

Can I change my child’s surname after separation?

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Changing a child’s surname following separation can be a relatively easy and straightforward process when both parents agree; however, it can become significantly more complicated when one parent withholds their consent to the child’s surname being changed.

This article will address the following:

1. Can I change my child’s surname?
2. How to change my child’s surname by consent?
3. What to do when one parent is withholding their consent?

Can I change my child’s surname?

Yes, there are three ways in which a child’s surname can be changed, by way of consent from both parents, mediation or by seeking a court order.

How to change my child’s surname by consent?

To change a child’s surname by consent (that is, where there is agreement between both parents to do so), the parents will need to make an application to Births, Deaths and Marriages Victoria. For children born in Victoria, you can make an application using the following link Births, Deaths and Marriages Victoria. For children born overseas, you can make an application using this link.

An application of this nature can only be made if the following requirements are satisfied:

1. The parents making the application are both named on the child's birth certificate;
2. Both parents' consent to the application being made;
3. If the child is 12 years or older, the child also consents to the application being made, which they will be required to confirm by signing the relevant consent form available on the Births, Deaths and Marriages Victoria website. An application cannot be made if the child (over 12 years) does not consent to the change;
4. If your child was born overseas, you will need to prove that your child has a right to live in Australia and has been resident in Victoria (for applications made in Victoria) for most of the time in the last 12 months; and
5. In circumstances where the child or parent is detained or in custody, there is a further legal requirement that they attach an approval from the relevant authority (as detailed on the Births, Deaths and Marriages Victoria website) to the application. It is an offence to make an application without this approval.

What to do when one parent is withholding their consent?

In these circumstances, the parents can attend a mediation to try and resolve the dispute; however, if this is not successful, the only other option is to issue court proceedings, which can be costly and time-consuming.

Changing a child's name is classed as a "major long-term issue" according to the family law, and therefore, a decision of this nature should be treated with sensitivity and with the best interests of the child in mind. In the case of older children, it may be appropriate to speak with your child and confirm they consent to the change being made before proceeding down this route.

Case law example – changing a child's surname

When deciding whether a child's surname should be changed, the court will often look to the leading case of *Chapman v Palmer* [1978] FamCA 86. In this case, the mother tried to appeal a decision of the court which restrained her from changing her children's surnames, amongst other things.

Following separation, the parents had remarried, and the mother enrolled the children at school with the surname of her new husband. The father of the children did not consent to this, and the court had to determine whether the previous Judge had made a mistake in restraining the mother from changing the children's surname.

Based on the facts, the court determined that it was not in the long-term interests of the children to be known by another surname and the mother's appeal was dismissed.

What does the court consider in applications to change a child's surname?

In light of the above case, the court now considers the following factors when determining whether a child's surname should be changed:

1. The welfare of the child (which is the paramount consideration);
2. The short and long-term effects of any change in the child's surname;
3. Any embarrassment likely to be experienced by the child if their name is different from that of the parent with custody or care and control;
4. Any confusion of identity that may arise for the child if their name is changed or is not changed;
5. The effect which any change in surname may have on the relationship between the child and the parent whose name the child bore during the marriage; and
6. The effect of frequent or random changes of name.

Get advice from a family lawyer

Changing a child’s surname can be complex where the consent of both parents is not mutual, even if the child themselves consents to the change. Before applying to change your child’s surname, we recommend that you obtain specialised legal advice. At Emera Family Law, we can offer tailored advice during our free, no-obligation initial consultation.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.