

## Joint parental custody

### *Information for unmarried parents who wish to jointly exercise parental custody of their child.*

1. Should the parents not be married at the time of the birth of the child, then the mother has sole parental custody for the child. However, unmarried parents are entitled to joint parental custody if they marry or hand over a **custody declaration**<sup>1</sup>. Exercising joint parental custody by unmarried parents is – as is also the case for married couples - not dependent on them living together. The custody declaration can be authenticated free of charge at the Child Welfare Office (or subject to charge at a notary). The parents, the Child Welfare Office, and the Child Welfare Office at the birthplace of the child if this is a different place, respectively receive a copy of the certificate.
2. The **submission of a custody declaration** subject to conditions or a time provision is not possible. The parents may only hand in the custody declaration themselves. The parents must identify themselves (identification card or passport) when submitting a custody declaration, and present the birth certificate of the child and a certificate acknowledging paternity. If parents who have already submitted a custody declaration for their child marry at a later date, then the joint parental custody for the child is retained. The custody declaration can also be submitted prior to the birth of the child.
3. “The obligation and right to care for the underage child” is described by legislators as **parental custody**.<sup>2</sup> The parental custody includes care for the child as a person (personal custody) and the assets of the child (asset custody). Included in personal custody is, for example, the upbringing of the child, the decision regarding their abode and upbringing, consent to operations, decisions regarding the type of schooling and similar.
4. Parents entitled to joint custody may determine the name of the mother or the name of the father which they respectively have at the time of birth of the child as the **birth name of the child** at the Registry Office. If joint parental custody does not (yet) exist at the time of the birth of the child, then the child receives the name of the mother as their birth name. If joint custody of the parents is only later established when the child already has a name, then the name of the child can be re-determined within three months after establishing joint custody.

From its 6<sup>th</sup> year of life the child must agree to the name change; that is, it must be involved.<sup>3</sup>

5. The **family relationships** (lines and degrees of relationship) of children whose parents are not married do not differ from the family relationships for children of married couples (See § 1589 BGB (German Civil Code)).
6. In case, at a later date, parents who are jointly entitled to parental custody (regardless of whether through marriage or custody declaration), live in permanent separation, then each parent may request that the Domestic Relations Court **transfers sole** parental custody or partial **parental custody**. The application is to be granted insofar as
  - “the other parent agrees, unless the child has completed their fourteenth year of life and objects to the transfer, or
  - it is to be expected that the annulment of joint custody and transfer to the applicant contradicts the well-being of the child.” (see § 1671 BGB). This means that also unmarried fathers are able to receive parental custody for the mutual child.
7. Within the scope of youth welfare, parents have a claim to **counselling in matters of partnership or separation**. The counselling is intended to promote living together in partnership, to help in coping with conflicts and crises, or in case of separation, to support the parents in creating parental responsibility to nurture the well-being of the child (see § 17 Kinder- und Jugendhilfegesetz (German Child and Youth Services Act) (KJHG)). This counselling in matters of partnership or separation is provided by the Allgemeinen Sozialen Dienst (General Social Service) (ASD) or Psychologischen Beratungsstelle (Psychological Advice Centre).
8. If the parents are jointly entitled to parental custody and one **parent dies**, then the surviving parent is entitled to parental custody. If a parent dies who exercises sole parental custody following separation or divorce, then the Domestic Relations Court has to transfer parental custody to the surviving parent provided this does not contradict the well-being of the child (see § 1680 BGB).
9. Normally included in the well-being of the child is the **interaction with both parents**, irrespective of whether the parents are married or not. The same applies for interaction with other persons with whom the child has bonds if the perpetuation of this is beneficial for their development. The child has the right to interaction

with each parent; each parent is obligated and entitled to interaction with the child. The parents must refrain from everything which might impair the relationship of the child with the respective other parent or impede their upbringing. If, in case of separation, problems with the interaction with the child should arise, then counselling provision by the Child Welfare Office or other social services may be utilised. If necessary, the Domestic Relations Court may be activated, which then makes decisions regarding the handling of the child.

10. If it is positive for the well-being of the child, then **grandparents and siblings also have a right of interaction** with the child. The same applies for the spouse or former spouse of a parent who lived in a common household with the child for a longer time and for former foster parents.
11. If parents who have joint custody are separated, then they must establish mutual consent for **regulating matters which are of substantial significance for the child**. In case of everyday matters, the parent with whom the child resides makes the decisions (see §§ 1626, Para. 3 and 1684 to 1687a BGB).
12. Should you **still have further questions** regarding parental (joint) custody rights, please contact us during our opening times, or by appointment as previously arranged by telephone. You may contact:
  - Allgemeiner Sozialer Dienst (General Social Services) Mannheim-Nord, Office, Tel: 293-3951
  - Allgemeiner Sozialer Dienst (General Social Services) Mannheim-Süd, Office, Tel: 293-6835
  - Department Beistandschaft und Vormundschaft (Guardianship and Custodianship), Office, Tel: 293-3587

The offices will connect you with the respective responsible employee.

- <sup>1</sup> See §§ 1626a to 1626e Bürgerliches Gesetzbuch (German Civil Code) (BGB) in the version valid since 01st July 1998.
- <sup>2</sup> See § 1626, Paragraph 1 BGB.
- <sup>3</sup> See §§ 1617 to 1618 BGB.