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Legal Concerns of Grandparents Raising Grandchildren

By Thelma Sanders-Hunter, Ed.D.
Extension Associate Professor

What is the difference between legal custody and guardianship?

Legal custody is the legal right granted by a court for you to have legal power in making decisions concerning your grandchild. You have the power to make important decisions as a parent would make.

Guardianship results from the willingness on the part of the parent(s) to allow you to care for your grandchild. A guardian has the duty and responsibility to make important decisions in matters having a permanent effect on the life and development of the child. This arrangement gives you limits on the decisions that are to be made on the child's behalf and it is often a temporary arrangement. The guardian is responsible for the care, custody, control, and education of the child. A guardian is not responsible for a child's expenses. In the event that the child needs medical treatment, the guardian, like a parent with legal custody, can consent to medical treatment for the child. As a guardian no one will be able to legally take the child without your consent. You have the right to receive public benefits on the behalf of the child. Oftentimes, schools refuse to enroll students if they are not living with a parent or legal guardian. As a legal guardian you have the right to obtain a restraining, or protective order if you need to protect the child from abuse. You must get permission from the court to move the child out of the county. Questions to consider are:

How can I become a legal guardian?

You may be appointed guardian of a child if you are over the age of 18. You must have been a resident of the state for at least one year. In conducting an investigation to determine whether a person is suitable to serve as a guardian, the court will want to know about your background such as if you have any felony convictions, if you have declared bankruptcy prior to the guardianship filing, or if there exists a conflict of interest which would be detrimental to your ability to act in the

best interest of the child. The court usually gives preference to the next of kin.

What legal status options do I have as a grandparent raising my grandchild?

As a grandparent raising a grandchild, unless you have legal custody, your options are limited. However, you may wish to consider some factors before pursuing legal custody of your grandchild. Some points to consider are whether or not your grandchild is a victim of abuse, neglect or abandonment by his or her parents. If you pursue legal custody, will it interfere with family relationships; and is guardianship an alternative to custody of your grandchild?

How can I acquire legal custody of my grandchild?

In order to get legal custody of your grandchild, you should contact the Juvenile Court where your grandchild lives. This may or may not require that the parent(s) be present and agree with the arrangement depending on whether it is a mutual agreement. Ordinarily, you would not need the presence of an attorney to request custody of your grandchild.

The parent of my grandchild has a terminal illness. Is there a way to set up a guardianship in advance?

If a parent has been diagnosed as having a terminal illness, a standby guardianship can be set up that will become effective upon the death of the parent; as long as the non-custodial parent does not object to this arrangement or the court finds that giving custody to the non-custodial parent would be harmful to the child. The parent's primary physician must write a report describing the type of illness the parent has and the likelihood of the parent's incapacity or death within two years. The standby guardian must petition the court within the time period that they are willing to accept the responsibility.

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What do I need to do if the state has custody of my grandchild?

You will need to go through the local children's services department where your child is living. Let them know your interest in seeking custody of your grandchild. Ask to meet with the person who is the social worker or caseworker of your grandchild.

Listed below are addresses and telephone numbers of legal services throughout Tennessee. You are encouraged to seek the advice of an attorney or contact the legal services office nearest you if you need additional assistance regarding legal issues involving your role as a grandparent parenting your grandchild.

Memphis Area Legal Services 109 N. Mid-America Mall Memphis, TN 38103 (901) 523-8822 Covington: (901) 476-1808	Legal Aid Society of Middle Tennessee 211 Union Street, Suite 800 2 nd Floor, Claridge House Nashville, TN 37201 (615) 244-6610	Coffee County Office Tullahoma (931) 455-7000 Legal Services of Upper East Tennessee P.O. Drawer 360 Johnson City, TN 37604 (423) 928-8311 or 1-800-821-1312
West Tennessee Legal Services P.O. Box 2066 Jackson, TN 38302 (731) 423-0616 or 1-800-372-8346	Montgomery County Office Clarksville (931) 552-6656 Sumner County Office Gallatin (615) 451-1880	Sullivan County Office Kingsport (423) 246-8734
Dyer County Office Dyersburg (731) 285-8181	Rutherford County Office Murfreesboro (615) 890-0905	
Carroll County Office Huntingdon (731) 986-7961	Legal Services of South Central Tennessee P.O. Box 1256 Columbia, TN 38402 (931) 381-5533	
McNairy County Office Selmer (731) 645-7961		

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For more information, contact your local county Agricultural Extension agent (See your telephone blue pages). Printable copies of this fact sheet can be found on our website.

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