryo. If he or she timely withdraws consent to be a parent he or she is not a parent for any purpose including support obligations but the embryo transfer may still proceed.

(d) An embryo disposition agreement that is not in compliance with subdivision (a) of this section may still be found to be enforceable by the court after balancing the respective interests of the parties except that the intended parent who divested him or herself of legal rights and dispositional control may not be declared to be a parent for any purpose without his or her consent. The intended parent awarded legal rights and dispositional control of the embryos shall, in this instance, be declared to be the only parent of the child.