

The Basics of Child Visitation (Possession and Access) for Divorcing Parents in Texas

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If you are thinking of divorce, or have begun the divorce process in Texas, you may be wondering when you will be able to see your children. Fortunately for you, Texas Law offers generous visitation for divorcing parents, and recognizes that children need love, support, and time with each parent.

OVERVIEW OF POSSESSION AND ACCESS

In Texas, visitation is formally referred to as “Possession and Access.” While perhaps not the best choice of words (some states use the more positive term, “Parenting Time”), because the Family Code refers to visitation time as Possession and Access, we will do so here. Absent drug abuse, domestic violence, or other types of harm, both parents will have the right to possession and access, with one parent typically having slightly more time than the other, to make things more stable for the children. For purposes of this article, the parent with slightly more possession time will be referred to as the Custodial Parent (CP), although a Texas Divorce Decree will never use the word “custody.” In a Texas Divorce Decree, the CP is legally given “the exclusive right to designate the primary residence,” restricted to the counties the parties live in, and counties contiguous (touching) the county the parties live in. The Non-Custodial Parent (hereinafter NCP) is the parent will slightly less possession time.

MUTUAL AGREEMENT ALLOWS PARTIES TO WORK TOGETHER

The most important thing to remember about Possession and Access, is that it carves out a paragraph at the very beginning of the Possession and Access Order that **INITIALLY ALLOWS BOTH PARENTS TO AGREE TO ANY SORT OF POSSESSION SCHEDULE THEY WISH TO**. The state does not normally want to interfere in family and parent/child relationships, and hopes that parties will work together for the best interests of their children. The state is also smart enough to know that in some (and maybe most) instances, divorcing parents will not be able to agree to a schedule, thus, **WHEN PARENTS DO NOT AGREE, EITHER A STANDARD OR EXPANDED POSSESSION SCHEDULE WILL CONTROL**.

The exact language of the Family Code regarding the above reads as follows:

“(b) *Mutual Agreement or Specified Terms for Possession*

IT IS ORDERED that the conservators shall have possession of the child at times mutually agreed to in advance by the parties, and, in the absence of mutual agreement, it is ORDERED that the conservators shall have possession of the child under the specified terms set out in this Standard Possession Order.”

Thus, it is important to remember first and foremost is that if you and the other parent wish to deviate from a “Standard Possession Order,” you may do so. But if you don’t agree, you have to follow the rest of the order. Whenever possible, it is recommended to attempt to work together with the other parent, since life does not easily fit into a particular possession schedule. Both parents should attempt to be flexible if they can; however, if they can’t, the parents must follow the schedule as written.

BASICS OF A “STANDARD POSSESSION ORDER”

A Non-Custodial Parent at the time of the divorce is normally offered two choices for possession and access depending on his/her work schedule and availability: 1) a Standard Possession Order, and 2) an Expanded Possession Order.

A Standard Possession Order works best for a NCP who works standard hours, Monday through Friday, 9 to 5. The highlights of a Standard Possession Order are as follows:

STANDARD POSSESSION ORDER (SPO) for Non-Custodial Parent

| | |
|--|---|
| 1 ST , 3 RD , 5 TH Friday, each month | Beginning 6pm Friday, ending 6pm Sunday (48 hours) |
| Each Thursday, school year only | Beginning 6pm Thursday, ending 8pm Thursday (2 hours) |
| Summer | 30 days of choice, if elect and notify by April 1 st If no notification by April 1st, July 1 to July 31 |
| Other Holidays | Alternate each year, per Family Code HOLIDAYS TRUMP WEEKENDS AND THURSDAYS Mothers always get Mother’s Day Weekend Father’s always get Father’s Day Weekend |

What is a Custodial Parent (CP) left with? Basically the CP has the right to all other time periods not specifically designated in the SPO by the NCP. Thus, unless the parties agree otherwise, the CP would always have 2nd and 4th Friday weekends, Monday to Wednesdays of the week during the school year, and all other time not designated in NCP’s schedule.

The net effect of a Standard Possession Order is not quite a 70/30 split (CP has 70, NCP has 30), rather, it has been said that the net effect is more like a 64/36. While this may not seem fair, or just, A NCP HAS THE RIGHT TO MORE TIME, IF THEY “ELECT” THE “EXPANDED POSSESSION ORDER” BEFORE THE DIVORCE IS FINALIZED.

BASICS OF A “EXPANDED POSSESSION ORDER”

If a Non-Custodial Parent wishes to have more time with the children than a Standard Possession Order, and has flexibility with their work, they can forgo an SPO and “elect” an Expanded Possession Order.

An Expanded Possession Order works best for a NCP who has some flexibility with their job, and is able to pick up the children from school each Thursday and every 1st, 3rd, 5th, Friday, and take them to school in the morning each Friday and every Monday following the 1st, 3rd, 5th, Friday. The highlights of an Expanded Possession Order are as follows:

EXPANDED POSSESSION ORDER (EPO) for Non-Custodial Parent

| | |
|--|--|
| 1 ST , 3 RD , 5 TH Friday, each month | Beginning at the time school is dismissed Friday, ending at time school begins Monday (48 hours plus) |
| Each Thursday, school year only | Beginning at the time school is dismissed Thursday, ending time school begins Friday (approximately 16 to 18 hours) |
| Summer | SAME AS SPO |
| Other Holidays | SIMILAR TO SPO, can elect expanded for some holidays |

What is a Custodial Parent (CP) left with? Basically the CP has the right to all other time periods not specifically designated in the EPO by the NCP. Thus, unless the parties agree otherwise, the CP would always have 2nd and 4th Friday weekends, Monday to Wednesdays of the week during the school year, and all other time not designated in NCP's schedule.

WHAT HAPPENS IN THE SUMMER?

During the summer, unless the parties agree otherwise, since the CP never has the right to designate summer possession until after April 15th, the CP is allowed the chance to "take away" two of NCP's summer weekends under the following limited conditions:

- (1) If NCP elects 30 consecutive days during the summer by April 1, so long as she gives notice by April 15th, CP mom can "take away" one of NCP's weekends during the consecutive 30-day summer break, so long as she picks up and returns to wherever the NCP has the children. If NCP notifies CP by April 1st of his 30-day period, and he breaks his 30 days up into 2 periods, CP is NOT able to "take away" one of NCP's weekends during his consecutive 30-day period.
- (2) If CP notifies NCP by April 1st, or 14 days before any OTHER weekend during the summer that is NOT a part of NCP's 30-day period (consecutive or otherwise), and NOT during Father's Day Weekend, CP can "take away" one of NCP's 1st, 3rd, 5th Friday weekends during the summer.

The net effect of the standard summer schedule is that, unless the parties agree otherwise, NCP always gets to elect his/her 30 days first, and gets every 1st, 3rd, 5th, summer weekend during the summer, except that CP gets to take away one of NCP's weekends if NCP does consecutive 30 days, and CP gets to take away a different 1st, 3rd, 5th, weekend during the summer that is not part of NCP's 30 days.

CONCLUSION

These are the very basics of visitation (possession and access) in Texas. When in doubt, contact an attorney to discuss. Just as a NCP ordered to pay child support faces 6 months in jail for every one month they do not pay child support, a CP faces 6 months in jail for every one time they do not surrender the child to the NCP for possession and access, if the NCP shows up and the ordered date, time, and place. Parents can work together to adjust the schedule, but if both parents do not agree, the parents must follow the court order or face contempt (jail) and fines. WHEN PARENTS WORK TOGETHER, AND FOLLOW THE ORDERS, CHILDREN THRIVE.



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