

# **CHANGE OF CUSTODY IN A MODIFICATION**

## **Change of Custody on a Temporary Basis in a Modification**

In a modification, the court may not render a temporary order if the effect is to change the designation of a sole or primary joint managing conservator appointed in a final order unless it is necessary because:

- the child's present living environment may endanger the child's physical health or significantly impair the child's emotional development;
- the child's managing conservator has voluntarily relinquished the actual care, control, and possession of the child for more than 6 months and the temporary order is in the best interest of the child; or
- the child is 12 years of age or older and has filed with the court in writing the name of the person who is the child's choice for managing conservator and the temporary order naming that person as managing conservator is in the best interest of the child.

## **Change of Custody on a Final Basis in a Modification**

In a final trial on a modification, the legal standard for making an order that has the effect of changing the primary caretaker is somewhat easier than on a temporary basis. However, the Courts do not like to make major changes without good cause, so be ready to clearly prove the following:

- circumstances of the child or either parent have materially and substantially changed since the last order **OR**
- the last order has become unworkable or inappropriate under current circumstances

### **AND**

- modification would be a positive improvement for and in the best interest of the children