

Cherish House
2 Lower Pembroke Street, Dublin 2
Tel: 01 662 9212
Fax: 01 662 9096
Email: info@onefamily.ie
www.onefamily.ie



Custody, Access and Guardianship

Custody refers to the day to day care and control of a child. Access refers to the contact a person, usually the non-custodial parent, has with a child. Guardianship gives the right to participate in major decisions relating to a child.

A mother who is not married will have sole custody of her child. Where a father wants to share custody of his child, this can be agreed informally with the mother, and can be made a rule of court. If agreement is not possible, he can apply to the courts for shared or joint custody of his child, or in rare cases sole custody. The relevant legislation requires the court to decide on the basis of the welfare of the child as the first and paramount principle.

Where a father wants access, or contact, with his child, again this can be agreed with the mother, and the agreement can be made a rule of court, or in the absence of such agreement he can apply to the courts for an access order. Again, the courts will make a decision based on the welfare of the child as the first and paramount principle. Access to both parents is regarded in law as a right of the child.

A mother who is not married is the sole guardian of her child. The natural father does not have an automatic right to be appointed guardian of his child, but has a right to apply to the courts to be appointed, even if he is not named on the birth certificate. Usually he will be successful, even if this is opposed by the mother, however the test the court will apply will be the welfare of the child as the first and paramount consideration. If the parents agree and the father is named on the child's birth certificate, there is an alternative simple procedure by which the father can become a guardian. This is by way of Statutory Declaration, a document which can be sworn by both parents. There is no way to register this document, so it should be kept safely.

A mother who is a sole guardian should consider making a will and appointing what is called a 'testamentary guardian' of the child in case of her own death.

This is a brief outline of the issues. It is not intended as a substitute for a proper consultation with a legal advisor. It is essential that anyone dealing with these issues seeks legal advice in order to decide how best to proceed in the individual circumstances.