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## Written record of the briefing on parental custody for unmarried parents

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

- If the parents do not make a declaration of parental custody (*Sorgeerklärung*), and the mother is of full age, then the mother has sole parental custody.
- If parents who are not married to one another wish to share parental custody, they must make a declaration of parental custody, stating that they wish to share custody. This does not require the parents to live together.
- Both parents must submit a declaration of parental custody. Those declarations can be certified separately, or together if both parents are present. If the declarations are submitted separately, shared custody does not begin until the second declaration of parental custody has been certified. Until then, a declaration submitted by one parent can still be revoked. This must, however, be done in the offices of a notary, who must certify it.
- If, after the father has submitted a declaration of parental custody, the mother refuses also to submit a declaration of parental custody, the father may apply to the family court to make a decision. Among other things, the court may order joint custody to be established fully or to a limited extent if this is expected to be in the best interests of the child.
- The exercising of the parents' right of contact with the child is unaffected by who has parental custody (sole custody on the part of the mother or shared custody).

### Important points when submitting the declaration of parental custody

- The declarations of parental custody are only effective if paternity has been legally established.
- The declarations of parental custody must be submitted in person by the parents.
- A declaration of parental custody can already be submitted before the child is born.
- The declaration of parental custody must be officially certified (*öffentliche Beurkundung*). This certificate can be issued by the youth welfare office, usually free of charge, or by a notary.
- The declaration of parental custody may not include any condition or time limit. Joint custody cannot be divided up between the parents, for example with one parent having the sole right to determine the child's place of residence or another matter. The declaration of parental custody can only be submitted once; after the parents have been given joint custody, it is irrevocable.
- The declaration of custody shall be ineffective if a decision on parental custody has already been made in court.

Important note:

Joint parental custody can only be changed by the family court.

### What happens to parental custody if one parent dies?

- If the parents share custody and one parent dies, the surviving parent has parental custody.
- If joint parental custody has not been certified and the mother dies, the court shall, upon application, transfer parental custody to the father if this does not conflict with the best interests of the child.

## How is joint parental custody carried out in practice?

- Both parents are equally responsible for the child's well-being.
- In matters that are of considerable importance to the child, both parents' consent is required.
- Important decisions such as kindergarten attendance, school issues, changes of place of residence or healthcare issues must be made by mutual agreement.
- The parent with whom the child lives has the sole right to make decisions on all matters of everyday life.
- Each parent shall have sole responsibility for raising the child when the child is staying with them. It is of course recommended that the parents come to agreements. It is a burden for the child if one parent displays dissatisfaction with the other's parenting.
- Advice can be sought from the youth welfare office (*Jugendamt*) and parenting advice offices (*Erziehungsberatungsstellen*) in the case of differences of opinion, misunderstandings or fundamentally different attitudes.

### Important note:

If the parents do not come to an agreement on matters that are of considerable importance for the child, then the family court can be involved. After hearing both parents, the court can give one parent the authority to decide on the disputed matter. The court does not decide on the matter itself.

- It is useful if the child's maintenance has already been settled before the declaration on joint custody is submitted. This can generally be done by the youth welfare office certifying that the father has an enforceable obligation to pay maintenance.
- If, after joint custody has been established, a dispute arises about the amount of child support owed, then the child can be represented in child support matters by the parent the child is. As a rule, that is the parent in whose household the child lives. That parent may also apply for the youth welfare office to become the child's legal adviser and to expertly represent the child on the claiming of child support.

## What is the child's surname and can it be changed?

- Issues regarding the right to bear a name can be difficult if the parents want special arrangements to be made or if foreign naming law is involved. The registry office (*Standesamt*) can provide detailed information on this.
- As long as no other arrangements have been made, and as long as the parents are not married to one another and do not have joint custody, the child shall bear the surname of the parent who has sole custody, i.e. the mother.
- If the mother has sole parental custody, the child can still be given the father's surname if the mother applies to do so and the father consents.
- If joint parental custody is declared before the child is born, the parents have one month after the birth to determine the child's surname. They then declare to the registry office that the child's surname at birth will be the name currently used by the father or mother. The surname the parents thus select is binding and shall also be given to their future shared children if they also have joint parental custody for those children.
- If joint parental custody is only established after the child's birth, and the child already has a surname, then the child's surname can be changed by mutual agreement between the parents within three months only of the declaration of parental custody being submitted. That declaration is binding and shall then also apply to their future shared children if they also have joint parental custody for those children.

### Important note:

Do not confuse these two deadlines! If the declaration of parental custody is made before the child's birth, the parents have just one month starting on the day of the birth to determine the child's surname. Once they have made the decision by declaring it to the registry office, there is no further opportunity to alter it by mutual agreement. The child cannot be given a surname "to try it out".

**The fact that this written record has been received will be stated on the original certificate.**

If you have any questions, please contact the youth welfare office (*Jugendamt*) department for children's legal advisers and certification (*Sachgebiet Beistandschaften/Beurkundungen*).

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