

# The Butler Bulletin

Butler Wills and Estates

11/20/2018

Edition 4, Volume 2

## Making Your Own Will Online

It's easy, free, and takes less than ten minutes – but is it a good idea?

Online will kits are starting to pop up everywhere. Will kits used to be available in book stores, but now, it is even easier to make your own will using a free online tool

We recently tested out the tool on a site that allows you to make your own will. It took less than five minutes, including entering a couple specific gifts. As with most DIY wills, the outcome isn't great. Previously we were asked to review another tool for a different company, and the resulting document was abysmal. Although we like this site for other documents – like basic affidavits for people representing themselves in court – the will option leaves much to be desired.

### What the Tool Didn't Ask

There are some basic questions the program did not ask, including:

- If I own property
- Whether or not I have jointly owned assets, and with whom
- The names of the residual beneficiaries
- If I know the legal definition of 'spouse' in NL

- If I want to stick with the 30-day period for survivorship
- If I have any children who predeceased me
- If I have any investments (RRSPs, RRIFs, TFSAs, etc.)
- If I own a business or am incorporated
- If any of my children have a disability
- Whether or not I want to make a Memorandum of Personal Effects
- What the beneficiary designations are on my life insurance policies and pension

This could lead to huge gaps in the will, as well as impact who is entitled to receive something from my estate. These are all basic questions that should be asked when doing your estate planning.

### The Gifts

This tool gives the user the option to include specific gifts to individuals and charities, like many other online will kits. However, I left the same gift to two different people. The algorithms used to account for user input did not catch this. Now, two people are receiving my car.

Also, the only jurisdiction I could select, other than a Canadian province, was 'other'. It is quite likely that a client has a beneficiary who lives outside of Canada, and saying they live 'other' is not sufficient.

This program did ask about whether or not I have pets, and what I want to have happen with them once I pass away. Based on my choices, the executor is responsible for finding a home for my dog. The issue here arises from the amount I left for the care of my dog. The caretaker is to receive \$1 million dollars for the care of my pet – but the program did not help me calculate whether or not that is reasonable, or even possible.

*You can't give away what you don't own. If you want to make monetary gifts in your will, the cash has to be available.*

As well, the wording says that I "...direct my Executor to provide a maximum of \$1,000,000 (CAD) out of the residue..."). This means the amount given is up to my executor, as long as it is not more than \$1 million, despite the fact that I specified the full amount to be given.

## The Residue

The questionnaire asked if I want to have my parents and my spouse's parents receive my estate if my spouse and child are both gone, to which I said yes. As a result, the document gave a clause that says my estate is to be divided into 100 equal shares, 50 of which go to my parents and siblings, and the other 50 go to my spouse's parents and siblings.

There are several issues here. The first is there is absolutely no reason to divide an estate into 100 equal shares unless there are 100 people each receiving one share. In this case, the number of beneficiaries is not specified. We know that 50 shares are supposed to be divided equally among my parents and siblings, but there is no mention of how many people that is. There could be any number of people involved, so 50 shares might not be divisible by the number of people involved. For example, say I have two parents and five siblings. 50 shares divided by 7 people is 7.14 shares per person. The 7 is easy, but how does an executor give 0.14 shares?

It would be much simpler to say to divide the estate equally between the following people, and name the people you want included.

## Trust Administration

One of the topics we talk about with clients who have a minor as a beneficiary is whether or not they want the money held in trust to be used for anything

before the child reaches the age at which he or she will inherit. This is called 'encroachment', and it can be set as strictly or as liberally as the client wants. For example, the client may say that the funds are not to be touched, that they can be used for medical emergencies, or that the Trustee has full discretion even if there is nothing left at the end.

In this will, I did not get to choose. The system automatically said amounts held in trust can be used for "the support, health, maintenance, education, or benefit of that minor beneficiary".

*The age of majority is not the same everywhere, and minors cannot inherit. If you want to leave something to someone under the age of majority, it needs to be held in trust.*

## Incorrect or Missing Information

At the bottom of the will is a place for the Testator and witnesses to sign. There is space for three witnesses, despite the fact that only two witnesses are needed. There is also a short affidavit for one witness to swear that he or she saw the Testator sign the document.

However, there are no instructions. It does not say that both witnesses must be present at the same time, or who should sign the affidavit. If there are three witnesses, it makes sense that all three would then sign the affidavit as well. There are also now instructions about swearing the affidavit in front of a Commissioner for Oaths.

Additionally, there are not any instructions as to how many wills you can print out. Some people think if they sign multiple wills, they can put one away, give one to the executor, and have one at home. However, there can only be one original will, so printing and signing extras is worse than useless.

## What Went Well

Unlike the last online will kit we tested, there were a few good points about this program. I got to choose the province I live in, and there were no clauses referring to legislation from other provinces. Additionally, the will included powers for the executor, which many will kits ignore.

## The Verdict

If your goal is to have a piece of paper that says "will" on top, this is a good choice. But, if you want a solid estate plan that will accurately outline what your wishes are, give your family some guidance, and prevent arguments, consider getting a will done by an estate lawyer.

*Getting your will done by an experienced estate planning lawyer involves a lot more than just filling in blanks on a form. The conversation should include a full discussion about your assets, liabilities, immediate family, and potential tax pitfalls.*

## We've updated our website!

We're always aiming to improve our services. Whether you need ongoing legal services or a one-time consultation, we want to provide our clients with as much or as little help as they need. Now, we've added two new options to our menu of services.

### *Ask a Question*

Sometimes the questions people have are too complicated to be answered in the newsletter or on Lynne's blog, but they are not quite in-depth enough to require a full hour with a lawyer. To solve this problem, we've added the Ask a Question section to the Resources page on our website. Now users can pay a small fee (\$50) to submit their question, and get an individualized answer from a lawyer. The blog, podcasts, radio show, and newsletter are still available as free resources.

### *Search for an Estate*

If you've been looking for a completed estate but don't know where to go, we can complete the search for you. This is an excellent option for people representing themselves in estate litigation who need copies of previous completed probates or administrations, or for those who are looking for more information about an estate situation within their family. All the user has to do is enter the information, and we'll find the documents and forward them on by email. The fee is \$40, which includes the \$20 the Supreme Court charges for copies of documents.

### *Webinars*

Our popular in-house seminar series is now online. Instead of hosting seminars in our office, we'll be hosting live webinars so people across the country can attend. There will be a session every few weeks, and we'll post the upcoming events on our website and in the newsletter. Don't worry if you can't make it to a session – each webinar is recorded and we will happily send it to you after the presentation is complete.

### *Newsletter Archives*

All the past editions of the newsletter are available for download as a PDF, so you can re-read any issue at any time.

### *Polls and Surveys*

For events like seminars and publications like the newsletter, we want to know which estate law topics our readers are interested in. From time to time we will put up polls and surveys to find out which topics are at the top of the list for our readers and viewers to learn about.

Do you have a suggestion for a service or topic? Let us know through our website or by sending an email to [chelsea@butlerwillsandestates.com](mailto:chelsea@butlerwillsandestates.com)

9- Testator

8- Residue

5- Beneficiaries

4- Affidavit

1- Capital Gains

Across

7- Trust

6- Executor

3- Probate

2- Administrator

Down

ANSWERS

CROSSWORD PUZZLE



## VOTE FOR ESTATE LAW CANADA!

Lynne's blog has been providing readers with free, up-to-date, Canadian legal info since 2009. The site has almost 6.5 million views and counting, and we're asking the readers to vote for Estate Law Canada as the best legal blog!

Each year The Expert Institute holds a contest to find the best legal blogs in a variety of categories, and Lynne's blog has been nominated in the Niche & Specialty category.

To vote, visit <https://www.theexpertinstitute.com/legal-blog/estate-law-canada-2/>

Log in to the social media platform of your choice (including Gmail) to cast your vote for Estate Law Canada. All votes are anonymous.

It only takes a few seconds, and all votes are appreciated.

### QUESTION FROM A READER

"MY MOM PASSED AWAY, AND NOW HER HUSBAND (MY STEP-DAD) SAYS THE HOUSE IS HIS. BUT HER WILL SAYS TO DIVIDE HER ESTATE AMONG HER CHILDREN. DOESN'T HE HAVE TO MOVE OUT?"

Part of the answer depends on whether or not they were legally married. Since you refer to him as her 'husband' it sounds like they were formally married and not common-law.

If your mom and step-dad were legally married, he doesn't have to move out. According to *The Family Law Act*, that house is their matrimonial home. This means that it belongs to the surviving spouse, whether or not either one of them was married before. As a result, it is not part of your mom's estate, and therefore not governed by her will.

Things are a bit different if they weren't legally married. In Newfoundland and Labrador, common-law spouses do not have any inheritance rights. This means that if the house was registered only in your mom's name, it is now part of her estate, and your step-dad does need to vacate the property.

On the other hand, your mom may have added your step-dad's name to the title of the property, making them joint owners. If this is the case, the house is now his because legally they both owned it.

Another way to add a name to a title is to make the people involved "tenants in common", often referred to as "last man standing". This means that the house divided into portions, with each person owning an equal portion. Between two, this means each person owns half and the last person alive owns the whole property. Since your step-dad is the remaining person, he would own the entire property and does not need to move out.

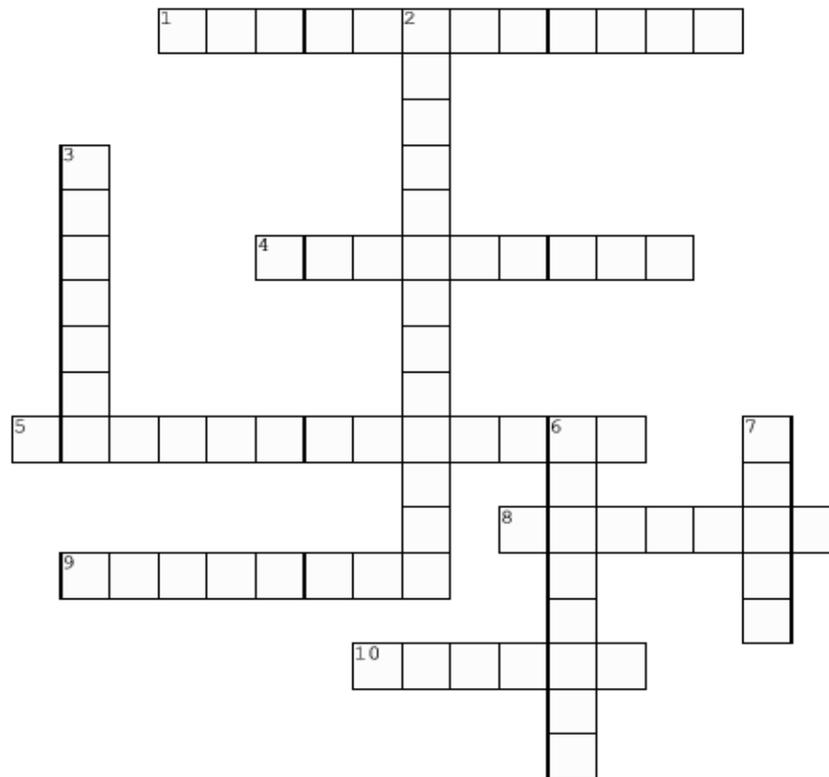


"Are you Peter? We'd like to talk to you about a class-action lawsuit."

## Did you know...?

The term "chafewax" is a person whose job it was to prepare and apply the wax that was needed to seal the documents that were signed by a judge.

The judge would then press the court's official stamp into the warm wax to leave an impression.



### Across

1. A TYPE OF TAX (2 words)
4. A SWORN DOCUMENT
5. PEOPLE/COMPANIES WHO INHERIT FROM YOUR ESTATE
8. REMAINDER OF YOUR ESTATE
9. THE PERSON WHOSE WILL IT IS
10. WHAT YOU OWN

### Down

2. NON-APPOINTED PERSON WHO DOES THE JOB OF AN EXECUTOR
3. COURT PROCESS FOR VALIDATING A WILL
6. THE PERSON WHO HANDLES YOUR ESTATE
7. A WAY TO HOLD MONEY FOR A MINOR

Please feel free to share this newsletter with others.

If you have any questions, comments, would like to suggest a topic, or to **unsubscribe**, please email us at [chelsea@butlerwillsandestates.com](mailto:chelsea@butlerwillsandestates.com)