

Do Grandparents Have Custody Rights?

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Q:

I want to be sure that if anything ever happened to the parents of my grandchildren, I will get legal custody. How do I ensure that will happen?

A:

The best method for becoming your grandchild's custodian is for his or her parents to designate you as the custodian and/or guardian under a "pre-need" designation. Such a designation typically has these characteristics: It is in writing and signed by both parents, or the surviving parent; it designates one or more persons to take responsibility for the welfare of the minor child; it provides when the pre-need designation applies (such as parental incapacity or death); and, it is witnessed by one or more adults.

Although state laws and procedures may differ, a pre-need designation may be authorized for filing with the court in advance of the need, to be brought to the court's attention upon the filing of a guardianship petition for the minor. If early filing is not authorized, the pre-need designation can be presented to the court when the need arises. The pre-need designation, as the parent or parents' own wish for their child, typically gives the designated person priority to be appointed as guardian, but the judge may retain authority to make the final decision. Other family members, including other grandparents, may need to be notified of your request to become guardian, and you should expect the judge to consider any meritorious objections raised by others. An attorney who practices in the area of guardianships in your state can assist you in seeking to become guardian or custodian for your grandchild.