



Chapter
4

CARING FOR GRANDCHILDREN

In This Chapter, Learn:

- How to form a Legal Relationship with Your Grandchild
- How to Enroll a Grandchild in School
- How to Get Visitation Rights
- How to Establish Kinship
- About Guardianship
- The Basics of Adoption
- About Much More

CARING FOR GRANDCHILDREN

What should I know if I am caring for a grandchild?

It is common for parents to ask grandparents to care for their children while they are ill, on vacation, in jail, or simply not available. This could mean taking care of grandchildren for a few days or a few years. If this is the case, consider establishing a legal relationship so you have the authority to make medical, educational, and other decisions for your grandchild. Five types of legal relationships with your grandchild are discussed below — a delegation of parental powers, visitation, kinship, guardianship, and adoption. Each relationship establishes different authority and requires different responsibilities.

DELEGATION OF PARENTAL POWERS

Can I make decisions for my grandchildren if their parents are away?

Yes, if the parents give you the authority to do so through a “delegation of parental powers” document. This type of legal relationship is fitting

for those caring for their grandchildren for a few days or more.

What is a delegation of parental powers?

A delegation of parental powers is a legal document that a parent (or guardian of a minor child or incapacitated person) creates to give another person authority to make decisions. The parent still maintains all rights and responsibilities, but a delegation of powers gives another person the right to also make decisions regarding the child or ward.

Parents can give almost any power they want, such as the power to enroll a child in school or make a medical decision. However, there are some powers they cannot give, such as the power to adopt or consent to marry. Most often, parents create such a delegation so that if an emergency happens while they are gone, the grandparent has authority to make medical decisions for the grandchild.

This document is usually created when parents leave their children in the care of family members or friends for longer than a few days. A delegation of powers can last for any time period up to six months.

Do I need an attorney for a delegation of powers?



No, you can use a form that is available online at the Utah State Courts' Self-Help Resource Center (see the "More Information" section on page 48).

SCHOOL ENROLLMENT

How do I enroll my grandchild in school?

You can enroll a child in school with a delegation of parental powers document, guardianship, or custody agreement. In some cases, you may enroll your grandchild in school under the McKinney-Vento Act. This law states that a homeless child who is living with a relative on a temporary or emergency basis can be enrolled in school by that relative. The relative does not have to provide the necessary documents required for enrollment such as medical records, previous school records, birth certificate, and proof of residency. If you are using this law to enroll a child, ask to speak to the school's liaison for homeless children.

VISITATION RIGHTS

What are grandparent visitation rights?

Visitation rights are court-ordered rights given to grandparents to visit and spend time with their grandchildren. It is a legal remedy available under state law to grandparents who are being prevented from seeing their grandchildren.

How do I get visitation rights?



First, try to work out a solution with the parents without going to court. If that does not work, consider working with a mediator as soon as possible. Mediation is a great way to resolve family issues, especially at the beginning of a dispute. In mediation, both sides sit down with a mediator to voice concerns, listen, and come up with a resolution that is in the best interest of the parties. It often saves time and money, and it can do a lot to preserve family unity.

If mediation does not resolve the issue, you have the right to file a petition (written request) to the court asking for grandparent visitation rights. A grandparent may also file a petition in a pending (a case that has not been decided) divorce, custody, or visitation proceeding, asking for visitation rights.

Is it difficult to get visitation rights?



Yes, the court presumes that the parents' decision about visitation is always in the best interest of the grandchild until proven otherwise. Thus, grandparents will have to prove in court that visitation is in the best interest of the child. This is another reason why mediation is a preferred option.

The court will consider various factors in determining whether visitation is in the best interest of the child, such as whether:

- The grandparent is a “fit and proper person” to have visitation,

- Visitation with the grandchild has been denied or unreasonably limited,
- The parent is unfit or incompetent,
- The grandparent has had a substantial relationship with the grandchild and the loss will harm the grandchild, and
- The parent of the grandchild has been missing from the child's life for an extended period of time because of death, divorce, or loss of custody.

KINSHIP CARE

My grandchild has been removed from the family home. Can he or she live with me?

Maybe. Kinship care is similar to temporary foster care. When children are removed from the parents' custody, a relative can care for the children on an emergency basis and possibly long-term. The purpose of kinship care is to reduce the trauma for the child by placing him or her with persons who are known and trusted.

For a child, to be considered for kinship placement, the relative must agree to a number of requirements, such as not allowing unauthorized contact with the parents or guardians, not discussing the events that led to removal, and providing information regarding the home environment of the placement. As always, the child's best interest is the most important factor.

Those who have kinship care can apply for financial and medical assistance for their grandchild (called a “specified relative grant”) from the Utah Division of Workforce Services. This aid is not based on the grandparent’s need, but on the child’s assets (things that the child owns that have value) and income.

GUARDIANSHIP

How do I care for my grandchild for an extended period of time?

A legal guardianship is fitting if you are planning to care for a grandchild for an extended period of time. It is also a more fixed relationship as the parent cannot remove the child from the home without first going to court to terminate the guardianship.

A guardian is someone who is legally responsible for the care of another person. A guardianship gives those rights and responsibilities to a court-appointed guardian that are like those of a parent who has legal custody of a minor child. The parents retain their right and responsibility to support their child, the right to consent to adoption, the right to determine the child’s religious affiliation, and the right to reasonable parent time — unless the court forbids it.

How do I obtain a guardianship?



You file a petition with the court. The court will always consider the best interest of the child. The court may also consider whether the parents are alive, whether there was a nomination of a guardian in the parents' wills, whether the child was abandoned, or whether the parents consented to the guardianship. Gaining the parents' consent makes the process easier. If the parents have died or cannot be found, you must demonstrate this to the court. Parents have the right to contest the guardianship, which, makes the process more difficult.

Do I need an attorney to get a guardianship?



You don't need an attorney to petition the court for a guardianship; rather, you can do it on your own using the "Online Court Assistance Program" (OCAP; see the "More Information" section on page 48). If the guardianship is contested you are encouraged to hire an attorney.

What are my responsibilities as a guardian?

If you are appointed as guardian, you must provide the child with basic shelter, food, education, and clothing. You are not required to pay for the child's expenses out of your own funds. A legal guardian can also apply for public assistance to care for the child. Once you become a guardian, you must file an annual report with the court as long as the child is a minor (unless the guardianship was established only to enroll the child in school). For annual reporting forms go to the Utah State Courts' Self

Help Resource Center (see the “More Information” section on page 48).

ADOPTION

What is adoption?

When parents become unable to care for a child, grandparents will often want to adopt their grandchild. Adoption terminates the rights of the natural parents and gives full parental rights to another person.

Is it difficult to adopt a grandchild?



To adopt your grandchild, the natural parents’ parental rights must be terminated. If the natural parents agree to the adoption, the process is much easier. However, if either parent contests the adoption, it is much more difficult because courts favor the parents’ rights. Terminating parental rights to adopt in a contested matter requires a three-step process: (1) proving to the court that the natural parents are unfit; (2) demonstrating that it is in the best interest of the child to terminate the natural parent’s rights; (3) and qualifying for adoption. In Utah, a hearing (a preliminary legal proceeding in court where you present your side of the case) is required to terminate parental rights.

MORE INFORMATION

GRANDPARENT

Seminars and support groups on grandparenting issues

Children's Service Society of Utah Grandfamilies Program

800-839-7444

801-355-7444

www.cssutah.org

Resources for grandparents caring for their grandchildren

AARP

www.aarp.org

Information on kinship care

Utah Division of Child and Family Services

801-538-4100

www.dcfcs.utah.gov

Kinship financial assistance

Utah Department of Workforce Services

801-526-9675

www.jobs.utah.gov

MEDIATION AND VISITATION

Legal mediation for those with low and moderate income

Utah Dispute Resolution

877-697-7175

801-532-4841 (SLC)

801-689-1720 (Ogden)

www.utahdisputeresolution.org

GUARDIANSHIP

Information on guardianship of a minor

Utah State Courts' Online

Court Assistance Program

www.utcourts.gov/ocap

Utah State Courts' Self-Help Resource Center

www.utcourts.gov