

Parenting Plans

The co-holders of parental rights and responsibilities in respect of a child may agree on a parenting plan determining the exercise of their respective responsibilities in regard thereto. The concept of a parenting plan was introduced by the Children's Act 38 of 2005 ("the Act") and is a useful legal instrument that is designed to assist parents with determining any matter in connection with their parental rights and responsibilities including where and with whom the child is to live, the maintenance of the child and the contact between the child and the other party. The parenting plan can become an essential tool in governing and describing the parental rights and responsibilities which may facilitate co-parenting in a healthy and civil manner whilst ensuring that the child's interests are considered and placed first and that the child is raised in solid structure.

Formalities:

A parenting plan must be in writing and signed by the parties to the agreement. The parenting plan must be registered and approved by the family advocate and made an order of court.

Is a parenting plan mandatory?

In terms of section 33(1) of the Act, the co-holders of parental rights and responsibilities *may* agree on a parenting plan determining their respective rights and responsibilities in respect of the child. In this scenario, the parties may not necessarily be experiencing difficulties in exercising their rights and responsibilities but may want to create a formalised structure in raising their child.

When parties are experiencing difficulties in exercising their rights and responsibilities, section 33(2) states that those people, before seeking intervention of a court, must first seek to agree on a parenting plan determining the exercise of their respective rights and responsibilities in respect of the child. Therefore, all holders of parental rights and responsibilities in respect of a child do not need to enter into a parenting plan from the outset, however, should there be problems and one or more parties want to take them to court, before they do so, they should first try agreeing on a parenting plan. Should the parties fail to agree on a parenting plan, a court may then be approached.

Refusal of access or refusal to exercise parental rights and responsibilities:

In terms of section 35 of the Children's Act, any person having care or custody who, contrary to an order of court or to a parental responsibilities and rights agreement, refuses another person who has access to that child or who holds parental responsibilities and rights in respect of the child to exercise such rights and responsibilities is guilty of an offence and liable to a fine or a period of imprisonment not exceeding a year.

How will a parenting plan help me?

Concluding a parenting plan will ensure that both parties are in agreement with how to exercise their parental rights and responsibilities which will ensure the parties build a stable and respectful co-parenting relationship where they can cooperate, communicate and discuss all matters that relate to the child. Furthermore, the parenting plan will ensure that the child's interests are the main priority.