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## **Grandparent Visitation in New Mexico**

New Mexico law does not give a grandparent any automatic rights to custody over their grandchild. Instead, grandparents have the privilege of visitation with their grandchildren and that visitation may only be granted under certain specific instances, which are defined by statute in NMSA § 40-9-2.

Grandparents cannot interfere with the rights of legal parents, or force visitation with grandchildren upon unwilling parents, when a family is intact. However, a grandparent may petition the court for visitation as a part of any divorce proceeding, legal separation or paternity case involving their grandchild. A grandparent may also petition for visitation in the unfortunate event that their child (who is the parent of the grandchild) dies.

Finally, a grandparent may petition for visitation when the grandchild has lived primarily with the grandparent. If the grandchild is under the age of six, the grandparent can petition for visitation if the grandchild has resided with the grandparent for a period of three or more months. If this grandchild is over the age of six, then the grandchild must reside with the grandparent for a period of six or more months in order to support a grandparent's petition for visitation.

The Court will only grant a petition for grandparent visitation if it determines that such visitation is in the best interests of the grandchild. In determining the best interest of the grandchild, the Court will apply many of the same standards it uses to decide custody between two parents and may refer the parties for mediation or evaluation, especially in the Second Judicial District in Albuquerque and other jurisdictions that have a family court clinic specifically created to evaluate custody.

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