

LEGAL RELATIONSHIP OPTIONS BY GENERATIONS UNITED



BELOW, FINDS A SUMMARY OF LEGAL RELATIONSHIP OPTIONS THAT CAN APPLY TO GRANDFAMILIES. IT IS IMPORTANT TO NOTE THAT BECAUSE THIS AREA OF THE LAW IS CREATED AT THE STATE-LEVEL, HOW THESE OPTIONS ARE DEFINED AND WHICH ONES ARE AVAILABLE CAN VARY SIGNIFICANTLY BY STATE. FOR INFORMATION ABOUT WHICH LAWS ARE AVAILABLE IN YOUR STATE VISIT THE GRANDFAMILIES STATE LAW AND POLICY RESOURCE CENTER AT WWW.GRANDFAMILIES.ORG.

Adoption –

One of the most critical differences between adoption and other options is that it severs all of the biological parents' rights and responsibilities. The relative caregiver becomes the parent in the eyes of the law. This fact makes access to services on behalf of the child much easier. It also means that the biological parents cannot simply reappear one day and go to court to reclaim parental rights and responsibilities.

Open or Cooperative Adoption –

About one-third of the states have this option available. As part of an adoption, the relative caregiver, birth parents, and child develop an agreement for post-adoption contact with the birth parents. In some states, siblings may also receive contact privileges through the agreement. If a party breaches the agreement's terms, courts can order remedies to enforce it.

Invalidation of the adoption, however, is never a possible remedy.

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Guardianship –

The most significant distinction between adoption and guardianship is that guardianship does not sever the biological parents' rights and responsibilities.

Parents typically retain the rights to visit the child and must consent to adoption and/or name change. They also keep the obligation to financially support the child. For caregivers, the guardianship designation allows them access to services on behalf of the child that otherwise might prove impossible. Unlike adoption, the parents can go back to court and ask for the guardianship to be terminated. Many states offer monthly guardianship assistance for children exiting foster care with their relative foster parents.

Standby Guardianship –

This option exists in more than a third of the states. It allows a terminally ill parent to name a "standby guardian" to take over the day-to-day care of a child in the event of a triggering event, such as a parent becoming incapacitated, without the parent's rights being terminated. These laws were originally designed in response to the AIDS crisis.

Legal Custody –

Legal custody is similar to guardianship, but is usually granted by a different court with varying procedures. The status of "guardian" may give access to more services and rights than "legal custodian." Consider, for example, how many times you read or hear the phrase "parent or guardian" without any mention of "legal custodian."

De Facto Custody –

Because of difficulties with bringing legal custody cases and proving that parents are unfit, some states have enacted innovative laws that may help relative caregivers. These laws essentially provide that if a relative has been raising a child for a significant period of time, the first step in proving the case is met. Then, the relative can go on to prove that he or she should be awarded legal custody, because it is in the child's best interests. Kentucky was a pioneer in this area when it passed the nation's first de facto custody law in 1998.

Consent and Power of Attorney Laws

In some states, relative caregivers who do not want or have a legal relationship to the children in their care have laws that make it possible for them to complete an affidavit and access health care and educational services on behalf of the children. About a third of the states have educational consent laws which effectively allow children being raised by relatives to attend public school free of charge. More states, about half, have some form of health care consent law.

Another option for those caregivers without a legal relationship may be a power of attorney. Parents execute a form or handwritten document that states what type of authority they are conferring to the caregiver. Some states allow parents to use power of attorney to confer school-related and health care decision-making authority. Like the consent laws, these laws do not require going to court. Both consent affidavits and power of attorney documents can be easily revoked by the parents.

Legal Assistance

Once a decision is made that a legal relationship is needed or wanted, finding an affordable lawyer can be difficult, if not impossible. There are some no- and low-cost alternatives available. Area Agencies on Aging, legal aid clinics, local law schools, and bar associations may provide legal assistance. Grandfamilies may be able to access referral services through local programs, including support groups.

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