



DIVORCED OR Planning To?

Advocate VEERASH SRIKISON explains how to draft a detailed parenting plan while taking into account the developmental needs of your child.

The underlying purpose of effective co-parenting is to ensure that children are able to maintain a stable relationship and contact with both parents prior to and post the divorce process. However, practically, family law practitioners are facing an increase in litigation requests against a co-parent because the current parental arrangement does not suit them and the children are apprehensive about the lack of properly administered contact arrangements.

Co-parents are left trying to decipher what exactly is required of them from the parental care and contact clause, as drafted by their respective attorneys. A catch-all parental clause (alternate weekends/school holidays/public holidays/birthdays) may work for co-parents who have older children and are able to manage these arrangements without any conflict, but the majority of parents who have younger children find it difficult to meet these vague arrangements where each child has a different schedule, or requires more contact time with the other co-parent because of the bond that needs to be cemented with younger children.

DIVIDING UP THE CHILDREN

Usually, generically drafted parental rights and responsibility clauses incorporated within the divorce order:

- Do not give specific date periods for alternate holidays allowing some co-parents to manipulate when and where they see their children.
- Do not address procedures to be followed should the one parent wish to take their child on an overseas holiday.
- Do not give guidance on how the child's belongings (including achievements) will be distributed and shared between the two homes.
- Do not incorporate what the daily schedule will be for the children to be fetched and taken to extra curricular activities, and how are the choices for these activities are determined.
- Lack contingency provisions to be made if one parent is unable to make themselves available to fulfill their commitment agreed upon during their time with the child.
- Do not allow for flexibility in the parental agreement in the event of last minute or unforeseen circumstances.

DEVISING A DETAILED PARENTAL PLAN

The Children's Act of South Africa 2005 makes provisions for dealing with the responsibilities and rights parents have towards their children. Every section of the Act has implications for the development and psychological wellbeing of children. Section 33 of the Act addresses the need for a parenting plan to be devised to ensure that these rights and responsibilities are given effect. Co-parents must realise that there is a need and a benefit in the best interests of everyone involved, to devising a detailed parental plan for taking care of their children in two separate homes to avoid small conflicts that create an unstable environment for their children. The challenge lies in coming up with a plan that is practical and in line with your child's developmental needs, and taking into consideration the developing child's brain while it experiences the high level emotions of a traumatic nature.

The parenting plan must be drafted with the verbal input from both parents in a controlled discussion forum to take into account what agreement works best in the development stage of their particular child. Depending on the age and maturity of each child, they will be given an opportunity to voice what they feel will work for them and how they feel about the division of their home. Parents must understand when children are introduced to what the parental plan will contain, they can adapt themselves to the change in circumstances and prepare themselves to succumb to a routine that will be carried out responsibly by their parents. This helps the child to feel less excluded in the divorce process and facilitates their healing.

THE BENEFITS OF A DETAILED PLAN

By devising a detailed parental plan, children of divorce are acknowledged and protected in accordance with the South African Constitution, which states that: "A child's best interests are of paramount importance in every matter concerning the child."

- The uncertainty your child experiences while their home is being divided in two is lessened.
- If done amicably, through the process of mediation before or after the divorce order is granted, it gives co-parents an opportunity to "test drive" the plan and revise and redraft terms that need to be adjusted to suit their children.

PREVENTING STRESSED CHILDREN

As adults in the midst of the already devastating experience of a divorce, co-parents tend to forget that their children are experiencing the traumatic emotions of their household being torn in two and an uncertain future. Young children may not fully understand the reasons behind an absent parent, experience emotional pain that is evidenced by:

- Developing a nappy rash

- Being inconsolable
- Regressing from being toilet trained to soiling,
- Trouble sleeping and eating,
- Aggressive to withdrawn behaviour

Older children may exhibit emotional pain in other ways that may go undetected and be labelled as other disorders that lead to untold medical and assessment costs.



MEDIATION

If done in good faith, mediating a parenting plan may eliminate some of the residual emotional ill-feelings some co-parents may still have towards each other, and opens the forum for them to discuss and collaborate in a controlled neutral environment, on what will work best for their children with the guidance and facilitation from the mediator. The generation of children who come from split homes will reap the benefits of being raised by two parents who did the best they could to keep them happy. 



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