

RESIDENCE ORDERS

What does Residence Mean?

“Residence” in the context of Children Act Proceedings means where the child lives for the majority of the time. When a relationship breaks down and the parents no longer live together then the child will usually live with their mother or father. “Residence” is the new term for what used to be called “custody”. The parent with whom the child lives is called the “resident parent” and the other parent is the “non resident parent”. It is possible for the child to divide its time pretty much equally between both parents, in which case both parents share residence of the child.

Ideally, separating parents agree between themselves where the child/ren of their relationship will live, but as emotions run high in the wake of a breakdown of a relationship, it is not always possible to agree on the arrangements of the child/ren. If you and your former partner cannot agree on where the child/ren should live then there are three main options:-

Mediation: this is a process designed to lessen conflict and aims to bring both parties to an agreed outcome. We have trained mediators who can assist in this process.

Instruct a barrister or solicitor to contact your former partner on your behalf to try and negotiate the desired outcome, or alternatively instruct a barrister or solicitor to correspond with your former partner’s legal representative. All our direct access trained barristers can assist you with this, and the clerks can provide you with fixed fees for fixed pieces of work.

Commence court proceedings to seek a Residence Order.

What is a Residence Order?

A Residence Order is a court order, which states with whom the child should live. The Court

may make a Residence Order in favour of one parent/other applicant, or alternately a Shared Residence Order in favour of two parents/applicants, with whom the child spends approximately equal time.

Who can apply for a Residence Order?

The following can apply to the Court without applying to the Court to ask for permission:

A parent

A step-parent, who has treated the child as a “child of the family”.

Any person who has obtained the consent of all parents with parental responsibility

Any person, who if the child is in care has obtained the consent of the Local Authority

Any person who has obtained the permission of all those who already have a Residence Order in favour of the child.

Anyone who the child has lived with for at least three years.

A foster parent, if the child has lived with them for a period of at least one year immediately preceding the application to the Court.

Anyone who does not fall into the above categories needs to apply to the Court for permission.

How do I apply for a Residence Order?

If there have been no previous court proceedings involving your child, then you will need to fill out a C100 form and file this with the court. This form can be downloaded from www.justice.gov.uk, or alternatively you can pick one up from your local county court. It currently costs £200 to apply to the Court for a contact order; you may be eligible for help with court fees if you are on benefits or on a low income.

Once you have completed the C100, you will need to file three copies of it with the Court as well as payment of the court fee by cheque, postal order or cash.

If there have been previous court proceedings involving your child, then you will need to fill out a C2 form (this can be downloaded from www.justice.gov.uk) and file this with the court.

If you require permission to make an application then you need to fill out the C2 form.

What happens once I have made the application for a Residence Order?

The Court will write to you (the Applicant) and your former partner (the Respondent) with a date and time to come to Court. The letter will include a “notice of proceedings”, which tells you when and where to come to Court. It is always helpful to come to court at least 30 minutes before the time of the hearing to enable you to have discussions with your former partner or their legal representative before going into Court, or alternatively to meet your barrister to give them instructions to have those discussions on your behalf.

It is common for a CAFCASS worker to contact you before the court hearing to ask you some questions about your application and to ask your permission to carry out safeguarding checks, e.g. checking whether you have criminal convictions or not. This is your opportunity to give them more information about why you feel it is necessary to make an application to the court and to voice any concerns you have. CAFCASS stands for “Children and Family Court Advisory and Support Service”, the CAFCASS workers are independent and will speak to both you and your ex partner at Court to ascertain both your views.

The first hearing that you attend will usually be a “CAFCASS appointment” and directions hearing, although local courts have different practices. It is usual for you to speak to a CAFCASS worker at Court, and for them to speak to your former partner as well, prior to going in to see the Judge. CAFCASS can assist in coming to an agreement with your former partner.

What benefits are there to having a Residence Order?

If your child lives with you under a Residence Order then if they are not returned after contact with the non-resident parent, then the Court will have power to direct their return to you.

When the Court makes a Residence Order, the person in whose favour it is made also receives Parental Responsibility. (Please see Fact Sheet on “Parental Responsibility”)

You will be able to take your child out of the jurisdiction (abroad) for up to 28 days without the permission of the non-resident parent, N.B. if you wish to take your child out of the jurisdiction for longer, you will need the permission of all those who have parental responsibility for the child.

Members of the family team at 12 College Place understand how difficult it can be for someone without legal training to navigate their way round the legal system. We all specialise in family law and have lots of experience of helping our clients make the right decisions about these complex issues. We can discuss your case with you, talk through the options, and guide you through your court case. Remember: we are here to help.