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German

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## Moving/settling abroad with children

## Germany

**1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?**

The question of where the child should live permanently is subject to legal rules about the right to determine the child's place of residence, and so forms part of the de facto care of the child (Section 1631(1) of the Civil Code (*Bürgerliches Gesetzbuch*, 'BGB')). Like care for the child's property, this falls within the scope of parental responsibility under Section 1626(1) of the Civil Code.

Permanent residence is a 'matter of appreciable importance' (*Angelegenheit von wesentlicher Bedeutung*) - unlike, for example, a short holiday to a neighbouring European country. So a parent needs the consent of the other parent to move abroad with the child, unless they have sole parental responsibility.

**2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?**

The other parent's consent to the child moving abroad is needed if that parent shares parental responsibility (see also answer to question 1).

**3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?**

Taking the child to live abroad is lawful if the parent who wants to move with the child has sole parental responsibility. If the other parent has joint parental responsibility and refuses consent, then, on the application of one of the parents, the family court (*Familiengericht*) may, under Section 1628 Civil Code, give one parent the right to decide the matter. The Court must decide on the basis of what is in the best interests of the child, taking into account the particular circumstances and practicalities and the legitimate interests of those involved (Section 1697a of the Civil Code).

A parent living apart from the other may also apply to the family court under Section 1671(1) of the Civil Code to be awarded sole parental responsibility or sole parental responsibility for a particular issue - for example the right to decide residency. The court will grant the application if the other parent agrees, or if removal of joint parental responsibility or partial transfer of full parental authority to the applicant is likely to be in the best interests of the child. If the court grants the application, the parent may freely decide where the child should reside.

**4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.**

A parent with sole parental responsibility is free to take their child abroad for short periods whenever they wish.

Parents with joint parental responsibility must in principle take this decision jointly (Section 1627 Civil Code). If the parents have joint parental responsibility but live apart, the decisive question is whether the planned journey is a 'matter of appreciable importance' or a day-to-day matter. If it is a matter of appreciable importance they must decide together (Section 1687(1), first sentence, of the Civil Code). The parent with whom the child normally lives is entitled to decide on their own about day-to-day matters (Section 1687(1), second sentence, of the Civil Code). The legislation does not specify which matters are of appreciable importance and which are day-to-day matters. This issue depends on the particular circumstances of the case. In practice, especially in caselaw, there is extensive agreement about the main areas that are of appreciable importance for the child. These include decisions about moving house and about medical treatment that carries a risk of significant complications and sideeffects. Day-to-day matters include short-term visits to relatives, especially grandparents, or participation in short, special events such as a school trip to the zoo.

A parent who does not have parental responsibility does not have the right to decide where the child should live. However, as part of their entitlement to contact, they have the sole right to decide on issues relating to the de facto care of the child during contact visits. They may decide what happens during the visit, especially regarding leisure activities, who else the child should have contact with, and other things done in this time, unless, exceptionally, these constitute matters of appreciable importance.

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