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[Discussion Boards](#)
[Photo Contest](#)
[Conception](#)
[Pregnancy](#)
[Parenthood](#)
[The Family Home](#)
[Parenting Resources](#)
[Work at Home](#)
[Newsletters](#)
[Family Recipes](#)
[NAPPA](#)

Grandparents: Know Your Rights!

By Joan E. Lisante

What You Can Do to Keep Connected with Your Grandchildren

Dana Nourie didn't know when she'd get to build Lego™ castles again with twin grandchildren Michael and Amanda. She and her husband had visited the kids regularly since birth, but were shut out after her son and his wife separated.

"It was incredibly painful," she recalls. "We had always been active in our grandkids' lives and they were only 1-1/2 years old when this happened."

When Nourie's daughter-in-law obtained a restraining order against her son, hope for a normal relationship with the toddlers vanished. Nourie trudged to supervised visits in a county building, shadowed by a state worker who took notes.

Happily, the couple eventually worked out a visitation schedule. Nourie now sees Michael and Amanda often and gladly serves as the "free babysitter."

Divorce spirited away Nourie's grandchildren. Death can do the same.

Amy, who asked that we not use her real name because her daughter, who lived in Colorado with her husband and 4-year-old son, died last fall under what she considers to be suspicious circumstances. Her son-in-law, with whom she was not close, she says, "showed no remorse" over her daughter's death and has refused to allow Amy or her husband any communication with their grandson.

"I put together information for the police," she says, "but they ... closed the case." She is now consulting a lawyer to re-establish ties with her grandson.

Similar situations occur daily across the country, as families split up and regroup. Grandparents are caught in the fallout and suffer greatly when carefully nurtured relationships with grandchildren are cut off.

State Laws and the Courts

All 50 states have addressed the problem with so-called "grandparents laws" spelling out when grandparents have a legal right to visit their grandchildren or even take custody of them. Laws vary widely, and some are more liberal than others. All are subject to interpretation by the courts.

Colorado's grandparent visitation law gives grandparents the right to ask for visitation in three situations:

When the child's parents' marriage has been dissolved (divorce) or annulled, or when the parents are legally separated.

When someone other than the parent has custody of the child (and the child has not been adopted).

When one of the child's parents has died.

Grandparents are the only relatives entitled to petition for visitation, and it's not an automatic "yes." Courts look at the whole situation in deciding what's in the "best interests of the child" – a standard used across the country. If circumstances change, for example, if a grandparent's mental state makes him or her unable to handle weekend visits, the court can modify a visitation order. Likewise, if the child is

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adopted by a stepparent, the grandparents' right to visit the child can be revoked.

In more extreme situations, grandparents may choose to apply for custody. Colorado allows a grandparent to request custody:

When the state removes a child from a parent's home. In this situation, grandparents have preference over a foster parent or other placement.

When the grandparent has been caring for the child already (also applies to others with physical care of a child).

When the grandparent (or other person) took physical care of the child for at least six months, and fewer than six months have passed since such physical care stopped.

The Supreme Court Addresses Visitation

Parents who think that grandparent visitation laws are unfair frequently end up in court. Tommie Granville of Washington State was one such parent. Granville and her boyfriend Brad Troxel lived together for several years and had two daughters, Natalie and Isabelle. When they split up, Troxel moved in with his parents and later took his own life.

Although Troxel's parents had visited the girls regularly, when Granville married she sought to cut back on the Troxel's visitation schedule of one weekend a month and a week during the summer. The Washington Court agreed. Grandparents Jenifer and Gary Troxel objected and appealed to the U.S. Supreme Court.

The Supreme Court sided with the mom, citing a parent's 14th amendment right to privacy in figuring out what's best for their children.

"So long as a parent adequately cares for his or her children," the Court said, "there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."

Gregg Greenstein, who practices family law with the Boulder firm of Frasca, Joiner, Goodman and Greenstein, noticed that following the Troxel decision, the number of cases he got from grandparents declined.

"The Colorado grandparents' law has been ruled constitutional," Greenstein says, "but our courts have emphasized that in these situations, special consideration will be given to the parents' wishes."

Greenstein advises grandparents to have realistic expectations about visitation and realize that "concern about how my grandchild is being brought up" isn't a legally valid reason for seeking extensive visitation.

Trying Mediation

Generally speaking, going to court should be a last, not a first, resort. Putting yourself before a judge who doesn't know your family isn't the best way to resolve what's usually a highly personal situation.

A grandparent-to-parent conversation explaining why your relationship with the grandkids is important to both of you could enable both sides to work out a solution. Sometimes feelings run too high for that to happen.

If that's the case, think about mediation. With mediation, both sides tell their side of the story to an impartial third party, who helps them come up with solutions and a legally binding agreement that works for everyone.

Attorney Brette McWhorter Sember believes in mediation. Sember, a family law expert and author of *Senior Rights: Your Legal Guide to Living Life to the Fullest*, says, "You can divorce your spouse, but divorcing your parents, adult child or entire

family is another matter. Mediation is an alternative that can help pinpoint why you are having problems, rather than just slapping a court-ordered visitation schedule on something. If you can't afford mediation or don't want to take formal steps, sometimes a family member can act as an impartial mediator and help you sort things out."

You can find a qualified mediator in several places: through your local bar association, or through organizations like the Association for Conflict Resolution or the Association of Attorney Mediators (see Resources below).

Commonsense Solutions

Sometimes when you take a topic away from lawyers, creative solutions emerge. Armin Brott, author of *Father for Life: A Journey of Joy, Challenge and Change*, has made fatherhood his life focus.

Brott, who has gone through a divorce himself, tells grandparents to "try to establish and build a relationship with the parent who controls access to the child. Emphasize that you really want this relationship to thrive and are willing to do so under his or her terms. Be willing to rearrange your schedule, and be as nice and nonthreatening as possible."

Brott encourages grandparents to look into some of the research that's been done on the benefits of grandparents having an ongoing relationship with grandkids, and to let parents know that the relationship benefits the child as much as the grandparent.

Flexibility is important when you're dealing with an unstable situation, he adds. "Do whatever you can to continue the connection. Go to school plays and dance recitals. Keep in touch by e-mail or phone. Send photos and artwork to each other."

Brott's approach works for him. His former in-laws, who see his 10- and 14-year-old daughters often, "still send me a box of peanut brittle on my birthday," he says.

More Tips for Success

Here are pointers you could write on an index card or paste on a refrigerator magnet:

Carl Graham, family law specialist in Colorado Springs, suggests that grandparents "make sure their own child is on board with the visitation plan" before forging ahead. In all the cases Graham has litigated during the past few years, the court granted visitation. He believes that sometimes it's easier when a grandchild's parents are young and still dependent on their own parents, since the nuclear family tends to be more of a unit.

Another suggestion from Graham: "Establish how much of a role you've already played in the child's life." The schedule you seek, he points out, should be similar to the time you've spent with your grandchild in the past.

Don't automatically adopt a guns-blazing approach. Try talking to the people with whom you disagree – then try again. Working out disputes person-to-person saves time, money and sometimes the relationship.

Use "grandma and grandpa" time wisely. Help in whatever ways you can, whether it's as homework tutor or shoulder to cry on. Kids need mentors – and those they can find within the family are the best.

You're far from the first person in this situation – there are lots of resources out there to guide and support you. Check out local support groups for grandparents, Web sites and legal self-help books.

Be patient, but persistent. As Brott puts it, "Don't give up! Do what you can. Kids with disappearing grandparents tend to think 'they don't care,' especially when the relationship was close before. You don't want kids to think you've forgotten them."

When you get right down to it, the best way to have a relationship with your grandchildren is to have a good relationship with your children.

RESOURCES

National Organizations

Grandparents' Rights Organization – 248-646-7191. This advocacy group, which aims to protect grandparents and grandchildren from loss of contact resulting from death or divorce, has members in all 50 states. The \$40 membership provides a kit with state-specific information.

AARP – 303-830-2277. The AARP's **Grandparent Information Center** offers statistics, advice, legal information and support for grandparents.

Colorado Legal Information & Assistance

Colorado Bar Association – 303-860-1115. Offers information on finding a lawyer, where to go for help with specific issues and an online version of the *Senior Law Handbook*, which has a chapter on family relationships.

Colorado Legal Services – 313-837-1313. This nonprofit corporation offers free legal services to low-income individuals and seniors. Its Web site provides county-specific information about grandparent rights. **Search under "Family and Children."**

Metropolitan Lawyer Referral Service – 303-831-8000. Charges \$35 for a 30-minute consultation with an attorney.

District Court Self-Help Centers – Adams County, 303-654-3230; Boulder County, 303-441-3739; Denver County, 720-865-8440; Jefferson County, 303-271-6102.

Mediation

Association for Conflict Resolution

Association of Attorney Mediators

Books

The Colorado Senior Law Handbook, from the Colorado Bar Association, is a guidebook on laws affecting all aspects of seniors' lives, including grandparents' rights. Call 303-860-1115 to order (\$11).

Father for Life: A Journey of Joy, Challenge and Change, by Armin Brott, Abbeyville Press, 2003.

Grandparents' Rights, by Traci Truly, Sphinx Publications, 2001.

Grandparents' Rights: What Every Grandparent Needs to Know, by Patricia Perkins Slorah, Ist Books Library, 2003.

Senior Rights: Your Legal Guide to Living Life to the Fullest, by Brette McWhorter Sember, Sourcebooks, 2004.

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