
Legal Issues in Caring for Your Grandchildren

As a grandparent raising your grandchildren, you may not have imagined being involved with the legal system. But if your grandchildren live with you for a long time, you may eventually need legal support and advice to provide the best care for them. It's important for you to understand laws affecting grandparents raising their grandchildren.

The following information is a brief introduction to the legal system as it applies to grandparents caring for their grandchildren. This publication is NOT intended to substitute for actual legal advice. If any of these legal issues affect you, your first step is to seek advice from a qualified attorney.

Communication is Key

If your grandchildren's parents are still involved in their lives, it's important to communicate with them about legal issues that affect their children. As a grandparent raising your grandchildren, you need to be able to register your grandchildren for school and take care of their medical needs. But unless you have legal custody of your grandchildren, their parents are still legally responsible for those decisions. Talk with the parents and try to agree on how to handle these issues. Remember that what's best for the children is most important!

Consent Laws

Some states have what are called "consent laws," which allow your grandchildren's parent to sign a form giving you the right to enroll the children in school and to seek medical care for them without going to court. Your grandchildren's school or pediatrician's office may have a copy of the consent form. Consent forms do not give you legal custody of your grandchildren. If you and the children's parents ever disagree about their care, the parents are still legally responsible for making the decisions.

Legal Custody

In order to have legal responsibility for your grandchildren, you need to obtain some type of legal custody. Legal custody gives you more rights related to your grandchildren's care. The courts will make custody and visitation decisions based on what they think is in the best interests of the children.

Reaching an Agreement on Custody

Any type of custody is simpler if parents and grandparents agree. No matter what type of custody grandparents seek, family conflict can be reduced or eliminated if parents and grandparents sort out custody issues together. Custody is easy to decide in some cases, but sometimes parents and grandparents have trouble agreeing. What's best for the children should guide all of your discussions and decisions.



Consider negotiation or mediation if you want to work things out together but are having a hard time agreeing on what's best for the children. In negotiation, the lawyers take the lead; you and your lawyer sit down with the parents and their lawyers to work out a custody plan. In mediation, you and the parents can sit down together, with or without lawyers present, with a person trained to help people work out disagreements. Talk with a lawyer about these strategies and be sure to consult your lawyer before you sign any agreements.

Types of Legal Custody

In most states, there are three ways to obtain legal custody.

Custody Order

In most states, a custody order from a judge is the most common way to get legal custody of your grandchildren. When you get a custody order, you are responsible for the child's day-to-day care, including seeking medical treatment and enrolling them in school. With a custody order, the children's parents continue to have a legal relationship with the children. The parents have the right to visitation (unless a judge denies or limits the visits) and could request custody again someday. Many families like custody orders because they are relatively easy to get and still allow the parents to play a legal role in the children's lives. A custody order may be a good choice if there is a chance that the parents will take the child back. If there is a problem with a parent, ask your lawyer to make sure court records state why the parents could not care for your grandchild.

Legal Guardianship

With legal guardianship, similar to a custody order, you accept day-to-day responsibility for the children, but the parents retain some rights. The main difference is that legal guardianship usually is granted in probate court (the same court that handles wills after someone dies). Probate court has different rules and standards than superior court, where custody orders usually are decided. If you are declared your grandchildren's legal guardian, you may have to return to court periodically to report on your care of the children. Your lawyer can tell you more about this requirement.

If you are trying to decide between a custody order and legal guardianship, consider asking your lawyer the following questions. The answers to these questions vary from state to state and sometimes even across counties. Considering these questions can help you decide which type of custody is better for your family.

- Which type of custody would cost more, take longer, and require return trips to court?
- How would each choice affect cash benefits (such as TANF or food stamps) or health insurance coverage for your grandchildren?
- How would each choice affect the parents' ability to visit the children?
- How would each choice affect the parents' ability to ask that the children return to their custody?

Adoption

Adoption is a permanent arrangement. If you adopt your grandchildren, you become their legal parent in every way, and the legal relationship between the grandchildren and their parents ends. If you adopt, the parents cannot request custody later. It may sound strange to adopt your own grandchildren, but sometimes it may be the best choice. Adoption is the only legal way to ensure that you will raise your grandchildren permanently. The major reason to choose adoption is to give your grandchildren the safety and security of knowing that you will care for them permanently.

Adoption is a very serious step that requires careful thought, and it's not the best choice for all families. Of course, adoption is simpler if the child's parents agree to it. Parents who agree can voluntarily give up their parental rights so the grandparents can adopt. If the parents don't agree that adoption is the best choice for the children, discussing adoption may cause conflict between parents and grandparents. If this happens, discuss the issue calmly and rationally. Give clear reasons why adoption is best for the children. Talk about whether the parents will still visit the children. Above all, protect the children from being caught in the middle of the conflict. Help them understand that you love them and want what's best for them.

Child Support

If you have legal custody or guardianship of your grandchildren but have not adopted them, the court may require the children's parents to pay child support to you. Child support can help make raising your grandchildren more affordable. Receiving child support also sends the message that the children's parents care enough to help with the costs of raising them. Parents who pay child support tend to visit their children more often and stay more involved in the

children's lives.

Child support should be negotiated at the time of custody or legal guardianship agreements. Each state has guidelines to help parents and grandparents agree on a fair amount. If the parents were not married when the children were born, you may have to go through a legal process to establish the children's paternity before support can be collected from the father. Keep in mind that if you legally adopt your grandchildren, you give up your right to receive child support from the parents.

Emergency Protection

If your grandchildren's safety is in jeopardy, especially from an abusive parent, there are laws that can protect you. Once you have any form of legal custody, a judge may order supervised visitation, so the parent can visit the children only in a safe setting with someone watching. If the parent should not be visiting the child at all, a judge can issue a legal protection order to keep the parent away from you and your grandchildren.

It is your responsibility to make sure protection orders are not violated. If you have a protection order, call the police any time the parent tries to violate it. Remember that the protection order was issued for the safety of your grandchildren. Don't feel guilty about insisting that the parents follow it.

Choosing a Lawyer

Paying a lawyer might seem like an unnecessary expense. But if you're trying to make decisions about custody and child support, a good lawyer is crucially important. An experienced lawyer can advise you about the consequences of different types of legal custody and help you decide what would be best for your family. Your lawyer can help you work out agreements with the parents and will represent you in court when you seek custody.

Shop around for a lawyer who meets your needs. Explain your family situation and tell the lawyer about the kinds of decisions you need to make. Ask questions about the lawyer's training and experience. Choose a lawyer who has worked with cases like yours, and who can effectively represent the interests of you and your grandchildren. Look for someone who listens carefully and shows you respect. It's important to have at least one meeting with a prospective lawyer before you decide whom to hire. Most lawyers do not charge for a first visit.

If You Can't Afford to Pay

Remember that paying a lawyer to represent you is a good investment. But if you need a lawyer and can't afford to pay one, you still may be able to get good legal help. Try contacting some of the following:

- **Legal services or legal aid.** These government-sponsored law offices help low-income people with common legal problems. You can search online to find the legal services office near you. Call to set up an appointment before you go.
- **Law school clinics.** If there's a law school near you, see if they have a clinic that provides low-cost legal help. If you go to a law school clinic, a law student will work on

your case, supervised by an experienced lawyer. To find out what programs exist, visit their website or call the dean's office of the law school.

- **A pro bono lawyer.** Some private lawyers will work on a case for free, especially if the case will help more than one family. If you're trying to change an unfair law or challenge an unfair state policy, you might find an interested pro bono lawyer. Call the state bar association and ask for ideas.

Lawyers have an ethical duty to do their best in every case, whether or not the client is paying. If you feel you are not getting good service, talk to your lawyer or your lawyer's supervisor about the problem.

In Summary

As a grandparent raising your grandchildren, you may need to help make decisions about custody and child support for your grandchildren. There are several different options. Work with your grandchildren's parents to decide what will work and get help from a good lawyer. Above all, remember that your grandchildren's needs should come first. Choose the arrangement that's best for them.

References

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