



LAW OFFICE OF  
BRYAN FAGAN  
— PLLC —



# GRANDPARENTS' RIGHTS IN HOUSTON, TX

WORK WITH A HOUSTON ATTORNEY

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## INTRODUCTION

Thank you for downloading our special report: about Grandparents' Rights, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

## GRANDPARENTS' RIGHTS IN TEXAS

### RETAIN REPRESENTATION FROM A HOUSTON FAMILY LAWYER

Under Texas law, parents and grandparents are not seen as equal. Even if a grandparent petitions to be given visitation or custody, there's no guarantee that the court will grant the request. There are several factors for a judge to consider before making his or her decision, which is why it's imperative that you retain legal representation from a trusted Houston family attorney if you find yourself confronting this type of visitation or custody issue.

The Law Office of Bryan Fagan, PLLC aims to deliver the highest standard of legal service to their clients in all of their family law matters. If you are a grandparent who is fighting to preserve the relationship you have with your grandchildren, you'll need a legal professional on your side who strives to ensure that you and your grandchild's interests are prioritized from start to finish.

### ESTABLISHING VISITATION AND CUSTODY FROM THE COURT

The Texas court cannot impede on a parent-child relationship unless a parent is unable to provide for the child or meet his or her emotional and physical needs. Although a grandparent's rights are always seen as secondary to a parent's rights in the eyes of the law, exceptions can and do happen when it is in the child's best interests.

### TEXAS' GRANDPARENT STATUTE ALLOWS VISITATION WHEN:

- ☑ At least one biological parent still has parental rights
- ☑ The grandparent proves that denying visitation would harm the child
- ☑ The grandparent's child (the child's biological parent) has been in jail for at least 3 months, declared mentally incompetent by the court, has died or does not have court-ordered visitation

### TEXAS' GRANDPARENT STATUTE ALLOWS CUSTODY OF A GRANDCHILD WHEN:

- ☑ The child's current home environment is cause of serious concern regarding his or her well-being
- ☑ One of the parents has agreed to a change in custody
- ☑ Grandparent Rights, Standing, and the Parental Presumption
- ☑ Custody and Visitation Rights of Grandparents in Texas
- ☑ Grandparents' Rights in Texas

### YOUR CASE IS OUR PRIORITY

The bond between grandparents and their grandchildren is not one that is meant to be broken. As a grandparent, you should be aware of your rights and how our firm can fight for them. When you hire our firm, you can trust that we will do everything we can to protect the relationship you have with your grandchildren.



## GRANDPARENT RIGHTS, STANDING, AND THE PARENTAL PRESUMPTION

The other day I had a consult with a husband and his wife because they had serious concerns regarding the grandparents of their kids. From my conversation with this couple I learned that the Grandparent's had been threatening to taken them to court and get "Grandparent's Rights" and take the children away from the parents.

### DOES TEXAS LAW ALLOW GRANDPARENTS TO TAKE YOU KIDS?

Many parents have had a passing fear that someone may come to their home night and take their children away. Hopefully, though this is not a fear that it would be your child's Grandparents.

There are certain circumstances in which law enforcement might be able to show up and remove your children from your home including if you are using illegal drugs, if you are leaving them alone at the age of 5 or less, you are not feed them, etc.

In such circumstances you might find yourself visited by a CPS worker and your children may end up being places with a Grandparent. However, a Grandparent does not have special rights to your children. There are certain circumstances where a grandparent may gain rights to your children through a lawsuit in court.

### THERE ARE NO AUTOMATIC GRANDPARENT'S RIGHTS

In my consult with the Parents I found out that the Grandparents had been using some real intimidation to make the couple question themselves and put them in fear of losing their children.

From my brief encounter with them they seemed like a normal couple from a nice neighborhood. They did not seem like anyone who would ever have a reason to fear that CPS would ever knock on their door.

They both worked hard at their jobs, would come home and make sure their children had a meal to eat. However, these Grandparent would then criticize the parent that it was less than nutritious or that it was not a homemade meal and was carryout.

These Grandparents made a special effort to points out everything the parents were doing wrong. I let the parents know at this point that from everything I heard so far they could just ignore the Grandparents.

Some states are more court friendly to grandparents than in Texas. Texas has taken the approach that grandparents can see their grandchildren any time a parent of that child wishes. However if the parents object to grandparent visitation then they will not happen.

In other words grandparents have no legal automatic visitation rights to their grandchildren they would have pursue them by going to Court.

### PARENTAL PRESUMPTION - A STEEP MOUNTAIN GRANDPARENT'S MUST CLIMB

There was more to story. The Grandparents were sending threatening emails to the couple. They were not content to just tell them how to raise the grand kids, but were planning on filing a lawsuit because they did not think the parents were raising the children right.

In Texas putting on evidence that the non-parent would be a better parent to the child is not enough to win in court and become the managing conservator of a child instead of a parent. More is required.

If a parent is simply denying a grandparent access to a child a courts will presume that the parents are acting in the child's best interest. Under Texas Family Code § 153.433(a)(2) a grandparent will have to overcome this by a preponderance of the evidence.



A non-parent can only gain possession or access of a child over a parent when they can show under Texas Family Code § 153.432 (c) that not doing so would "significantly impair the child's physical health or emotional well-being."

What this means is that once parents and grandparents walk into a court in a battle regarding the grandchildren they are not on equal footing. Parents are ahead and not just a little. However, before grandparents can even get to court they have another problem.

### **STANDING THE BATTLE BEFORE THE CUSTODY BATTLE**

Before the grandparents can bring a lawsuit in Courts regarding their grandchildren, Texas law requires they have standing to do so.

The Texas Family Code states that the court may order reasonable possession of or access to a grandchild by a grandparent if:

- ☑ at the time the relief is requested, at least one biological or adoptive parent of the child has not had that parent's parental rights terminated;
- ☑ the grandparent requesting possession of or access to the child overcomes the presumption that a parent acts in the best interest of the parent's child by proving by a preponderance of the evidence that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being; and
- ☑ the grandparent requesting possession of or access to the child is a parent of a parent of the child and that parent of the child:
  - ☑ has been incarcerated in jail or prison during the three-month period preceding the filing of the petition;
  - ☑ has been found by a court to be incompetent;
  - ☑ is dead; or
  - ☑ does not have actual or court-ordered possession of or access to the child.

## **CUSTODY AND VISITATION RIGHTS OF GRANDPARENTS IN TEXAS**

The attorneys with the Law Office of Bryan Fagan, PLLC have represented grandparents in many cases and as we could tell you, the circumstances of each family were very different and represented just how diverse family situations are in today's world.

While one set of grandparents may only seek visitation rights with their grandchildren, other grandparents may want to pursue custody of the grandchildren for any number of reasons. As such, our office has seen an increase in Grandparents who are interested in learning more about their rights within the context of attempting to:

- ☑ gain conservatorship and/or
- ☑ visitation of their grandchildren.

What follows is a blog post that details some of the more important aspects of Grandparents' rights in the State of Texas and how they can impact you and your family.

### **STANDING OR THE RIGHT TO FILE A CASE**

In order to even file a custody lawsuit in Texas, a potential filing party must have what is called "standing" to do so. Standing for family law cases requires that a potential party show that they are a person who has suffered an "injury" of some sort sufficient to be able to file a lawsuit to address that injury.

Chapter 102.003 of the Texas Family Code lays out the standing requirements for filing a suit in Texas. Typically grandparents qualify as a relative of the child at issue within the third degree of consanguinity.



## OVERCOMING THE PARENTAL PRESUMPTION

Once a Court determines that a Grandparent does have standing sufficient to proceed with a lawsuit there are further hurdles that must be overcome in order for a Court to rule in their favor. Texas applies a parental presumption on cases where Grandparents are attempting to assert a right to visitation or custody of a grandchild.

This presumption is that the best interest of the child is served by awarding custody to a parent or parent(s) and that it is presumed that parents act in their child's best interest in any action that they take in relation to the child.

For those that are interested, Texas Family Code section 153.131(a) details this presumption. To be successful in an original suit, a Grandparent or other nonparent must rebut this presumption by showing that the appointment of a parent as conservator would significantly impair the child's health or development, or that the natural parent has voluntarily relinquished the child (In re V.L.K., 24 S.W.3d 338, 341 (Texas, 2000)).

## ACTUAL CARE OF THE CHILD

In order so a Grandparent may sue for primary conservatorship of their grandchildren (to allow the grandchildren to reside with them primarily and to have rights and duties to the children for educational, medical and psychiatric decisions, etc.) the grandparent needs to have had actual care, custody and control of the child for at least the previous six months before filing (Texas Family Code section 102.003(9)).

Parents who relinquish their rights and physical custody of the child to the Grandparents. When the parents attempt to come back into the children's lives and continue where they left off in terms of their parenting, some Grandparents do not willingly agree to this.

### EXAMPLES #1

Two clients situations come to mind that I think can go a long way towards illuminating the issues and variances between particular situations involving Grandparents rights in Texas. The first involves two grandparents whose adult son was in prison but whose daughter in law was raising the grandchildren without the involvement of our Grandparent-clients.

Initially their hope and intention was to file a lawsuit to be named a joint conservator of the grandchildren. However, after speaking with them it was determined that their best opportunity was to present a case to the Court to gain visitation with grandchildren.

Ultimately, the children's mother and our clients negotiated a settlement in mediation which allowed for the grandparents to see the children on a monthly basis. This way the grandparents had peace of mind knowing that there would be a court order in place that allowed for them to have guaranteed time with their grandchildren.

Another positive aspect of this case (from the grandparents' perspective) was that the children's mother was facing criminal charges of her own and is set to stand trial later this year. The fact that these grandparents went through the effort to ensure that they have relationships with their grandchildren can show a court in the future that they have the continuing ties necessary to give them an opportunity to become conservators if neither parent can fulfill those duties.

### EXAMPLE #2

The other grandparent case that sticks out in my mind is one involving a Grandmother and her two grandchildren that she had been raising on her own since the death of the children's mother (and the Grandmother's daughter). The grandchildren's father was not involved in their lives and had no intent to disrupt the grandmother's relationship or caretaking of the children.

However, the grandmother was not able to apply for benefits, health insurance, or get access to school records without being a conservator of the children under Texas law. This client hired us to negotiate directly with the children's father and to draft an Order that named her primary conservator of the children.





Her intent was not to eliminate the father's rights to the children- all she wanted to do was to have the legal distinction of being the primary caretaker for the two boys so that she could take steps to benefit their lives on a daily basis.

Ultimately, our office was able to work with the father on an Order that allowed our client to get her primary rights to boys while allowing him to retain his rights and duties as a dad. At the final hearing, the judge was impressed with our client's attitude and generosity towards her grandchildren and made sure our client was aware of his admiration.

Whether a grandparent is requesting visitation or conservatorship rights to their grandchildren, experienced representatives are essential to this process. The attorneys with the Law Office of Bryan Fagan, PLLC have the both the knowledge of the legal system in Texas and the advocacy skills to turn that knowledge into results for clients. Please contact our office today with any questions and for a consultation with one of our attorneys- free of charge.

## GRANDPARENTS' RIGHTS IN TEXAS

Unfortunately, difficulties often arise when raising children. Whether the circumstances were avoidable or unforeseeable from the perspective of the parents, sometimes other family members feel the brunt of one or both parents' issues with each other. One casualty of divorce is when a parent does not allow the child to see their grandparents as a result of discord at home.

Grandparents have a special role in families, perhaps second only to that of the parent-child relationship. When divorce occurs parents can genuinely feel hurt to the point where they feel the need to protect themselves and their children. When I speak with a potential client of the Law Office of Bryan Fagan, PLLC and they have question about grandparents' rights in Texas the conversation that we went into isn't always an easy one to digest.

### WHAT ARE GRANDPARENT RIGHTS IN TEXAS?

The state of Texas, like all other states, have specific laws that outline the extent to which grandparents have rights to visit with and have possession/access of their children. In today's world where the nuclear family isn't so nuclear anymore this isn't surprising. What is surprising to many is how our state comes down on this issue. There are laws in the state that related to child custody and their grandparent(s) while others apply generally to adults of all sorts but do not necessarily exclude grandparents.

### TEXAS HAS STRONG PRO-PARENT RIGHTS

In Texas, our laws are strongly pro-parents' rights. This means that even if grandparents do not approve of how mom and dad are handling the kids, it does not mean that they can file a lawsuit and interrupt the relationship between parents and their children. It is a presumption that parents are acting in the best interest of the children in basically all circumstances, absent issues of abuse, neglect and other extreme fact patterns.

### GRANDPARENTS CAN ESTABLISH RIGHTS IN CERTAIN SITUATIONS

Grandparents, simply put, are not presumed to have a right automatically to be able to have access and possession to their grandchildren. However, when circumstances arise that have the potential to have a detrimental effect on the family a court can step in. Circumstances sufficiently important to have a court enter the fray include the death of one or both parents, a parent going to jail, violence in the family, and the termination of a parents' parental rights.

One case that I can write about from personal experience involves two grandparents and their grandchildren. This was a case that we recently helped to settle. The facts and circumstances are extremely unique and I think do a great job of illustrating the above points. Approximately two years ago our clients' son was arrested on charges relating to a sex-crime. The son's two children, both teenagers, were under the direct control and supervision of their mother. This would begin to be an issue for our clients as they found out that mom wasn't too keen on them having any time to spend with the grandkids. What made the situation even worse was that their son wanted nothing to do with his parents after he was sent to prison. Our grandparents had no advocates for them to be able to see and spend time with their grandchildren.



After months of not even having the ability to speak to their grandkids on the phone or in person, a phone call was placed to our office for a consultation with these two grandparents. After allowing them an opportunity to air their grievances with the kids' mother and life in general it was time for our office to be able to speak to the grandparents about their rights vis a vis their grandchildren. When I went through the basics of grandparents rights' in Texas it was unsurprising that they were not feeling too great about their chances to get more time with their grandchildren. I let them know that they are not completely shut out as far as rights and that if they felt strongly about the situation they ought to consider filing a lawsuit to see where the process leads them.

Fortunately for them, they decided to heed this advice and they began the somewhat winding process of having their case filed in the courts here in Harris County. We were able to schedule mediation with the mother's attorney and have all parties present in a setting where a settlement would be most likely. Our office has written blog posts previously on mediation and this case offered another example of why our office strongly endorses this process. While grandma and grandpa did not get everything they wanted at the outset of the case, they were able to work with the mother of their grandchildren in order to arrive at a visitation schedule that allows for them to re-build a relationship with the children.

### **WHAT CAN GRANDPARENTS DO TO HELP THEIR CASE?**

What helped the grandparents' case? For starters, our office encouraged them to diligently take notes on their thoughts and concerns about the case. This allowed our office to answer their questions quickly and readily. Secondly, we let these clients know early on that if they could present a strong case of having a close relationship with the children then that could really go a long way towards showing the kids' mother that going to court could result in the grandparents presenting some convincing evidence as to why they need to be awarded time with their grandkids due to a long lasting bond.

While it is impossible for the attorneys at the Law Office of Bryan Fagan, PLLC or any other attorney for that matter to guarantee a client any particular result in their case, it is possible through diligent communication and preparation to avoid a protracted and costly case and arrive at a successful settlement fairly early in the life of a case. Grandparents certainly have a tough road to hoe when it comes to negotiating time with their grandchildren- especially if one or both parents are against the idea for one reason or another.

To learn more about your rights as a grandparent, or for more information on any family law issue, please contact the attorneys with the Law Office of Bryan Fagan, PLLC. Our office has attorneys and staff members ready and standing by to meet you and to learn more about your particular legal situation.





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## **WE'RE HERE FOR YOU**

When it comes to your financial future, your peace of mind matters. No matter where you are in the divorce process, we are always available to help you protect your assets and safeguard your future. As a Texas law firm exclusively devoted to divorce and family law, our experienced divorce attorneys will explain your options and support you throughout the process. Please contact us at (281) 810-9760 if you would like to schedule a free confidential consultation

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