

## CUSTODY OPTIONS

Grandparents have several custody options when they are caring for their grandchildren. To decide which options match your needs, you must become familiar with legal terms. Courts classify families in the following two ways:

- families with dependent children; and
- families without dependent children

A family with a dependent child receives ongoing supervision by a caseworker from a local Community-Based Care (CBC) provider. A child can become dependent on the state if she or he has been abused, neglected, or abandoned by a parent. A dependent child is also referred to as an “adjudicated dependent.”

Families without dependent children do not receive ongoing supervision by a CBC provider. The custody options available for families without dependent children are not the same as those with dependent children. In Tables 1 and 2 of this publication, you will find the specifics of these custody options. Table 1 outlines options for families without dependent children, whereas Table 2 outlines custody options for families with dependent children.

After familiarizing yourself with the various custody options described in Tables 1 and 2, review the situation scenarios that follow and decide which custody option would be best for that grandparent or other relative.

## ANSWERS TO SITUATION SCENARIOS

1. adoption
2. custody
3. physical custody
4. permanent guardianship

## FOR MORE LEGAL OR SUPPORT SYSTEMS INFORMATION

### ACCESS TO LEGAL FORMS

<http://floridalawhelp.org/>

### FLORIDA BAR REFERRAL SERVICE

<http://www.floridabar.org/lawyerreferral>

### GENERATIONS UNITED, GRANDFAMILIES STATE LAW AND POLICY RESOURCE CENTER

<http://www.grandfamilies.org/>

### GRANDPARENTS RAISING GRANDCHILDREN

<http://www.raisingyourgrandchildren.com/>

### UF/IFAS GRANDPARENTS RAISING GRANDCHILDREN PUBLICATION SERIES

[https://edis.ifas.ufl.edu/topic\\_book\\_grandparents\\_raising\\_grandchildren](https://edis.ifas.ufl.edu/topic_book_grandparents_raising_grandchildren)

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The legal information in this publication was verified by the Legal Aid Foundation and is for informational purposes only. For legal advice, please contact your local legal aid office.

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## GRANDPARENTS RAISING GRANDCHILDREN: CUSTODY OPTIONS<sup>1</sup>



### INFORMATION ABOUT FLORIDA'S LEGAL SYSTEM AS IT RELATES TO GRANDPARENTS RAISING GRANDCHILDREN.

## SITUATION SCENARIOS

1. After taking care of her grandchild for more than three years, Mrs. Johnson wants to secure the most permanent custody for her grandchild. What is her best option?
2. Mrs. Simmons' grandchildren just moved in with her due to parental drug abuse. She is uncertain that her daughter will be willing to follow her case plan to get her children back. What option does Mrs. Simmons have?
3. Mr. and Mrs. Garcia agree to take care of their grandchildren while their parents re-establish themselves in a new location. What is the best custody option?
4. Mrs. Smith has been caring for her grandchildren for more than six months. During that time, the family has been supervised by a Department of Children and Families caseworker. Mrs. Smith wants to seek a more secure and permanent arrangement because her daughter is not following her case plan. What options are open to Mrs. Smith?

## WHERE TO FIND HELP ABOUT LEGAL ISSUES

If you need additional information about legal matters, contact the following services:

- **Lawyer Referral Service:** This is a public service of the Florida Bar Association. By calling 1-800-342-8060, you will be referred to a lawyer. The lawyer will provide an initial 30-minute consultation for free or a small fee.
- **Attorney:** Look in the yellow pages for one who specializes in family law.
- **Department of Children and Families:** If you call 1-866-762-2237, you can find out about the services available in your community.
- **Family Mediation:** The number for your area is found in the blue pages (government pages) of your phone book. Look under court administrator's office.

Table 1. Custody options for non-dependent children (not under supervision of the Department of Children and Families).

	Description	Grandparent's Rights	Parent's Rights
Informal/Physical Custody (No Court Order)	<ul style="list-style-type: none"> <li>• Not considered legal custody.</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparent has no legal right to make important decisions for the child (except emergency health care).</li> <li>• With durable power of attorney and health care surrogate for minor from the parent, grandparent's legal rights are strengthened.</li> </ul>	<ul style="list-style-type: none"> <li>• Parents can take child back at any time.</li> <li>• Parents still have legal rights.</li> <li>• Parent keeps the right to make legal decisions (medical/school).</li> </ul>
Custody	<ul style="list-style-type: none"> <li>• Court order required.</li> <li>• If parent and grandparents agree to grandparent custody, a court finding of unfitness of parent is not necessary.</li> </ul>	<ul style="list-style-type: none"> <li>• Custody order determines the decisions grandparents can make for the grandchild (including medical/school).</li> </ul>	<ul style="list-style-type: none"> <li>• The parent can only terminate custody with a court order.</li> </ul>
Guardianship	<ul style="list-style-type: none"> <li>• Court order required.</li> <li>• Permanent until child is 18 or court removes guardianship; requires the filing of annual reports with the court; required when the child is receiving more than \$15,000 in assets under some circumstances.</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents have all authority over the child.</li> </ul>	<ul style="list-style-type: none"> <li>• The parent can only terminate with a court order.</li> </ul>
Adoption	<ul style="list-style-type: none"> <li>• Most permanent legal custody.</li> <li>• Happens when parent consents or court has terminated parental rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents have all authority over the child.</li> <li>• Grandparents no longer eligible for state benefits unless they are income eligible or the child was adopted through the state, in which case the grandparents may become eligible for an adoption subsidy.</li> </ul>	<ul style="list-style-type: none"> <li>• Parents lose their rights.</li> </ul>

Table 2. Custody options for dependent children (adjudicated dependent).

	Description	Grandparent's Rights	Parent's Rights
Court-Ordered Placement	<ul style="list-style-type: none"> <li>• Grandparents have physical custody.</li> <li>• Department of Children and Families (DCF) and Community-Based Care (CBC) provider has supervising authority.</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents can make day-to-day decisions about grandchild.</li> <li>• Grandparents are provided with needed services by a CBC caseworker.</li> <li>• Grandparents can access additional benefits through the Relative Caregiver Program.</li> </ul>	<ul style="list-style-type: none"> <li>• Parent can work on case plan to get child back with assistance from a CBC caseworker.</li> <li>• Parents will have to sign for major medical procedures for the child.</li> </ul>
Custody	<ul style="list-style-type: none"> <li>• Grandparents have court-ordered legal custody.</li> <li>• DCF requires ongoing supervision.</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents can make important decisions about grandchild with minimal CBC supervision.</li> </ul>	<ul style="list-style-type: none"> <li>• Parent can work on case plan to get child back.</li> <li>• Parents will have to sign for major medical procedures for the child.</li> </ul>
Permanent Guardianship	<ul style="list-style-type: none"> <li>• Option granted after 6 months of CBC supervision with temporary legal custody.</li> <li>• More secure and permanent arrangement than placement or temporary legal custody.</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents have full authority over grandchild.</li> </ul>	<ul style="list-style-type: none"> <li>• Parents can regain custody if they can prove that the situation that caused them to lose custody has changed and that living with parents is best for the child.</li> </ul>
Adoption	<ul style="list-style-type: none"> <li>• Most permanent legal custody.</li> <li>• Happens when parent consents or court has terminated parental rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents have all authority over the child.</li> <li>• Grandparents no longer eligible for state benefits unless they are income eligible or the child was adopted through the state, in which case the grandparents may become eligible for an adoption subsidy.</li> </ul>	<ul style="list-style-type: none"> <li>• Parents lose their legal rights over the child.</li> </ul>