

PARENTAL RIGHTS AND RESPONSIBILITIES

- The relationship between children and their parents in a divorce, once called "custody", is now called **Parental Rights and Responsibilities**.
- The wording of the law has changed from custody to parental rights and responsibilities to emphasize the law's policy of protecting children. Children need to know that their parents each have the responsibility to take care of them financially and emotionally, to guide and parent them and to spend time with them no matter how angry the parents are with one another.
- Children are often confused and anxious about their parents breaking up. They are concerned about who is going to take care of them. They worry about both of their parents still loving them. They worry about the breakup being their fault.
- Spouses may divorce each other, but they do not divorce their children, and except in exceptional circumstances the spouses must maintain a relationship with each other as parents after the divorce. Unresolved conflicts between parents will continue to surface and are destructive to you and often more so to your children and other family members.
- Divorcing parents are often very angry at each other. They want to blame the other partner for the breakup of the family. Parents often each want the children to be with them and not with the other parent. "Winning the children in a custody fight" seemed to be how parents proved how right they were, and how wrong the other parent was. Children are the ones who lose when parents put their energy into the "fight" and forget the needs of their children.
- The parents' rights and responsibilities define a child's living arrangements, their contact with the other parent, education, medical and dental care, religion, travel and any other issues involving a child's welfare and upbringing.

Definitions:

There are two major parts to parental rights and responsibilities:

The first is called **"Legal responsibility"**

- This term defines the right and responsibility of a parent to determine and control matters affecting a child's welfare and upbringing, other than routine daily care and control of the child. Examples include decisions regarding education, non-emergency medical and dental care, religion and travel. Basically it is the right to make major life decisions for the child.
- Legal responsibility may be held solely by one parent, or may be shared between both parents, or divided when at least one child is living with each parent.

The second, is called **"Physical responsibility"**

- This term defines the right and responsibility to provide routine daily care and control of the child while taking into consideration the right and responsibility of the other parent to have contact with the child. Basically, it is the right and responsibility to make daily decisions for a child.

- Physical responsibility, like legal responsibility, may be held solely by one parent, or may be divided or shared.

Parent Child Contact:

- Parent child contact is the term used to describe what has been known in the past as "visitation." Visitation is no longer used because of the negative impact it can have on children. Children are dependent on the love and support of both of their parents to grow and develop into healthy adults. Children do not visit with one of their parents. They spend as much quality time as possible with each parent.
- Children need to be able to spend as much time as possible with each of their parents. When parents separate, their children should not be denied the opportunity to spend quality time with each of their parents. If the parents had remained together, the children would have enjoyed access to each parent on a daily basis. Therefore, unless there are good reasons to limit the contact a parent has with the children, the parenting plan should include contact with both parents on a regular basis.
- The ending of a relationship is often very emotional. Parents may be angry at one another over broken commitments and feelings of being deceived and cheated. Children who are exposed to their parents' arguments often blame themselves for the fights of their parents. Sometimes the children feel they have to pick "sides" between their parents. Parents need to be particularly sensitive to their children and keep them out of their adult conflicts. Unless physical or emotional abuse is involved, the reasons people have for ending their relationships are not reasons for children to change their relationship with their parents.

What is in the Children's Best Interests:

- When parents are angry at one another over a divorce or broken relationship, one parent will often try to stop the other parent from spending time with the children. Sometimes, one parent will stop seeing the children because they are so angry with the other parent. Vermont law supports the idea that **the active participation of both parents in the lives of their children after separation or divorce is in the children's best interest.**
- Each parent, regardless of the personal feelings they may hold toward the child's other parent, is expected to encourage and support their children in spending as much time as is reasonable with the other parent.
- Too often, parents cannot separate the feeling each holds toward the other parent over the ending of the relationship from their shared responsibility to be parents for their children. In those cases, the court will encourage both parents to seek counseling and support to change attitudes that can only hurt their children.

Circumstances which will limit Parental Contact with the Children:

- There are exceptions to each parent spending the most time they can with their children. When there is evidence that it is likely the children or the parent with whom the children live could be harmed by contact with the other parent, restrictions may be required by the court. A parent is still entitled to contact with his or her children,

but conditions such as supervision of the contact may be ordered by the Court to insure everyone's physical and emotional safety.

How the Court decides Parental Rights and Responsibilities if the Parents Cannot.

When parents come to court to legally dissolve their relationship, they have to make decisions about many issues concerning the children. The court has the responsibility to make sure the decisions are consistent with the law and are "in the best interests of the child." The Family Court must deal with questions about decision-making on behalf of the children, living arrangements, and financial support.

These kinds of issues are governed by legal standards and are part of Vermont statutes. This can involve complex legal issues, that have long-term effects on families and it is often a good idea to **seek legal advice**.

The law is based upon the principle that the best interests of the child should determine the outcome of these issues, and therefore, when parents cannot agree, and the judge is making the decision, he or she is bound by the requirements of the statute.

- It is in the children's best interests for two parents to make decisions about parental rights and responsibilities and parent child contact based on the knowledge and love they share for their children. Decisions about parenting do not go away when parents choose to end their relationship. When parents can't reach a decision on how to divide their responsibilities for the children, the court will make the decision for them. Judges must make decisions based on the limited information presented in the courtroom while taking into consideration the law that lists what the judge must look for in defining what is in the best interests of the children.
- When the court has to decide for the parents, the law says the court must award parental rights and responsibilities primarily to one parent. If the parents are unable to cooperate to reach an agreement, it is unlikely they would be able to make joint decisions in sharing the responsibilities just because the court ordered them to share the responsibilities.

Agreements between Parents:

- The court encourages parents to agree on the parenting plan for the children after separation. Agreements that parents make regarding the parenting of their children are assumed to be in the best interest of their children. In order to insure that parents consider all aspects of parenting, such agreements are required to address the following areas:
 1. Physical living arrangements: Where the children stay and when they stay there.
 2. Parent child contact: Usually the schedule provides for the non-residential parent to spend time with the children. Sometimes parents work out a schedule for how holidays and school vacations are to be spent with the children. If parents have difficulties communicating, a more detailed schedule should allow fewer disputes to happen.
 3. Medical, dental, and health insurance and care. Who will provide the coverage and what the specific coverage will be and who will take the children for the care.

4. Travel arrangements. Who will provide transportation for parent child contact and who will pay the costs? Under what circumstances can the children travel out of state or out of the country?
5. How the parents will communicate with each other about the child's welfare. Parenting doesn't stop with the divorce. Specifically, how will parents provide each other with information about the children, their schedule, school progress, extra curricular activities, childcare, etc?
6. If parents have chosen to share or divide parental rights and responsibilities, what are the procedures going to be utilized if they disagree over some part of parenting their children. Parents need to state specifically how they will resolve any disputes that arise regarding the children. Some solutions might be to agree to seek mediation or to work with a particular therapist or counselor in deciding what is best for the child. The Court may refuse to approve any agreement that is found not to be in the best interests of the children.

What the Court may do to help Parents make Agreements regarding the Children and which may help the Court in the Decision Making.

- The court discourages parents from having the judge make parenting decisions for them. As a result, there are very few cases in which parental rights and responsibilities are decided by the judge. When parents cannot come to an agreement on parenting, the judge may appoint a **guardian ad litem** to represent the best interest of the children. The guardian ad litem is a trained volunteer who will represent the best interests of the children by helping them through their parents' divorce. The guardian ad litem may visit both homes and the children's schools and make a recommendation to the parents how they can resolve their dispute. They cannot be witnesses in court.
- You may also be encouraged to at least do one session with a family **mediator** to see whether you and your spouse can use a trained, neutral third party help you come to an agreement.
- The court may also order an **evaluation** of the parents and the children by a trained psychologist or other mental health provider in order to better determine where the children should be living and what parent should be making the major decisions for them. These evaluations are expensive, but may be lowered by your medical insurance.
- Where the situation does not call for a full evaluation, the court may order a **home study** where a trained social worker or other mental health provider will visit both parents and the children in their homes and make a recommendation to the judge.
- All of the above alternatives are designed to help parents make their own decisions about parenting, and also help the judge make a more knowledgeable decision in the few cases which that actually end up contested on the issue of parenting.

Factors considered by the Judges in Determining the Best Interests of the Child:

- The decision to give one parent sole parental rights and responsibilities when the parents can't agree on a parenting plan is determined by considering the following:
 1. The relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection, and guidance.

2. The ability and disposition of each parent to assure the child receives adequate food, clothing, medical care, other material needs, and a safe environment.
3. The ability and disposition of each parent to meet the child's present and future developmental needs.
4. The quality of the child's adjustment to her or his child's present housing, school, and community and the potential effect of any change on the child.
5. The ability and disposition of each parent to foster a positive relationship with the other parent and to insure the child has frequent and continuing contact with the other parent, including physical contact. (Except in situations where contact is likely to will result in harm to a the child or to a one parent.)
6. The quality of the child's relationship with the parent who has been the primary care provider, if appropriate given the child's age and developmental needs.
7. The relationship of the child with any other people who may significantly affect the child.
8. The ability and disposition of the parents to communicate, cooperate with each other and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided.
9. In addition, the court shall consider evidence of abuse, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.

The court may not apply a preference for one parent over the other because of the sex of the child or the financial resources of a parent.

How to prepare for a contested Hearing on Parental Rights and Responsibilities:

- It is difficult to represent yourself in cases where parenting is contested. Most people choose to hire a lawyer to present their cases to the court.
- If you do choose to represent yourself, you must prepare ahead of time. You will need to present facts regarding each factor outlined above. Describe what relationship you have with each of your children, who has been responsible for meeting the different needs of the child, like feeding, clothing and day-to-day care for the child, doctor's appointments, home work, extra curricular activities, etc. Outline what you believe your child needs, and describe why and how you can better provide for such needs. Be prepared to outline what contact you believe the children should have with the other parent.
- If there are other witnesses who can give important information to the judge about the above factors, you have the right to bring those witnesses to the hearing.

Testimony of Children:

- The law discourages testimony of minor children. Before a child may testify, a Guardian ad Litem must be appointed for the child and a hearing must be held to determine whether the testimony of the child is necessary. If the testimony of the child is found to be necessary a lawyer must be appointed for that child.

**You can obtain helpful information, as well as court forms at:
www.VermontJudiciary.org.**