

Removal to Relocation: Changes in the Statute

By: Tiffany Newton

The Illinois Marriage and Dissolution of Marriage Act (“IMDMA”) governs divorce cases in Illinois. The IMDMA was amended, effective January 1, 2016, with regard to parental relocation. The law which existed prior to January 1, 2016 restricted the removal of a minor child outside of the State of Illinois. The new statute limits a parent’s relocation based on distance, not state lines.

The law prior to January 1, 2016, a parent with primary custody of a minor child(ren) was permitted to move anywhere within the State of Illinois. However, the parent with the primary custody was not permitted to move with the minor child(ren) anywhere outside the State of Illinois without court permission. The concern with this previous law was that a residential parent could move with the child hours away within the boundaries of the State of Illinois without getting court permission. However, the parent could not move across the border to a neighboring state even if it was very few miles without court permission.

The new statute, effective January 1, 2016 defines relocation as:

- (1) A change of residence from the child’s current primary residence located in the county of Cook, DuPage, Kane, Lake, McHenry or Will to a new residence within this State that is more than 25 miles from the children’s current residence;
- (2) A change of residence from the child’s current primary residence located in a county not listed in paragraph (1) to a new residence within this State that is more than 50 miles from the children’s current primary residence; or
- (3) A change of residence from the child’s current primary residence to a residence outside the borders of this State that is more than 25 miles from the current primary residence.

The new statute outlines the process for relocation at 750 ILCS 5/609.2 as follows:

- (a) A parent's relocation constitutes a substantial change in circumstances for purposes of Section 610.5.
- (b) A parent who has been allocated a majority of parenting time or either parent who has been allocated equal parenting time may seek to relocate with a child.
- (c) A parent intending a relocation, as that term is defined in paragraph (1), (2), or (3) of subsection (g) of Section 600 of this Act, must provide written notice of the relocation to the other parent under the parenting plan or allocation judgment. A copy of the notice required under this Section shall be filed with the clerk of the circuit court. The court may waive or seal some or all of the information required in the notice if there is a history of domestic violence.
- (d) The notice must provide at least 60 days' written notice before the relocation unless such notice is impracticable (in which case written notice shall be given at

the earliest date practicable) or unless otherwise ordered by the court. At a minimum, the notice must set forth the following:

- (1) the intended date of the parent's relocation;
- (2) the address of the parent's intended new residence, if known; and
- (3) the length of time the relocation will last, if the relocation is not for an indefinite or permanent period.

The court may consider a parent's failure to comply with the notice requirements of this Section without good cause (i) as a factor in determining whether the parent's relocation is in good faith; and (ii) as a basis for awarding reasonable attorney's fees and costs resulting from the parent's failure to comply with these provisions.

(e) If the non-relocating parent signs the notice that was provided pursuant to subsection (c) and the relocating parent files the notice with the court, relocation shall be allowed without any further court action. The court shall modify the parenting plan or allocation judgment to accommodate a parent's relocation as agreed by the parents, as long as the agreed modification is in the child's best interests.

(f) If the non-relocating parent objects to the relocation, fails to sign the notice provided under subsection (c), or the parents cannot agree on modification of the parenting plan or allocation judgment, the parent seeking relocation must file a petition seeking permission to relocate.