

Legal Briefs

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Reviewing Custody

If you are considering divorce, the custody arrangement may be the most important aspect of your divorce agreement. Divorce agreements dictate whether children live primarily with one parent (a sole physical custody arrangement) or split their time more or less evenly between their parents (a joint physical custody arrangement). In sole physical custody, one parent takes care of the child most of the time and makes major decisions about the child. That parent is usually referred to as the custodial parent. Unless he or she is deemed a danger to the child's welfare, the noncustodial parent is granted a right to parenting time.

Situations in which both parents share in making major decisions about the child and both parents spend substantial amounts of time with the child are known as joint physical custody arrangements.

When parents cannot agree between themselves about the custody of their child, the court decides. Courts base their decisions on an assessment of the best interests of the child. The wishes of a child can be a factor in custody decisions. Though some courts will not consider the preferences of a child under 14, an older child's expressed preferences are taken seriously by the court.

If you are already divorced, and recent changes in your or your ex-spouse's circumstances



makes a review of the custody arrangement necessary, courts do have the power to make changes.

If both parents wish to voluntarily change custody or visitation schedules, they may do so without obtaining a court order. However, if the parent receiving custody or more visitation wants to protect the changes from future reversal, it is best to obtain a court order to that effect. Additionally, informal changes in custody do not affect a parent's support obligation—only the court can change court-ordered child support.

While it is possible to get divorced without the help of a lawyer, this is never advisable when children are involved. Even amicable divorces may require an attorney's hand to assure that custody issues are treated fairly. Talk to your lawyer before signing any custody agreements or if you feel you'd like to change your existing agreement.

