Asking a marriage lawyer if I can change my child's surname

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Moving forward from a separation can be arduous and filled with unexpected change. Not only do you have to re-evaluate your living circumstances but also your child's. A marriage lawyer will be able to navigate you through a claim proposing a change to your child's surname. A marriage lawyer will advise you of this unique area of family law and in this article we will consider if the court has allowed for this to occur in the past. If this is a claim you wish to pursue it is just as important that a marriage lawyer is able to provide you with some key points.

The Legislation

The *New South Wales Births, Deaths and Marriages Registration Act 1995* provides that both parents make the application to change their child's name. If the child is aged 12 or over, they must also agree to the surname change.

A marriage lawyer will be able to inform you that there are some exceptions allowing one parent to make the application. They include:

1. The applicant is the sole parent;
2. There is no other surviving parent; or
3. A Court approves the proposed changed name.

Court proceedings

Where an agreement cannot be made between the parties, the Court may be able to make an order. The Court's decision will be based on many factors namely:

- The reason for the change of name ;
- Any possible confusion of identity; and
- The child's views (dependent on their age and maturity).

The Court will always have regard to the best interests of the child and in *Reagan & Orton* [2016] a number of extra factors were considered. These included:

- Any embarrassment likely to be experienced by the child if their name is different to the parent which they live with; and
- The effect any change in surname may have on the relationship between the child and the parent whose name the child bore during the relationship;

In that instance the court ruled it was in the child's bests interests that the mother be permitted to adopt a hyphenated surname for the child.

Marriage lawyers recognise however that a change of name is not always allowed. In *Darley v Darley,* the Court rejected the mother's application to change her child's surname. In this case the Court ruled on the basis that a change would lead to the children perceiving their father as resenting the change. The likelihood that this would lead to an increase in animosity between the parties was enough to satisfy the Court's ruling.

As a complex and somewhat underdeveloped area of the law, it is best to seek legal advice from a marriage lawyer. In the context of heightened emotions, a marriage lawyer will be able to advocate your case and provide you with legal assistance expanding into claims such as changing your child's surname.

Contact us on 1800 300 170 or email us at famlaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.