

A baby carriage without the marriage:

What you need to know about custody in Oregon

By Sharnel Mesirow



A recent report by the United States Census Bureau found that the portion of “unmarried partners¹” grew 41% between 2000 and 2010², which means more people are living together and having children before marriage. While we are all hopeful that a loving relationship can last forever, most of these modern couples are unknowingly subjecting themselves to a complex legal arena. If you and your domestic partner have children, it is important to know your legal right under Oregon’s child custody laws.

OREGON CHILD CUSTODY LAWS DO NOT FAVOR EITHER PARENT

People often assume that the child custody process favors the child’s mother. This is not true. Fathers’ rights in Oregon are viewed as equal to mothers’ rights. In fact, under Oregon custody law, courts base their custody decisions on what is in the best interests of the child. For instance, if the mother has an extensive drug history affecting the child then the father may have a higher likelihood of receiving sole custody.

THE BASICS OF LEGAL CUSTODY IN OREGON

Custody is the legal responsibility for the primary care of a minor child. A court cannot award custody of a child over 18 years of age. Under Oregon custody law there are two forms of custody that can be awarded. One of these is legal custody. Legal custody provides a parent or parents with the ability to make major decisions regarding the child’s upbringing. These decisions typically involve health care, religious training, and education.

In Oregon, judges must select one parent as having sole legal custody. However, the parents can agree to have joint legal custody. Joint legal custody awards both parents decision-making authority. If the parents agree to joint legal custody, then the court will uphold that agreement. However, a parent may later seek to modify this form of custody on the basis that the joint custody arrangement is no longer workable.

THE BASICS OF PHYSICAL CUSTODY IN OREGON

The other type of custody is physical custody. Physical custody refers to the parent with whom the child lives a majority of the time, not the way major decisions are made. In Oregon, physical custody is based upon the parenting time (formerly known as “visitation”) each parent has with the child. It is possible to have equal parenting time, and sole legal custody.

THE BASICS OF OREGON PARENTING TIME

The non-custodial parent’s parenting time will depend on what the court deems is in the best interests of the child. Generally, Oregon courts favor granting some level of parenting time to the non-custodial parent. However, this may not be the case if the parent has a history of domestic abuse.

While counties in Oregon vary as to whether there should be a “standard” or “recommended” parenting time, it is important to develop a parenting time plan which considers the unique dynamics of the family such as the child’s developmental age, physical or emotional handicaps, and the limitations of the non-custodial parent.



Sharnel Mesirow, Associate

For further information, you should contact an Oregon family law attorney specializing in custody disputes.

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¹ For the purposes of the study, an “unmarried partner household” consists of a householder and a person living in the household who reports that he or she is (1) an unmarried partner of the householder and of the opposite sex; (2) an unmarried partner of the householder and of the same sex; or (3) a spouse of the householder and of the same sex.

² U.S. Census Bureau. Households and Families:2010. 2010 Census Brief. By Daphne Lofquist, Terry Lugaila, Martin O’Connell, and Sarah Feliz. Available at <http://www.census.gov/prod/cen2010/briefs/c2010br-14.pdf> Accessed September 2012.