

99126015000000

Apply for custody, transfer and withdrawal (outside divorce proceedings)

Heruntergeladen am 06.07.2025

<https://fimportal.de/xzufi-services/6000222-99126015000000/L100009>

Modul	Sachverhalt
Leistungsschlüssel	99126015000000
Leistungsbezeichnung I	Apply for custody, transfer and withdrawal (outside divorce proceedings)
Leistungsbezeichnung II	Apply for custody, transfer and withdrawal (outside divorce proceedings)
Typisierung	2/3 - Bund: Regelung (2 oder 3), Land/Kommune: Vollzug
Quellredaktion	Sachsen
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	
Leistungsgruppierung	
Verrichtungskennung	

Modul	Sachverhalt
SDG-Informationsbereich	
Lagen Portalverbund	
Einheitlicher Ansprechpartner	
Fachlich freigegeben am	
Fachlich freigegeben durch	
Handlungsgrundlage	<ul style="list-style-type: none"> • §§ 1626 bis 1698b Bürgerliches Gesetzbuch (BGB), Viertes Buch – Elterliche Sorge • §§ 151 folgend Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG) – Verfahren in Kindschaftssachen
Teaser	<p>If children are victims of domestic violence or neglect, the youth welfare office or one of the parents may apply to the family court for custody to be restricted. The family court may withdraw custody from the parents and transfer it to another person or the youth welfare office</p>
Volltext	<p>Transfer and withdrawal of parental custody pursuant to §§ 1626 et seq. BGB</p> <p>Domestic violence and neglect</p> <p>If children are victims of domestic violence or neglect, the youth welfare office or one of the parents may apply to the family court for custody to be restricted. The family court may withdraw custody from the parents and transfer it to another person or the youth welfare office</p> <p>There is particular cause for this</p> <ul style="list-style-type: none"> • if children are neglected and run wild, • if the parents do not fulfil their children's basic needs for food, clothing and cleanliness, • if they do not fulfil their duty of supervision and care, • when a parent mistreats or abuses children. <p>The same applies to the right of residence, which is a</p>

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special aspect of custody: If the Youth Welfare Office has to take custody of children without the parents' consent, the Family Court can withdraw the right of residence determination from the parents and transfer it to the Youth Welfare Office, under certain circumstances also in summary proceedings.

In the event of danger to the child, even without an application

If children are in danger of becoming neglected, the family court must find a solution without delay. The impetus for this usually comes from the youth welfare office, or relatives and neighbours turn to the court. Even without an application, the family court is then in a position to withdraw custody of the parents or one parent in whole or in part ex officio.

However, the family court may only make this decision if the child is in acute danger physically, mentally or emotionally. If it is evident that the parents are willing and able to avert the danger themselves, they are given the opportunity to do so.

Separation or divorce of parents

Even after separation and divorce of the parents, joint custody of the parents continues by law after the reform of the law of parent and child of 1998.

If the parents live permanently separated, however, the family court can transfer parental custody or part of it to the mother or father on application. Divorce proceedings do not have to be opened for this.

If a matrimonial case between the parents is before the court, the family court dealing with it is also responsible for the custody proceedings. This should be the reason in most cases anyway.

Going to the family court should be the last step. It is better to seek an amicable solution from the outset. The youth welfare office can help you with this.

An amicable solution

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An application for transfer of custody is usually granted by the family court if both parents agree. Children sometimes have a different opinion, and the court must always take this into account. Adolescents over the age of 14 can also appeal against a decision.

In case of irreconcilability, the court decides

If both sides cannot agree, the family court will decide which arrangements are in the best interests of the child. If necessary, only part of the custody will be transferred to the other party. It is conceivable, for example, that the mother and father could argue about who the child should live with, but otherwise be willing to reach an agreement.

In extreme cases, the court can order further interference with the parents' authority. It is conceivable, for example, to order educational assistance, to initiate measures towards third parties or to replace parental declarations (e.g. consent to medical treatment).

Separate decision on residence

There are often disputes about who the child should stay with during the separation. The court can decide separately on the right of residence as part of custody.

Erforderliche Unterlagen

to be obtained from the responsible office

Voraussetzungen

- Application by one parent
- Reasons justifying the withdrawal of custody even without an application (examples: Notification of the Youth Welfare Office, information from neighbours, educators or relatives) or the transfer of custody to one parent under the aspect of the best interests of the child

Note: There is no obligation to be represented by a lawyer in the first instance.

Kosten

- Court fees
- lawyer's fees, if applicable

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The fees are determined according to the value of the proceedings as determined by the court.

Verfahrensablauf

on application (without the existence of a matrimonial case):

Formulate an application for sole custody, no special form is required.

- Submit the application to the competent family court; receipt will be confirmed to you in writing.
- The family court will obtain a comprehensive overview of the family situation of the child, and will also involve experts if necessary.
- The family court summons you to a hearing, at which it hears all parties involved - especially the children.
- The results of the hearing and, if applicable, the recommendation of the experts are included in the court's decision. After the decision has been pronounced, both parents are informed of it in writing.

on the court's instructions:

- The family court becomes active without an application if one parent or both parents do not provide adequately for the child, in extreme cases combined with violence (example: report to youth welfare, relatives or neighbours).
- The court arranges for an immediate review of the family situation; it must determine the actual extent of the endangerment.
- If the welfare of the child is extremely endangered, the court can order immediate measures (summary proceedings, for example to hand over the child and exclude access).
- The court examines whether the possible danger can be averted by milder means.
- As part of the custody order, a provisional decision on residence can be made.
- The decision is sent to the parties involved in writing.

The court usually appoints a so-called procedural guardian. This ensures that the needs of the child are safeguarded during the proceedings and that the child

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	<p>does not become a mere object of the parents.</p> <p>Not only lawyers but also social pedagogues, child psychologists or youth welfare workers can be considered as procedural advisors.</p> <p>Within a matrimonial case (divorce proceedings), the competent family court also decides on custody - usually upon application. The matter is then part of a so-called compound proceeding.</p>
Bearbeitungsdauer	
Frist	
weiterführende Informationen	
Hinweise	
Rechtsbehelf	Appeal (details on the procedure in the decision)
Kurztext	
Ansprechpunkt	
Zuständige Stelle	
Formulare	
Ursprungsportal	