



04/2009

The name of the child

For the German sphere of law, the name of a German child is determined by German law (art. 10 § 1 EGBGB) even if the child also has another citizenship (art. 5 § 1 2nd sentence EGBGB). This provision only pertains to German authorities while American authorities will determine the name of the child according to their law when issuing American documents (e.g. birth certificate, American passport). Thus it is possible, that the child has different names based on German and American laws, i.e. German documents may show a different name than the American. The name that has been registered by the American authorities in the birth certificate is therefore not automatically the name which German documents (German children's passport or birth certificate) can be issued for.

German law provides several possibilities to choose the law that is to determine the family name of the child as well as to choose the name of the child itself.

1. The parents are of different nationalities

According to German law, the person or persons who have the right of legal guardianship of the child may choose the law that is used to determine the family name of the child. The following choices can be made:

- the law of the country of which either the mother or the father is a citizen; if, according to German law a third person can give his name to the child, the law of the country whose citizen this third person is might also be chosen;
- German law, even if none of the parents is a German citizen, if one of the parents has his or her usual place of residence in Germany (art. 10 § 3 EGBGB).

The choice is documented in a formal declaration on the name, which must be filed with the civil registrar according to the usual residency of the parents.

If neither one of the parents has his or her usual place of residence in Germany, the declaration is sent to the Civil Registry I (Standesamt I) in Berlin. Forms for this declaration are available at the German Consulate General. The declaration must be certified either by the German Consulate General or any American notary public, however, the declaration must be sent to the civil registrar's office via the **German Consulate General**.

If the parents choose foreign law to determine the name of the child then that law determines the name of the child and the possibilities to choose between different names are those offered by that law. If the parents choose German law then the following applies:

2. Both parents are German/German law is chosen

If both parents are German, the name of the child is determined by German law. There is no possibility to choose a foreign law to determine the name of the child. German law offers the following options:

If both parents have a common married name this name is the name of the child (§1616 BGB).

In many cases the parents will not have a common married name, either because they are not married, or because they did not make a declaration to determine this name. Please note that in German law marriage does not automatically change the name of either of the spouses. In order to acquire a common married name, both spouses need to make a declaration. This declaration can only be made in front of a German civil registrar (Standesbeamter). If you married in the US, therefore, you have acquired a common married name only, if you subsequently filed such a declaration with the German Consulate General to be forwarded to the civil registrar. The consulate has an information leaflet concerning the **name after marriage**.

How to fill out the Declaration on a Child's Name Usage:

Please read the application form carefully. Please fill in any requested information on the parents of a child. The mother's marital status is at the time of the child's birth, not the status as of today. The same counts for the parental custody. The information to fill is as of the date of the birth's child. Please note, that German parents may only choose German law (§§ 1617, 1617b BGB or § 1617a BGB).