

Should We Adopt Our Grandchildren?

May 1, 2014 | by

Dear Ask the Attorney:

My son and daughter-in-law died as a result of drug abuse. Their twin boys (21 month olds) have been living with my husband and I practically since their births. Should we consider legally adopting them?

G.R.

Our guest blogger, [Jennifer Fortunato, Esq.](#) is counsel at [Einhorn Barbarito](#) where she devotes her career exclusively to family law and related matters. She has broad experience in all areas of [family law](#) and related matters, including divorce litigation, custody and visitation, alimony and child support, business and other asset valuation, equitable distribution, domestic violence, separation and property settlement agreements, prenuptial agreements, post-divorce issues and litigation, [grandparent rights](#), adoptions, guardianship, palimony, appeals, and civil unions.

Dear G.R.:

Adoption is an option for grandparents who are raising their grandchildren.

According to the 2000 U.S. Census, 6 million children live with their grandparents or another relative as the head of their household. Grandparents are keeping families together. Grandparents often serve as a safety net to keep their grandchildren out of foster care. They also assume care of their grandchildren in cases of death or illness of a parent. However, grandparents encounter many challenges that biological parents do not encounter. For example, they are unable to place their grandchildren on their medical insurance or make medical decisions on their behalf or enroll them in school.

Adoption is one option for grandparents. Other options include legal custody and guardianship. Adoption provides grandparents with the legal parental rights that their grandchildren's biological parents have. Adoption requires that a legal proceeding be brought by the grandparents against one or both of the biological parents to terminate the parental rights of the biological parents. If the biological parents object to the adoption, these proceedings can be lengthy and extremely emotional. The grandparents may or may not succeed in adopting their grandchildren. The court must decide as to the fitness of the parents and the "best interests" of the grandchildren. However, if the biological parents consent to the adoption, then these proceedings are usually quicker and less emotional.

Besides remedying the challenges that grandparents face as to placing their grandchildren on their medical insurance, making medical decisions on their behalf and enrolling them in school, adoption also provides a number of other benefits to both the grandparents and their grandchildren such as, their grandchildren's right to inherit, the emotional and physical security for the grandchildren and a feeling of family unity. Furthermore, grandparents may also be entitled to various tax benefits.

If both biological parents are deceased, and there is no last will and testament designating guardianship, it should make the process less onerous; however, it raises the question as to whether

there is anyone who may object to you adopting your grandchildren such as other grandparents, aunts or uncles. This must be considered and explored further and will depend upon the facts of the case.

Whether to adopt a child, even a grandchild, is an extremely important decision that must be thoroughly explored. It is also very fact sensitive. As a result, you should consult with an attorney who handles adoption matters to determine if adoption is the option you want to pursue.

"Ask the Attorney" is a blog in which answers to questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case are different; therefore you should seek competent legal representation.