

QUICKLAW

ANSWERS YOUR QUESTIONS

CHILD ACCESS UNWED FATHERS

Do I have the right to see and visit my child?

- Yes, if one parent is awarded custody of a child it does not mean that you, the non-custodian parent, are deprived of all parental rights.
- You are entitled to access to your child, unless a court orders otherwise.
- Access can be obtained by a court order or by arrangement with the custodian parent.
- If the court order does not say what the terms of the access are then the custodian parent should allow you "reasonable access" to your child.

What is "reasonable access"?

- To determine what reasonable access is will depend largely on the age of the child and the relationship between you and the child.
- In practice, reasonable access to school-going children is usually every alternate weekend and every alternate school holiday.

Is my ex-wife or ex-husband allowed to refuse me access to my child?

- It is a criminal offence for a custodian parent to unreasonably refuse or prevent you from having access to your child.
- The custodian parent must advise you in writing

of any change of residential address. If this is not given the custodian parent may be guilty of a criminal offence.

- If access to your child is part of a settlement agreement, your ex-wife or ex-husband must comply with the court order, if they do not comply with the court order, your ex-wife or ex-husband will be in contempt of the court .

If I am refused access to my child by my ex-wife or ex-husband, do I still have to pay maintenance?

Yes, it does not matter whether you have access rights or not. You still have a responsibility to financially support your child.

If I am in the process of obtaining a divorce must I include the right to access in my settlement agreement?

Yes, when people are in the process of getting a divorce it is common for the court to make an order regarding access to the child.

How should I apply for access to my child if I am already divorced and the court did not grant an access order?

- You may apply to the High Court for a court order allowing you access rights to your child.
- The High Court will make an order allowing you access to the child if the court feels that this is in the best interests of the child.
- Rights of access may be refused if the court is not satisfied that it is in the best interests of the child to allow you access.

The court will consider the following:-

- the age of the parent*
- parent's state of health*
- social and financial position of the parents*
- the parent's character*

- temperament and past behaviour towards the child*
- the age, sex, health and character of the child*
- the child's educational and religious needs and personal preferences*
- any other factors that the court considers relevant*

What happens if I want to change my access order?

- A parent may change, cancel or suspend an access order:
 - Variation (this means to change an access order) eg. a father decides that he would like to see his child every 2 months instead of every alternate weekend because he is moving from Johannesburg to Cape Town.
 - Rescission (this means to cancel an access order) eg. a mother finds out that her child is being abused by the father of the child and applies to the court to have the access order cancelled.
 - Suspension (this means to postpone the access order) eg. a father decides that he cannot manage his 12 month old baby every second weekend and he would rather wait until the baby is two years old before he has reasonable access to his child.
- You must apply to the High Court for the variation of the court order (the Family Advocate must be informed of the application).
- You will need an attorney to help you with this type of application.
- You must satisfy the court that the changing of the access order will be in the best interests of the child.

KEY:

1. CUSTODY - the duty of taking care of someone
2. MAINTENANCE - a duty of support towards another person
3. VARIATION - to change
4. RESCISSION - to cancel
5. SUSPENSION - to postpone