

Kinship Care: Legal Options for Grandparents Raising Grandchildren

If you are one of the many people who raise children of others, we commend you. You are not alone. The AARP reports that nationally, 4.5 million children are living in grandparent-headed households (6.3% of all children under age 18). This represents a 30% increase from 1990 to 2000. There are another 1.5 million children in the United States who are living in households headed by other relatives (2.1% of all children under 18). In Colorado there are 51,325 children living in grandparent-headed households (4.7% of all children in the states). There are another 19,230 children living in households headed by other relatives (1.7% of all children in the state). Of the children living in households headed by grandparents or other relatives in Colorado, 28,185 are living there without either parent present.¹ Raising children born to others can be extremely rewarding and fulfilling, but also presents a number of challenges, including financial worries, difficulties enrolling children into school and struggles with qualifying the children for various support, healthcare and other benefits. This article helps to provide grandparents and other raising children born to others with information as to various legal alternatives to help them resolve these difficulties.

There are different processes available that provide non-parents with the power to make decisions regarding children in their care. The method chosen depends on various factors, including:

1. Whether an emergency or child safety issue exists that requires immediate intervention;
2. Whether the birth parents are present and willing/able to consent;
3. The level of decision making required;
4. How long decision making powers are needed;
5. Whether there are special financial needs of the children and/or their care providers and
6. The involvement of the Department of Human Services (also called Department of Social Services, Child Protective Services, or Child Welfare Authorities in some jurisdictions), or law enforcement authorities.

Decisions related to children can be made in multiple courts within the Colorado Court System, including the Juvenile Court (examples include dependency and neglect matters, paternity cases, truancy and some criminal matters), the Domestic Relations courts (part of the civil district courts – examples include divorce and parental rights matters between married and unmarried persons), and the Probate Courts (examples include guardianships and approval of settlements made to minors.) Generally, the least restrictive alternatives are favored. The least restrictive alternative is the alternative that imposes the fewest restrictions on the civil rights of the birth parents. Because parents have a fundamental right under the U.S. Constitution to the care and control of their children, courts will not intervene to limit a birth parent's right against the wishes of the parent without just cause.

A list of legal alternatives which provide decision making authority to non-birth parents is provided below. The list begins with the least restrictive alternative and proceeds to the most restrictive:

¹ AARP Colorado Fact Sheet for Grandparents and other relatives Raising Children, September, 2005. Copies are available at www.aarp.org/grandparents and from the AARP Grandparent Information Center at 888-687-2277.

1. Authorizations and Releases (also known as “Delegations of Authority”)

Authorizations and releases are used when decision making is needed for a limited period of time. Common examples where releases are used include consent forms that enable another adult to consent to emergency medical care of a child while away from home at camp or on a school field trip if parents cannot be reached. They typically involved limited decisions under limited circumstances. The advantage is that they are simple, inexpensive and do not require any special legal or courtroom process. Parental consent is generally needed and a child’s consent may also be needed under certain circumstances (where mental health treatment of teens and childbirth or contraceptive/abortion treatment is sought). Releases can be revoked by parents at any time and parental rights are not terminated. One problem with releases is that they may not be accepted by certain authorities as it can be difficult for the person or institution that is presented with the release to determine if it is genuine and valid.

2. Powers of Attorney (“POA”)

Powers of Attorney are written documents that transfer the decision making authority of one person to another, usually upon the occurrence of certain specified events. The longest period of time they may currently last by statute in Colorado is about one year. Powers of Attorney usually grant more power than Releases. They are still quite simple to prepare, are relatively inexpensive and do not require a court procedure. Parental consent is generally needed and birth parents must be willing and able (have the capacity) to give the Power of Attorney when it is executed or signed. Problems may occur if a parent lacks the capacity to sign a POA when it is needed, such as where there is mental illness, intoxication or a lack of consciousness due to illness or injury that affects a parent’s ability to understand the process. If a person signs a POA when they lack the capacity to understand the powers they are giving up, the POA is invalid. The POA may last until revoked. The problem with a POA is similar to Releases – it is often difficult for an individual presented with a POA to determine if it is valid. Banks and other institutions are often fearful they will be sued if they unknowingly honor a POA that later turns out to be invalid. For this reason, POAs may not be accepted by certain schools, banks and other authorities.

3. Guardianship

Guardianship in the state of Colorado refers to the care and custody of a person. (“Conservatorship” is the term used in Colorado to refer to the management of the financial affairs of a person). These terms have different meanings in different states. The Veteran’s Affairs guardianships, for example, are similar to conservatorships in Colorado.

Guardianships can be obtained for minors and adults deemed to be incapacitated by the court. A court procedure is needed. The Colorado Uniform Guardianship and Protective Proceedings Act found at Colorado Revised Statutes starting at Sections 15-14-101 provide the standards and procedures needed. Additional information can be obtained from the Colorado State Court website self-help center at <http://www.courts.state.co.us/chs/court/forms/selfhelpcenter.htm>

Guardianships for minors may be needed if:

- A minor's parents have died
- A minor's parents cannot be found
- One or both parents are unable or unwilling to care for their child (examples: parents are in jail or on drugs)

Requirements for a Guardian: A Guardian must be 21 years old, and can be non-residents of Colorado. The statute also lists the priority of persons who may serve as guardians. Incarcerated parents must be personally served and have a right to object to the process. The person nominated to serve as guardian must agree. Parental consent is required if the parents are alive. If they cannot be found, notice by publication is required. There are specific requirements that must be met to notify the parents. Other laws should also be reviewed that may also control, including the Indian Child Welfare Act ("ICWA"), the Parental Kidnapping Protection Act of 1980 ("PKPA") and the Uniform Child custody Jurisdiction and Enforcement Act (UCCJEA).

There are different types of Guardianships:

Advance Appointment: This can be accomplished by a parent who believes, due to illness or other cause, that he or she may be unable to parent his or her child within two years. This requires a court procedure and consent of the minor if the child is age 12 or over. The benefit is that it allows a parent to specify who that parent would like to serve as guardian and have that person confirmed by the court to prevent others from objecting later on. A legal process is required.

Emergency: This can be obtained if the parents cannot be located pursuant to Colorado Revised Statute Section 15-14-204(5). The emergency guardianship currently lasts 60 days if substantial harm to a minor's health and safety is found and no one else can be located who has authority to act for the minor. The power granted may be limited by the court. A legal process is required.

Judicial Appointment: This requires a court procedure and a finding by the court that this is in the best interests of the child. Generally, parental consent is required unless parental rights have been terminated by court order or the parents are unable or unwilling to act. Judicial appointment can also occur when a prior guardian dies without appointing a successor guardian by will or signed writing.

Temporary Guardian: A temporary guardian can be appointed for up to 6 months if an immediate need exists and it is in the best interests of the child. Notice to a minor if the child is 12 years of age or older is required. Notice to all others with custody is also needed. There are specific notice requirements required by Colorado law. A court procedure is required.

Guardianships do not terminate parental rights and are generally considered a temporary measure. (CRS 15-14-202(7)).

Guardianships terminate upon death of the minor, adoption of the minor, emancipation of the minor, a request for termination of the guardianship by the birth parents and/or court order.

A guardian is not required to use personal funds for the ward's expenses (CRS 15-14-209(2)).

A guardian may be required to cooperate in filing a child support action on behalf of the child.

Venue, or the location of the guardianship action, exists where the minor resides or is present at the time of the action. If the child is not a resident here, the court may only have temporary jurisdiction until the emergency guardianship ends.

4. Foster Parent

The Department of Human Services (DHS) is always involved in these matters. The foster parent has to go through a specified qualifying process, take classes, attend meetings, and follow DHS rules. Background and criminal checks are performed. Foster parent status is considered a temporary measure to safeguard the child until a plan to reunify the family can be attempted. The permanency plan generally needs to be completed within one year. If the birth parents can't comply with the family service plan, parental rights can be terminated and custody can be given over by court order to a relative or the child may be placed for adoption. Adoption of a child generally cuts off the grandparent visitation rights of the parents of the birth parents.

Foster parents qualify to receive subsidies or payments while the case is open. These payments are higher than Temporary Assistance for Needy Families ("TANF") discussed below. This can be an advantage for the very poor, but because the payments usually end when the case is closed, the payments usually end within a year (the time the permanency plan needs to reach conclusion). Foster parents are the sometimes the only way a non blood relative may obtain financial assistance as a caretaker.

Other financial assistance:

TANF (Temporary Assistance for Needy Families) is available for foster parents while they are waiting to qualify as foster parents.

TANF "child only grants" are available for the child. These are generally less than the foster parent subsidies but last until the child turns 18. The child generally qualified for Medicaid and supportive payments for non-covered items such as school fees, clothes and day care in El Paso County. While a child's own earned income does not disqualify the child from receiving the benefit, TANF can not be received if one of the birth parents is receiving child support from the other parent or is receiving SSI. Rules change so the Family Support Team at DHS should be contacted for further information at 719-385-7932. To apply for TANF, contact DHS. The grandparent advocate may be contacted at 719-444-5229. Grandparent Support Groups also exist. Call 719-444-5229 for more information.

5. Allocation of Parental Rights and Responsibilities ("Custody")

The term "custody" of children is no longer used in legal proceedings in Colorado as it was thought to dehumanize children. Instead, the term "allocation of parental rights and responsibilities" ("APR") is used to refer to parental rights and obligations related to parenting time, decision making and support of children.

APR is needed when a guardianship is in place and birth parents decide that they want to terminate guardianship. If an individual has had physical care and control of the children for 6 months or more and disagrees that it is in the best interests of the children

to return to the care of their birth parent(s) they must file a court action for APR. The action must be initiated within 6 months of the time their physical care and control of the children terminates. The person bringing the APR matter needs “standing” (or needs to qualify to bring the action). For the non-parent to have rights to continue to care for or visit the children over the parents’ wishes, the court will need to make specific findings that this is in the best interests of the children.

Custody can also be granted by juvenile court in Dependency and Neglect proceedings if the court finds a more permanent plan is needed.

Grandparent or Non-parent visitation: More complicated legal proceedings are often needed where a non-parent desires visitation with children and the birth parents disagree. A biological parent has a first and prior right to the custody, care and control of his or her children. Legal counsel should be consulted in these circumstances.

6. Adoption/Termination of Parental Rights

Children may be adopted if parents voluntarily relinquish their parental rights or if the Court terminates parental rights due to abandonment, neglect or abuse. Special court proceedings are required. When a grandparent adopts a child, they are then responsible for the financial support of the children and the TANF goes away. This can be a financial burden for many. Because the birth parents rights have been terminated, the birth parents no longer have an obligation to support the child. Sometimes grandparents are placed in the difficult decision of having to decide whether to adopt their grandchildren or allow them to be adopted by someone else who might not easily permit the grandparent to visit their grandchildren in the future. In these circumstances, legal counsel should be consulted.

IMPORTANT NOTICE: THIS INFORMATION IS PROVIDED FOR GENERAL INTEREST ONLY. LAW AND PROCEDURE CHANGES CONSTANTLY. AS SUCH, THE INFORMATION PROVIDED ABOVE MAY NOT BE ACCURATE. YOU SHOULD NOT RELY ON THE ACCURACY OF THE INFORMATION PROVIDED AND SHOULD SEEK LEGAL COUNSEL FOR CURRENT INFORMATION.

Resources and Links

AARP Grandparent Information Center: 888-687-2277

National and state data on grandparents at AARP’s website at <http://www.aarp.org/families/grandparents/>

Colorado Kinship Care Resource Guide: call 303-866-4207 or visit http://www.cocaf.org/topics_kinship.asp

The Grandparents Resource Center offers a series of educational and informative programs for kinship caregivers in the Denver area. Contact 303-980-5707 or GRC4USA@aol.com

A Grandparents Guide For Family Nurturing and Safety
(Consumer Product Safety Administration)
<http://www.cpsc.gov/cpsc/pub/pubs/grand/704.html>

Public Benefits for Grandparents with Guardianship
(Generations United)
<http://www.gu.org/projg&opubbene.htm>

Legal Options for Grandparents
(Generations United)
<http://www.gu.org/projg&olegal.htm>

Children's Defense Fund: call 202-628-8787 or visit www.childrensdefense.org

Generations United, call 202-289-3979 or visit www.gu.org

GrandsPlace, call 860-763-5789, or visit www.grandsplace.com

Kinship Information Network, call 772-501-0502 or visit www.kinsupport.org

Notional Committee of Grandparents for children's Rights, call 866-624-9900 or visit www.grandparentsforchildren.org

Child Welfare League of America, call 202-638-29552, or visit www.cwla.org

Adoption Information Clearinghouse, call 888-251-0075, or visit <http://haic.acf.hhs.gov/>

Suggested Reading for Grandparents & Grandchildren:

Books for Children

Author: Martha Whitmore Hickman
Title: *Robert Lives With His Grandparents: A Concept Book*
Ages: 4 - 8
Date: 1995

Robert's parents are divorced, and he lives with his grandparents. When his grandmother decides to attend Parent's Day at his school, he is afraid of what the other kids will think of him.

Author: Jeanne Warren Lindsay
Title: *Do I Have a Daddy?*
Ages: 4 - 8
Date: 1991

A read aloud book to help caregivers respond to children's questions about a parent they have never seen.

Author: Tololwa Mollel

Title: *Kele's Secret*
Ages: Elementary School – picture book
Date: 1997

A young African boy who lives with his grandparents on their coffee farm follows their hen in order to find out where she is hiding her eggs.

Author: Cindy Klein Cohen and John T. Heiney
Title: *Daddy's Promise*
Ages: 4 – 8
Date: 1997

Addresses all the different feelings children may have as they grieve a loved one. (Available through bookstores or amazon.com)

Author: Brigitte Weninger
Title: *Good-Bye Daddy!*
Ages: 4 – 9
Date: 1995

After spending the day with his daddy, a young bear is sad and angry that his father has to leave. The bear comes to learn that even when a father lives in another home, the love and caring never go away.

Author: Laurene Krasny Brown and Marc Brown
Title: *Dinosaurs Divorce: A Guide for Changing Families*
Ages: 5 – 10
Date: 1986

Dinosaur characters depict the range of experiences and feelings encountered by children of divorced parents.

Author: Elizabeth Weitzman
Title: *Let's Talk About When A Parent Dies*
Ages: 5 - 9
Date: 1996

Gives advice on surviving the death of a parent and suggests what feelings and behaviors to expect from others.

Author: Jill Krementz
Title: *How It Feels When a Parent Dies*
Ages: 8 – 13
Date: 1981

Children, ages seven through sixteen, tell how it feels to lose a parent through death.

Author: Maureen K. Wittbold
Title: *Let's talk About When a Parent is in Jail*
Ages: Early Elementary
Date: 1997

Discusses why jail exists, why people go to jail and how to deal with a person in jail.

Author: Jill Hastings and Marion Typpo
Title: *An Elephant in the Living Room: the Children's Book and An Elephant in the Living Room: a Leader's Guide for Helping Children of Alcoholics*
Ages: 4 – 8 and their caregivers
Date: 1994

These books help children from alcoholic homes learn about addiction and teach new ways to handle their feelings.

Author: J.K. Rowling
Title: *Harry Potter* - series of 4 books
Ages: 9 - 12
Date: 1998 - 2000

Harry Potter, whose parents were killed when he was a baby, is being raised by his loathsome aunt and uncle. On his eleventh birthday, he learns he is really a wizard and has quite a special past and future.

Author: Ruth White

Title: *Belle Prater's Boy*
Ages: Young Adult - fiction
Date: 1996

When Woodrow's mother disappears suddenly, he moves to his grandparent's home in a small Virginia town. He befriends his cousin and together they find the strength to face the terrible losses and fears in their lives.

Author: Richard A. Gardner
Title: *The Boys and Girls Book about Divorce, With an Introduction for Parents*
Ages: Young Adult
Date: 1992

A warm reassurance and honest answers to questions frequently asked by children of divorced parents.

Author: Rhoda McFarland
Title: *Drugs and Your Parents*
Ages: Young Adult
Date: 1997

How to survive in a chemically dependent household and how to get help for yourself and a parent.

Author: Barbara Hermie Draimin
Title: *Everything You Need to Know When a Parent Has AIDS*
Ages: Young Adult
Date: 1994

Facts and information about AIDS for children of AIDS patients.

Author: Jay Schleifer
Title: *Everything You Need to Know When Someone You Know Has Been Killed*
Ages: Young Adult
Date: 1998

Discusses death and the fear of death, explains the emotions

experienced when someone you know is killed and gives strategies to cope with them.

Books for Adult Caregivers

Author: Sylvie De Toledo

Title: *Grandparents as Parents: A Survival Guide for Raising a Second Family*

Date: 1995

Guidebook for any grandparent who is raising a grandchild.

Author: Deborah Doucette-Dudman

Title: *Raising Our Children's Children*

Date: 1997

The social, legal and emotional issues faced by grandparents as parents, such as custody, housing and prior mistreatment of the children.

Author: Lillian Carson

Title: *The Essential Grandparent: A Guidebook to Making a Difference*

Date: 1996

An easily readable book that honors grandparenthood, dispelling grandparenting myths and helping readers develop their own grandparenting strategy.

Author: Eda J. Leshan

Title: *Grandparenting in a Changing World*

Date: 1997

Insightful, witty advice on such topics as grandparents who remarry, grandchildren who live far away, grandparents raising their grandchildren and more.

Author: Lenora Madison Poe

Title: *Black Grandparents As Parents*

Date: 1992

Focuses on the adjustments grandparents must make socially, emotionally and economically when raising their grandchildren.

Author: Traci Truly

Title: *Grandparents Rights: With Forms*

Date: 2nd Edition 1999

Simple, legal explanation of the law regarding grandparent custody and visitation rights. Includes legal forms and example cases.

Author: Carole B. Cox

Title: *To Grandmother's House We Go and Stay: Perspectives on Custodial Grandparents*

Date: 1999

Information for custodial grandparents.

Author: Joan Callander

Title: *Second Time Around; Help for Grandparents Who Raise Their Children's Kids*

Date: 1999

Information and support for grandparents raising grandchildren, including a discussion of the issues facing kids today.

Author: Bob Rowland and Sally Houtman

Title: *To Grandma's House, We...Stay: When You Have to Stop Spoiling Your Grandchildren and Start Raising Them*

Date: 1999

Help with understanding the new relationship with the custodial grandparent and child. Includes a list of helpful resources.

Author: Joseph Crumbley and Robert L. Little

Title: *Relatives Raising Children: An Overview of Kinship Care*

Date: 1997

Discussion of the many issues facing family members raising others' children, from the perspectives of the child, the caregiver and the parent.

Author: Rebecca M. Yaffe, and Lonnie F. Hoade

Title: *When a Parent Goes to Jail: A Comprehensive Guide for Counseling Children of Incarcerated Parents*

Date: 2000

How to help children cope with their emotions and the legalities of their parent's situation. (Available through bookstores and amazon.com)

Author: Silverman Janis

Title: *Help Me Say Goodbye: Activities for Helping Kids Cope When a Special Person Dies*

Date: 1999

An art and activity book to help children cope with the death of a loved one. (available through bookstores and amazon.com)

Author: Doughy Center Staff

Title: *35 Ways to Help a Grieving Child*

Date: 1999

Information to help grieving children taken from the stories of other children and adolescents who have lost a loved one. (Available through bookstores and amazon.com)

Author: Phyllis Rolfe Silverman

Title: *Never Too Young to Know: Death in Children's Lives*

Date: 2000

Offers a practical and theoretical approach to how children cope with death and how to support and help them.

Author: Earl A. Grollman

Title: *Bereaved Children and Teens: A Support Guide for Parents And Professionals*

Date: 1995

Understanding the age, religious and cultural differences in children coping with death.

Author: Cynthia MacGregor

Title: *“Why Do People Die?” Helping Your Child Understand
– With Love and Illustrations*

Date: 1998

Genuine, sensitive story designed to read aloud to young children to answer questions about death.



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