

Right of First Refusal and Custody: The Benefits and Drawbacks of the ROFR Clause

The time you spend with your child is precious to you, which is why many custody battles become so bitter. There are a number of ways that you and your ex can avoid conflict, however, and one such way is with the addition of the Right of First Refusal to the standing custody agreement.

What is the Right of First Refusal?

The Right of First Refusal (also referred to as ROFR), is a clause added to custody agreements that gives both parents the right to watch their child during non-parenting time if the other parent will be gone for a specified amount of time (4 hours, 6 hours, overnight, etc.).

Essentially, this clause means that if your child's other parent will be temporarily unavailable to watch your child during their scheduled parenting time, the other parent must first ask you if you're available to watch them. The majority of ROFR clauses have a minimum time limit which simply means the other parent doesn't have to ask you first to watch your child unless they'll be gone for the minimum time or longer.

What are the Benefits of ROFR?

The most obvious benefit to having the ROFR clause added to the custody agreement is that each parent will be given the full opportunity to spend as much time with their child as possible.

Children benefit when both parents play an active role in their lives, so the more time that a child can spend with either of their parents, the better. This clause also benefits each parent, as neither has to worry about their child being in the care of someone whom they don't know or don't trust (babysitter, ex's extended family member, etc.) for an extended period of time. Additionally, the ROFR clause can also improve the co-parenting relationship between you and your ex, which is beneficial for all parties involved.

Are There Any Drawbacks to Adding the ROFR Clause?

For some children, the ROFR can cause unnecessary upheaval and instability. This is the main drawback of ROFR, though there are more depending on your situation.

Young children usually experience the most difficulty during divorce, and ROFR may add to their burdens. This is especially true for children who have strong attachments to one parent over the other, or to children who struggle with changes in their environment. For example, if a young child spends every other weekend at their father's house but the father has a work engagement during one of his days, the child may have difficulty with seeing his mother for a few hours and then being taken away from her again to return to his father. In this case, it may be best for the child to stay with another family member (grandparent, aunt, uncle, etc.) or babysitter during this time.

Another drawback of ROFR arises when the parents have a contentious relationship. The ROFR clause can cause additional bitterness and may increase secrecy (one parent lying to the other so

they don't have to offer additional parenting time). This, of course, can add fuel to the fire and only intensify the contention between you two.

Should You Add the ROFR Clause to Your Custody Agreement?

As with many decisions regarding the custody of your child, the answer to this question will depend entirely on the situation, namely, how your child is handling the current custody arrangement and how your relationship is with your child's other parent.

If you and your child's other parent are on good terms, ROFR can encourage continued co-parenting and cooperation. On the other hand, if you know the other parent will ignore the clause and the clause will only further the hatred between you, ROFR may not be a beneficial addition.

It's always a good idea to think ahead to possible scenarios and consider how they'll play out with and without the ROFR clause in place. If there are more possible positive scenarios than negative, then the addition of a ROFR clause may be a good thing.

If you're considering adding the Right of First Refusal to your custody agreement, or you'd simply like to learn more about what it means, consult with your family law attorney today.

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