



A Legal Resource Guide for Grandparents Raising Grandchildren

Knowing what to do when you become a parent again can be tough. This guide outlines your legal options, services and other information that can be helpful in raising your grandchild.

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Introduction

In Hawai'i over 14,000 grandparents are responsible for raising over 33,000 grandchildren. The Needs Assessment of Grandparents Raising Grandchildren in the State of Hawai'i, released in November 2007, recognized that grandparents raising grandchildren face different challenges than parents and these include, age, financial difficulties, housing difficulties and additional stressors.

This legal resource manual aims to assist grandparents raising grandchildren with basic information about their legal rights and responsibilities in terms of legal status, caregiver consents, child welfare, public benefits, housing and child support.

While this guide covers a lot, it cannot take into account every situation that a grandparent raising a grandchild must face. Therefore, we do advise you to consult with an attorney or seek legal assistance for your particular situation.

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Legal Status: Knowing What Option is Best for You and Your Grandchild

When caring for grandchildren, one of the most important questions that arises is, “What do I need to do in order to ‘legally’ take care of them?” Knowing what option is best for you requires you to become familiar with each legal relationships.

Adoption is the most permanent of the five relationships. With adoption, you take your grandchild on as your own child. This means that you are financially obligated to support the child and if you and your spouse divorce, custody will be part of the divorce as well as child support. Once adopted, a child is legally your responsibility and the legal parents have neither rights nor responsibilities (including the responsibility to pay child support) toward that child.

Guardianship provides you with the legal authority to make decisions on behalf of the child, but does not require you to provide financial support. With a guardianship, the legal parents would be responsible for child support and could have visitation either formal (through the

guardianship) or informal (upon your determination). The child’s legal parents would still be the child’s parents and either you or the legal parents could take action to end the guardianship if the legal parents become able to care for the child.

Consider a few questions in determining what type of legal relationship is right for you and your grandchild:

- *How long are you expected to care for your grandchild?* The longer the time, the more you should consider an adoption or guardianship. The shorter the time, a power of attorney or caregiver consents may be just what you need.
- *How well are or were the parents able to care for your grandchild?* If your grandchild is living with you because the parents are unfit or unable to care for your grandchild, you may want to consider an adoption or guardianship. However, if you are only caring for your grandchild while their parent is at work, getting things settled to move the household or other temporary situation, then a power of attorney or caregiver consents should be enough.
- *What’s being required by the different agencies, companies or organizations to recognize my caring for my grandchild?* Research what kinds of services and access that you need to get for your grandchild in determining what type of status you need to have with them. For example, if you are intending to provide health insurance for your grandchild through your insurance, the company may require you to have guardianship or have adopted your grandchild.

Power of Attorney (aka Temporary Custody Consent) is a time limited document which is signed by the parents (or parent with sole legal custody) and gives custody as well as the ability to make medical and educational decisions on behalf of the minor. This form is notarized. Most agencies and institutions accept this form, however, they can require a guardianship.

Caregiver Consents for Education and Health Care allow grandparents with or without the consent of the legal parents to enroll a grandchild in their care in school or seek medical treatment for them. These consents must also include specific requirements in order to qualify.

Hanai is the traditional Hawaiian form of adoption. Children are given to other relatives and many times to the grandparents without any legal documentation or formal adoption. While the hanai relationship is recognized for public benefits, in child welfare cases and in housing discrimination, many state agencies and medical institutions may not recognize the hanai relationship.

Legal Status: Knowing What Option is Best for You and Your Grandchild

	Adoption	Guardianship	Power of Attorney	Caregiver Consents	Hanai
Do I need to go to court?	Yes	Yes	No	No	No
Do I need to meet any legal requirements?	Yes, must pass child abuse neglect clearance and show ability to care for child.	Yes, show ability to care for child.	No	Yes, must have child in custody and meet specific criteria for each of the consents.	No
Do the parents need to agree?	No, however much easier if they do	No, however much easier if they do	Yes	No, however much easier if they do	Yes, usually they are giving the child
Does the child need to agree?	Yes, if over 10.	Yes, if over 14.	No	No	No
Will I have legal custody?	Yes	Yes	Yes	No	No
Am I financially responsible?	Yes	No	No	No	No
What financial assistance is available to care for the child?	Social Security (if you qualify), TANF (if income is less than 185% FPL)	Non-Needy Caregiver Assistance, TANF (if income is less than 185% FPL)	Non-Needy Caregiver Assistance, TANF (if income is less than 185% FPL)	Non-Needy Caregiver Assistance, TANF (if income is less than 185% FPL)	Non-Needy Caregiver Assistance, TANF (if income is less than 185% FPL)
Do the parents pay child support?	No	Yes	Yes	Yes	Yes
Do the parents get visitation?	Not by law, however, you can provide visitation should you choose.	It can be provided as part of the guardianship order or only as you determine.	Depending on how the power of attorney is written, but generally yes	Yes, the parent can see the child anytime he or she wishes	Yes, as hanai is not legally restrictive, the parent can generally see the child anytime he or she wishes
What can the parents do to undo this legal status?	Nothing	Can be terminated either by consent or parents may ask court to end	Revoke the power of attorney or not renew after one year	Revoke the consent	Take the child back
Do I need an attorney?	Yes, but forms are on-line to represent yourself.	Yes, but forms are on-line to represent yourself.	No	No	No

Adoption and Guardianship

Adoption and guardianship as the more permanent of the available legal statuses require the filing of court documents and court hearings. Because the process can be complex, it is recommended that you hire an attorney to assist you with this process.

If you are unable to afford an attorney, you may also represent yourself in court and good resources are available. Forms for adoption and guardianship can be found on the Hawai'i Judiciary website: www.courts.hi.gov, under the Forms tab at the top of the webpage and under the Oahu, Family Court section (these same forms are generally usable on other islands, you will just need to change the circuit—Second Circuit for Maui County, Third Circuit for Hawai'i County and Fifth Circuit for Kauai). The adoption forms provide the basic format required to file your own documents with court and the Hawaii Adoption Manual, 2nd. Edition, which can be found at all law libraries, can assist you to understand the process. The guardianship for minors packet provide comprehensive instructions and forms to complete your guardianship.

Information You Will Need

You will need to provide personal information about the child, the child's legal parents, and you and your spouse. You will also need to provide documents, including, but not limited to:

- Original certified copy of child's birth certificate
- Certified copy of petitioners' marriage certificate (if currently married)
- Copy of any prior marriage certificates (for each petitioner)
- Copy of divorce decrees from any prior marriages (for each petitioner)
- Copy of death certificate (if parent of child or spouse of petitioner is deceased)

Letting Relevant People Know About the Adoption or Guardianship – “Notice”

Notice requires any person who may be affected by the action that court is about to take be told about the adoption or guardianship. In these cases, the legal parents and the child (if over 10 for an adoption or over 14 for a guardianship) must have notice. There are other people, including, but not limited to other grandparents, adult siblings of the child, and those with custody of the child (if not you), that may need notice but notice to these people are only required under specific situations.

Getting notice to the required people is one of the most important things a court looks at. For instance, it will not be enough to say that you don't know where the father of your grandchild is, you will need to show efforts to find him and then will be required to publish in a newspaper notice of the hearing. If you are in this situation you should consult with an attorney.

Legal Parents:

- A natural mother is always considered a legal parent unless parental rights have been terminated.
- For a child born after 1999, a father listed on the birth certificate is considered a legal parent.
- For a child born before 1999, a father is only a legal father if the parents were married at the time of the child's birth or paternity was established.

Adoption and Guardianship

Consent or Contested

In order for an adoption or guardianship to be granted, consent from the legal parents and your grandchild (if of relevant age) or a determination by the court that the adoption or guardianship is necessary for your grandchild is required.

Consents signed by the legal parents and your grandchild can move the legal process along very quickly. Consents are usually sent to the legal parents and your grandchild at the same time they are given a copy of the petition for adoption or guardianship. These consents should clearly explain that the person received the documents and they agree to the adoption or guardianship. Once these consents are signed, they are provided to the court and unless the court has questions regarding the consent, the adoption or guardianship is usually granted.

Getting Legal Assistance:

- Legal Aid Society of Hawai'i:
536-4302 (Oahu)
1-800-499-4302 (Neighbor Islands)
- Volunteer Legal Services Hawai'i:
528-7046 (Oahu)
1-800-839-5200 (Neighbor Islands)

Contested cases result when either the legal parents or your grandchild do not agree to the adoption or guardianship. In these cases, the court will set a trial or contested hearing at which time you must show why the adoption or guardianship is necessary for your grandchild and that the legal parents are unfit and unable to care for the child. At the same time, the legal parents or your grandchild who do not agree to the adoption or guardianship are given an opportunity to show why it is not necessary. If your adoption or guardianship becomes contested, it is highly recommended that you consult with an attorney.

Termination of Guardianship

If both you (and your spouse) as guardians and the parents agree that the guardianship be terminated, you can file an order with the court stipulating to the termination of the guardianship. If either of the legal parents decides that they want to terminate the guardianship, then they can file in court for a termination. If you do not agree, then it will be set for a contested hearing and the legal parent will need to show why the guardianship should be terminated.

Special Considerations for Grandparents

Grandparents by nature of your relationship with your grandchild are usually older. It is important you make special considerations for the future care of your grandchild if you adopt or take guardianship over them.

Because adoption is permanent and like any other parent-child relationship, you should have a will drawn up that outlines who should take care of the child and any trusts that need to be set up for any inheritance in case of your death. You can nominate the child's natural parents should you choose or any other adults that can care appropriately for the child.

With guardianship, you should similarly outline in a will what should happen to the child in the case of your death. While no inheritance rights will attach, any nominations in your will can be taken into consideration when determining who should take care of the child.

Power of Attorney and Caregiver Consents

Power of Attorney

A power of attorney is signed by the legal parents that appoints an agent to have custody and care of the child as well as the ability to make legal decisions on behalf of the child.

Legal Parent(s) Must Authorize

The legal parent(s) of the child must sign the power of attorney. If the legal parents of the child are divorced or separated, only the parent with sole legal custody must sign the document before a notary. However, if both legal parents share legal custody, then both must sign.

Limited Authority

The legal parent(s) authorizing the power of attorney may limit the degree to which you can make decisions on behalf of a child. While many forms used for this type of power of attorney are usually fairly broad, the legal parent(s) can decide to not allow a grandparent to make certain decisions, including, but not limited to serious medical decisions or education decisions.

Limited Time Period

A power of attorney is only good for one year and can also be revoked at any time by the legal parent(s). If a power of attorney is to expire and the legal parent(s) can not be reached, you may want to seek out a guardianship or adoption to create a more permanent relationship between you and your grandchild.

Caregiver Consents

There are two types of caregiver consents. One provides a caregiver the ability to enroll the child in school and the second provides the ability for caregiver to get health care: primary and preventive medical and dental care and diagnostic testing and other medically necessary health care and treatment for the child.

Affidavit of Caregiver Consent (HRS §302A-482)

Passed in 2003, the caregiver consent provides the ability for the caregiver to enroll minor in school. It can be signed by parent, guardian or legal custodian. If the parent, guardian or legal custodian is not available, the caregiver can sign if they state that they could not get a signature and must document their attempts to obtain signature. A school may require evidence that caregiver lives at address provided.

This consent does not affect rights of minor's parent, guardian, or legal custodian and can be rescinded by parent, guardian or legal custodian at any time. Notice to DHS must be provided by caregiver if child is living with them due to abuse or neglect.

The educational caregiver consent cannot be used to: attend particular school, circumvent district exemption process, participate in athletics at particular school or take advantage of programs at a particular school.

Currently, the caregiver consent does not apply to special education proceedings in a school (IDEA or 504 of the Rehabilitation Act). The Department of Education has a form which includes all of the relevant information available to grandparents in need of a caregiver consent.

Power of Attorney and Caregiver Consents

Affidavit of Caregiver Consent for Minor's Health Care (HRS §577-28)

Passed in 2005, this affidavit provides a caregiver to get health care: primary and preventive medial and dental care and diagnostic testing and other medially necessary health care and treatment for the child.

It can be signed by parent, guardian or legal custodian. If the parent, guardian or legal custodian is not available, the caregiver can sign if they state that they could not get a signature and there is documentation of attempts to obtain a signature. In addition, the caregiver must be over eighteen and either:

- Related by blood, marriage, or adoption, including person entitled to award of custody, but who is not the legal custodian or guardian; or
- Has resided with the minor continuously during the immediately preceding period of six months or more.

The affidavit must also include the following statement:

"General Notices: This declaration does not affect the rights of the minor's parent, guardian, or legal custodian regarding the care, custody, and control of the minor, other than with respect to health care, and does not give the caregiver legal custody of the minor.

The minor's parent or legal custodian may at any time rescind this affidavit of caregiver consent for a minor's health care by providing written notification of the rescission to the appropriate health care professional.

A person who relies in good faith on this affidavit of caregiver consent for a minor's health care has no obligation to conduct any further inquiry or investigation and shall not be subject to civil or criminal liability or to professional disciplinary action because of that reliance."

Child Protective Services

For some grandparents, the need to care for their grandchild is the result of intervention from child welfare service. The goal of the child welfare system is to care for children who have been neglected or abused by their parents. The system provides for alternative intervention as well as formal intervention, both types of intervention which can result in the termination of parental rights if parents involved in these systems are (1) found to have neglected or abused their child(ren) and (2) fail to complete the services necessary to provide a safe family home.

While the system can be complex for parents, it is sometimes even more unfamiliar for grandparents and other kin who are willing and able to care for the child while a parent is attempting to complete services. For many grandparents, the failure to get information from the Department of Human Services (“DHS”), the inability to become foster parents and extremely late notice about the fact that their grandchild was taken into foster custody hampered efforts for many to help care for their grandchild.

What’s a Relative?

- Relative is defined as blood, adoptive or hanai relatives
- Hanai relatives defined as adult who performs or has performed a substantial role in the upbringing or material support of a child, as attested to by the written or oral designation of the child or of another person, including other relatives of the child, as deemed credible by the court or the department.

Under new amendments to Hawai’i Revised Statutes Chapter 587, effective on July 1, 2008, grandparents and other kin now have access to more information and certain rights to care for a grandchild that has entered or may enter the child welfare system.

The new provisions require a placement preference for relatives up until temporary foster custody. This means that if a child is removed from the home of their parents, DHS must immediately look for relatives and must have a preference to place the child with relatives up until the time of the temporary foster custody hearing.

In addition, the new amendments require DHS to provide an application to any relative seeking foster custody within 15 days on the inquiry. If the relative is denied, DHS must

provide the specific reason for denial and the procedures for administrative appeal. It also requires DHS to make reasonable efforts to identify all relatives within six months of assuming foster custody of child.

In order to make sure that DHS is making efforts to identify extended family and friends, DHS social workers are now required to report to the court about their efforts.

My Grandchild was Removed by Child Welfare Services. What Should I Do?

Contact the local child welfare office to find out more information. Under the new law, the social worker is required to send you an application to be a foster home for the child within 15 days of your call. You will need to complete the application if you are interested in becoming a foster parent or be a permanent placement for your grandchild. This is extremely important in the event your grandchild’s parents do not complete services and have their rights terminated. If you do not express your interest early, DHS could decide to place your grandchild with another family member or even non-relatives.

Housing

Most grandparents thrust into having to care for their grandchildren have already made housing decisions for themselves. Some have given up their larger single family homes and downsized to smaller apartments and others who need some assistance are living in senior housing complexes across the state. When a grandchild is suddenly in need of a place to stay, grandparents may face denials and other barriers to finding appropriate housing.

Housing Discrimination

Generally, it is illegal to discriminate against families with children. Both federal and state law prohibit such discrimination. What this means is that if you are seeking housing from a landlord who does not run a senior housing complex, that landlord cannot refuse to rent, sell, finance or insure to you because you have a child with you. No formal written relationship between you and your grandchild is required as hanai is recognized under Hawai'i's familial status protections.

In Hawai'i it is also illegal to discriminate based on age. As such, a landlord cannot refuse to rent to you because they consider you too old.

The Exception to Housing Discrimination in Senior Housing

However, under both federal and state law, certain senior housing complexes may choose not to rent to grandparents raising grandchildren. There are three types of senior housing complexes that fit under this exception:

- A senior project been determined by the HUD Secretary to be specifically designed for and occupied by elderly persons under a Federal, State or local government program
- A senior project solely occupied by those 62 or older
- A senior project where at least one person who is 55 or older in at least 80% of the occupied units and there is a policy to house persons who are 55 or older

If you currently live in one of these types of senior housing, adding your grandchild to your household may be difficult. If you are unsure of the type of senior housing you are residing in, ask your housing provider. If they are unclear on their answer or you don't believe them (i.e. you've seen other grandchildren living in the complex or others who are not elderly), contact the Legal Aid Society of Hawai'i's Fair Housing Project.

Recognizing the increasing number of grandparents caring for grandchildren, some housing projects are carving out exceptions and providing a grace period for the grandparent to find other housing and are assisting to find alternative housing.

The Legal Aid Society of Hawai'i's Fair Housing Project provides:

- Counsel and advice as well as legal representation in housing discrimination cases.
- Testing of housing providers to determine whether they are complying with federal and state laws regarding housing discrimination.
- Services statewide.

Contact the Fair Housing Project at:

527-8024 (Oahu)

1-866-527-FAIR (Neighbor Islands)

Public Benefits: Financial Assistance Programs

Providing for the financial support of grandchildren is usually not part of the financial planning that many seniors go through. Retirement and fixed incomes make it much more difficult for grandparents faced with caring for their grandchildren. There are a number of different programs available to grandparents raising grandchildren to help financially support.

Social Security

For those grandparents receiving social security and who decide to adopt their grandchild, social security will be available to that child until the child turns eighteen or graduates from high school. This additional income is provided through the Social Security Administration and an application will need to be made upon completion of the adoption.

Supplemental Security Income (SSI)

A grandchild who has a disability may also be eligible for supplemental security income. If your grandchild is in special education or receiving other services at school, he or she may have a disability that could qualify them for financial assistance. Depending on your legal status relationship to the child your income may or may not be counted.

Temporary Assistance for Needy Families

Non-Needy Caregiver Assistance

If your grandchild has not been adopted and you (and your spouse) make more than 185% of the 2006 federal poverty guideline for your household size, you may qualify for non-needy caregiver assistance for your grandchild. Non-needy caregiver assistance does not take into consideration your income and provides financial assistance for your grandchild alone. There are no time limits for this program.

Household Eligibility

If you have adopted your grandchild or your household income is less than 185% of the 2006 federal poverty guideline for your household size, you may qualify for financial assistance for your entire household.

TANF (as of October 25, 2008)

HH #	S.O.A. HH Exempt from Work Requirement	S.O.A. HH Not Exempt from Work Requirement	185% Standard of Need
1	\$ 469	\$ 375	\$1,844
2	\$ 632	\$ 505	\$2,482
3	\$ 795	\$ 636	\$3,120
4	\$ 958	\$ 766	\$3,759
5	\$1,121	\$ 896	\$4,397
6	\$1,284	\$ 1,027	\$5,035
7	\$1,447	\$1,157	\$5,673
8	\$1,610	\$1,288	\$6,312

Adoption and Guardianship Assistance

If your grandchild was placed with you through the Department of Human Services' Child Welfare Division and you are adoption or taking guardianship of your grandchild, there may also be additional financial assistance programs available to you. Prior to the finalization of your adoption or guardianship, be sure to speak to the social worker as to whether there is a financial assistance program available to you.

Public Benefits: SNAP (Food Stamps) and Medical Insurance

In addition to financial assistance programs, both SNAP (formerly known as food stamps) and medical insurance may be available to your household when caring for your grandchild.

Supplemental Nutrition Assistance Program (SNAP) - Formerly Food Stamps

SNAP benefits is a cash amount that is placed on an Electronic Benefit Transfer (EBT) card that can be used to buy certain food items. It cannot be used for alcoholic beverages, tobacco, pet food, soap, paper products or other non-food items and usually, it cannot be used to purchase prepared food. It can be used at any grocery store and for services like meals-on-wheels.

SNAP provides additional resources to your family for food and nutrition beyond your current income while allowing you to choose the foods that you would like to purchase.

To qualify for SNAP, your household income must be below 130% of the federal poverty guidelines for a household of your size and your liquid assets must be under \$3,000.

SNAP (as of October 1, 2008)

# in HH	Monthly Gross Income (not disabled or elderly)	Monthly Net Income	Max. Monthly Allotment (TFP)
2	\$1,745	\$1,342	\$ 506
3	\$2,193	\$1,687	\$ 725
4	\$2,642	\$2,032	\$ 921
5	\$3,090	\$2,377	\$1,094

Medical Insurance

Medical insurance from the state of Hawai'i is available to children up to age 19 who live in households with incomes that are less than 250% of the federal poverty guidelines for a household of your size. Medical insurance can be automatically qualified for if you are receiving temporary assistance for needy families assistance or it can be received separately through the Department of Human Services.

QUEST (as of October 2008)		
HH#	FPL	250%FPL
2	\$1,342	\$3,355
3	\$1,687	\$4,217
4	\$2,032	\$5,080
5	\$2,377	\$5,942

In addition, you may also be able to add your grandchildren to your own medical insurance plan if you are working. However, it is important to contact your insurance provider to determine what legal status you will need to have in order to qualify for insurance.

Child Support

Child support can also be available when you are caring for your grandchild. It can be received directly from the parents or may also be collected by the Department of Human Services if you are receiving public assistance to help financially support your grandchild.

Direct Support

If a grandparent has guardianship of a grandchild, the grandparent must either establish a child support order when there is none or modify an existing child support obligation.

Establishing a Child Support Order without Going to Court

If there is no child support order, you can apply directly to the Child Support Enforcement Agency (“CSEA”) for child support enforcement services. When applying directly, you must provide information about the parents of the child and must complete information requested by CSEA to establish child support. CSEA will attempt to schedule a hearing to establish the monthly child support obligation and will use the parents’ income to calculate this amount.

Modifying an Existing Child Support Order without Going to Court

When there is an existing order, you may also directly contact CSEA to modify the existing order. The process is similar to establishing support, but will take an existing order and make modifications based on the new situation.

Establishing or Modifying Child Support at Court

Child support may also be established as part of your guardianship proceeding. If you are filing for guardianship, you could also ask the court as part of the proceeding to establish child support for the child to be paid by the parents.

Indirect Support

If you apply for financial assistance for your grandchild, any rights that you may have to collect child support will be assigned to the Department of Human Services (“DHS”). Should DHS decide to collect child support from the parents of the child, you may receive a request for information about the location and whereabouts of the parents. As a condition of receiving financial assistance, you will need to complete this information and provide it to the best of your ability.

Child Support Enforcement Agency can be reached at:

- Via Telephone:
692-8265 (Oahu)
243-5241 (Maui)
241-7112 (Kauai)
933-0644 (Hawaii)
1-888-317-9081 (Molokai & Lanai)
- Via e-mail, you may complete a form located at: <http://hawaii.gov/ag/forms/csea-general-responses>

Resources

There are a multitude of services available to grandparents raising grandchildren in need of legal assistance. Here are just a few of those services:

Legal Services

- Legal Aid Society of Hawai'i: Provides free and low-cost legal services in family, housing (including housing discrimination), public benefits, and consumer law.
 - 536-4302 (Oahu)
 - 1-800-499-4302 (Neighbor Islands)
- Volunteer Legal Services Hawai'i: Provides neighborhood clinics, a volunteer attorney or other programs to assist you with civil legal needs
 - 528-7046 (Oahu)
 - 1-800-839-5200 (Neighbor Islands)

Self Help Legal Services

Civil legal forms are readily available on the Judiciary's website at: <http://www.courts.state.hi.us/>. Under their Form tab, you can find adoption and guardianship forms as well as other court forms that you may need in representing yourself.

Each Circuit also has a public law library available which has resources that can assist a person representing themselves. Contact your local court to find out the hours and locations of the court law library.

Government Agencies

The following agencies were referred to in this legal resource guide as being able to assist in particular situations:

- Child Support Enforcement Agency
 - 692-8265 (Oahu)
 - 243-5241 (Maui)
 - 241-7112 (Kauai)
 - 933-0644 (Hawaii)
 - 1-888-317-9081 (Molokai & Lanai)
- Department of Human Services
 - Child Welfare Services: 832-5300
 - Public Assistance Information Line: 643-1643
- Social Security Administration: 1-800-772-1213