

NOWELL MELLER SOLICITORS LTD FAMILY LAW SERVICE

LEAFLET NO.4 – CHANGING YOUR NAME OR THAT OF YOUR CHILD

What is a Surname?

Most people have at least two names - a first name and a surname. The first name is often called the Christian name and is the name shown on a Christian Baptism certificate. The surname is the name for the family unit.

How do you get your Surname?

When a child is born to married parents one or both of them registers the birth. Unmarried fathers are not obliged to do this and have no independent right to have their name entered on the register.

An unmarried mother can register the child under any surname (including the father's surname) she wishes. She can only enter the father's details on the register as father of the child if he also signs the register; or they each produce a sworn statement, or they have an appropriate court order.

A child's surname can be re-registered later if a couple marry and officially change the child's surname. Similarly, re-registration can include details of the father if these were not provided at the time of original registration.

What normally happens with surnames?

Children normally take the surname of their father unless their mother wishes them to have a different surname and their father agrees. After a divorce the children usually keep their same surname but if everyone agrees their surname may be changed.

When some children in a family have different surnames step-parents often want everyone to have the same surname.

How do you change a child's surname?

There are legal restrictions. You cannot simply change a child's name when you remarry or set up a new partnership

A mother (or father) cannot strictly change a child's surname by herself unless she is the only person with Parental Responsibility. For an explanation of this term see our leaflet on the Children Act.

If the mother was unmarried when the child was born, and the child's father has not obtained Parental Responsibility, then she is technically able to simply change the child's name to match hers on remarriage. However, a string of recent Court decisions have made it clear that a parent should not do this if it is clear that the other parent (whether or not that other parent also has Parental Responsibility) objects to the proposed change of name. In such a case, an application must be made to the Court for approval. If you are in any doubt, you should seek specialist legal advice.

If there is a Residence Order (or old Custody Order) in force in respect of the child, you definitely cannot change the child's surname without either the written consent of every other person with Parental Responsibility for the child or a Court Order.

An application to change a child's surname is normally only successful when everyone having Parental Responsibility (which could include birth parents, adoptive parents, step-parents or grandparents) for the child gives their written consent.

A child aged between 16 and 18 can generally change their own name but will require the consent of any person with Parental Responsibility or Court permission.

What will the Court do?

The Court has a duty to decide what is in the best interest of the child. It may agree to the change or may make an order stating that you cannot change the child's name.

What can happen when a name is changed?

Everyone appears to belong to the same family unit. This is less confusing at school as everyone has the same name. This hides the fact that you have different family stories and may reduce any stigma you felt as a divorcing or lone parent family.

However, it may force a sense of togetherness too soon for some children.

It may cause problems between children who do not want to share their name or lose their name. The child may lose touch with the other parent or grandparents and may resent the change in later life and want to change it back again.

What the law says about changing a child's name

Any change of name must be in the best interests of the child. All those with Parental Responsibility must give written consent to the name change or you must get an order.

How to go about it

A name can be changed by common usage but this normally relates to first names only and will not usually be legally enforceable.

The easiest way of obtaining formal proof may be to make a statutory declaration or Deed Poll confirming the change of name. This is usually sufficient for banks, the Passport Office etc.

For a change to be legally recognised, a person with parental responsibility for the child can execute a Deed which is a legal document containing personal information about the child. This may be advertised in the London Gazette by the Court. The child must sign this type of Deed as evidence by consent if aged between 16 and 18 years.

This Deed must be accompanied by the child's birth certificate and a sworn declaration by a third party to formally identify the child and state the length of time for which that person has known the child and his or her parents. It must be supported by an Affidavit that the proposed change of name will be for the benefit of the child.

What will it cost and how long will it take?

This depends on the steps that are required and who is involved. We are happy to provide you with an estimate of the likely cost free of charge. In addition, free legal advice and assistance may be available under the Legal Help scheme.

Remember

No two step-families are alike. For information about your own situation you need personal guidance and advice. You need to be sure that such a big step like changing a child's name is the right thing to do in all the circumstances.

You must think about all the implications before you act, not only the father's feelings if the children stop using his name but also their grandparents. Building family togetherness does not depend on the use of the same family surname. Before you make any decision about the future, come and ask for advice.

NOTE: The above is intended as a general guide for your information. It is NOT intended as a substitute for proper legal advice. Each case is different and advice cannot be given without a proper analysis of your own circumstances.

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