

## **Information on parental custody for parents who are not married to each other**

### **Who has parental custody if parents are not married to one another?**

The mother of majority age has sole parental custody if the parents do not make a custody declaration and the courts do not enact a decision on custodial arrangements. If parents who are not married to one another agree on the exercise of joint custody, then each of them must make an officially recorded custody declaration, i.e. declare that they would like to exercise parental custody jointly with the other parent. The parents are not required to live together for this purpose. These declarations can be separately recorded if both parents are present at the same time. If declarations of custody are made separately, joint custody does not become effective until the second one has been recorded. Until this point in time, such a declaration by one parent may still be revoked by means of a recorded declaration, but only in the presence of a notary. Insofar as there is no agreement between the parents, both the father and the mother may apply to a court for the transfer of joint custody to both parents. The court may establish joint custody in whole or in part if this is not inconsistent with the best interests of the child. This condition will be deemed to be met for legal purposes if the other parent fails to submit any reasons against joint custody which are of relevance to the best interests of the child, and if no such reasons are otherwise manifest. The exercise of the right of contact with the child remains unaffected by the custody arrangements (sole custody for the mother or joint custody).

### **What must be borne in mind when making a declaration of custody?**

To be effective, declarations of custody require paternity to be established with legal effect. The declarations of custody must be made by the parents in person. A declaration of custody can be made before the birth of the child. The declaration of custody must be officially recorded; the document may be drawn up at a youth welfare office, generally free of charge, or with a notary. The declaration of custody cannot contain any conditions or time stipulations. Joint custody cannot be divided up by the parents, as with one of the parents reserving the right to determine the place of residence or another matter, for example. As soon as joint parental custody comes into effect, the declaration of custody is irrevocable and can only be made once. The declaration of custody is ineffective if a court has already made a decision on arrangements for parental custody. Please note: Joint parental custody can only be amended by the family court.

### **What happens with parental custody if one parent dies?**

If the parents had joint custody and one of them has died, the parental custody is held by the surviving parent. If a parent who had sole custody has died, the court transfers parental custody to the surviving parent if this is not inconsistent with the best interests of the child.

### **What does the exercise of joint parental custody look like in practice?**

Both parents are equally responsible for the welfare of the child. The mutual agreement of the parents is necessary in the case of matters of substantial significance for the child. Important decisions, e.g. on kindergarten attendance, educational matters, change of residence, health issues etc. must be taken by mutual consent. The parent with whom the child lives has the sole power to make decisions in matters of the everyday life of the child. Each parent has sole responsibility for upbringing when the child lives with them. Agreements are advisable, of course. Dissatisfaction with the other parent's methods of upbringing places a strain on the child. Advice and support can be obtained from the youth welfare office or child guidance agencies if there are differences of opinion, misunderstandings or differing attitudes. The family court can be consulted if parents fail to agree on matters of substantial significance for the child. Following a hearing with the parents and the youth

welfare office, the court may transfer the powers of decision with regard to the matter under dispute to one of the two parents; it will not make its own ruling on the matter. It is very advantageous if a ruling has been made on the child maintenance prior to the establishment of joint custody. This is normally possible by making a record at the youth welfare office of the father's enforceable obligation to maintain. Should a dispute over the amount of cash maintenance arise following the establishment of joint custody, then the parent in whose charge the child is may represent the child in maintenance matters. This normally means the parent in whose household the child lives. This parent is also entitled to apply for a legal adviser from the youth welfare office to represent the child in the assertion of maintenance claims. The parent who actually solely cares for the child is the one who is entitled to advice and assistance acc. to § 18 German Code of Social Law vol. 8.

### **What family name does the child have and can this be changed?**

Legal questions around the right to a name can be difficult if the parents want to make special arrangements or foreign naming laws are involved. The civil registry office has detailed information on this subject. Insofar as no other arrangements have been made and joint custody between parents who are not married to one another has not been established, the child receives the name of the parent who has sole custody, i.e. the mother. Even if the mother has sole parental custody, she can apply for the child to receive the father's name with the latter's approval. If joint parental custody is declared prior to the birth of the child, then the parents have one month from the birth of the child to designate the child's family name. This is done in the form of a declaration at the civil registry office to the effect that the child receives as its birth name the name of the father or mother at the time of the declaration. The name designated by the parents is binding for this child and then for any further joint children, insofar as joint parental custody also exists for them. If joint parental custody is only established after the birth of the child and the latter already has a family name, then the parents can give the child a new family name by mutual agreement, as long as this is done within three months of making the declaration of custody or after the court has transferred joint custody. This declaration is binding for this child and then for any further joint children, insofar as joint parental custody also exists for them. Please note: These two deadlines must not be confused! In the case of prenatal declarations of custody, the parents only have one month after the birth to designate a name. If they have made the decision by making a declaration at the civil registry office, there is no further opportunity to make changes by mutual agreement. The child cannot have a family name for a "trial period".

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