



Legal information for unmarried parents living in the Basel-City Canton

Dear parents,

We would like to congratulate you on the birth of your child and wish you and your child all the best for the future. It is our pleasure to provide some basic legal information to get you started. If you have any further questions, please do not hesitate to contact us.

Kind regards,

Kindes- und Erwachsenenschutzbehörde Basel-Stadt (KESB) (Child and Adult Support Agency)

Declaration of paternity

If the parents are unmarried, the child does not automatically have a legal father. In the best interests of the child, the father is required to declare his parenthood at the registry office. This safeguards the child's legal situation. Please contact the registry office if you have any questions regarding the declaration of parenthood (phone: +41 (0)61 267 95 90 or e-mail: za@jsd.bs.ch).

If the father does not declare parenthood within a reasonable amount of time, the KESB can organise state assistance for the child. The child maintenance official is obliged to place the interests of the child above those of the father. If necessary, they shall submit maintenance claims or file a paternity case with the court having jurisdiction.

Consenting to shared parental responsibility

Parental responsibility is the obligation and right of the parents to make decisions for the minor. Shared parental responsibility is the normal procedure, even for unmarried parents. It comes into effect after the parents have agreed and provided a joint declaration. If the parents cannot agree, the authorities may decide that parental responsibility should be shared.

Parents are in agreement

Unmarried parents who want joint custody can submit a declaration form, provided that the father has declared parenthood of the child. In the declaration, the parents confirm that they are prepared to be jointly responsible for the child and have agreed

on arrangements for child care and maintenance contributions. The corresponding forms can be obtained from the authorities.

The declaration must be submitted in writing and in person by both parents. The two following options are available:

1. The declaration regarding parental responsibility can be submitted together with the declaration of parenthood at the registry office. The declarations can also be submitted before the child is born. To arrange an appointment, please contact the Basel-City Canton registry office (phone: +41 (0)61 267 95 90 or e-mail: za@jsd.bs.ch).

2. If you only want to make the declaration after the father has declared parenthood, it can be submitted to the KESB in the child's place of residence. To submit a declaration to the Basel-City Canton KESB, please contact the KESB office (phone: +41 (0)61 267 80 92 or e-mail: kesb@bs.ch).

There is a 30 CHF charge for submitting a shared parental responsibility declaration. You can also get advice from the KESB before submitting your declaration. The first hour-long advice session is free of charge. Every additional advice session is charged at an hourly rate of 120 CHF. If you can prove that you are unable to pay, the costs will be waived.

Parents are not in agreement

If one of the parents is not willing to submit the declaration regarding shared parental responsibility, the other parent can contact the authorities in the child's place of residence. If the parents cannot agree on the maintenance of the child as well as the shared parental responsibility, these matters will be settled by the court. In contrast, if the parents are able to agree on maintenance but not on shared parental responsibility, the KESB is responsible. The court/KESB also settles other matters which are disputed by the parents (e.g. child care).

Until the authorities make a decision to the contrary, the mother has sole parental responsibility. The intention of the legislator was to introduce shared parental responsibility as the rule. Therefore, shared parental responsibility may only be refused if the well-being of the child would be severely jeopardised by it. Arguments or disagreements between the parents are not sufficient reasons. The authorities decide whether parental responsibility is shared between both parents, taking the child's well-being and the overall situation into consideration. If the authorities decide that shared parental responsibility would be detrimental to the child's well-being, the decision is taken as to whether the sole parental responsibility should remain with the mother or be granted to the father.

Changes to formal arrangements regarding parental responsibility

If unmarried parents separate, this does not automatically affect the shared parental responsibility. If the parents live separately, it is recommended that a formal arrangement regarding child maintenance is put in place and provisions for sharing child care are agreed upon. If the parents have shared parental responsibility and one parent dies, the surviving parent automatically assumes sole parental responsibility.

Rights and obligations for shared parental responsibility

The parents have the obligation and right to care for their under-age child. Where parental responsibility is shared, both parents have the same fundamental rights and obligations. They must be able to communicate with each other and solve any conflicts together in the best interests of the child. This is of particular importance when the parents do not live together (any longer).

Who can decide what?

As a general rule, both parents have to make joint decisions. However, the parent caring for the child may make decisions alone for urgent or day-to-day matters or if the other parent cannot be contacted despite a reasonable attempt to do so. The parents shall make decisions of greater significance jointly.

What happens if the parents cannot agree?

In principle, parents have to jointly agree on matters which concern the child's welfare. If they cannot do this, the parents should consult an advice centre to receive assistance in drawing up an arrangement which is acceptable to both parents. The KESB may be called but only when the child's welfare is severely jeopardised by the parents' disagreement (this refers only to decisions by parents with shared responsibility which must be made together).

Who decides where the child will live?

Amongst other things, parental responsibility includes the right to determine where the child shall live. If the parents have shared parental responsibility and one parent wants to change the child's place of residence, this may require agreement from the other parent under certain circumstances. For example, if the new place of residence is in a foreign country or if the change of residence would severely affect how parental responsibility is exercised or how the other parent's access (child care) is maintained. The parent who wants to change their place of residence must inform the other parent in good time. If necessitated by the change of address, the parents must agree on any alterations to the parental responsibility, child care arrangements and maintenance contributions to ensure the child's continued welfare. The court or KESB will only be required to settle this matter should the parents be unable to come to an agreement.

Whose surname does the child take?

The parents can decide on the child's surname at the same time as submitting the father's declaration of parenthood and the declaration for shared parental responsibility for their first child to the registry office. They can choose between the mother's or father's unmarried name. If the parents submit the shared parental responsibility declaration to the child support agency at a later date, the parents can inform the registry office within a twelve-month period that the child will take the surname of the other parent. This declaration applies to all of this couple's children.

Parenting credits

When calculating a pension, the parenting credits take lost income during periods of parental leave which a parent has incurred in the past into account. The AHV (old age insurance) grants parents with a parenting credit for each year that they had parental responsibility for one or more children up to the age of 16. Unmarried parents who have established shared parental responsibility through a joint declaration can agree on who is granted the parenting credits or whether they are to be shared. If the parents cannot come to an agreement, the KESB automatically makes a decision on who is granted the parenting credits. The emphasis is placed on which parent's employment situation was most affected by caring for the child. Equal credits are recommended when both parents provide roughly the same amount of child care for their children.

Child maintenance

Irrespective of parental responsibility, parents must ensure the child receives adequate support. This is achieved through care, education and monetary payments. If the necessary arrangements are not in place, maintenance cannot be fully guaranteed in the event of a conflict. Particularly when the parents live separately, it is recommended that a formal arrangement regarding child maintenance is put in place and provisions for sharing child care are agreed upon. The maintenance contribution for the child consists of the financial support (direct costs of the child, e.g. for housing, food, healthcare, clothing, education, third-party child care) and child support. The child support should cover the costs for the parent to care for the child on their own. Please note that any agreement regarding the financial maintenance of the child is only binding once it has been approved by the KESB. Please contact the KESB (phone: +41 (0)61 267 80 92 or e-mail: kesb@bs.ch) for advice and formulation of an agreement regarding care and/or financial maintenance.

Sole parental responsibility

If parental responsibility remains with one parent, this parent is solely responsible for making decisions. However, the other parent must be informed about major events in the child's life. In addition, the other parent must be consulted prior to decisions which are important for the child's development. Finally, the parent who does not have parental responsibility can receive information regarding the child's welfare and development from a third-party who is involved in the child's care. The parents have to agree on care for the child by the parent without parental responsibility. If they cannot come to an agreement, the matter is settled by the KESB.