

# **COMMON "CUSTODY" TERMS USED IN DIVORCE AND PATERNITY ACTIONS**

Custody terms that are used in legal documents have some very important legal consequences and can have a tremendous impact on your future actions in the court.

There are two kinds of custody that must be addressed in divorce and paternity documents. **"Physical" custody and "Legal" custody.** Physical custody has to do with the actual, physical, interaction and contact between parent and child. Legal custody has to do with the rights and responsibilities to make decisions about the important aspects of the child's life, such as the child's education and the child's health needs.

The following terms are commonly used to describe "custody" arrangements. It is important to realize that these are not the only terms used and if there are terms that you don't understand or you are not sure of their meaning, for your own protection, have the terms clearly defined in any legal documents you sign or any orders that issue from the court.

These definitions are not complete legal definitions, but only give you an idea of what terms are commonly used in documents and what they *generally* mean. For a more complete definition, please speak to an attorney, or clarify the terms with the mediator, if you are in mediation, or, clarify the terms at the time of any hearing or conference with the judge.

**Primary Physical Custody:** The child physically resides with, and spends the great majority of time with, one parent, designated as the primary physical custodian, and the other parent has visitation rights and privileges. For example: the non-custodial parent may have visitation at least every other weekend, one evening during the off week, alternate holidays and some block time for vacation periods. Non-custodial arrangements vary with each set of circumstances.

**Joint Physical Custody:** Each parent has significant periods of time with the child. It **DOES NOT MEAN** that each parent has an exact equal amount of time with the child. The significant time may be worked out over longer periods such as weekly, monthly, or even annually. This may also be designated as **shared physical custody.** Joint physical custody does not mean that there will be no child support obligation. Usually, there is still a child support obligation of some kind from one parent to the other, depending upon the financial position in which each is left following the divorce.

**Sole Physical Custody:** Sole physical custody is very seldom granted by the court. Usually, the term is used when one parent is completely out of the child's life, such as in prison, or in circumstances that contact with the non-custodial parent would expose the child to physical danger or abuse. Sole physical custody does not automatically mean that the non-custodial parent has no visitation rights. The court may grant one parent sole physical custody and grant the non-custodial parent specific visitation. The term sole physical custody is most often combined with sole legal custody which then grants one parent the complete control over making all the decisions for the child without any input by the non-custodial parent. However, sole physical custody may also be combined with joint legal custody. In that case, although one parent has the child solely in their physical custody, the important decisions for the child are made with input by the non-custodial parent.

***Joint Legal Custody:*** Both parents equally share the right and responsibility to make decisions about the child's health, education and welfare. Should the parents not be able to agree on such decisions, the parents usually return to mediation to see if they can work out their differences and if they cannot work them out through mediation, the matter is presented to the Court for the final decision. Both parents have an equal right to access such things as the child's doctor's records and school records.

***Sole Legal Custody:*** One parent, alone, has the right and responsibility to make all the decisions about the child's health, education and welfare, without any input from the non-custodial parent. Sole legal custody is only granted in extreme and unusual cases and circumstances.

***The State encourages custody arrangements that allow the child to have significant time with both parents and expects both parents to share the responsibility of making the important decisions involving their child's life.***