

## CIVIL CODE

### TITLE III: PATRIA POTESTAS

**Art. 264.** Patria Potestas denotes the set of rights and duties belonging to the parents in respect to the person and property of their children, for their protection and a well-rounded education, from the moment of their conception and while they are minors and not emancipated.

The exercise of the patria potestas belongs to:

- 1) In the case of children born into the marriage, it belongs jointly to the father and mother, provided they are not separated or divorced, or their marriage has not been annulled. It shall be presumed that acts carried out by one of them has the consent of the other, except for the cases contemplated in section 264 quater, or when an express objection exists.
- 2) In the case of a de facto separation, a personal separation, divorce or annulment of marriage, it belongs to the father or mother who legally exercises custody, without detriment of the right of the other parent to keep the appropriate contact with the child and to supervise its education.
- 3) In the case of death of one of the parents, the absence which leads to a legal presumption of death, deprivation of the patria potestas, or suspension of its exercise, it belongs to the other parent.
- 4) In the case of children born out of wedlock, and acknowledged only by one of their parents, it belongs to the one having acknowledged the children.
- 5) In the case of children born out of wedlock, and acknowledged by both parents, it belongs to both of them if they live together; otherwise, it belongs to the one holding guardianship granted by an agreement, by a judicial decision, or recognized through a judicial investigative hearing.
- 6) To the one judicially declared as parent or mother of the child if the latter was not voluntarily acknowledged.

**Art. 264 bis.** When both parents are incompetent, or have been deprived or suspended in the exercise of the patria potestas, the child will be placed under guardianship. If the parents of a child born out of wedlock are themselves non emancipated minors, the person exercising the patria potestas over the parent providing protection and care to the child shall be given preference, subsisting such guardianship even when the other parent becomes emancipated or of age.

**Art. 264 ter.** In case of disagreement between father and mother, either of them may appear before the competent judge, who will decide bearing in mind the best interest of the child, through the shorter proceedings set forth by the local law, after a hearing held with the participation of the parents and the Minor's Guardian. The judge may, even at his own initiative, request all the information he deems necessary, and hear the child, if he/she has enough discernment and the judge considers it appropriate. In case of reiterated disagreements or when by any other means the exercise of patria potestas is seriously hindered, the judge may grant it, totally or partially to one of the parents or distribute its duties between them, for an established term, which may not exceed two years.

**Art. 264 *quater*.** In the case of subsections 1, 2 and 5 of Art. 264, the express consent of both parents is required for the following acts:

- 1- Authorize the child to get married.
- 2- To grant legal emancipation.
- 3- Authorize the child to enter religious communities, the armed forces or security forces.
- 4- Authorize the child to leave the Republic.
- 5- Authorize the child to participate in a trial.
- 6- To dispose of real property, rights and registrable personal property of the child administered by them, through judicial authorization.
- 7- To carry out administrative activities regarding the child property, unless one of the parents delegates the administration according to the provisions of section 294.

In all the previous cases, if consent is not granted by one of the parents, or there is an impossibility to do so, the judge will decide bearing in mind the best interest of the family.