



No. 3 in the Series

THE ART OF GRANDPARENTING

For many, the relationships formed between grandparents or stepgrandparents and grandchildren are special. Grandparents often get to enjoy the pleasure of their grandchildren's company without the responsibility of raising or caring for the children full time.

As for the grandchildren, the relationships they have with their grandparents or stepgrandparents may be sources of stable, unconditional love.

However, divorce, the death of a parent or adoption of grandchildren frequently threatens these relationships and leaves grandparents with questions about their rights.

Here are some of the most common issues and questions concerning the rights of grandparents. The answers are based in general on North Dakota law.

You and the Law in North Dakota: The Rights of Grandparents and Stepgrandparents

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Throughout North Dakota, nearly 12,304 or approximately 7 in 100 children are living in households headed by a relative other than a parent. The majority are living with grandparents (7,443 or 4.4% of all children in North Dakota). Statewide, the number of children living with grandparents rose 83% between 1990 and 2017.

When the Legislature or the courts make decisions about the rights of grandparents, they seek a balance between two ideals. The first is the value attached to allowing parents to care for their children in the best way they can. The second is the value attached to doing what is in the best interests of the children. The wishes or best interests of grandparents are not among the most important factors considered in making these decisions.

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Visitation

In North Dakota, grandparents, including great-grandparents, may be granted “reasonable visitation rights” if the court finds that visitation would be in the best interests of the child and would not interfere with the parent-child relationship.

The court is directed to consider the amount of personal contact that has occurred between the grandparents or great-grandparents and the child and the child’s parents. In North Dakota, making every effort to foster a positive relationship with their grandchildren and the parents of their grandchildren would be beneficial for grandparents.

Approximately 20 states have “restrictive” visitation statutes, meaning that generally only grandparents can get a court order for visitation. Specific concerns should be directed to a family law attorney. State statutes on the subject of grandparent visitation rights vary from statutes considered to be permissive to those considered to be stringent.

The *Troxel v. Granville* Supreme Court case on grandparenting visitation rights in Washington State addressed the rights of third parties to seek court-enforced visitation. Although the statute did not specifically mention grandparents, they were the people most likely to seek visitation under the statute.

The Supreme Court decided that the statute was overbroad because it required only that such visits be in the best interests of the children. Generally, the court decided that the statute violated a parent’s right to make decisions concerning the care, custody and control of children.

In North Dakota, the state Supreme Court recently reversed a ruling in a case that awarded visitation to a Grand Forks couple who sued their son and his longtime partner for visitation rights with their three grandchildren. The justices determined the lower court had not presumed that a parent’s decision on visitation is made in the child’s best interests, and that placed the burden of proof on the parents, instead of on the grandparents, where it belonged.

The parents of my grandchildren are divorced. Do I have a right to visit my grandchildren?

You may ask the district court to give you the right to reasonable visitation with your grandchildren. You can ask for this while the parents are in the process of getting divorced or after the divorce has been granted. The court will consider the amount of personal contact you have had with the children and with their parents prior to your application. The court may order a home study and may talk with the children to determine their wishes. If the court allows visitation, it may place reasonable conditions or restrictions on the visits. The court also may issue orders necessary to enforce your rights.



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My child is dead and the surviving parent won't let me visit my grandchildren. Am I entitled to visit my grandchildren?

You may ask the district court to give you the right to reasonable visitation as indicated in the previous example.

My child is dead and my grandchildren have been adopted by a stepparent. Do I have a right to visit my grandchildren?

When children are adopted, all legal relationships and all rights and duties between the children and the biological parents cease. The adopting parent assumes all the rights, duties and obligations of a biological parent.

However, the "former" grandparents may ask the court to give them the right to visit the children. The court will decide whether to grant visitation after considering the same factors cited in the first question. If the grandchildren have been adopted by a stepparent or other grandparent, the court will consider the best interests of the children.

Grandparents do not have a right under North Dakota statutes to ask for visitation if the grandchildren are adopted by someone other than a stepparent or grandparent. Adoption cuts off the rights of grandparents unless visitation was granted prior to the adoption.

The parents of my grandchildren are angry with me and refuse to allow me to visit. Can I make them let me visit my grandchildren?

Courts generally don't want to interfere with families because protection of the parent/child relationship is considered important. However, the court must recognize the visitation request. Again, many factors previously discussed may be used to determine frequency and length of visitation. Upon considering all of the factors above, the court would issue an order to enforce the decision.

Custody

In unfortunate circumstances, parents may be unable or unwilling to care for their children. However, grandparents or stepgrandparents may be hesitant to pursue or attain legal custody of their grandchildren because of the family relationship or because they don't want to upset the parents. For grandparents who might become or are becoming caregivers for their grandchildren, understanding the following legal arrangements is important:

- ▶ **Informal or kinship care:** Grandparents can care for grandchildren without court orders with the consent of parents. Parents of the children may not be present in the home or may be present but unable to care for the grandchild.
- ▶ **Legal custody:** This gives grandparents rights in relation to their grandchildren's care. A parent voluntarily can relinquish custody of a child to a grandparent or a court can order it.
- ▶ **Guardianship:** Guardianship of a child is appropriate only when the parents are deceased or their parental rights have been terminated or suspended. With guardianship, grandparents accept day-to-day responsibility for the children.
- ▶ **Foster care:** In foster care, the child remains under state control.
- ▶ **Adoption:** Adoption is a permanent arrangement and grandparents become the legal parent in every way. The legal relationship between the grandchildren and their parents ends.

Getting health care and enrolling children in school can be challenging for grandparents who do not have legal custody or guardianship of their grandchildren. Grandparents who are caring for grandchildren often cite the following as critical needs: legal assistance to obtain legal custody or the authority to enroll their grandchild in school and give consent to medical treatment.

My child has died and I believe my grandchildren would be better off living with me than with the surviving parent. Can I get custody?

North Dakota courts view parents as the natural guardians of their children. The parents have the primary right to custody. This right can be taken away only in a legal proceeding in which the parent's ability to provide care is shown to be so inadequate that the children's welfare, health and safety are compromised or some other extraordinary circumstances exist.

An example of an extraordinary circumstance is if a grandparent has had custody of grandchildren for a substantial length of time and has become the children's "psychological parent" (a person thought of as the parental figure) during that time. But even then, a court would return the children to the custody of the parent unless it found that restoring parental custody would cause serious harm to the children.

How can I get medical care for my grandchildren if I haven't established a legal relationship?

North Dakota has a medical consent law that includes a list of those adults who may be consulted when a minor needs medical treatment. The list begins with the child's parent or legal guardian. Grandparents who have maintained significant contacts with the child also are listed among those who may provide informed consent if a parent or legal guardian is not available. This law may be helpful to kinship caregivers.

If a parent is in jail, grandparents can execute a power of attorney for a child giving the attorney-in-fact the ability to make decisions on the child's behalf for up to six months. If the parent has abandoned the child, the grandparent could contact the county or juvenile authorities for an order that places the child legally with the grandparent on a temporary basis. This option more easily allows the grandparent to obtain financial assistance through the Temporary Assistance for Needy Families (TANF) program or child support.

I am supporting my grandchildren. Neither parent is contributing. Can I get help?

Parents are responsible for supporting their children. If grandparents furnish the support, they may go to court to try to make the parents pay back the funds. However, to recover the money, grandparents must show clearly that they did not intend the support to be a gift.

The parents' responsibility to support their children remains intact even when they divorce. Divorce decrees set an amount for child support according to a child support schedule. This amount is the extent of the parents' financial duty and the court will not allow recovery of any excess amount.

Even if the divorce decree does not set a definite amount of support owed, the responsibility for supporting the children still belongs to both parents. If one or both of the parents do not fulfill the support responsibility, the other parent or a third person can try to recover the amount of support that should have been provided.

In certain limited circumstances, Temporary Assistance to Needy Families (TANF), which is a federal public assistance program, may provide financial assistance on behalf of children who are cared for by a relative, such as a grandparent. The children must be residents of North Dakota and not yet 18 or full-time students who expect to complete high school before age 19.

Children whose parents have died, abandoned them or are unable to care for them because of physical or mental disabilities may be eligible for TANF. The caretaker must show he or she needs funds to provide proper care for the children. In North Dakota, 4,006 grandparents are raising grandchildren and receiving public assistance.



How can I be certain that money I save for my grandchildren's education will be used for that purpose?

Depending on the amount involved and how complicated you are willing to make things, several options are available. The simplest is to keep the money yourself and make it available directly.

You could use a formal trust with someone acting as trustee. This usually requires the services of a lawyer. It is the surest way to get what you want because the trustee is legally obligated to follow your wishes as set in the trust agreement. Check with your lawyer for other ideas that best suit your needs.

How can I get health insurance for my grandchildren?

If your grandchildren don't have health insurance, find out if your employer will allow you to add them to your policy. If not, find out if they qualify for your state's free or low-cost Children's Health Insurance Program (CHIP) or the federal Medicaid program. Both of these programs vary from state to state, but most insure children and teens up to age 19 for health care, medicines and hospital visits. The Early Periodic Diagnosis, Screening and Treatment (EPDST) program is part of Medicaid, and offers well-baby visits with normal screening, tests and treatments that children would get if they went to a doctor for regular visits.

In most states, you do not need to have legal guardianship of your grandchildren to apply for health insurance for them. But a few states will consider your income when they decide if your grandchildren qualify for insurance. To find out if your grandchildren may be eligible for CHIP or Medicaid and apply:

- ▶ Go to [Benefits QuickLINK](#) and answer a list of questions. You'll get a report that tells you what programs the child is eligible for and provides links to the forms to apply. Talk with a local social worker or someone at the clinic or your doctor's office about applying for CHIP or Medicaid.
- ▶ Visit the Insure Kids Now website (www.insurekidsnow.gov/) or call toll-free at 877-543-7669.

What do I need to know about enrolling my grandchildren in school?

Legal custody is required in North Dakota to enroll a child in school. Grandparents can contact their local school district's administrative office or their local school to find out how to register the child and what paperwork they need. Caregivers may need birth records, health records or previous school records. Some states have laws that allow relative caregivers to enroll the children they are raising in school. These laws often are called "education consent" laws, but they may be called something else in your state. A power of attorney or a guardianship also would be sufficient to enroll a child in school. An abandoned child's grandparents may want to seek the juvenile court's help to get something done quickly.

The parental rights of my child have been terminated (by death or court order) and my grandchildren have been adopted by a stepparent. Will these grandchildren inherit from me when I die?

Under North Dakota law, your grandchildren most likely will inherit from you because the adoption by the spouse of a biological parent has no effect on the relationship between the children and either biological parent. However, to be certain, you should identify your grandchildren by name in your will. Your grandchildren then will benefit under your will whether you die residing in North Dakota or another state. Perhaps the greatest challenge in the coming years will be the adaptability of family law to the increasing number of nontraditional families.



Support, Resources and Assistance

Financial

- ▶ **Supplemental Security Income (SSI)** – The SSI program pays benefits to disabled adults and children with limited income and resources. The benefits also are available to individuals age 65 and older without disabilities who meet the financial limits.
Online directory – to find your local Social Security Administration office, call 800-772-1213 (toll-free) or visit <https://secure.ssa.gov/apps6z/FOLO/fo001.jsp>
- ▶ **Temporary Assistance to Needy Families (TANF)** – The program may provide cash assistance to eligible children and their relative caregivers.
North Dakota TANF –
Economic Assistance Policy Division
Department of Human Services
701-328-2332
Email: dhseap@nd.gov
- ▶ **Earned Income Tax Credit (EIC)** – This tax credit can provide an annual payment to eligible families with an adult wage earner, children in the household and low income.
- ▶ **Child support** – If a grandparent is raising a grandchild, the child's living parents still are responsible for paying child support unless the grandparents have adopted the child. In cases where grandparents have custody or guardianship, many judges will require parents to pay support. If you are deaf or hard of hearing, call TTY 1-800-325-0778.

Nutrition

- ▶ **Supplemental Nutrition Assistance Program (SNAP)** – This program helps low-income individuals and families buy the food they need for good health.
North Dakota Supplemental Nutrition Assistance Program
Department of Human Services
701-328-2328
Email: dhseap@nd.gov

Health

- ▶ **Medicaid** – This type of government-sponsored medical insurance pays for the medical care of eligible children.
Medical Services Division
North Dakota Department of Human Services
Telephone: 701-328-2321
Toll-free: 800-755-2604
ND Relay TTY: 800-366-6888 or 711
Email: dhsmed@nd.gov
- ▶ **Children's Health Insurance Program (CHIP)** – This is a federally funded program offering discounted health insurance coverage for children of working families.
North Dakota Healthy Steps Children's Health Insurance Program
Department of Human Services
877-543-7669 (toll-free)

Support and Services to Caregivers

- ▶ **The North Dakota Family Caregiver Support Program** provides information, assistance, counseling, support groups, training, respite care and supplemental services to grandparents who are caring for children.
North Dakota Department of Human Services
Aging Services Division
North Dakota Aging and Disability Resource-LINK
1-855-GO2LINK or 855-462-5465
ND Relay TTY: 800-366-6888
Email: carechoice@nd.gov
Website: www.carechoice.nd.gov

Legal

When trying to make decisions about custody, a good lawyer is very important. An experienced lawyer can provide advice about the consequences of different types of legal custody and help grandparents decide what would be best for their family. If you can't afford to pay a lawyer, you may be able to get good legal help. Contact Legal Services of North Dakota, which is a

nonprofit organization providing legal assistance in a variety of matters to low-income and elderly North Dakotans. Help is available by phone or website.

- ▶ Under age 60, call toll-free 800-634-5263
- ▶ Age 60+, call toll-free 866-621-9886
- ▶ Website: www.legalassist.org

Recommended Resources

Grandparents Raising Grandchildren

www.aarp.org

- Health care
www.aarp.org/relationships/friends-family/info-08-2011/grandfamilies-guide-health.print.html
- Education
www.aarp.org/relationships/friends-family/info-08-2011/grandfamilies-guide-education.print.html

North Dakota TANF – Economic Assistance Policy Division

www.nd.gov/dhs/services/financialhelp/tanfjobs.html

North Dakota Supplemental Nutrition Assistance Program

www.nd.gov/dhs/services/financialhelp/foodstamps.html

North Dakota Healthy Steps Children's Health Insurance Program

www.nd.gov/dhs/services/medicalserv/chip/

North Dakota Aging Services Division

www.nd.gov/dhs/services/adultsaging/caregiver.html

National Indian Child Welfare Association (NICWA)

<http://nicwa.org>



References

2019 North Dakota Kids Count Fact Book

American Association of Retired Persons. The grandparent study 2002 report. Washington, D.C. (2002). Available: www.aarp.org/relationships/grandparenting/info-2002/aresearch-import-481.html

Fact sheets for grandparents and other relatives raising children. www.aarp.org/content/dam/aarp/relationships/friends-family/grandfacts/grandfacts-northdakota.pdf

Grandparents Raising Grandchildren, North Dakota Kids Count, Volume 3, (3), July 2005.

Children in the care of grandparents in North Dakota. <https://datacenter.kidscount.org/data/tables/108-children-in-the-care-of-grandparents?loc=36&loct=2#detail/2/36/false/1729,37,871,870,573,869,36,868,867,133/any/433,434>

Legal Issues in Caring for your Grandchildren (2009). Grandparents Raising Grandchildren, Cooperative Extension, University of Georgia.

North Dakota Statutes. 14-09-05.1 Title 14, Chapter 14-09, Section 14-09-06 (N.D.C.C. 14-09-06).

http://www.benchmarkinstitute.org/t_by_t/substantive/guide_to_low_income_tax_credits.pdf

Parenting the Second Time Around, Grandparents Raising Grandchildren in Home Visiting.



Disclaimer: This information is not legal advice. If you have a legal problem, you should talk to a lawyer and ask for advice about your options.

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