

# Grandparent Visitation Rights



In Nebraska, a grandparent may seek visitation rights under very limited circumstances; and, these are considered “narrowly drawn” under the law. If the nuclear family is intact (biological parents are married OR they are un-married, but paternity is established and they still live together), grandparents cannot petition the Court for visitation. If a minor child has been adopted due to the termination of parental rights, a grandparent will not be able to petition for visitation.

The goal is to appropriately weigh the balance between the *parent's constitutional parental rights* (constitutional right to raise their child freely as they please without interference) against the *best interests of the child*.

## **There are four primary requirements, each of which have their own definitions:**

- You must fit the definition of a grandparent in Nebraska in order to petition the Court for visitation.
- There must be clear and convincing evidence that currently or in the past there was a significant beneficial relationship between the grandparent and the minor child.
- Continuing the grandparent relationship must be in the minor child's best interest.
- The grandparent visitation must not adversely interfere with the minor child's relationship with their parent(s).

## **Do I fit the definition of a grandparent?**

The grandparent(s) must be either the biological or adoptive parent of the minor child's biological or adoptive parent. There is no such thing as “common law grandparents” in Nebraska, meaning older people with a special relationship to the child do not qualify as “Grandparents” under Nebraska law.

### **A person qualifies as a Grandparent If...**

- ... your (child) biologically or adopted is the biological parent to the minor child; or
  - ... your biological/adoptive child has legally adopted the minor child; or
  - ... your biological/adoptive son (child) is the biological father to the minor child and has undergone a paternity test and submitted it to the court; or
  - ... your biological/adoptive child is the biological or adoptive parent to the minor child, and their parental rights have not been terminated
- If you answered yes to any of the above, meaning your biological or adopted child is legally the biological or adoptive parent to the

minor child, then you fit the definition of a grandparent. Only an adoptive or biological grandparent of the minor child(ren) may bring an action for visitation

**The grandparent needs to establish whether a “substantial beneficial relationship” exists. To do so, you would need to submit evidence to the Court, which may include sworn affidavits (written statement of fact made under oath).**

## **How does the court decide if I have a “substantial beneficial relationship”?**

- This is determined on a case by case basis as every relationship is different.
- Generally, the Court will look at how much contact the grandparent and grandchild have had and over what period of time that contact occurred. The Court uses this information to determine if a substantial beneficial relationship exists. Facts that would be considered a beneficial relationship include how long the relationship existed, and how it would be in the child(ren)'s best interests to continue the relationship.

## **How does the court decide if a grandparent's relationship with a child is in their best interest?**

The Court has to find by clear and convincing evidence that there is, or has been, a significant beneficial relationship between the grandparent and the child, that it is in the best interests of the child that such relationship continue, and that such visitation will not adversely interfere with the parent-child relationship.

The best interests of the child require:

- (1) A parenting arrangement and parenting plan or other court-ordered arrangement which provides for a child's safety, emotional growth, health, stability, physical care and regular and continuous school attendance and progress for school-age children. This encompasses the general health, welfare and social behavior of the minor child(ren), and;
- (2) That the child's families and those serving in parenting roles remain appropriately active and involved in parenting with safe, appropriate, continuing quality contact between children and their families when they have shown the ability to act in the best interests of the child and have shared in the responsibilities of raising the child.

The court may also factor in the desires and wishes of the minor child, if of an age of comprehension but regardless of chronological age, when such desires and wishes are based on sound reasoning.

## **Under what circumstances can a grandparent in Nebraska seek visitation?**

A grandparent may seek visitation with his or her minor grandchild if:

- The child's parent or parents' are deceased;
- If the child's parents were married but one (or both) passed away;
- If the child's parents' are divorced or an action for divorce of such marriage has been filed, is still pending, but no decree has been entered, grandparents can petition the court for visitation.
- If parents were not married, and the biological father's paternity has been legally established (which means the court acknowledged it), and they are now separated, grandparents can petition the court for visitation
- If parents were not married and the biological father's paternity has NOT been legally established, the child's paternal grandparents can petition for visitation, but the child's father will have to legally establish his paternity. These cases are more complicated.

## **What are the steps to petitioning the court for Grandparent's visitation?**

- File legal documents with the Court. The action begins with a legal document called a Petition filed in the District Court in the county in which the minor child(ren) resides. With the Petition, sworn affidavits containing evidence of the 'beneficial nature' of the grandparent relationship as well as how the grandparent has the legal right to Petition for visitation. If the grandparent petitioning the Court is married, ideally, both grandparents should be listed on the Petition together to request visitation.
- Gather information to be contained in the Petition. Those include your name and address; name and address of the parent having custody; name and address of parent not having custody; name and year of birth of each child with whom visitation is sought; the relationship of the grandparent to the minor child(ren); any information that the parties have attempted to reconcile their differences, but the differences are irreconcilable and such parties have no recourse but to seek assistance from the Court.
- Visit with an attorney – they will be able to guide you through the unique aspects of your situation

## **How will the court decide whether my relationship with the child will be adverse to the parents relationship with the child?**

The Court will look at the evidence presented and determine if the Grandparents' efforts to seek visitation will serve to undermine the relationship between the parent and the child or children. The Court has found that where Grandparent visitation will undermine the parent-child relationship, it does not serve the best interests of the child or children.

## **How can our son establish paternity so we can petition the court in regard to his children?**

Paternity of a child is established in three general ways: (1) the child is born to parents who are married; (2) the parents sign an Acknowledgment of Paternity at or before the child's birth; or (3) through judicial proceedings (a Court).

Establishing paternity through judicial proceedings requires the filing of legal documents with the Court. In much the same way that the Petition for visitation is filed, the Petition to establish paternity can also be filed. A complaint or petition to establish paternity can be filed by; (1) the alleged father of the minor child; or (2) the guardian or next friend of the minor child.

If you choose to represent yourself in a court proceeding by use of this information, it is still recommended that you talk with an attorney for assistance.

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