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**BRYAN FAGAN**  
— PLLC —



# POSSESSION & ACCESS ORDERS IN HOUSTON, TX

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## INTRODUCTION

Thank you for downloading our special report: about Possession & Access Orders in a Divorce, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

## POSSESSION AND ACCESS ORDERS

In the state of Texas, a Position and Access Order (PAO) is an order that outlines parents' child visitation rights. This applies to the non-custodial parent and instructs them regarding how, when, and where they will see their child going forward.

- ☑ Family Law Cases in Texas: Visitation, Possession and Access
- ☑ The Texas Standard Possession Order
- ☑ Texas Divorce and Firefighter Child Custody Possession Order?
- ☑ When can a parent be awarded less than a Standard Possession Order in a Texas divorce?

**There are 2 different kinds of PAO's, including:**

**Standard PAO: These involve visitation schedules that are dictated by law and involve the following normal parameters for parents:**

- ☑ Holiday visitation rotation (spring break, Christmas, birthdays, etc.)
- ☑ 42 visits for non-custodial parents during summer months/school break
- ☑ Restrictions and instructions regarding communication between the child and non-custodial parent
- ☑ Visitation hours for parents whose homes are separated by less than 100 miles, which are the 1st, 3rd, and 5th week-ends of every month, beginning at 6pm every Friday and ending at 6pm every Sunday
- ☑ Visitation hours for parents who live more than 100 miles from each other, which permit the non-custodial parent to pick either the 1st, 3rd, or 5th weekend of each month, with the same time restrictions
- ☑ Standard Thursday night visits from 6-8pm

**Non-standard PAO: This is an agreement that references holidays, communication, etc. but exists to accommodate unique circumstances, distance, and other extenuating factors. These may be issued if parents attempt to negotiate their own arrangement but the judge does not perceive that their proposed arrangement would be beneficial to the child.**

## HOW A FAMILY LAWYER CAN HELP WITH POSITION AND ACCESS ORDERS

Without an experienced legal representative there to fight for your parental rights, your ability to remain an active and involved parent could be strictly limited. Connect with an experienced attorney right away if you fear being unfairly cut off from your child or if you wish to change your current PAOs. Our team at the Law Office of Bryan Fagan, PLLC is here to advocate for you, protect your rights, and help you get the result you want and remain present in the life of your child.

## COMPELLING AND EFFECTIVE FAMILY LAWYERS SERVING PARENTS IN HOUSTON, TX

Our team at the Law Office of Bryan Fagan, PLLC is here to serve you when your relationship with your child depends on it. We understand that your level of involvement in your child's life is at stake, and we are prepared to be your voice during this time. Our Houston family law attorneys have the knowledge and experience necessary to help you make your visitation arrangement more desirable for you as a parent and more beneficial for your child.



## FAMILY LAW CASES IN TEXAS: VISITATION, POSSESSION AND ACCESS

In learning more about family law concepts and terminology you may have come across the terms: visitation, possession, and access. Interestingly enough possession and access are what visitation is actually made up of. If you are a parent with visitation rights than you are the possessory conservator of the child who does not have the right to determine the primary residence of your child.

This means that your child lives primarily with his or her other parent and that you have visitation rights on the weekends and other times throughout the year. What are the types of visitation that you may have been ordered to have?

### TYPES OF VISITATION ORDERS IN TEXAS

Otherwise, there is a Standard Possession Order (SPO) that is outlined in the Texas Family Code.

This visitation arrangement essentially would provide you with visitation with your child every other weekend of the month, a Thursday night visit from 6:00 to 8:00 p.m. as well as alternating holidays of visitation for Thanksgiving and Christmas. The SPO allows you to have thirty days of visitation with your child during the summer months, or forty-two days if you live more than 100 miles away from your child.

The exact periods of possession for an SPO are spelled out clearly in the Texas Family Code. If you are interested in seeing the specific dates accounted for I would recommend you access the Code online and take a look for yourself. This is the default visitation schedule that most judges in Texas fall back on if you and the other parent cannot agree on your own to a visitation schedule.

### MODIFIED POSSESSION ORDERS

The Modified Possession Order is similar to the SPO but has slightly modified lengths of visitation for particular times of the year. Depending on the individual circumstances of your family attributes of the possession order may have to be changed to suit you, your child or the other parent. More time may be allowed to you as your child gets older if you order begins when your child is very young, for example.

A variation on the Modified Possession Order is a Modified Possession Order for a child who is under three years of age. The best interests of your child and the specific needs of your child will be what a judge in your case keeps an eye on in the event that a trial is had on this subject. In that case, limitations will likely be put on your visitation with your child if he or she is under three years of age at the time the orders are rendered.

Overnight visitation may be limited and your time with your child may occur only during daylight hours in order to accommodate your child's normal structure and routine and to slowly integrate him or her into a changed life schedule.

In general, if you are a parent who has always been involved in your young child's life then you stand a good chance at being able to have the overnight visits with your young child that other parents may not be as able to win.

Having visitation orders for a young child requires a certain amount of cooperation and "co-parenting" between you and the other parent that may not be as necessary when it comes to older kids. There is simply more shared responsibility for raising a young child than there is compared to an older child.

Younger children are more rigid in their schedules and habits and need more structure to establish a routine. This is opposed to older children who are able to better adapt to change in most circumstances and require less "normalcy" to thrive.

You and the other parent should work together to help each other to be aware of changes that are needed on a day to day or even week to week basis for your child based on their changing needs. If their bedtime has changed over the past week or a new medication has been prescribed to him or her it is best to make the other parent aware of this.



## SOME “WHAT HAPPENS IF...” SCENARIOS TO RUN BY YOU

The best-laid plans of mice and men often go awry. So goes a famous line from American literature. The basis of the quote is that no matter how well thought out or intentioned a plan is, life gets in the way sometimes and causes that plan to fall by the wayside.

One of those life issues that can arise in your situation is your child's other parent not following the orders that arose out of your family law case. You may have family members or friends who were denied the opportunity to see their child by the child's other parent. The remedy for you in this situation is to take the other parent back to court to have the judge enforce the terms of the order.

You would have to be able to present evidence to the court showing that you did everything that you were supposed to do in order to take advantage of the visitation time allotted to you in the order and that the other parent did not live up to their responsibilities in making your child available to you at that time.

Your enforcement petition must specify the date, time and location where you were denied visitation. It is advisable to hire an attorney to proceed with an enforcement case as these are not simple cases to handle on your own.

On the other hand, what if you are ordered to have visitation with your child for the weekend and you do not pick your child up at 6:00 at their other parent's home? The fact is that the other parent cannot force you to have visitation with your child.

As long as you make the other parent aware of the fact that you are not going to take advantage of the time allotted to you, there is no remedy for him or her to go to the judge and attempt to enforce the terms of the order.

The downside to this sort of situation as far as you're concerned is if you stack enough of these missed visitation opportunities on top of one another it becomes almost impossible for you to win additional periods of visitation down the line if you want to modify the court order that is in place. The reason for that should be obvious- why would a judge decide to alter the schedule of a child for a parent who has shown little interest previously in spending time with your child.

Above all else, exercise every period of possession with your child that you are entitled to. It is good for your child, for you and can benefit you in the long run if you want to ever modify your present court order.

## THE TEXAS STANDARD POSSESSION ORDER

If you are about to undertake a Divorce or Child Custody and have a child then you should be familiar with a Standard Possession Order and what it entails. Our State Legislature created the Standard Possession Order, or SPO, in order to help family law courts who have to work with parents to figure out when each parent will be able to have possession of their child after their divorce has been finalized.

If you and your spouse are able to settle upon your own possession order that suits you both better than a SPO then that is fine and even preferable to the SPO. However, the SPO is utilized by courts because it is believed to be in the best interest of the child because both parents are provided reasonable amounts of time.

## BASIS FOR THE STANDARD POSSESSION ORDER IN THE TEXAS FAMILY CODE

Our state law holds that frequent contact between child and parent is in the best interests of the child because it further strengthens the bond between the two and creates an environment where the child can develop well. The State does not want parents to get divorced or otherwise separate, either. This is part of the reason why you cannot file for divorce on a Monday and have the divorce finalized on the following Tuesday.

Our State has a built in waiting period wherein after you file for divorce the quickest the divorce can be finalized is 61 days later. Families that stick together tend to be less expensive for the State down the line, I suppose.



### **DOES THE SPO APPLY IF YOU HAVE A CHILD UNDER THE AGE OF THREE?**

If you are like me and have a child or two under the age of three then this section is for you. An SPO is intended to apply only to children that are over the age of three. For those of you with children under three then a court need only to create a possession order that is age appropriate.

This means that bearing in mind the challenges of raising a child of this age a judge will need to ensure that both parents have an opportunity to foster the sort of long lasting relationship that we discussed in the previous paragraph. Of course, taking a child this young away from their home for even a weekend may be too much so a judge has a special challenge in this regard.

Once the child turns three then the judge may either order that a SPO go into effect or order something else based on the similar circumstances of your case. Again, if you and your spouse/the other parent are able to come up with a different possession order yourselves then by all means that is the best alternative. Reason being is that since you and the other parent know your child's circumstances exponentially better than a judge will it makes sense that you both will be able to come up with an possession schedule that better suits everyone involved when compared to a judge.

### **WHAT IF A SPO DOES NOT WORK FOR YOUR FAMILY?**

In some instances a SPO will not work for a family. A judge will not cram a SPO down your throat if it is unreasonable to do so or if the evidence in your hearing or trial have shown that it will not work out for you and your family. We see this often with parents who work unorthodox hours.

An SPO is also based around the school calendar for most public schools in Texas. If your child attends home school or private school and the holiday/school schedules do not sync up with your child's then it is unlikely that an SPO would be an appropriate means of establishing a possession schedule.

If a SPO does not work for you or your family then a judge will do their best to balance those specific needs and the Standard Possession Order and its key tenets in terms of dividing up possession between you and the other parent during the year. Whatever alternative methods of scheduling possession are agreed to a court will need to determine that they are in the best interests of your child.

### **STANDARD POSSESSION FOR PARENTS WHO LIVE WITHIN 100 MILES OF ONE ANOTHER**

If you and your child's other parent live within 100 miles of one another then the parent with whom the child does not primarily reside with will have the right to take possession of the child on the first, third and fifth weekends of every month from 6:00 p.m. on Friday to 6:00 p.m. on Sunday. These weekends can be extended by holidays as well that occur on Monday or Friday.

Thursday evenings from 6:00 to 8:00 p.m. for the child are spent with whichever parent that your child does not live with primarily. This allows you or the other parent to have a night during the week to see the child and spend time with him or her.

Holidays such as Spring Break, Christmas and Thanksgiving are alternated between you and your child's other parent. In no year may one parent have both Christmas Day and Thanksgiving unless that is agreed to between you and the other parent. Summer Vacation allows you to have a period of thirty days of possession of the child. The other parent may give notice of their intent to take one weekend during this thirty day time period if notice is provided by April 15.



## TEXAS DIVORCE AND FIREFIGHTER CHILD CUSTODY POSSESSION ORDER?

Our office has had the privilege of representing several firefighters through family law matters include divorce and child custody cases.

Certain professions, such being firefighters have unique custody situations. The readers of our blog will know that in Texas, there is a presumption that the Standard Possession Schedule is in the “best interest of the child.”

However, for many firefighters, that schedule is not compatible with someone who has a firefighter’s work schedule. In today’s blog, we will tackle what rights firefighters have in regard to child custody and visitation during a Texas Divorce

## FIREFIGHTER POSSESSION SCHEDULES

The easiest solution is if parents can agree, then just about any customized schedule can be worked out to accommodate the firefighter.

Texas Family Code §153.255 states that “the court may render an order for a period of possession of a child that vary from the standard possession order based on the agreement of the parties.”

If the case is settled without mediation, a judge may still overrule a parent’s schedule. One way to ensure that this does not happen is to settle the case in mediation.

I have listed two suggested firefighter schedules from the Advanced Family Law Conference further down.

## IF PARENT’S CAN NOT AGREE

However, if parents are unable to agree, then the case will need to go to court and a Judge will dictate the terms of possession. As mentioned earlier, it will be necessary to establish that a Standard Possession Order is not in the best interest of the child. This is something courts reluctant to do.

However, there are avenues in the family law for making just such an argument. Under the family code:

- ☑ Texas Family Code §153.002 provides: “The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.”
- ☑ Texas Family Code §153.001 provides: “(a) The public policy of this state is to: (1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;”
- ☑ The Texas Family Code §153.251(b) elaborates on the policy of Texas to “encourage frequent contact between a child and each parent for periods of possession that optimize the development of a close and continuing relationship between each parent and child.”
- ☑ Texas Family Code §153.253 provides: “The court shall render an order that grants periods of possession of the child as similar as possible to those provided by the standard possession order if the work schedule or other special circumstances of the managing conservator, the possessory conservator, or the child, or the year-round school schedule of the child, make the standard order unworkable or inappropriate.”





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## **WE'RE HERE FOR YOU**

When it comes to your financial future, your peace of mind matters. No matter where you are in the divorce process, we are always available to help you protect your assets and safeguard your future. As a Texas law firm exclusively devoted to divorce and family law, our experienced divorce attorneys will explain your options and support you throughout the process. Please contact us at (281) 810-9760 if you would like to schedule a free confidential consultation

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