Advice to Grandparents and Relatives Who Are Guardians or Adoptive Parents on Providing for Your Grandchildren If You Become Disabled or Die

The coronavirus has presented new challenges in caring for children, and more so, if you are a grandparent or relative who is a guardian or adoptive parent. With the fear of the coronavirus all around, you may worry about what happens if you become disabled or if you die. This is a very difficult topic to think about at the best of times. It is extremely worrisome to think about at a time like this.

If you haven’t done so already, you may want to make a plan for the care and custody of the child by a trusted relative, friend, neighbor, or other adult in your and the child’s life. Otherwise, the child may go into the custody of the Department of Children and Families (DCF). DCF will then have to find a foster home or more distant relative to care for the child.

We call the person who you find for this “your successor.” You’ll need to sign a legal document to “appoint” your successor to take care and custody of the child. Massachusetts gives you options for appointing a successor.

We will give you general information about two options. However, this is not legal advice. You may want to consult an attorney to determine the best option for you. If you can’t afford an attorney, see below for recommendations on getting a suitable attorney.

Appointing A Caregiver

You can complete a Caregiver Authorization Affidavit. This option will give your successor temporary physical custody and the authority to make medical and educational decisions for the child. However, appointing a caregiver is not a complete solution for the care of the child, and you will retain the authority to make certain decisions for the child such as visitation with birth parents or child support.

For more information, see https://www.mass.gov/how-to/name-a-caregiver-for-your-child.

Appointing A Successor Guardian

To prepare for the possibility of a successor taking complete care and custody of the child, you may want to appoint a successor guardian, who can make all legal decisions for a
child just as a parent would. Guardianships can be temporary or permanent. You can do this in your will. If you already have a will, speak to your attorney about replacing it or signing a separate “codicil” to appoint the successor guardian.

If you don’t have a will or don’t want to change it, you may want to speak to an attorney about completing a separate document specifically to appoint a guardian, as permitted under Massachusetts law (G.L.c.190B, sec 5-202). While you don’t need to sign the document before a notary, you do need to sign it before at least two people who witness your signature.

Your appointment of the successor guardian becomes effective when a doctor states in writing that you are no longer able to care for the child or if you die.

Finding an Attorney

If you need an attorney, you may get assistance from one of the following:

Massachusetts Senior Legal Helpline: 1-866-778-0939
If you are over 60:  The Helpline provides FREE legal information, advice and referral services for Massachusetts senior citizens (60 years or older) in most areas of civil law.
Northeast Legal Aid, for grandparents who live in Essex county or Northern Middlesex county: 978-458-1465
To get a referral to a private attorney:
Massachusetts Bar Association Lawyer Referral
www.masslawhelp.com