

PARENTAL PLAN / AGREEMENT

In terms of Section 33(1) the co-holders of parental responsibilities and rights in respect of their child/ren may agree on a parenting plan determining the exercise of their respective responsibilities and rights in respect of the child. In terms of Section 33(2) if the co-holders of parental responsibilities and rights in respect of a child are experiencing difficulties in exercising their responsibilities and rights, those persons, before seeking the intervention of a court, must first seek to agree to a parenting plan determining the exercise of the respective responsibilities and rights in the respect of the child. Co-holders of parental responsibility are obliged to create a family plan before approaching the court for relief. This can be done through mediation. The court will review a parenting plan to make sure it fulfils the **best interests of the child/ren**. Typically, courts go along with plans to which both parents have agreed.

What is a Parenting Plan?

It is a written agreement between co-holders of parental responsibilities and rights outlining in detail their respective responsibilities and rights of care, contact, guardianship and maintenance with regard to a child. The Parental Plan should be in accordance with sections 33 and 34 of the Act - these sections make provision for "parenting plans"

A parenting plan is a formal statement that establishes how parents will spend time with their child/ren, how they will share information; how they will make decisions regarding their child/ren and how they will resolve other parenting issues.

Creating a co-parenting relationship and sharing decision making powers with a former spouse is not easy, but by taking one step at a time it is possible and as you reduce conflict and encourage communication, your children will feel more secure and less afraid.

In general, a parenting plan should be specific yet flexible. It should create a workable system for dividing responsibilities so that the plan can function whether parents get along well or not. For example, parenting plans can establish a rotation of primary responsibilities and decisions and/or delegate specific responsibilities to each parent. A parenting plan can also include terms requiring each parent to treat the other with respect when the children are present. Finally, parenting plans should outline a process for resolving conflicts and schedule periodic reviews and adjustments — for example, after the first year and then every two or three years thereafter.

Children do best when their parents co-operate - when parental conflict is kept to a minimum and the children are able to experience loving and meaningful relationships with both parents. Children who experience ongoing conflict between parents, are at high risk for suffering serious long-term emotional problems.

Certain issues will be determined by the child/ren's age, for instance holiday's when the child/ren are still small it will be advisable not to take them away from the other parent for long periods of time i.e. maybe share the holidays in intervals of a week.

The Children's Act provides:

Section 33 Contents of parenting plans

- 1) The co-holders of parental responsibilities and rights in respect of a child may agree on a parenting plan determining the exercise of their respective responsibilities and rights in respect of the child.
- 2) If the co-holders of parental responsibilities and rights in respect of a child are experiencing difficulties in exercising their responsibilities and rights, those persons, before seeking the intervention of a court, must first seek to agree on a parenting plan determining the exercise of their respective responsibilities and rights in respect of the child.
- 3) A parenting plan may determine any matter in connection with parental responsibilities and rights, including-
 - a) where and with whom the child is to live;
 - b) the maintenance of the child;
 - c) contact between the child and-
 - i) any of the parties; and
 - ii) any other person; and
 - d) the schooling and religious upbringing of the child.
- 4) A parenting plan must comply with the best interests of the child standard as set out in section 7.
- 5) In preparing a parenting plan as contemplated in subsection (2) the parties must seek-
 - a) the assistance of a family advocate, social worker or psychologist; or
 - b) mediation through a social worker or other suitably qualified person.

Section 34 Formalities

- 1) A parenting plan-
 - a) must be in writing and signed by the parties to the agreement; and
 - b) subject to subsection (2), may be registered with a family advocate or made an order of court.
- 2) An application by co-holders contemplated in section 33 (1) for the registration of the parenting plan or for it to be made an order of court must-
 - a) be in the prescribed format and contain the prescribed particulars; and
 - b) be accompanied by a copy of the plan.
- 3) An application by co-holders contemplated in section 33 (2) for the registration of a parenting plan or for it to be made an order of court must-

- a) be in the prescribed format and contain the prescribed particulars; and
- b) be accompanied by-
 - i) a copy of the plan; and
 - ii) a statement by-
 - (ia) a family advocate, social worker or psychologist contemplated in section 33 (5) (a) to the effect that the plan was prepared after consultation with such family advocate, social worker or psychologist; or
 - (ib) a social worker or other appropriate person contemplated in section 33 (5) (b) to the effect that the plan was prepared after mediation by such social worker or such person.
- 4) A parenting plan registered with a family advocate may be amended or terminated by the family advocate on application by the co-holders of parental responsibilities and rights who are parties to the plan.
- 5) A parenting plan that was made an order of court may be amended or terminated only by an order of court on application-
 - a) by the co-holders of parental responsibilities and rights who are parties to the plan;
 - b) by the child, acting with leave of the court; or
 - c) in the child's interest, by any other person acting with leave of the court.
- 6) Section 29 applies to an application in terms of subsection (2).

Section 35 Refusal of access or refusal to exercise parental responsibilities and rights

- 1) Any person having care or custody of a child who, contrary to an order of any court or to a parental responsibilities and rights agreement that has taken effect as contemplated in section 22 (4), refuses another person who has access to that child or who holds parental responsibilities and rights in respect of that child in terms of that order or agreement to exercise such access or such responsibilities and rights or who prevents that person from exercising such access or such responsibilities and rights is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.
- 2)
 - a) A person having care or custody of a child whereby another person has access to that child or holds parental responsibilities and rights in respect of that child in terms of an order of any court or a parental responsibilities and rights agreement as contemplated in subsection (1) must upon any change in his or her residential address forthwith in writing notify such other person of such change.
 - b) A person who fails to comply with paragraph (a) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

As you create a parenting plan, it is good to learn what kind of provisions you need to make for your plan to be most effective.

What does a Parenting Plan cover?

- Shared Decision making
- Information sharing i.e. health, education,
- Who the child/ren will live with (days of the week, time of pick-up and drop-off) by day, including after-school time and weekends
- Recognition and protection of your child/ren's rights
- What you will call your child/ren
- Health and emotional wellbeing
- Education
- Financial Maintenance
- Potential Dangers (potential hazards of life, questionable moral behaviour or physical and emotional threats)
- In the event of the death of a parent
- Living and housing
- Contact and Access
- Beliefs and religious instruction
- Supervision and Control
- Communication, consultation, information and conflict resolution
- When plan will be re-evaluated
- Living Conditions
- Discipline
- Reasonable Financial needs
- Legal Issues
- Consult with their child/ren on decisions
- Conflict resolution
- Parent moving with child out of province
- Parent wanting to move abroad with child
- State any restriction on domestic or international travel
- Be specific if there are age-related travel concerns or other requirements
- Don't forget to include drop-off and pick-up times and locations
- Travel details and expenses when parents live far from each other
- See that both parents have access to medical records, school records, teachers and activities
- Make sure both parents have the right to make emergency medical decisions
- Set up a system that gives the other parent sufficient notice when long-term plans, address, telephone number or employment changes
- Public holidays - rotate between parents

Recognition and Protection of their Child/ren rights:

- To be treated with respect
- Adequate nutrition, shelter, Clothing and Education
- Emotional and physical security
- Development of relationship with parents
- Regular and constant contact with parents
- Equal contact
- Protection -
- Promotion of contact with extended family

Extra add-on to a parental plan:

- The right of first refusal for babysitting- (explained below)
- Visual Visitation - (explained below)
- Draft a set of rules for dealing with changes like special events or unanticipated business travel.
- Include notice provisions for school activities, events and conferences.
- Establish how notice will be given of new childcare providers, children's location during visitation and new relationships or people present during time with children.
- Adjusting visitation based on children's ages
- Draft a set of rules for dealing with changes like special events or unanticipated business travel.
- Set up a system that gives the other parent sufficient notice when long-term plans, address, telephone number or employment changes.
- Will you include agreed guidelines about some household rules children need to follow during the time spent with each of you? (eg TV or computer use, nutrition, bedtimes.)
Do I recognise that the other parent will parent differently to me and I may need to let go of some control over my children's daily life when they are with the other parent?
- Schedule for special occasions:
 - Mother's Day
 - Father's Day
 - Mother's birthday
 - Father's birthday
 - Paternal family days (grandparents' birthdays, etc.)
 - Maternal family days (grandparents' birthdays, etc.)
 - Children's birthdays

RIGHT OF FIRST REFUSAL EXPLAINED

First refusal right may be used if one parent desires the first chance to care for or babysit the child/ren when they are in the other parent's custody. If the custodial parent wants to take a mini vacation or go out for a night, he or she needs to contact the non-custodial parent to watch the child/ren before anyone else is contacted. The non-custodial parent has the first right to refuse caring for the children during the time the custodial parent is away. If the non-custodial parent is unable to care for the child the custodial parent may for example the mother of a child/ren wants to go shopping and to dinner with some friends while she has custody of the child/ren, if a right of first refusal provision is instated in the parenting plan or custody agreement, the mother must first call the child/ren's father and give him the first right to care for the child/ren. If the father decides not to watch the child/ren during that time, the mother may then make alternative arrangements which must be acceptable to both parents.

A parenting plan should be used to help parents determine times when either parent has the right of first refusal an agreement may be made for the non-custodial parent to always have the right of first refusal, whether it be for half an hour or a full day. This may be hard to control. Because of this, many arrangements are made to set the time in hourly intervals. In this type of arrangement, if the custodial parent will be gone less time than agreed upon, he or she does not need to contact the other parent first.

Right of first refusal can help make your parenting plan work better. It lets the non-custodial parent to get more time with the child/ren.

Keep in mind that if one parent does not comply with the right of first refusal provision instated in the parenting plan, then that parent is in violation of the agreement. The parent who has not violated the agreement may file a complaint with the court to show that the other parent is in violation.

VIRTUAL VISITATION

Make provisions in your parental plan for virtual visitation, this will guarantee you the change to talk with your child/ren through and internet video connection. Virtual visitation will keep you going between your physical visits, which might only happen once a year.

Virtual visitation will be especially beneficial if your spouse live abroad with your child/ren or in another province and you don't see your child/ren on a regular physical basis.

Shared Parenting / Joint Custody?

Shared parenting is an arrangement whereby children enjoy the love and nurture of both parents and their extended family following divorce or separation, it means that equal time is spent with both parents. The time between each parent may be split 50/50 or the children may live with one parent for example, four days every week and the rest of the week with another parent and the following week it rotates, the parent that had the child/ren for four days will now have them for three days. Shared parenting arrangements may differ to suit your situation. The parents of the minor child/ren share equally in any decisions made regarding the child/ren's needs. When you share the parenting responsibilities it will be beneficial not to stay too far from each other.

Physical Custody

If the child lives with just one parent only, it's regarded as a sole physical custody, and it's usually with the other parent getting visitation privileges. The extent of the visitation privileges would depend on who exactly decided the custody of the children: the court or both parents themselves.

Legal Custody

The privilege as well as the responsibility in making all the decisions regarding the child's upbringing – which includes education, religion, and medical treatment – are given through legal custody, frequently via joint legal custody generally in most legal courts so this means the right and the obligation tend to be shared by both mother and father.

In extreme cases when a single parent is the owner of all of the privileges and duties in the decision-making process, the parent might file a law suit and request for single legalised or single physical custody.

Sole Custody

One parent may either get single legitimate custody or single physical custody of a child. A few factors that cause the process of law to prefer one parent over the other could be once the other is actually regarded unhealthy due to alcoholism and/or drug abuse. The parent with sole custody makes all the decisions and has all the responsibilities with only visitation to the other parent.

How can I be sure that my co-parent will follow the Parenting Plan?

Parenting Plans that are registered at court are court orders and subject to the same rules as any other court order. It further means that you could approach court if the terms of the Plan are violated (Section 35). In the case of the high conflict divorce situation it is probably best to register the Parenting Plan at court.

If a Parenting Plan is not registered at Court but has been signed and implemented by both parents, the Court probably would consider this aspect if either parent approaches court for some relief.

What happens if your Parenting Plan becomes outdated?

A Parenting Plan may be amended or terminated at any stage. It is recommended that parents consider how they wish to maintain and update their Parenting Plan on a regular basis. These processes could be included in the Parenting Plan.