

FOR BETTER OR FOR WORSE: PARENTING PLANS AND OTHER FAMILY LAW CHANGES

Florida Law Focus
December 2008

This article, by Business Litigation Practice Group associate, Mireya L. Rivera, was originally published in the December 2008 *Florida Law Focus*.

The Florida Legislature's 2008 session brought radical changes to the laws that govern divorce and related family law matters, including Florida's custody statute. For starters, there were significant nomenclature changes. The term "custody" itself was entirely removed. There will no longer be a designation of "primary residential parent," "secondary residential parent," "custodial parent," or "visitation." These terms were abolished in an attempt to indicate the importance of both parents in instances of family law proceedings. However, the changes are not just a matter of semantics.

A more significant change is the implementation of the "parenting plan" concept. Effective October 1, 2008, Florida law now requires all divorcing couples with minor children, in lieu of determining the parents' visitation and custody rights, to prepare a parenting plan, a document that governs any decisions that must be made about the children. Issues such as parental responsibility, time sharing, and support are essential elements of a parenting plan. While an in-depth examination of each element of a parenting plan is beyond the scope of this article, a general overview is provided. We invite the reader to imagine the intended results of these legislative changes with the real life consequences that are likely to occur.

A parenting plan generally covers, although isn't necessarily limited to, the following areas.

- Allocation of time spent with each parent and the extended family
- Conflict resolution
- Educational and religious decisions
- Financial arrangements
- Recreational involvement and holiday plans
- Residential and child car arrangements

Parenting plans can be as detailed or as vague as the parents desire. In creating the plan, parents must consider their historic relationship, any instances of domestic violence, and other factors. The parenting plan is generally developed and agreed to by the parents and approved by the court; in instances where the parents cannot agree, the parenting plan is established by the court.

The parenting plan seed was planted many years ago. The intent was to diffuse the acrimoniousness of the typical custody litigation proceeding by replacing litigation-prone terms with more neutral wording so that a custody battle undertaken to either "win" the label of primary residential parent or to "win" custody as a means of punishing the former spouse could be avoided.

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While minimizing conflict within the family is a laudable goal, the use of parenting plans has the potential to create problems. Because parenting plans cover not only critical decisions but also any other items the parents may want to include, plans can be riddled with mind-boggling detail and can lead to micromanagement of the family members' lives. Although numerous "standard" parenting plans are being developed by mental health professionals, lawyers, and judges and are making their way through the Florida circuit courts for fine-tuning, it seems impossible to come up with a one-size-fits-all parenting plan. Parenting plans need to remain open to family-specific tailoring.

There is a potential gap between the intent of the law and how it will be applied in the real world. This gap is widened by the fact that lay people may be asked to address issues that would not have otherwise become contentious if not for a "form" parenting plan addressing them. Furthermore, abandoning traditional labels may add confusion to the specific duties and roles of the parents. Whether the tailoring of a parenting plan will result in a renewed battle between the parents remains to be seen.

It may be years before the legal system and those in it fully digest and react to this revision of the law. For at least the next several years, judges will try to decipher its true meaning, and attorneys will argue about its correct interpretations. Because the changes are novel, it is also likely that we will see legislation revisiting the issue. Nevertheless, there is one thing we can count on: Florida family law is undergoing major changes. Only time will tell if these changes will bring positive results to the real world arena in which families play out their lives.

