



Information about the declaration of joint custody in accordance with § 1626a BGB (German Civil Code)

Information über die gemeinsame Sorgeerklärung gemäß § 1626a Bürgerliches Gesetzbuch (BGB)

Parents who are not married to each other have the option to jointly assume custody for a child who is a minor. This is done either through the submission of declarations of custody or through a court order.

What does "joint custody" mean?

The parents have the obligation and the right to take care of the minor child. This includes the care-taking of and education of the child while taking into consideration the growing abilities and increasing needs of the child for independent, responsible action.

Custody does, for instance, also include the care-taking of the child's assets and the right to determine place of residence.

For this, the focus should be on the child's well-being.

Which prerequisites must exist for the documenting of joint custody in valid legal form?

The parents of the minor child may not be married to each other. Both the mother and the father must want to exercise joint custody.

If the mother is the sole custodial parents, the parents exercise custody jointly subsequent to the declaration of joint custody.

If a court order restricting custody exists, the parents can only declare joint custody regarding the remaining portion.

It is not necessary for the parents to maintain a joint household. If the parents do not maintain a joint household, the right to sole decision-making must be observed (see below: "What else must be taken into consideration").

The citizenship of the parents is of no concern.

There are no deadlines, i.e., until the child reaches the age of majority, it is possible to make declarations at any time.

Another option is the pre-birth declaration of custody. It is not possible to tie the declaration of joint custody to prerequisites or conditions.

A specified starting point of joint custody is also not permitted.

If the mother or the father still has any doubts, it is advisable to visit the district social service or a counselling centre prior to making the declarations of joint custody so that the individual living situations of the parents can be discussed.

How and where can the declaration of joint custody be made?

If the parents are in agreement, the declaration of joint custody can be made and documented in valid legal form in front of the registrar of the youth welfare office or in front of a notary.

This declaration can be made both jointly as well as individually; e. g. if each parent lives in a different city. In case of declarations of joint custody made separately, the joint parental custody becomes effective only once both parents have made such declarations. Until then, the individual declaration can be revoked.

If one of the parents is or both parents are minors, a declaration of consent - also made in valid legal form - by the respective legal representative (parents, guardian) is required.

What happens after the declaration of joint custody?

As soon as joint declarations of joint custody have been made, both parents exercise custody of the child jointly.

After the declarations of joint custody have been made, a withdrawal from or revocation of the joint custody by one parent is not possible.

If one parent no longer agrees to the joint custody, any change of the declaration of joint custody must be decided by the family court.

Independent of the joint custody, the parent in whose care the child is has - in addition to the entitlement to counselling and support - also the option to file for assistance and support for the enforcement of the child's claim for maintenance.

Which last name does the child receive?

In principle, the child bears the last name of the mother as name at birth.

In case of joint custody, the parents decide whether the child receives the father's or the mother's last name as name at birth.

If joint custody already exists at the time of the registration of the birth, the specification of the last name is carried out by the parents on occasion of the registration with the office of vital statistics. If the parents expressly do not specify the last name in this, this must be made up for within one month through a certified declaration to the office of vital statistics.

However, if the child instead is bearing as name at birth the last name of the mother who has sole custody and if subsequently joint custody is established,

the child's last name can be specified anew by the parents within three months. In all cases, a specification of the last name made as a result of joint custody is irrevocable and also applies to all other joint children for whom joint custody was declared.

Even in case of sole custody, the child can receive the father's last name through a declaration to the office of vital statistics in valid legal form, if the father agrees to this.

If one of the persons involved does not hold German citizenship, the other country's law relating to the use of a name must be taken into consideration. For additional questions regarding the law relating to the use of a name, check with the registry office.

What else must be taken into consideration?

If the child lives in the household of one parent, said parent retains - even despite joint parental custody - the right to sole decision in areas of daily life. These are typically those that occur frequently and which do not have any difficult to change effects on the child's development (e.g. structuring of day-to-day life and recreational time, clothing, etc.). However, in case of decisions on issues the settling of which is of considerable importance for the child and also not easily reversible, an amicable solution must be found (e. g. selection of a school and/or switching schools, major medical treatments, child's place of residence).

If one parent dies, the other shall exercise sole parental custody without this requiring a court order.

The same applies if one parent's custody right is revoked by the family court (§ 1666 BGB) or if the court determines the dormancy of the parental custody (§§ 1673, 1674 BGB).

If the making of the declarations of joint custody cannot be achieved, one parent can file at the family court for transfer of the joint custody or of a portion of parental custody.

Advice and Information

Please use the qr-code for personal advice.



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