

Who should have the children?

The popular misconception with couples who have children and are going through a divorce is that the law automatically requires the mother to be the primary residential parent. The primary residential parent is the parent with whom the child stays overnight more of the time and with whom the child maintains his or her primary residence. At one point in the State of Florida, courts followed the “Tender Years Doctrine.” This doctrine decided residential status of the children based upon the age and sex of the children. In practice, it worked to create a presumption that the mother would be the primary residential parent. However, the Tender Years Doctrine has not been the law in Florida for many years. Additionally, family law custody law changed drastically in 2008 by removing the terms “primary” and “secondary” residential parent. Most Judges interpret the October 2008 change in the law to create presumption that the Mother and Father should share the children 50/50 so long as the parents reside near one another such that each parent can get the children to school in a reasonable amount of time and the best interests of the children are otherwise served. When deciding custody arrangements for children of divorcing parents, people should not assume one parent is automatically going to have the children most of the time. The mother and father should be given equal consideration for timesharing. In making the decision, parties should evaluate all factors affecting the welfare and interests of the children. Some factors the legislature encourages parties to consider are: (1) which parent is more likely to allow the child frequent and continuing contact with the other parent; (2) the love, affection and other emotional ties existing between the parent and the child; (3) the capacity and disposition of the parents to provide the child with food, clothing, medical care and other material needs and (4) the moral fitness of the parent. In reviewing these and other factors, the true best interests of the children are served and children are guided through the difficulties of divorcing parents maintaining mental and emotional stability to lead them to become happy and productive adults.