

# The Butler Bulletin

Butler Wills and Estates

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## Why Lying on a Declaration of Value is a Big No-No

Obviously, lying on any legal form isn't a good idea. Somehow, when it comes to Declarations of Value and tax, people think they will save themselves time and trouble by fudging the numbers. Most frequently we see this issue in regards to capital gains tax – the tax that applies to the sale of a property that is not your principal residence.

Most people who are looking into selling their cabin, shares, or other taxable items have a basic understanding of capital gains tax. The difference between the value of the item when you got it and what it is worth now is subject to tax. Logically, the smaller the difference, the less tax you will pay. As a result of this train of thought, a great number of people try to claim that the current value of the item is less than it actually is.

For example, let's consider a parent who wants to sell his cabin to his child. Since the cabin is not the parent's principal residence, the transaction is subject to capital gains tax (note that the tax is on the transaction, not the cabin, so no matter who is involved in the sale there will still be tax).

If the cabin was worth \$10 000 when the parent bought it, and now it is worth \$75 000, there will be a considerable amount of tax on the difference of \$65 000. To calculate capital gains tax, take the difference in values and divide by two. This amount is added to the seller's tax return as income. In this example, the amount of tax would be \$32 500.

If the current value of the cabin was lower, the amount of tax would also be lower. To lower the amount of tax, people fib about how much the item is worth. This causes two major problems – you are committing perjury, and you are setting your child up for a big tax bill.

Perjury is the act of willfully lying on a sworn document. The Declaration of Value is part of a sworn document, so by fudging the value of the property, you are deliberately concealing the truth. People assume that if no one ever finds out, they'll be ok, but this is not a solid enough plan to rely on.

Setting your child up for a large tax bill directly contradicts the goal of trying to minimize the tax. Most people don't consider any further transactions, but it is likely that your child will one day sell the property that you have sold to them. If you have lowered the current value of the property, and then your child sells the property at a fair market price, there is going to be a huge difference.

Consider the property that was worth \$75 000 – say you claimed it is only worth \$30 000. Several years later your child goes to sell the property on the open market, and the value has increased since it was worth \$75 000, due to the market and improvements your child has made to the property. Perhaps it is now worth \$100 000. If the property was supposedly worth \$30 000 when your child bought it, and is now selling it for \$100 000, the tax will be based on the difference of \$70 000, leaving your child with a capital gain of \$35 000.

You have succeeded in avoiding your own tax bill, but you have created an expensive problem for your child.

## WE'VE MOVED!

On November 1, 2017 we moved to:

The Hamlyn Road Plaza

#145, 60 Hamlyn Road

St. John's, NL

A1A 5X7

(Between the Village Mall and Sobeys/Wal-Mart)

Our email addresses and phone number remain the same.

All the things we love about our current location can also be found at our new office. There is free parking right in front, and you don't have to battle downtown traffic. The new office is still accessible - our office can be reached using a ramp for anybody with reduced mobility, and there are no stairs within the office.

We look forward to seeing you as we grow in a new location!

### STRANGE PLACES PEOPLE HAVE HIDDEN THEIR WILL

It makes sense to take care of important documents, especially ones like a will that give someone a lot of legal power. We encourage our clients to put their documents in a safe place, since the original will is needed for probate and cannot be replaced.

Sometimes people cross the line between 'a safe place' and 'a strange place'. The most common place to hide a will is in the freezer.

#### Why the freezer?

This is by far the most popular place to hide a will. The logic behind this one seems to be that if there is a house fire the refrigerator will remain intact. Fridges and freezers are primarily made of aluminum. The insulation is fibreglass which will disintegrate given enough heat. I couldn't definitively say whether a freezer would go up in flames, but stashing your will under the ground beef and frozen peas isn't the best idea.

#### Alternative Locations

To keep your will safe from fire, store it in a safety deposit box or fire-proof strong box. Any bank will be able to rent you a safety deposit box for a monthly fee. Alternatively, if you prefer to keep your will in your home, consider purchasing a small fire-proof safe. These safes are widely available at home reno and DIY stores, as well as at big box stores like Costco.

Make sure the model you choose is nosey-person proof (i.e. it can be securely locked) as well as fire-proof.

## DO I HAVE TO HAVE A POWER OF ATTORNEY?

The short answer is no, but as with all legal questions there is more to it than that. Thorough estate planning includes considering what will happen (passing away) and what might happen (losing capacity). A will takes care of what is definitely going to happen, and a Power of Attorney takes care of what might happen.

Keep in mind that for estate planning, the type of Power of Attorney referred to is the kind that is enduring. This means it will be effective throughout any loss of capacity. This is important to note because it is drastically different than a standard business Power of Attorney.

An Enduring Power of Attorney appoints the person of your choosing to make financial decisions on your behalf if you are not able to handle it yourself. This could be due to anything from dementia to experiencing a physical accident. The document only remains in effect for as long you are unable to manage your own affairs.

For example, someone diagnosed with Alzheimer's likely won't ever regain capacity to the point where he or she could manage banking, selling a house, filing tax returns, etc. However, someone who has been in a physical accident who is temporarily prevented from managing financial decisions could reasonably be expected to take back control at some point in the future.

While you may never experience these things, these types of situations are much more difficult to deal with if you don't have a plan in place. It is also more expensive to fix after the fact than it would be if you had sorted it out before anything happened.

An Enduring Power of Attorney is almost like an insurance policy – you get it just in case, but you hope you'll never have to use it. Getting an Enduring Power of Attorney is entirely optional, but we believe it is an essential component of a complete estate plan.

## What do I need for a will appointment?

Preparing for a wills appointment is incredibly easy. Most people ask us what documents they need to bring, and the answer is simple – just bring a piece of ID. We don't require copies of bank statements, investments, etc., since these numbers will change over time.

If you have a will already, it can be helpful to have it with you to refer back to what your previous plans were, but it isn't necessary.

As long as you have a good idea of what you own and what you owe, along with a general idea of what you would like to have happen with your estate, you will be ready to go.

Your job is think about what you want to have happen with your estate (for example, treating your children equally, leaving certain items to certain people, and who will be in charge of your estate), and our job is to figure out what the best way to achieve that goal is.

Sometimes people call us and say they know what they want to see happen, but they don't know how to word it properly. You don't need to worry about how to phrase your wishes – we send everything out to you in draft so you can review it before it is signed.

If you've been thinking about getting your will done but you've been concerned about the details, you are probably more prepared than you think.

Send us an email or visit [www.butlerwillsandestates.com](http://www.butlerwillsandestates.com) for more info about getting started on your will planning.

Do you want to book an appointment? Give us a call at 709 221 5511 or email [chelsea@butlerwillsandestates.com](mailto:chelsea@butlerwillsandestates.com)

## What happens with my Advance Healthcare Directive in an emergency?

Part of our wills package is an Advance Healthcare Directive. This document outlines your wishes for medical care in the event that you cannot communicate them yourself, and appoints someone who can speak to your physician on your behalf if you have lost your capacity. For routine medical procedures, this document can be taken with you and given to your doctor upon admission. But what happens in an emergency? In these situations, you likely won't have time to get out your directive and take it with you.

### Keep your AHCD in an accessible place.

Often we encourage our clients to keep a copy of their AHCD in their home, in a safe place. This allows for someone to be able to access it in an emergency. Consider the scenario if you kept your AHCD in a safety deposit box at the bank, and you were in an accident on Friday evening. You would not be able to access the document until Monday morning when the bank opens. Keeping a copy in your home makes it usable in an emergency.

### Have someone inform the emergency room staff that you have an AHCD.

According to the Advance Care Planning booklet published by Eastern Health, "In a medical emergency, a health care professional does not have to search for your Directive before giving treatment. However, if a health care professional is made aware of your Directive when you enter the emergency room, then your Directive must be followed." By making sure that the people who would be most likely to accompany you to the emergency room (e.g. your spouse, children, or close friends) know that you have a healthcare directive, you are ensuring that the medical staff know that it needs to be followed.

### Tell your substitute decision maker where your AHCD is located.

The person you have appointed to be your substitute decision maker should also know where to find the AHCD in an emergency. For example, if they know to look in your desk at home, your "kitchen papers", or your filing cabinet, there is much better chance that he or she will be able to find it when the time comes for it to be used. You don't need to review it with your substitute decision maker before you make it, but it is a good idea to let the person know what your wishes are. This avoids confusion down the road, and makes it easier for everyone involved.

### *The Law Show* has come to an end!

We've recorded and aired the last episode of our radio show. Over the six months we were on the air we heard from a ton of listeners that the topics we covered were extremely helpful.

We're working to post all of our episodes on our website so you can continue to listen to them whenever you want – for free!

Keep an eye on our website for updates.

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"In addition to the escape clause, we're added a control-alt-delete clause."

*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)*