

October 2007

FACT SHEET: FAMILY LAW – RESTRAINING RELOCATION

Is there a ‘shared parental responsibility’ order?

An order for ‘shared parental responsibility’ provides that parties are required to consult with each other and make a genuine attempt to come to a joint decision about any major long-term issues in relation to the child/ren. This includes any changes to the child’s living arrangements that make it significantly more difficult for the child to spend time with the other parent.

Where there is a ‘shared parental order’ in place, the parent wishing to relocate must consult the other parent. Relocating without consultation will be a breach of the order.

If there are no court orders in place and the other parent relocates without your consent, you may make an application to the court for a recovery order.

Attend Family Dispute Resolution

In most circumstances (unless an exemption applies, for example, history of family violence or the matter is urgent) it is compulsory for parties to attend Family Dispute Resolution (FDR) with a registered FDR practitioner in an attempt to resolve parenting matters before making an application to the court. The other parent may request that you attend mediation in an attempt to reach an agreement regarding relocation.

Make Application to the Court

Urgent Interim Orders

If you are concerned that the parent is going to relocate in the immediate future, you may file an application for urgent interim orders in the Family Court or Federal Magistrates Court. In doing so, you would be claiming an exemption to compulsory FDR requirements on the basis that it is a matter of urgency that the court makes an order.

Final Orders

In the Family Court, your application for interim orders must be accompanied by an ‘Application for Final Orders’ detailing proposed orders for who the child is to live with and where.

Best Interests of the Child

In considering an application to restrain relocation, the child’s best interests are paramount. In determining what is in the child’s best interest, the court is to consider the benefit to the child of having a meaningful relationship with both parents and the need to protect the child from harm or being exposed to abuse or family violence.

There are also a number of additional considerations the court is required to take into account. For example, the nature of the relationship between the child and each parent, the willingness of each parent to facilitate a relationship between the child and the other parent, the likely effect of any changes in the child’s circumstances (including effect of separation from a parent).

While the best interest of the child is the paramount consideration, it is not the sole consideration. The court will also take into account to the legitimate interests of both parents.

Details of Your Application

An interim order may restrain the parent from relocating until final orders are made.

If filing in the Family Court, you will need to file an:

- 'Affidavit: Non-Filing of FDR Certificate' Form (claiming exemption on basis of urgency); and
- 'Application in a Case' Form; and
- 'Affidavit' (evidence to support an interim order restraining relocation); and
- 'Application for Final Orders' (detailing who the child is to live with and where).

Forms may be downloaded from the Family Court website: www.familycourt.gov.au

If filing in the Federal Magistrates Court, you will need to file:

- 'Affidavit: Non-Filing of FDR Certificate' Form (claiming exemption on basis of urgency); and
- 'Application' Form (seeking interim and final orders); and
- 'Affidavit' (evidence as to why an interim order restraining relocation should be made and evidence to support proposed final orders).

Forms may be downloaded from the Federal Magistrates Court website: www.fmc.gov.au

In both the Family Court and the Federal Magistrates Court, there is a filing fee of \$145. If you have a concession card or can demonstrate hardship, the fees may be waived. You will need to complete a waiver of court fees form.

Proposed Orders

In your interim application to restrain the other party from relocating, you will need to draft the order that you are seeking, for example, that the other parent will not remove the child from their place of residence without your consent.

In your application for final orders, you will need to draft the orders (proposals) that you are seeking in the long term. For example, that the parent who the child lives with is to live in a defined area or that the child is to live with you and spend time with the other parent (providing detail of how/when the child will spend time and forms of communication with the other parent).

The court will consider the proposals of both parties in light of the best interests of the child considerations. It is important to note that the court is not limited to the competing proposals of the parties. The court may, if in the best interest of the child, propose to make orders that were not sought by either party.

What you will need to demonstrate

You will need to demonstrate to the court that the proposed relocation is not in the best interests of the child. Evidence to support an order preventing relocation may include:

- Benefit for child in maintaining strong and meaningful relationship with you;
- Strong ties to school and community;
- Loss of relationship with friends and relatives.

You may also provide evidence of the disadvantages to the child if relocation where permitted.

Contacts

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Family Relationships Australia:

Ph: 1800 050 321

Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to a court.

Acknowledgements: Livermore M, 'The Family Law Handbook' University NSW Press, Sydney, 2007.