



OPTIONS FOR GRANDPARENTS CARING FOR CHILDREN

Grandparents caring long-term for their grandchildren face several barriers if they do not have legal support. These can involve difficulty arranging medical or dental care or school enrollment. A order changing legal custody will solve those problems. But not every situation justifies changing custody, and with the COVID-19 Pandemic, many courts are limiting non-emergency hearings due to health concerns and reduced staff.

Thankfully, Ohio has two legal documents that make it possible for grandparents who are taking long-term—but not permanent—care of their grandchildren to have a clear legal right to handle all of those affairs:

Grandparent Power of Attorney (GPOA)

A Grandparent Power of Attorney is a legal document in which the parent(s) of a child give the designated grandparent(s) “any of the parent's, guardian's, or custodian's rights and responsibilities regarding the care, physical custody, and control of the child, including the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child.” Importantly, the GPOA does not eliminate the parent’s rights or change legal custody.

Requirements of GPOA:

To prevent abuse, GPOAs have strict requirements for validity. In order to give the GPOA, the parent signing must certify that:

- They are experiencing one of these conditions:
 - (a) Seriously ill, incarcerated, or about to be incarcerated,
 - (b) Temporarily unable to provide financial support or parental guidance to the child,
 - (c) Temporarily unable to provide adequate care and supervision of the child because of my physical or mental condition,
 - (d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable, or
 - (e) In or about to enter a residential treatment program for substance abuse;
- The other parent is deceased and the signing parent has authority to sign the GPOA;
- The parent believes the GPOA is in the child’s best interest

In addition, the parent must certify the GPOA is not for the purpose of enrolling the child in a school or school district for athletic or academic programs.

If there is a court order about custody of the child and only one parent is signing, the signing parent must also certify either that (1) they have attempted and failed to locate the other parent or (2) the other parent is legally not entitled to notice.

Finally, the GPOA must be filed in the juvenile court in the county where the grandparent lives [or in any other court where there has already been orders about the child, like a divorce or juvenile court that has previously determined custody] within 5 days of signing.

Grandparent Caretaker Affidavit (CTA)

A Grandparent Caretaker Affidavit is used when a child is living with a grandparent and the grandparent cannot locate or contact the child's parents, despite reasonable attempts. With a valid CTA, the grandparent can "obtain authority to exercise care, physical custody, and control of the child including authority to enroll the child in school, to discuss with the school district the child's educational progress, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child." As with the GPOA, the CTA does not eliminate the parent's rights or change legal custody.

Requirements of CTA:

CTAs also have strict requirements for validity. In executing a CTA, the grandparent must certify that:

- The child lives with the grandparent
- The grandparent has made reasonable attempts to locate the parents
 - If paternity is not established, there is no requirement to attempt to contact a parent other than the mother;
 - If there is a court order for custody of the child and one parent either (1) is not entitled to notice of relocation or (2) parental rights have been terminated, the grandparent does not need to attempt to contact that parent
- The CTA is not for the purpose of enrolling the child in a school or school district for athletic or academic programs.

Finally, the CTA must be filed in the juvenile court in the county where the grandparent lives [or in any other court where there has already been orders about the child, like a divorce or juvenile court that has previously determined custody] within 5 days of signing.

Limitations to GPOAs and CTAs

Neither a GPOA nor a CTA creates or changes anything about child support. Child support changes still will have to be handled through the appropriate court or child support enforcement agency.

If there are court proceedings pending about the child, such as an adoption, guardianship, custody, divorce, or juvenile court case, neither a GPOA nor CTA can be created.

Because GPOAs and CTAs do not change custody or the parental relationship, the parents can limit, terminate, or revoke either one if they change their minds. Do not try to use GPOAs or CTAs as a substitute for changes of custody or adoption if a permanent solution is needed.

Resources

There is a statutory form for both GPOAs and CTAs. The county law library or department of Job and Family Services should be able to provide a copy. The Supreme Court of Ohio has posted these forms online as well:

<https://www.supremecourt.ohio.gov/JCS/CFC/DRForms/caretakerAuthAff.pdf>
<https://www.supremecourt.ohio.gov/JCS/CFC/DRForms/powerAtty.pdf>

The Legal Aid Society of Columbus and Southeastern Ohio Legal Services provide free legal services for low-income Ohioans and seniors. Call for an intake at 614.241.2001 (Central Ohio), 888.301.2411 (Delaware, Marion, Morrow & Union counties) or 800.686.3668 (Southeastern Ohio).

Legal Aid does not discriminate against any person on the basis of actual or perceived race, color, religion, sex, sexual orientation, gender identity or expression, marital status, national origin, disability, age, ancestry, or military status in admission, treatment, or participation in our programs, services and activities, or in our hiring and employment practices

