



*Helping Older Persons With
Legal & Long-Term Care
Problems*

Grandparent's Rights

1. What Are Grandparent's Visitation Rights?

Under Ohio law, a court can award visitation rights to a grandparent in three situations: during, or after, a domestic relations proceeding, if the child's parent is deceased, or the child's mother was unmarried when the child was born. For the court to consider visitation three elements must be present: the grandparent has an interest in the welfare of the child, visitation is in the best interest of the child, and the grandparent files a motion with the court seeking to enforce these rights.

2. When Is Visitation In The Best Interest Of The Child?

Ohio law specifies numerous factors that a court can consider in determining whether visitation between a grandparent and a child should be ordered. These include:

- 1) the wishes and concerns of the child's parents;
- 2) the prior interaction and interrelationships of the child with parents and other relatives the location of the grandparent's residence and the distance between it and the child's residence;
- 3) the child's and the parent's available time;
- 4) the child's age;
- 5) the child's adjustment to home, school, and community;
- 6) the wishes of the child;
- 7) the health and safety of the child;
- 8) the amount of time that a child has available to spend with siblings;
- 9) the mental and physical health of all parties; and
- 10) whether the person seeking visitation has been convicted of or pleaded guilty to any criminal offense involving an act that resulted in a child being abused or neglected.

3. How Do I Obtain Visitation With My Grandchild If My Son Or Daughter's Marriage Is Terminated?

After your child's marriage is terminated a court can grant reasonable visitation rights to you should visitation be refused by the parent. You should file a motion seeking visitation in the court of common pleas. This motion may be filed while the divorce or dissolution proceeding is pending, or after a decree or final order is issued.

4. How Do I Obtain Visitation With My Grandchild If My Child Dies?

If either the father or mother of a minor child is deceased, you may file a complaint requesting reasonable companionship or visitation rights in the county court of common pleas where the child resides.

5. How Do I Obtain Visitation With My Grandchild If My Son Or Daughter Was Unmarried When My Grandchild Was Born?

If you are the parent of the child's mother who was unmarried at the time the child was born, or if you are the parent of the child's father and he has acknowledged the child and the acknowledgement has become final, or if he is found in a parentage action to be the child's father, the court may grant you visitation rights. In order to establish this right of visitation, you will need to file a complaint in the court of common pleas in the county in which the child resides. The court's authority to order visitation when a child is born to an unmarried woman continues even if the child's parents subsequently marry and establish paternity of the child.

6. What Are My Visitation Rights If My Grandchild Is In Protective Custody?

The Ohio Revised Code does not expressly provide for grandparent visitation when a child is alleged or adjudicated by the juvenile court to be an abused, neglected, or dependent child. However, the Ohio Department of Jobs and Family Services has adopted a rule that requires a public children services agency or private child placing agency to arrange for such visitation in certain circumstances. When a child is in temporary custody, child services must make arrangements for family members to have the opportunity to visit or communicate with the child, if it is in the child's best interests.

You should be aware that it is unlikely that a court would conclude that grandparents have a right to visitation in abuse, neglect, or dependency cases because the Ohio Supreme Court has held that if grandparents are to have visitation rights, they must be provided for in a statute.

7. Do I Have Visitation Rights If My Grandchild Is Adopted?

Your rights to visitation in the case of adoption differ depending on the circumstances. In Ohio, your visitation rights cannot be curtailed or restricted by the adoption if the parent(s) has/have died. The adoption of a child by a stepparent does not affect the authority of the court to grant reasonable visitation rights with the respect to the child. Ohio law does not terminate the relationship between the child and the family of the parent whose status is not changed by a stepparent adoption. Grandparents whose child retains parental rights after a stepparent adoption remain entitled to seek visitation.

However, in the case of a child whose parents are separated or a child born to an unmarried woman, the Ohio Supreme Court has held that a provision of Ohio law providing that a final decree of adoption terminates all legal relationships between the adopted person and the adopted person's relatives has the effect of terminating your visitation rights upon adoption, regardless of whether the child is adopted by strangers, relatives, or a stepparent.

8. How Do I Enforce My Visitation Rights?

Any person who has visitation rights or is subject to a visitation order may bring an action for contempt for another person's failure to comply with, or interference with, the order. The court may impose a fine, a term of imprisonment, or both on a person found guilty of contempt.

9. Does The Child's Parent Have The Right To Prevent Me From Visitation With My Grandchild?

Yes. The Due Process Clause does not permit a state to infringe on the fundamental right of a parent to make childrearing decisions simply because a judge believes a better decision could be made. The determination of your visitation rights will be decided primarily upon what is in the best interests of the child. Courts begin with the presumption that fit parents (those who adequately care for the child) act in the child's best interests. Ohio law expressly identifies the parents' wishes and concerns regarding visitation as a factor the court must consider in making its determination. It is therefore your legal burden to demonstrate that visitation is in the best interest of the child.

10. What If The Court Denies My Petition For Visitation?

The courts must give special weight to the wishes and concerns of fit parents. Therefore, if your petition is denied, you must file a written request with the court for findings of fact and conclusions of law. After doing so, the court shall state in writing its findings of fact and conclusions of law. You may then file your objections for a judge to review.

11. Under What Circumstances May I Be Granted A Power Of Attorney For My Grandchild?

If your grandchild is residing with you, a power of attorney may be granted if one of the following applies: the parent is seriously ill; incarcerated; temporarily unable to provide adequate care and supervision of the child because of his or her mental condition; is homeless or without a residence; is in a residential treatment program for substance abuse; or the parent has a well-founded belief that it is in the child's best interest. This document must be filed with the juvenile court in the county in which you reside.

12. What Rights Does A Power Of Attorney For Residential Grandparent Create?

The parent of a child may create a power of attorney that grants to a grandparent of the child with whom the child is residing any of the parent's, rights and responsibilities regarding the care, physical custody, and control of the child, including the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child

The power of attorney may not grant authority to consent to the marriage or adoption of the child. The power of attorney does not affect the rights of the parent of the child in any future proceeding concerning custody of the child or the allocation of parental rights and responsibilities for the care of the child and does not grant legal custody to the attorney in fact.

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In southwest Ohio, Pro Seniors' staff attorneys and long-term care ombudsmen handle matters that private attorneys do not, such as nursing facility, adult care facility, home care, Medicare, Medicaid, Social Security, protective services, insurance and landlord/tenant problems.

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Pro Seniors, Inc.
7162 Reading Rd.
Suite 1150
Cincinnati, Ohio 45237

Switchboard: 513.345.4160
Clients Toll-free: 800.488.6070
Fax: 513.621.5613
TDD: 513.345.4160

E-mail: proseniors@proseniors.org

Web Site: www.proseniors.org