BD&P LAW FIRM

Do You Trust Your In-Laws to Raise Your Children?

By Sydney Black

Key Takeaways

- Parents need to consider who would care for their children if both parents were unable to do so.
- A family relationship does not automatically answer every question about future care.
- Your preferred caregiver should understand the responsibility and be willing to accept it.
- Your wishes should be discussed with an estate-planning lawyer and recorded properly.

Who would care for your children if you could not?

It is an uncomfortable question, but an important one: if something happened to you and your co-parent, who would look after your children?

Many people first consider estate planning after having children. Their main concern is not always money. It is deciding who would care for their children if both parents were unable to do so.

Parents may assume the answer is obvious: a sibling, parent or in-law who already has a close relationship with the children. But does your co-parent have the same person in mind? And is a close relationship enough?

You should also consider whether that person is willing, able and prepared to take on the responsibility, both now and in the future.

Do you and your partner have the same answer?

One of you may have a close relationship with your parents who live in a smaller town a couple of hours away and expect the children to live with them if something happens. The other may have assumed their child-free sibling who lives one neighborhood away would be the best fit.

If you have never discussed it, you may not know whether you agree.

Start with practical questions:

- Who shares your approach to parenting?
- Would the children need to move to another city or province?
- Could siblings remain together?
- Does the proposed caregiver have the time, health and resources required?
- How would the choice affect relationships with the other side of the family?
- Has the person actually agreed to take on the role?
- Who would your children choose?

These questions are not about deciding which family is “better.” They are about identifying who could provide the stability and care your children would need in tragic circumstances.

This conversation may require you to raise concerns that have been easy to overlook while someone is acting as a grandparent, aunt or uncle. Full-time caregiving is different. Consider the

person's age, health, values and ability to support your children through different stages of life. Think about how they would respond if a child faced mental health concerns, struggled at school or needed support that the caregiver had not expected.

It is also vital that you speak to the people you are considering naming your children's guardian.

It is a movie cliché for a protagonist to suddenly be surprised with guardianship, ranging from the comedy (Uncle Buck) to the creepy (M3gan). Movies often use unexpected guardianship as a plot device. In real life, no one should be surprised by the responsibility. Speak with the people you are considering before naming them in your estate plan.

- Don't assume that your child-free-by-choice sibling would be unwilling to step into the role of caregiver – ask them (your premature death probably isn't part of their plan either, so you're already considering a less-than-ideal future).
- Maybe your parents were planning on moving abroad in the next year or so – that is a factor that could impact your decision.
- You should talk to the people you are considering before you cement anything in your estate plans and let them know once you have.

Consider Care and Money Separately

The person you trust to care for your children may not be the person you want managing money for them.

You have several options:

- **The guardian could also manage the trust.** They would understand the children's needs and could access funds when required.
- **Another trusted person could manage the trust**. This may provide added oversight, but the trustee and guardian must be able to work together.
- **A professional trustee could manage the trust.** This may offer experience and independence, although the cost may not suit every estate.

The right structure will depend on your children's needs, the people involved and your family's financial circumstances. An estate-planning lawyer can explain the available options.

Have a Conversation Now

Speak first with your co-parent.

Discuss your priorities and come up with a short list of people you think could fit the bill. Then speak with the people you are considering.

Discuss the everyday reality, not just the idea.

- Where would the children live?
- How might education, activities, culture and family relationships be maintained?
- What financial support could be available?

The conversation may confirm your choice. It may also reveal that you need another plan.

Do Not Leave the Answer to Assumption

Choosing who may care for your children can be emotional. Avoiding the conversation, however, could leave your family without clear direction during an already difficult time.

Start by:

- Discussing possible caregivers with your co-parent
- Speaking openly with the people you are considering
- Thinking through location, finances and long-term capacity
- Asking an estate-planning lawyer how to record and support your wishes

A clear, regularly reviewed plan can give your family guidance when they need it most.

If you are ready to have this conversation, our **Estate Litigation** team can help you consider your options and put your wishes into a clear plan.