

Legal Access For All

COMMUNITY

LEGAL SERVICES

A blue line-art illustration of Lady Justice, the personification of justice. She is depicted as a woman wearing a blindfold, holding a pair of scales in her raised right hand, and holding a sword in her left hand. The illustration is positioned to the right of the word 'COMMUNITY' and partially overlaps the 'LEGAL SERVICES' text.

***Strengthening Grandparents' Rights
in Kinship Care & Fostering Hope for
Future Generations***

Lizzie Johnson, Sr. Managing Attorney

Who are we?

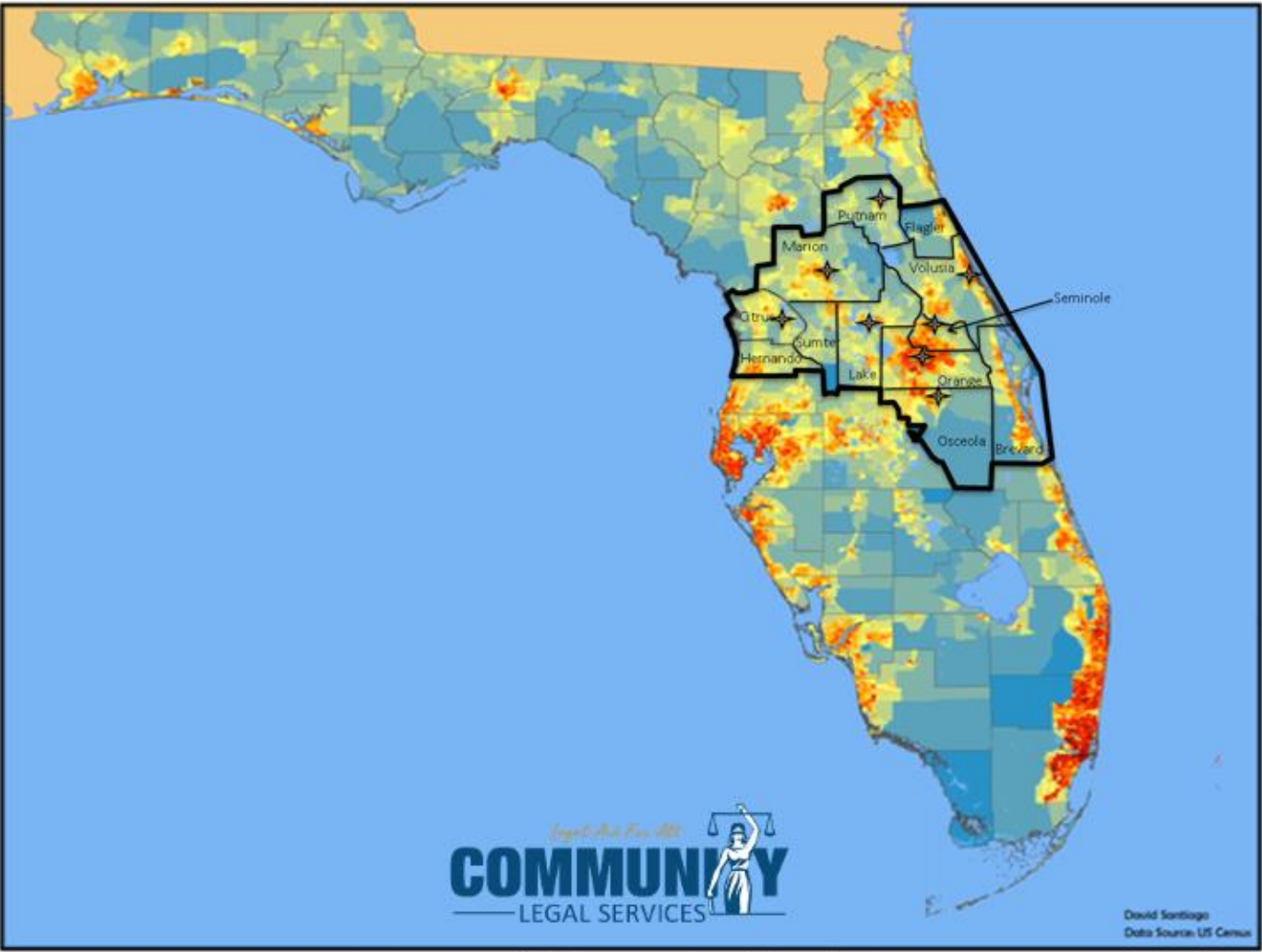
Community Legal Services (CLS) is a **no-cost** 501(c)(3) nonprofit law firm striving to remove barriers to justice by empowering vulnerable communities through legal advocacy, education, and collaborative partnerships.

Our Service Area

Citrus
Marion
Sumter
Volusia

Lake
Hernando
Putnam
Flagler

Orange
Osceola
Seminole
Brevard



Service Area/ Office Locations/ Population

Meet the Older Adult Programs Team!



LIZZIE L. JOHNSON, ESQ.
Sr. Managing Attorney
386.255.6573
407.322.8983



ANNIE BELJOUR, ESQ.
Staff Attorney
352.343.0815
407.841.7777



CARRIE CLINE, FRP
Florida Registered Paralegal
386.255.6573

Attorney Intake and Legal Advice HELpline: 1-800-405-1417

Older Adult Programs

Our *entire* firm assists seniors (age 60+) and caregivers (age 55+) with a broad spectrum of civil legal issues *including* the following:

- Landlord/Tenant Issues
- Foreclosure Prevention Counseling
- Residential Mortgage Disputes & Scams
- HECM/Reverse Mortgage Issues
- Deeds & Title Scams
- Heirs Property Rights
- Guardianship & Alternatives
- Health Care Surrogate/Living Wills
- Power of Attorney/Revocations
- Estate Planning
- Probate
- FEMA/Disaster Survivor Assistance
- Caregiver Resources & Legal Assistance
- Pro Se Forms & Legal Assistance
- Consumer Lawsuits/Small Claim Actions
- Bankruptcy
- Debt Collection
- Replevin/Vehicle Repossessions
- Credit Report Disputes
- Identity Theft
- Temporary Custody by Extended Family
- Divorces & Alimony Disputes
- Domestic Violence Injunctions
- Exploitation of Vulnerable Adults Injunctions
- Public Benefits Overpayments & Terminations
- SNAP Benefits (aka Food Stamps)
- Medicare/Medicaid Disputes
- Veteran's Benefits





Legal Needs After Disaster

- 1 **FEMA Assistance**
Help with applying and appealing denials

- 2 **Landlord/Tenant Issues**
Repair questions, attempts to end lease

- 3 **Insurance Disputes**
Filing a claim and disputing denials

- 4 **Contractor and Repair Issues**
Scams and contract disputes

- 5 **Public Benefits**
Unemployment, food assistance

Visit our website for more information
LegalAccessForAll.org

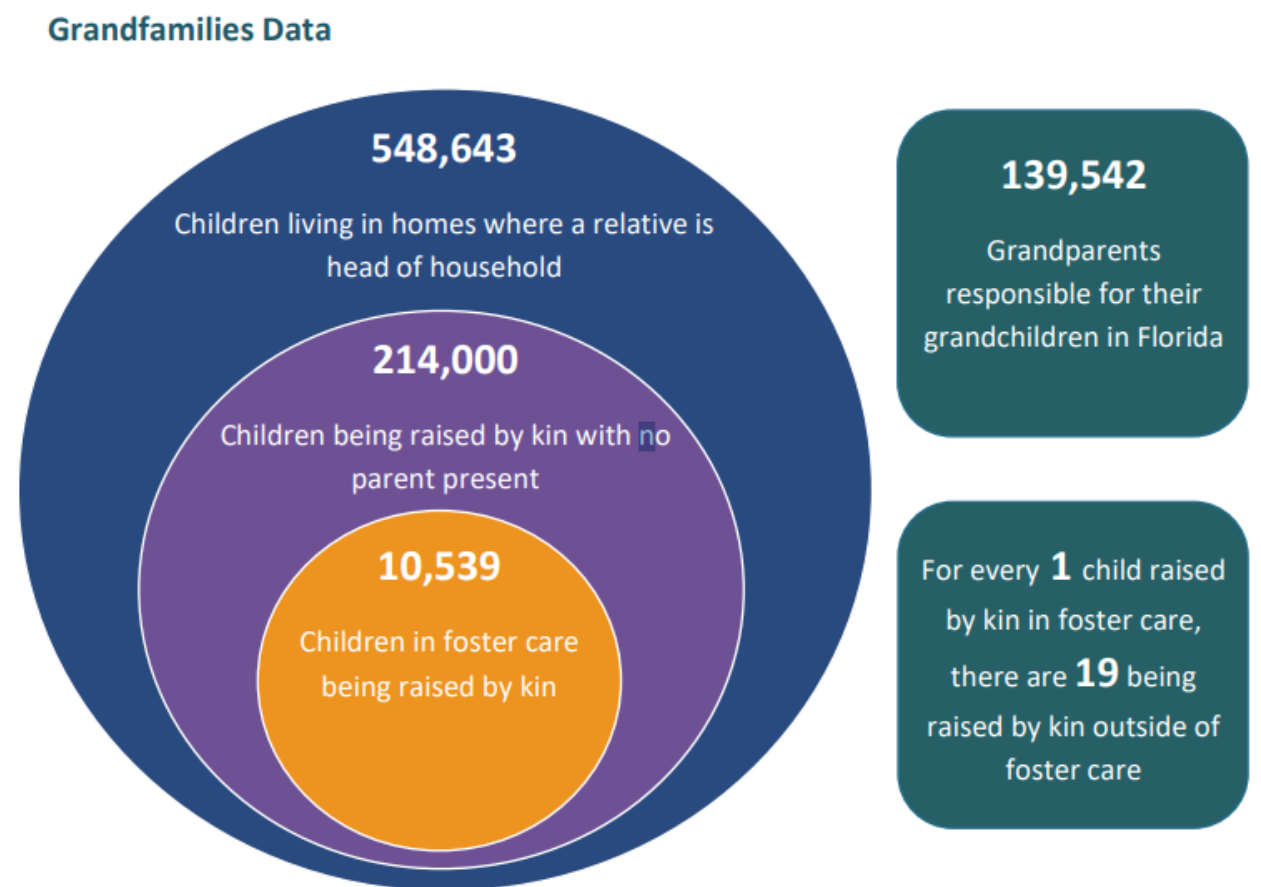


Kinship and Foster Care



Crisis Alert: Kinship and Foster Care

- **25%** of Florida's population are over the age of 60.
- Florida is the **third** largest state with veterans!
- In Florida, **13%** of seniors aged 65 or older live alone.
- In Florida, **29%** of grandparents are responsible for a minor
- The CDC reports that **1 in 4** Floridians are caregivers
 - **58%** are women
 - **22%** are 65+ years old



www.grandfamilies.org

Kinship and Foster Care: *Ineffective Legal Planning*

The lack of an effective legal plan can prevent relatives or foster parents from having the legal tools to make the following decisions for a minor, which is costly, burdensome and unreasonable delay:

1. General Welfare
2. Educational
3. Financial
4. Healthcare (Medical, Dental, Behavioral & Mental Health)
5. Residential Placement
6. Safety
7. Travel



Kinship and Foster Care: *Essential Life Care & Estate Planning Documents*

ADVANCE DIRECTIVES *(or a Health POA)*

DECLARATION OF PRE-NEED GUARDIAN

LAST WILL AND TESTAMENT

LEGAL RELEASES OR DISCLOSURE AUTHORIZATIONS

POWER OF ATTORNEY, *possibly*

TRUSTS, *possibly*



Kinship and Foster Care: *Barriers to Raising Minors*

- Parenting Challenges & Familial Strains
- Lack of effective solutions to navigate or support the emotion development of a minor with mental health issues
- Healthcare & Mobility Limitations
- Social Isolation & Loneliness
- Maintaining Self-Care
- Limited Financial Resources
- Obtaining Legal Authority to Make Decisions
- Accessing Supportive Services & Free Legal Services
- Accessing and/or Maintaining Safe & Affordable Housing
- Subjected to Housing Discrimination
- Legislative Advocacy & Public Awareness



Kinship and Foster Care: *Understanding Your Legal Rights in Florida*

- Adoption (*See Florida Statutes, Chapter 63*)
- Conservatorship (*See Florida Statutes, Chapter 747*)
- DCF Dependency Placement (*See Florida Statutes, Chapter 39*)
- Guardianship (*See Florida Statutes, Chapter 744*)
- Guardian Advocacy (*See Florida Statutes, Chapter 393*)
- Grandparental Visitation Rights (*See Florida Statutes, Chapter 752*)
- Power of Attorney (*See Florida Statutes, Chapter 709*)
- Temporary Custody by Extended Family Member (*See Florida Statutes, Chapter 751, 61, and 742*)

Ancillary Matters:

- Social Security Representative Payee
- Probate (*See Florida Statutes, Chap. 732-735*)
- * VA Fiduciary Appointment
- * Trusts (*See Florida Statutes, Chap. 736-739*)

Kinship and Foster Care: *Best Interest of the Child & Other Related Factors*

1. What is in the *Best Interest of the Child*?
2. Additional Factors outlined by Case Law
3. Additional Factors outlined by Florida Statutes
4. Common *child custody factors*:
 - Relationship with the Minor
 - Display of Affections
 - Transportation and/or Relocation
 - Financial Support
 - Ability to Parent
 - Termination of Visitation
 - Safe Environments



Kinship and Foster Care: *Temporary Custody of Minor Children by Extended Family*

(Fla. Stat. Chapter 751)

- **Eligibility:** relative by blood, marriage, or adoption. Exceptions: Kinship or substitute parent
- **Legal Process:** File a Petition, discovery, parental consent, evidentiary hearing, mediation, and/or final hearing
- **Burden of Proof:** Clear and convincing evidence of abuse, neglect, or abandonment. *(Precise/Credible Evidence vs Mere allegations)*
- **Termination:** Child turns 18, Court modifies the Order, Court terminates the order, adoption, guardianship, DCF Placement, the child or custodian dies, etc.

Kinship and Foster Care: *Minor Guardianships*

Fla. Stat. §744.3021

- Allows a court to appoint a guardian for a minor *without adjudication of incapacity*
- Must be filed by a parent, sibling, next of kin, or other interested party
- The Court will monitor this case.
- Guardianship is NOT custody

Note: Guardian of the property for a minor is required if the minor receives \$15,000+ in a settlement or judgment.

The Process:

1. An attorney is **required**
2. A **Petition** is filed
3. Apply to be appointed as a Guardian
(Must be a Florida Resident with an exception; and eligible to be appointed)
4. Notice is **required**
5. Parental Consent is Encouraged
6. A **Hearing** is held
7. *If necessary*, appointment of a Guardian
8. Initial filing
9. Required Guardianship Education Class
10. Annual filings as required by law

Kinship and Foster Care: *Preserving Legal Rights*

Preneed Guardian *Fla. Stat. §744.3045-.3046*

- A written declaration that names such guardian to serve in the event of the declarant's incapacity.
- Reasonably *identify the declarant* and preneed guardian
- Signed by the declarant in the presence of at least two attesting witnesses present at the same time.
- ***Although a Notary is not required, it is recommended!***



Declaration of Preneed Guardian *Fla. Stat. §744.3045-.3046*

- Note: When a petition for incapacity of the ***last*** surviving parent or appointment of guardian upon the death of last surviving parent is filed, the Clerk of Court **MUST** produce the declaration and/or inform the Court.
- A ***rebuttable presumption*** that the preneed guardian is entitled to serve as guardian.
- The preneed guardian shall assume the duties of guardian immediately upon an adjudication of incapacity or the death of the last surviving parent.
- If the preneed guardian refuses to serve, a written declaration appointing an alternate preneed guardian constitutes a ***rebuttable presumption*** that such preneed guardian is entitled to serve as guardian.

Kinship and Foster Care: *Ancillary Matters ~ Probate*

Probate is legal proceeding to determine the legal heirs of a deceased person.

- Strict judicial oversight
- Ensures that probate *assets are accounted for, valued, and given to the heirs* of the estate.
- A *valid and uncontested* Last Will and Testament streamlines the process and reduces costs.



Probate May Not Be Required?

- Joint Assets
- Life Estate Deeds
- Life Insurance Policies
- Beneficiary Accounts
- Pensions & Retirement Accounts
- IRA's
- Annuities
- Investment Accounts.
- Pre-paid Funeral or Cremation Plans
- Trusts (*There many!*)
- Gifts (*Prior to Death*)

Kinship and Foster Care: *Florida Legislative Intent in Guardianship Proceedings* (Fla. Stat. §744.101)

Acknowledging

- Acknowledging an individual's rights to self-determination and participation in the decision-making process.

Preserving

- Preserving an incapacitated individual's civil and legal rights.

Promoting

- Promoting that guardianship should be the last resort in Florida.

Requiring

- Requiring the court to consider ***“the least restrictive form of guardianship”***.

Recognizing

- Recognizing that every individual has unique needs and differing abilities and *may* be able to independently exercise their rights with assistance.

Advocating

- Advocating that the court should only delegate decision-making tasks where an individual lacks the ability to do so.

Establishing

- Establishing a legal process and court system that permits incapacitated individuals to fully participate in decisions that affect them, as much as possible.

Kinship and Foster Care: *Guardianship (Adults)*

GUARDIANSHIP : Florida Statutes, Chapter 744	GUARDIAN ADVOCACY: Florida Statutes §393.12 and Ch.744
Types: <i>Emergency, Limited, Plenary, Standby, Veteran, Voluntary, Mental Health, Minors</i> or <i>Preneed</i>	Limited to seven (7) developmental disabilities that manifest before 18 yr old
Capacity <u>must</u> be determined	Capacity is <u>not</u> determined
Court appoints a Guardian	Court appoints a Guardian Advocate
Stringent judicial oversight	Stringent judicial oversight
Complex process	Streamlined process
Lose <i>substantial</i> constitutional rights	Lose <i>considerable</i> constitutional rights
<i>The most restrictive & possibly unnecessary</i>	<i>Less restrictive</i> than guardianship
An attorney <u>is</u> required	An attorney is <u>not</u> required

Resources & Florida Courts Forms

- Local Legal Aids (No-Cost Services or Pro Bono Referrals)
- County Clerk's Website for Guide and/or Sample Forms
- Law Library for Sample Forms and Legal Information
(Law Librarians are at the Courthouse, typically!)
- The Florida Bar (Consumer Pamphlets)
- Florida Supreme Court, Self-Help Center
- Florida Statutes and Florida Rules of Court



Pro Bono Attorney Services

- **Legal Clinics:** Clients meet one-on-one with a *volunteer* attorney to receive advice and assistance specific to their legal matter.
- **Self-Help Workshops:** A group settings where individuals receive guidance on the completion of necessary legal documents so they can represent themselves (pro se).



Contact Us

HELPLINE

1-800-405-1417

MONDAY AND THURSDAY 8:30-4:30
TUESDAY AND WEDNESDAY 8:30-6:30
FRIDAY 8:30-3:30



Visit our website
LegalAccessforAll.org
for more information
including self-help materials

Online Application
Self-Help Chatbot
available
24 HOURS/7 DAYS A WEEK

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