

Chapter 11

Do not use this guide for legal advice. It provides information only, and that information only applies to British Columbia law, services, and benefits. Consult with a lawyer for advice related to your specific situation. Laws, benefits, policies, and procedures are always changing. Always double-check the information you intend to rely on with the appropriate agency or with your lawyer. Indigenous people's traditions and customary laws are outside the scope of this guide; however, we want to acknowledge those customs and traditions and emphasize that nothing in this guide should be misinterpreted as superseding or taking away from them.

Arranging your Affairs

Your grandchild is living with you now and you have a few things to sort out. This section will walk you through how to get a hold of important documents and what documents you will need to travel. There is also a section on how to arrange your affairs to provide for your grandchild in case you become ill or die.

In many ways, the law has not caught up to the particular case of what happens to grandchildren when their grandparent-guardian becomes ill or dies, but there are still a few ways you can legally plan for your grandchild.

Important documents

It is important to have certain papers and documents so that you can apply for benefits, register your grandchild for school, and go on trips. Read below for information on how to get copies of important documents.

Birth certificates

Contact the **Vital Statistics Agency**:

Greater Vancouver: **604-660-2937**
Greater Victoria: **250-952-2681**
Elsewhere in BC: **1-800-663-8328 (toll-free)**
Website: <http://www.vs.gov.bc.ca/>

You can get more information about birth certificates and download an application form from their website at <http://www.vs.gov.bc.ca/>. The following is required in order to complete the application:

- name of the child;
- child's date of birth;
- child's place of birth;
- father's full name and place of birth;

- mother's full name and place of birth;
- full name, mailing address, phone number and signature of person making the request; and payment of the processing fee.

Only certain people are allowed to apply for birth certificates. See the application form itself for the requirements. If you do not meet them, contact the [Vital Statistics](#) office for help.

Social Insurance Numbers

Legal guardians can apply for a Social Insurance Number (SIN) for a child under the age of 12 by completing an application form and providing the required identification documents. Legal guardians must also provide proof of legal guardianship (a court order) in order to apply for the card.

The [SIN application form](#) can be obtained from a local [Service Canada](#) office or by downloading it from the Service Canada website for more information about what is required for identification documents go to:

<http://www.servicecanada.gc.ca/eng/sin/apply/someoneelse.shtml>

Applicants are strongly encouraged to apply in person at a local Service Canada office since the process is faster and easier. To find an office or to ask for more information on obtaining a SIN card, call the Regional Call Centre for Employment Insurance and Social Insurance Numbers at 1-800-206-7218 (toll-free).

Medical records

If you have not been the primary caregiver for your grandchild since birth, your doctor may not have all your grandchild's medical records. If so, your doctor can send a request to any previous physicians and request that they send the grandchild's records so that you have a more complete medical history on file. Likewise, immunization records can be forwarded to your doctor since this information is typically tracked by local health authorities.

If you are concerned that the medical files available are incomplete, you can help your doctor reconstruct the child's medical history by **making a list of all the illnesses and conditions** you can verify that the child has had. Also **list any information regarding the medical history of the birth parents**, including any medical conditions, substance abuse, or mental health problems the mother may have experienced during pregnancy.

Whenever you bring your grandchild to the doctor or dentist, have the person **make a note in your grandchild's file**, along the lines of "child brought in by grandparent." It can be helpful later on to be able to prove that you were taking care of your grandchild's needs.

Secure Certificate of Indian Status (status card)

The Secure Certificate of Indian Status (SCIS) is an identity document issued by Aboriginal Affairs and Northern Development Canada (AANDC) that confirms that the cardholder is registered as a status Indian under the Indian Act. Once a person gets this card, they can access a range of entitlements, programs, and services.

More information can be found at:

<https://www.aadnc-aandc.gc.ca/>

In the meantime, you can get information and an application for a status card by contacting the office in your region.

Aboriginal Affairs and Northern Development Canada

British Columbia Region Lower Mainland: 604-775-5100 Elsewhere in BC: 1-800-567-9604 (toll-free) Website: http://www.aadnc-aandc.gc.ca/
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Contact information for other regional offices is available online:

<https://www.aadnc-aandc.gc.ca>. Or by calling the toll-free number above.

Documents required for travel

It is extremely important for you to have certain important papers with you when you take your grandchild travelling. If you do not have certain papers, your vacation to Disneyland may look like child abduction to the authorities.

International travel

Before you travel internationally with a child, you should contact the embassy or consulate of all countries the child will be visiting to ask about entry requirements. Whether travelling alone or with an adult, each child (regardless of age) who travels abroad must have a valid passport and may also need supporting documentation. Generally, anyone younger than 18 is considered a child.

You can find general tips for travelling with children at <http://travel.gc.ca/travelling/publications/travelling-with-children>

Because grandparents raising their grandchildren are in a unique legal situation, it is a good idea to talk with your lawyer or call the **Consular Affairs Bureau** before you leave: **1-800-267-6788 (toll-free)**.

- You will need the following documents to travel internationally with your grandchild:
- Your own valid passport and supporting documents
- Your grandchild's valid passport

Information about passports can be found at <http://www.passport.gc.ca/info/16-.aspx?lang=eng> Or call **Passport Canada: 1-800-567-6868 (toll-free)**

- Your grandchild's birth certificate showing the parents' names
- Any legal documents pertaining to custody and/or guardianship Status document from Citizenship and Immigration Canada if your grandchild has immigrated to Canada
- A death certificate if one of the parents or legal guardians is deceased
- Any additional documents required by the country you are visiting (check with the embassy or consulate of each destination country to find out what their requirements are)
- A parental consent letter (see the next page for a sample)

If you have **sole custody** of your grandchild under the **Divorce Act Order** or are the **only person with guardianship** under the **Family Law Act Order**, you may only have to show a **parental consent letter** if the parents have visitation rights. If you have joint custody or another person is a guardian of your grandchild, the other person with custody or guardianship will have to provide a consent letter. Be sure to bring any legal documents that explain your situation and call the Consular Affairs Bureau before you leave for further advice.

The letter on the next page is from the online resource for Foreign Affairs and International Trade Canada. You can download a copy in Microsoft Word, PDF, or Word Perfect format from <http://travel.gc.ca/travelling/children/consent-letter>.

You should adjust this sample to meet your specific situation and requirements.

Sample Consent letter

To Whom It May Concern:

I (We), _____ (full name(s) of the other person(s) with custody or guardianship) have _____ (lawful custody of/are guardians) of

Child's full name: _____

Date of birth (DD/MM/YY): _____

Place of birth: _____

Canadian passport number: _____

Date of issuance of Canadian passport (DD/MM/YY): _____

Place of issuance of Canadian passport: _____

_____ (child's full name), has my (our) consent to travel with

Full name of accompanying person: _____

Canadian or foreign passport number: _____

Date of issuance of passport (DD/MM/YY): _____

Place of issuance of passport: _____

To visit _____ (name of foreign country) during the period of _____ (dates of travel: departure and return).

During that period, _____ (child's full name) will be residing with _____ (name of person where child will be residing in foreign country) at the following address:

Number/street address and apartment number: _____

City, province/state, country: _____

Telephone and fax numbers (work and residence): _____

Any questions regarding this consent letter can be directed to the undersigned at:

Number/street address and apartment number: _____

City, province/state, country: _____

Telephone and fax numbers (work and residence): _____

Signature(s): _____ Date: _____

(Full name(s) and signature(s) of custodial parent, and/or other person(s) with custody or guardianship)

Signed before me, _____ (name of witness), this _____ (date)

At _____ (name of location).

Signature: _____ (name of witness)

Travel within Canada

All passengers, traveling by air, 18 and over must have one piece of government issued photo ID or two pieces of government issued non-photo ID (one of which must show name, date of birth and gender).

For infants (under two years of age) a proof of age is required. (A photocopy is acceptable.)

All children between two and 12 years of age must be accompanied by an adult unless travelling as an unaccompanied minor (see next paragraph). We strongly recommend that all children travel with at least one piece of government-issued identification.

You should travel with a parental consent letter (see above).

If one of the parents or legal guardians is deceased you should have a death certificate.

Children traveling alone

If your grandchild is traveling alone by plane, you should arrange in advance with the airline for an escort to supervise your child from check-in through arrival. Double-check with your airline regarding their identification requirements and restrictions for unaccompanied minors (such as minimum ages and requirements for them to take non-stop flights only).

Note that airlines require a parent or guardian to stay at the airport until the flight has departed. The person greeting the child at the destination must have appropriate identification and authorization; otherwise, seeking to pick up the child could be interpreted as child abduction.

Wills

Creating a valid, clear, and easy to understand will is a big help to those you will leave behind when you die. A lawyer can translate your wishes and desires into language that a court will understand and correctly carry out. Find a lawyer who practices in the area of wills and estates or elder law. It is likely that a friend of yours can recommend one, so it is a good idea to ask around. You can also call the [Lawyer Referral Service](#), and they will try to set you up with a lawyer in your area or suggest places to look: 1-800-663-1919 (toll-free), 8:30 a.m. to 4:30 p.m., Monday to Friday.

To minimize your costs, you can plan out your thoughts and ideas before seeing a lawyer. That way, the lawyer will simply help you translate your wishes into legal wording, as opposed to starting from scratch.

There is also the option of going to see a notary public, a different sort of legal professional who can help you create a valid will, and sometimes at a lower price. To find a notary public in your area, you can look in the yellow pages or visit this website: <http://www.notaries.bc.ca/>.

Notaries are not able to prepare more complicated wills which contain trusts.

Steps to making a valid will

If you decide to make your own will, be sure to follow the legal requirements set out in this section and to keep it in a safe place.

Generally, wills must satisfy the following requirements:

- Wills must be in writing. You need to be mentally capable of managing your own affairs, and you need to agree with the contents of a will at the time that you write it. If you are misled by someone or pressured when you put together the will, the courts may not consider it to be legal.
- The writer of the will, formally known as a **will-maker**, must sign at the end of the document. In addition, wills are often initialed on each page in order to show that you have read it and agree to the terms written there. If you are too sick or unable to sign the will, you can ask someone else to sign it in your name while you are present. This must be by your request.
- Your signature must be witnessed by two people besides yourself, both of whom must be over the age of 19. The two witnesses must sign the will in front of you and in front of each other.
- These two witnesses cannot benefit from the will. If you have someone witness your will who is named to inherit something from you, the law will not recognize that part of your will as legal, and that person will not be able to inherit anything from you.
- You should put a date on your will so that it is clear which version is the most recent.
- You should not typically have multiple wills. Each time you write a new one, it typically cancels out any that have come before and replace them entirely. (Multiple wills can sometimes be used with professional advice, for example, if you have assets in different countries.)

After you have made a will, it is possible to change it or make a new one at any time. You can create an entirely new will (for clarity's sake, it is useful to say in your new will that you revoke all of your old wills), or create something called a **codicil**, which is a document that alters some parts of your current will. To be legal, a codicil has to meet the same requirements as a will, although you do not have to use the same two witnesses as you did in your will and you must refer to the will you are changing (be sure to include the date the will was written on).

For more information on writing your own will, consult **Dial-A-Law** at <http://www.dialalaw.org/> (or by calling 604-687-4680 in the Lower Mainland or 1-800-565-5297

elsewhere in BC). You can also learn from the **People’s Law School**; look at their website at <http://www.publiclegaled.bc.ca/> or call them at 604-331-5400.

What to include in a will

Wills do not have to follow a specific format in order to be legal, but they generally have instructions on the following topics:

Executor: A will should name an executor, someone who will handle your affairs on your behalf after you die. That person is responsible for carrying out the instructions you write in your will. Choose someone to be executor whom you trust to look after your affairs – someone you expect to live longer than you.

Estate: Write down what you want to have happen to everything you own when you die. Altogether, these things are called your estate. This includes your property, your possessions, your RRSPs (unless you have a beneficiary nominated on the RRSP), and anything you would like to pass on to your beneficiaries (people who will get something under your will).

It is important to try to divide your estate up entirely, but you do not have to know exact figures. It is fine to say things like, “My bank account will go to...” without knowing exactly how much money it will have in it when you die.

Guardianship: If you are the legal parent of your grandchild (i.e. the adoptive parent or are a guardian of your grandchild you should name someone who will become the guardian for your grandchild in your will.

Funeral desires: If you have a specific request about how you would like your funeral or burial to be, a will is a good place to lay these requests out. However, be aware that in many cases a will is not looked at until after a funeral has taken place. So you make your requests known to your family and community as well.

Where to store a will

Keep your will in a place where it will stay safe for a long time – where fire, water, and time cannot damage it and where no one can tamper with it. Often people keep their wills in safety deposit boxes in banks or at their lawyer’s office. If you plan to keep your will at home, it is a good idea to put it in a brightly coloured envelope marked “WILL,” along with other important documents, so that your executor or family can easily find it when you die.

You can also register your will with the British Columbian Department of **Vital Statistics** to formally make it known that you have made a will. This is known as a “**Wills Notice**” and it identifies that a will has been registered, describes the person who has made the will, where the will is located, and the date of the will. This is not required by law, but it is a good idea. The

Vital Statistics nearest office can be found by looking in the blue pages that come after the white pages of your telephone book under “Government of British Columbia – Vital Statistics.” If you have any questions, the Vital Statistics website is helpful:

<http://www.vs.gov.bc.ca/wills/index.html>.

If a person dies without a will

If you [die without a will](#), there is British Columbia law that says who will get your property. However, it does so in a very impersonal way that does not take into account your family members’ individual needs and your wishes. Also, it could create a lot of trouble and expense for your family if you do not leave a will. For all of these reasons, it is best to write your own will so there is no question about what your wishes might have been.

Trusts

Creating a trust is a way to leave money or other property for someone who cannot manage it themselves. Trusts are usually created to ensure that children or disabled individuals can benefit under a will. For example, if you want to leave your house to a grandchild who is a minor, you write in your will that you, the settlor (the person creating the trust) ask either a certain company (a “Trust Company”) or someone you trust (called a trustee) to take charge of the property on behalf of your grandchild (called the beneficiary) until he or she reaches the appropriate age (a contingency age). This means that a beneficiary (your grandchild) can’t legally receive the money until they are 19. Sometimes people want the beneficiaries to receive the money when they are a bit older, for example 25. You often give the trustee the ability to advance funds from the trust to the beneficiary before they get to the specified age (eg 25), with the beneficiary being entitled to the balance of the trust fund at the specified age.

It is essential to get legal advice if you are thinking of establishing a trust in your will. It is best to find a lawyer who specializes in trusts, or a company that administers them. Several Trust Companies operating in British Columbia are listed on this website:

http://www.fic.gov.bc.ca/web_listings/TrustCompanies.aspx.

If you are thinking about providing for a disabled grandchild in your will, be sure to ask the lawyer or trust company you consult with about how the money you leave your grandchild will affect his or her eligibility for **Persons with Disabilities** (PWD) benefits. It may be that the gift in a will can be structured with a discretionary trust which will benefit the individual without eroding the benefits he or she may be entitled to receive from government.

In a typical discretionary trust, the Trustee is given the absolute authority (discretion) to decide how much of the income and how much of the capital, if any, will be paid to the beneficiary and at what time. Because the beneficiary cannot require the payment of the income or capital from the trust, as the law currently stands the trust is not considered to be of any value to the

beneficiary in calculating the beneficiary's assets under, for example, the *Employment and Assistance for Persons with Disabilities Act*. Also, because the Trustee will pay out only what the beneficiary needs, the beneficiary will not accumulate excess assets which could result in a loss of the disability pension.

If you are wanting to assist a disabled grandchild during your lifetime, you can consider an investment called a Registered Disability Savings Plan (RDSP) that is available for some disabled persons.

Your lawyer or trust company can advise you about your options. You can also look at the Ministry of Housing and Social Development's website for more information on the issue: <http://www.eia.gov.bc.ca/PUBLICAT/bcea/trusts.htm>.

Guardianship and wills

If you are the guardian of your grandchild, you can appoint someone to become the child's guardian in the event of your death. You can do this in your will or by using Form 2 from the Family Law Act Regulations.

You can also make a person a standby guardian of your child so that he or she takes over as the child's guardian in the event that you cannot continue to care for the child as a result of illness or senility. When the conditions set out in the Form 2 happen (the illness or senility), the standby guardian will begin to act as the child's guardian and must consult with you about parenting decisions for as long as possible.

Temporary guardianship

If you are the guardian of your grandchild and are unable to care for your grandchild for a short period of time – because of a hospital admission among other things – you can arrange for another person to have **temporary guardianship under Section 43 (2) of the Family Law Act (FLA)**. That person can then make arrangements for your grandchild's temporary care, education, and financial support.

This sort of Temporary authorization must be in the form provided in the FLA's Regulations and meet certain signing and written requirements. Unless the appointment is cancelled, or unless the appointment says otherwise, the appointed guardian continues as the child's guardian on the death of the appointed guardian, despite any other instruments made by the appointed guardian (such as in a will).

This Legal Guide will be updated regularly. We are counting on readers to alert us to any errors, omissions or unclear content. Please send your feedback to "Communications" via: office@parentsupportbc.ca.