



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

# **Grandparent Rights**

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## ***1. What Are Grandparent's Visitation Rights?***

Under Ohio law, a court can award visitation rights to a grandparent in three situations: when there has been a domestic relations proceeding [\[1\]](#), when the child's parent is deceased, [\[2\]](#) or when the child's mother was unmarried when the child was born. [\[3\]](#) For the court to consider visitation the grandparent must file a motion with the court, the grandparent must have an interest in the welfare of the child, and visitation must be in the best interest of the child. [\[4\]](#)

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

Ohio law specifies numerous factors that a court shall consider in determining whether visitation between a grandparent and a child should be ordered, including [\[5\]](#):

- 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;
- 10) The willingness to reschedule missed visitation;
- 11) 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; and
- 12) Any other factor in the best interest of the child.

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

Any court that is considering a divorce, dissolution of marriage, legal separation, annulment, or child support proceeding for your child, can grant reasonable visitation rights to you, the grandparent, if you file a motion seeking visitation with that same court. [\[6\]](#)

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

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 common pleas court in the county where the child resides. The remarriage of the surviving parent of the child or the adoption of the child by the spouse of the surviving parent does not affect the authority of the court to grant reasonable grandparent companionship or visitation rights. [\[7\]](#)

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

The court may grant you visitation rights if you are the parent of the child's mother who was unmarried at the time the child was born. If you are the parent of the child's father, he must have been legally determined the father, either through a paternity action or by acknowledging his paternity and his acknowledgement has been entered into the birth registry. You will need to file an action in the common pleas court 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 mother or father subsequently marry. [\[8\]](#)

### ***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. [\[9\]](#)

## ***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. If you have visitation rights because one of the parents has died, your visitation rights are not lost because of a stepparent adoption. Ohio law does not terminate the relationship between the child and the family of the deceased parent when the child is adopted by the spouse of the surviving parent. [\[10\]](#)

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. [\[11\]](#)

## ***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, or interference with, the order. The court may impose a fine, a term of imprisonment, or both on a person found guilty of contempt. Furthermore, if any person is found in contempt of court for failing to comply with or interfering with any order or decree granting companionship or visitation, the court shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court. [\[12\]](#)

## ***9. Does The Child's Parent Have The Right To Prevent Me From Visiting My Grandchild?***

Yes. The Due Process Clause does not permit a state to infringe on the fundamental right of a parent to make child-rearing decisions simply because a judge believes a better decision could be made. [\[13\]](#) 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, despite the parent's objections. [\[14\]](#)

## ***10. 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:

- 1) The parent is seriously ill;
- 2) The parent is incarcerated;
- 3) The parent is temporarily unable to provide adequate care and supervision of the child because of his or her mental condition;
- 4) homeless or without a residence;
- 5) The parent is in a residential treatment program for substance abuse; or
- 6) The parent has a well-founded belief that it is in the child's best interest. [\[15\]](#)

This document must be signed by the parent and filed with the juvenile court in the county in which the grandparent resides within 5 days of the signing. The filed power of attorney must be accompanied by a receipt showing that the notice of creation of the power of attorney was sent by certified mail to the parent who is not the residential parent and legal custodian. [\[16\]](#)

### ***11. 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 grandparent. [\[17\]](#)

### ***12. What If The Parent Won't Sign The Power Of Attorney And I Need To Enroll My Grandchild In School?***

You can file a Caretaker Authorization Affidavit with the Juvenile Court in your County. This affidavit will allow you to enroll the child in school when the child is living with you and you are unable to locate and contact either parent. You do not need to try to locate a parent if the parent's rights were terminated by court order, or if there is a custody order and the non-custodial parent is prohibited from receiving a notice of relocation or the father, when paternity has not been established. [\[18\]](#)

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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.

This pamphlet provides general information and not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Helpline or consult an attorney in elder law.

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**Endnotes:** [Click the endnote number "[1]" to return to the text]

- [1] [O.R.C. §3109.051\(B\)\(1\)](#) – Parenting time – companionship or visitation rights.  
“In a divorce, dissolution of marriage, legal separation, annulment, or child support proceeding that involves a child, the court may grant reasonable companionship or visitation rights to any grandparent . . .”
- [2] [O.R.C. §3109.11](#) – Companionship or visitation rights for parents or other relatives of deceased mother or father.  
“If either the father or mother of an unmarried minor child is deceased, the court of common pleas of the county in which the minor child resides may grant the parents and other relatives of the deceased father or mother reasonable companionship or visitation rights with respect to the minor child . . .”
- [3] [O.R.C. §3109.12](#) – Mother unmarried - parenting time, companionship or visitation rights.

“If a child is born to an unmarried woman, the parents of the woman and any relative of the woman may file a complaint requesting the court of common pleas of the county in which the child resides to grant them reasonable companionship or visitation rights with the child. If a child is born to an unmarried woman and if the father of the child has acknowledged the child . . . the parents of the father and any relative of the father may file a complaint requesting that the court grant them reasonable companionship or visitation rights with the child.”

[4] [O.R.C. §3109.051\(B\)\(1\)](#) – Parenting time – companionship or visitation rights.

[5] [O.R.C. §3109.051\(D\)](#) – Parenting time – companionship or visitation rights.

[6] [O.R.C. §3109.051\(B\)\(2\)](#) – Parenting time – companionship or visitation rights.

“A motion may be filed [by a grandparent] under division (B)(1) of this section during the pendency of the divorce, dissolution of marriage, legal separation, annulment, or child support proceeding or, if a motion was not filed at that time or was filed at that time and the circumstances in the case have changed, at any time after a decree or final order is issued in the case.”

[7] [O.R.C. §3109.11](#) – Companionship or visitation rights for parents or other relatives of deceased mother or father.

[8] [O.R.C. §3109.12](#) – Mother unmarried - parenting time, companionship or visitation rights;

[O.R.C. §2151.232](#) – Order requiring support of child where acknowledgment of parentage is not yet final;

[O.R.C. §3111.25](#) – Acknowledgment of paternity is final and enforceable;

[O.R.C. §3111.821](#) – Proceedings - finality of acknowledgment.

[9] [O.A.C. §5101:2-42-92\(D\)](#) – Visitation for child in temporary custody.

[10] [O.R.C. §3109.11](#) – Companionship or visitation rights for parents or other relatives of deceased mother or father;

[O.R.C. 3107.15\(C\)](#) – Effect of final decree or interlocutory order of adoption.

[11] [\*In re Martin\* \(1994\), 68 Ohio St.3d 250, 626 N.E.2d 82;](#)

(Putative paternal grandparents filed petition requesting visitation rights with putative grandchild which had been adopted by maternal grandparents, the Supreme Court held that: (1) putative paternal grandparents were not qualified to seek court-ordered right to visit putative grandchild, and (2) even if putative father's paternity was established, putative paternal grandparents were not entitled to visit putative grandchild after adoption of putative grandchild by maternal grandparents. *Case Synopsis*)

See also, [Sweeney v. Sweeney, \(1994\) 71 Ohio St.3d 169, 642 N.E.2d 629 \(Mem\)](#)

[In re Adoption of Ridenour, et al. \(1991\), 61 Ohio St.3d 319, 574 N.E.2d 1055](#)

(R.C. 3109.051(B), which permits a court in a divorce, dissolution of marriage, legal separation, annulment, or child support proceeding that involves a child to grant visitation rights to “any other person other than a parent,” does not apply following an adoption. *Ridenour*, 61 Ohio St.3d at 326, 574 N.E.2d at 1062.)

[12] [O.R.C. §3109.051\(K\)](#) – Parenting time - companionship or visitation rights

[13] [Troxel v. Granville \(2000\), 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49](#)

(Paternal grandparents petitioned for visitation with children born out-of-wedlock. The Supreme Court, Justice O'Connor, held that Washington statute providing that any person may petition court for visitation at any time, and that court may order visitation rights for any person when visitation may serve best interest of child, violated substantive due process rights of mother, as applied to permit paternal grandparents, following death of children's father, to obtain increased court-ordered visitation, in excess of what mother had thought appropriate, based solely on state trial judge's disagreement with mother as to whether children would benefit from such increased visitation.

Whether it will be beneficial to child to have relationship with grandparent is, in any specific case, a decision for parent to make in first instance, and if a fit parent's decision becomes subject to judicial review, court must accord at least some special weight to parent's own determination. Due Process Clause does not permit state to infringe on fundamental right of parents to make child-rearing decisions simply because state judge believes a “better” decision could be made. Case Synopsis.)

[14] [O.R.C. §3109.051\(D\)\(15\)](#) – Parenting time - companionship or visitation rights.

(15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;

[15] [O.R.C. §3109.57](#) – Further requirements for creating power of attorney.

For fillable pdf Grandparent Power of Attorney Form website, see: Franklin County Law Library, Library Guides, Ohio Power of Attorney Law, [Grandparent Power of Attorney & Caretaker Authorization Affidavit](#).

[Grandparent Power of Attorney Form](#) (pdf)

[16] [O.R.C. §3109.74\(A\) & \(B\)](#) – Filing with court.

[17] [O.R.C. §3109.52](#) – Power of attorney for residential grandparent.

[18] [O.R.C. §3109.65 – Caretaker authorization affidavit.](#)

For fillable pdf Grandparent Caretaker Authorization Affidavit Form website, see:  
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