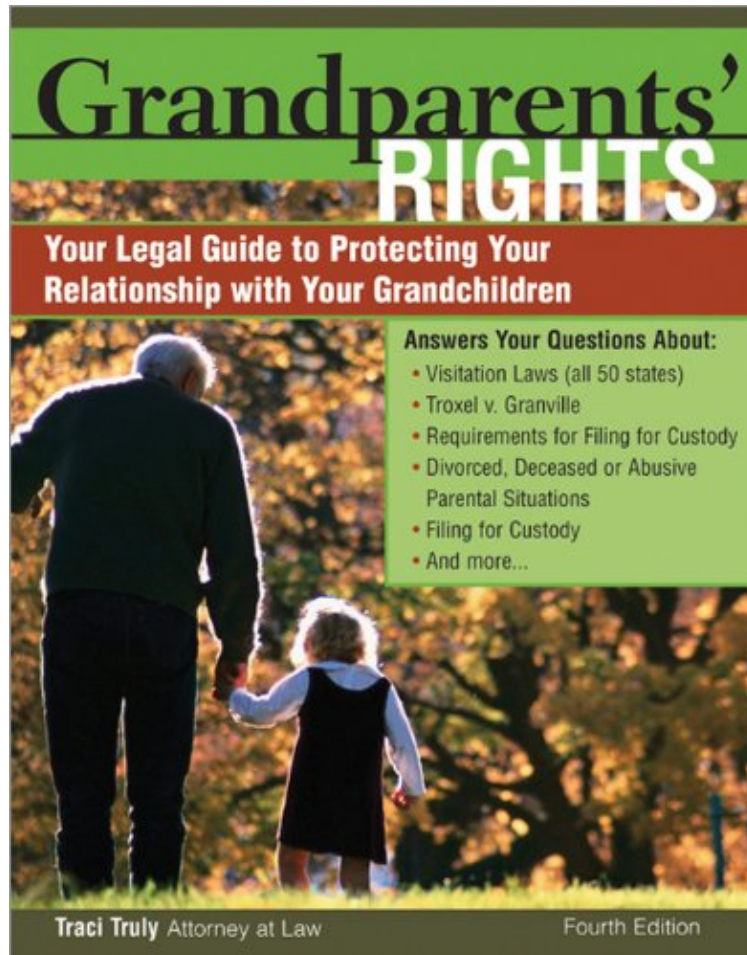


Grandparents' Rights: Your Legal Guide to Protecting the Relationship with Your Grandchildren

Traci Truly

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Traci Truly : Grandparents' Rights: Your Legal Guide to Protecting the Relationship with Your Grandchildren before purchasing it in order to gage whether or not it would be worth my time, and all praised Grandparents' Rights: Your Legal Guide to Protecting the Relationship with Your Grandchildren:

3 of 3 people found the following review helpful. did not helpBy Garythere seem to not be any right for grandparents, so this book did not help guide for the rights if there are none

Your Grandchildren Need You in Their Lives.Grandparents have long been the backbone to any family. In times of trouble, they are the first place struggling parents turn. However, when the struggles turn into a bitter divorce battle, it is the grandparents who are punished. Unfortunately, it is the children who ultimately suffer.As a grandparent, you provide a sense of history and stability to your grandchildren. You are a source of inspiration to them and you instill in

them the value of family. When, for whatever reason, you are prevented from being a part of their lives, you feel the pain, but they are the ones who lose. You have the right and the obligation to stand up for yourself and for your grandchildren. Grandparents' Rights fully explains what you can do to protect your relationship with your grandchildren. Learn the steps you can take to get the courts on your side and guarantee that you will be able to spend time with them. Written in easy-to-understand language, Grandparents' Rights teaches you how to:- Work with your grandchildren's parents to find the best solution- Identify when legal action may be necessary to enforce your rights-Take action if you think your grandchildren are being abused- Increase the time you get to spend with your grandchildrenContinue to Be a Part of Your Grandchildren's Lives.

About the Author Traci Truly received her law degree and undergraduate business degree from Baylor University. She has practiced family law in Dallas, Texas since 1985. In her general practice, she has handled various types of cases, representing many parents and grandparents in domestic relations matters. Ms. Truly has written or coauthored several legal guides, including Teen Rights, which was named to the New York Public Library's 2003 Books for Teen Age list. Her other works include Child Custody, Support, and Visitation in Texas, Making Music Your Business, and How To Start a Business in Texas. She has appeared on Fox Television (The Rob Nelson Show), on the Fox News Channel (Dayside with Linda Vestor), in Seventeen Magazine, and in the AARP Bulletin. Excerpt. Reprinted by permission. All rights reserved. Important Factors to Consider in Filing for Custody of Grandchildren Excerpted from Grandparents' Rights, 4E by Traci Truly 2005 Over the past twenty-five years, the number of grandparents rearing their grandchildren has risen dramatically. Over four million children live with their grandparents, with nearly one million of those living away from their parents. Most commonly, those parents are absent as a result of drug or alcohol abuse, making them either unable or unwilling to parent their own children. Other factors influencing the rising rate of grandparents rearing their grandchildren include the divorce rate and the economy. Many parents, especially single parents, are unable to afford to care for their children. Sometimes, abuse by a parent or stepparent is a factor that prompts grandparents to seek custody of their grandchildren. QUALIFYING TO FILE FOR CUSTODY Just as grandparent visitation statutes establish prerequisites for visitation, the states have requirements that grandparents must meet in order to obtain legal custody. In order to have standing to seek custody in most states, you will have to establish that you had significant past contacts with your grandchild. Assuming that the parents appear in court and contest your attempt to get custody, the greatest hurdle you will have to overcome is the parental preference. In the overwhelming majority of states, the court starts out presuming that the parents should have custody. The burden is on the grandparents to overcome that presumption. Various states use different words and phrases to describe what it takes to overcome that burden, but generally you must prove that the parents are unfit in order to take custody from them. In states that do not have the parental preference, the best interest of the child is the determining factor. Regardless of the standard used by your state, there may be a number of reasons or situations that will cause you to consider filing a lawsuit to get custody of your grandchildren. REASONS TO CONSIDER FILING FOR CUSTODY Before you make the decision to file for custody, you will need to weigh the factors that might help you win a custody case and the factors that might cause you to lose. Although each case is different and there may be factors unique to your case that you should also consider even though they are not covered in this book, there are some frequently occurring situations that you should know about. Abusive or Neglectful Parents In today's society, there are more reported cases of abuse and neglect than ever before. Sometimes, this is a reflection of drug or alcohol addiction. There are many causes of abuse. Addicted parents may leave their children with the grandparents, forcing them to seek custody. In other cases, the grandparents may become the primary caregivers for their grandchildren as a result of action by a child welfare agency. Often, grandparents may become aware of instances of abuse or neglect on their own and decide to seek custody in order to protect their grandchildren. Regardless of how the grandparents become involved in custody litigation relating to abuse or neglect, a contested custody suit of this nature is likely to be very messy. Most parents who invest the time and money to contest a custody case will vigorously deny that they have abused or neglected their children, especially if the possibility of criminal charges stemming from the abuse or neglect exists. Physical abuse can be difficult to prove, unless there are injuries that could only be the result of abuse that have been documented by third persons. For example, a scar or bruise in the shape of a coiled extension cord is difficult to explain as anything other than abuse-a black eye is subject to many explanations. Sexual abuse is even more difficult to prove. There is rarely any physical evidence of sexual abuse of children. In fact, the only evidence may be the testimony of the child. Very young children are not legally competent to testify. Older children, although allowed to testify, are easily confused about dates, times, and sequences of events. Children are also easily suggestible, as they tend to be eager to please, and their allegations of sexual abuse are often countered by the coaching defense. The coaching defense involves claims by the alleged abuser that some adult, usually the person bringing forward the allegation, has coached or manipulated the child into saying he or she has been sexually abused. Undertaking a case of this nature is a very serious endeavor. It requires a major investment of time and money (even if you represent yourself) and is difficult to handle without a lawyer. There is also the very real possibility that if you are unable to convince a judge or jury that the abuse has occurred, you will be totally excluded from the lives of your grandchildren. In spite of those odds, it is also difficult to stand by and do

nothing if you have reason to believe that your grandchildren are being abused. Neglect is also difficult to prove, as there may not be much evidence other than the testimony of family members, many of whom will not want to take sides in a custody fight. The testimony of family members is also more easily attacked than that of disinterested third parties, especially when there is little or no physical evidence to back the claim. In some cases, however, third party evidence will be available. For instance, if the police or child welfare investigators are called in because the children have been left alone somewhere, you will have the testimony of the police officers or investigators to help your case. If you are able to establish the existence of abuse or neglect, this will be sufficient in most instances to show that the parents are unfit. This alone, however, will not entitle you to custody. You will also have to convince the judge or jury of your fitness as custodian, and show that awarding custody to you is in the best interest of your grandchildren. There may be problems in proving these matters to the satisfaction of the court. (Some of the obstacles are discussed later.)

Unstable Parents Another situation that may give rise to a custody fight is when the parents are unstable. Instability can refer to a number of situations within the family. A family may be financially unstable or emotionally unstable. When taken in conjunction with the laws of the particular state, the nature and severity of the financial instability determine whether or not a grandparent can get custody. For example, if the financial instability involves frequent job and residence changes, that alone will not be enough for a nonparent to get custody in most states. However, if the financial instability means that the child is living in substandard housing without the basic necessities, the grandparents stand a much better chance of having enough evidence to win. The same may be said of emotional stability. Particularly in states where the parents have a statutory preference for custody of their children, it will take a significant amount of instability to defeat the presumption. The presence of significant instability is a factor that triggers an evaluation of whether or not a grandparent should seek custody of the grandchildren.

Absent Parents Parents may be absent from their children's lives for a number of reasons. The most obvious reason for a parent to be absent is death. Another reason is due to drug and alcohol abuse. An addicted parent may leave his or her child with the grandparents and vanish from the scene. No matter what the reason for the absentee parents, this situation will likely force a grandparent into court to seek custody. In that instance, the grandparents will need custody for legal reasons, such as to consent to medical care and to enroll the child in school. The basic problems involved in a contested custody case do not apply in this situation, as the absent parents are not likely to be in court contesting the change of custody to the grandparents.

OBSTACLES TO GETTING CUSTODY When the parent does contest the custody case, there are some significant obstacles facing the grandparents.

Age One difficulty a grandparent may encounter is age. One of the factors a court considers in making a custody determination is long-term stability of the child's situation. All other things being equal, a younger grandparent will have an advantage over an older one. Whether accurate or not, an older grandparent is at a disadvantage. Especially when the custody of younger children is involved, the court will question the remaining life span of older grandparents. Health problems, either existing or potential, are also a factor the courts use in the custody equation. The judge will wonder whether the older grandparent will be physically able to care for the child until the child reaches adulthood. This is the reason the younger, healthier grandparent has an edge over a grandparent who is older or who has health problems.

Your Track Record as a Parent A second factor in the custody equation is the grandparents' track record as parents. If you are competing against your son or daughter for custody of your grandchild, you should expect your son or daughter to bring up every mistake you ever made as a parent. If the discipline methods you employed as a parent would be considered abusive by today's standards, you will have a disadvantage to overcome, regardless of the methods you use to discipline the grandchild. If you were a largely absent parent who left your own children mostly with other relatives or sitters, this fact will count against you in the eyes of the judge or jury. On the other hand, if there is not any negative evidence, or only minor negative evidence, this can be an advantage for you.

Your Relationship with Your Children A third potential disadvantage to grandparents seeking custody is the current state of their relationships with their own children. A grandparent who has a poor or nonexistent relationship with some or all of his or her children will be at a significant disadvantage when compared to a grandparent with good relationships with all of his or her children. Another issue contained within the overall parent-child relationship is the grandparent's motivation for seeking custody of a grandchild. Are you filing because you still feel the need to control your son's or daughter's life? Are you filing to fulfill some maternal or paternal need of your own? Are you filing because you wish you were your grandchild's parent? A "yes" answer to any of these questions indicates that you should reevaluate the need to file in light of your motivation for filing. Filing to punish your son or daughter for some affront or misdeed is also not well-considered.

Your Financial Situation Your financial situation may also become an obstacle in a contested custody case. Another of the many factors that goes into a determination of what is in the child's best interest is the ability to meet the financial needs of the child. Everyone recognizes that rearing a child is an expensive proposition. Many grandparents will find themselves in the position of being on a fixed income. With costs rising every year, your income may not be sufficient to take on the expenses of caring for your grandchild. While this issue may not be the one that solely determines the outcome of your case, it is something that may make a difference in a close case.

Parental Preference Another factor involved in custody disputes is one that has been previously mentioned. That factor is the law of parental preference. This obstacle is one that should not be taken lightly. Even if you are fairly young, healthy, and financially secure, with a wonderful record as a parent or

grandparent, and could easily prevail in a state where the only test is the best interest of the child, you may not be able to get custody in a state with a parental preference. This law, by itself, may be enough to keep you from getting custody of your grandchild. The parental preference is stronger in some states than in others, and you will need to determine the strength as well as the existence of this policy. Before you file a lawsuit for custody, you need to evaluate the evidence you will be able to use in court in light of the presumption favoring the parents in custody cases.

GROUNDSAs a general rule, the qualifications for obtaining custody are not as specific as those for visitation. However, that does not necessarily mean that your state does not have any requirements. These requirements are often referred to as having standing to sue or just standing. For example, Texas has specific Family Code provisions that govern standing to sue (102.003 and 102.004). These laws say that a suit affecting the parent-child relationship (Texas terminology for a custody suit) can be filed by the following: a parent; the child through a court-authorized representative; a custodian or person having the right of visitation with or access to the child appointed by an order from another state or country; a legally appointed guardian of the child; a governmental entity; a licensed child-placing entity; a man claiming to be the biological father of the child; or, a person with whom the child has resided or who has had actual care, control, or possession of the child for at least six months, ending not more than ninety days prior to the filing of the suit. A grandparent is given additional specific standing if the court order requested is necessary, because the child's present circumstances would significantly impair the child's physical health or emotional development, or if both parents, the surviving parent, or the managing conservator or custodian consented to the suit. Once you have reviewed your status in light of the parental preference and have decided to seek custody, the next standard you will run into is the best interest of the child. Some states simply define this general concept, while other states have specific statutory guidelines for determining the best interest. Typical of these guidelines is 25.24.150 of the Alaska Statutes, which includes the following:...the physical, emotional, religious, and social needs of the child; the capability and desire of each parent to meet these needs; the child's preference if the child is sufficient age and capacity to form a preference; the love and affection existing between the child and each parent; the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent; any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents; evidence that substance abuse by either parent or other member of the household directly affects the emotional or physical well-being of the child; and other factors that the court considers pertinent. Even if your state does not have specific guidelines included in its statutes, the Alaskan guidelines will be similar to what courts in your state will consider as part of the best interest standard. As a reminder, if the parties reside in different states, the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act will also apply.

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACTAs noted before, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is a law designed to avoid conflicts between courts of different states in child custody situations. All fifty states and the District of Columbia have enacted some version of this law, and most provisions will be the same in every state. However, before you file anything in a case in which the UCCJEA is involved, be sure to check the laws for your state, as it is possible for state legislatures to make modifications to the provisions. Generally, the courts in a particular state can hear a child custody case in any of the following situations. If that state is the home state of the child on the date the legal proceeding began. If that state has been the child's home state within six months of the date the legal proceeding began. If the child has been removed from that state by someone and a parent continues to live in the state. If the child and at least one parent have a significant connection with that state, other than mere physical presence in the state. If the child is physically present in the state and has either been abandoned or is in danger of being abused or neglected. If another state has deferred to your state. If you otherwise qualify for a court in your state to hear a custody case, the court can still refuse to hear your case. One reason for this refusal might be that another proceeding concerning custody of the child was already on file in another state. Another reason might be that your state's court decides that it is an inconvenient forum. In making this determination, the court will consider the best interest of the child, the connections the child and his or her family have to other states, and the availability of substantial evidence in the other state. If you have wrongfully taken the child from another state or engaged in similar reprehensible conduct, a state can also decline to exercise jurisdiction. Assuming your state can hear your custody case, there are some specific provisions in the UCCJEA with which you must comply. The most important of these relates to information that must be provided to the court in or with the first document you file. This information must be provided in the form of an affidavit. Form 6 in Appendix D is a Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit, which can be used if you cannot find a specific form for your state. (see form 6, p.179.) Some states require a form like this to be filed in all domestic relations cases involving children, if for no other reason than to assure the judge that the UCCJEA does not apply. Some states may allow the same information to be included in the petition. The court clerk may be able to tell you if you need to file such an affidavit.