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Children

Dealing with the arrangements for children following separation can be highly emotional, but in the majority of cases, parents will be able to make arrangements between themselves in relation to a child without the intervention of the court.

Orders are not automatically made in relation to children within divorce proceedings. Under the Children Act 1989 a court can make a number of private law orders in respect of a child. These orders will only be made where a court considers it to be in a child's best interests and where there is a need for an order to be made. The orders that can be made are set out below:-

Parental Responsibility Orders

Parental Responsibility means all of the rights, duties, powers, responsibilities and authority, which by law a parent has in relation to a child and his property. This includes the right to be involved in the making of any major decisions that may affect a child's upbringing, such as in relation to health and education issues. The Children Act does not provide an exhaustive list of parental rights and duties.

Parents who are or were married to each other at the date of the child's birth will both share parental responsibility for a child. Parental Responsibility will continue, despite the parents' subsequent divorce. The father will also acquire parental responsibility for a child if he subsequently marries the child's mother.

Where the child's parents are not married, only the mother automatically has parental responsibility. The father automatically acquires it if his name is on the Birth Certificate of any child who was born on or after 1st December 2003. The father will also acquire parental responsibility either by obtaining a Parental Responsibility Order through the court, or by entering into a Parental Responsibility Agreement which is then registered at the Principal Registry of the Family Division.

Parental responsibility may be exercised independently by each parent. In the majority of cases parents will be able to make arrangements between themselves as to how parental responsibility is to be exercised. However, where there is a dispute between the parents as to how parental responsibility should be exercised, the court can make an order.

Residence Orders

This is an order that sets out where a child is to live. A Residence Order may be made in favour of more than one person. If these people are not living together, it may also specify the periods to be spent in each household.

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Contact Orders

A Contact is an order requiring the person with whom a child lives (or is to live), to allow him/her to visit or stay with the person named in the order, or for that person and the child to have contact with each other, for instance by telephone or letter. If a person refuses to comply with a Contact Order, this can lead to enforcement proceedings being taken before the court.

Prohibited Steps Orders

This is an order that prevents a person from taking a certain course of action. For example, a prohibited steps order could prevent a child being removed from a parent's care or being taken out of the country.

Specific Issues Orders

This is an order that resolves a specific question that has arisen in connection with a child. For example, a specific steps order could determine where a child is to go to school or whether he/she should have specific medical treatment.

Length of Court Orders

Court orders under the Children Act usually come to an end when the child reaches the age of 16, unless the court orders otherwise. Orders in respect of children over the age of 16 can only be made in exceptional circumstances.

No order made by a court concerning a child's welfare can ever be final. Either parent may seek a review of an order at any time.

Mediation

An alternative remedy to court proceedings is mediation. In mediation, trained mediators aim to help separating or divorcing couples resolve disputes in relation to children or financial matters by agreement between them. Mediation will usually take place over more than one meeting.

If you would like to know more about the court procedure in applying for orders and the orders that can be made please download our Children Act Guides from our website.

If you would like any further information about children matters, or in relation to mediation, please contact our specialists at Fairbrother & Darlow (Tel: (01344) 420808 Email: info@fairbrotherdarlow.co.uk)