

Parental Responsibility

Parental Responsibility is defined as “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property”.

The mother of a child automatically has parental responsibility for her child. A father will automatically have parental responsibility if at the time of the birth or at any time after that the mother and father are married.

A father who has not been married to the mother will automatically have parental responsibility if the child was born after December 2003 and both parents registered the birth with the father's name on the birth certificate. If the child was born before December 2003, the father can obtain parental responsibility by:

- entering into a formal Parental Responsibility Agreement with the mother; or
- asking the Court to make a Parental Responsibility Order.

Parental Responsibility recognises the rights of both parents to be consulted about major issues that may occur during the life of the child such as education and schooling matters, the child's religious upbringing, medical treatment, agreement to adoption, consent to marriage or removal out of the country.

On a day to day basis, having parental responsibility means that a parent who does not live with the child would have the right to obtain information from the child's school or doctor about the child's progress. It does not however, give that parent the right to interfere on a day to day basis with routine matters such as what a child eats or what time the child goes to bed. Further, it does not give that parent the power to override the decisions of the parent with whom the child lives. In the event of a dispute on a matter relating to the upbringing of the child, either parent can apply to the Court for an Order to decide the matter in question.

Perhaps one of the most important aspects of parental responsibility is that if a parent with parental responsibility dies the surviving parent with parental responsibility automatically becomes the child's guardian. If there is any dispute about where a child should live after the death of the parent, the dispute can be referred to the Court.

Courts generally like fathers to have parental responsibility in appropriate cases. In deciding whether to make an order for parental responsibility, the Court looks at the following three particular points:

1. The degree of the father's commitment to the child;
2. The degree of attachment to his child;
3. His reasons for applying for the Parental Responsibility Order.

The fact that a father is not paying maintenance does not mean he will not get parental responsibility, although it may be argued that failure to pay maintenance shows a lack of commitment to the child.