

The Butler Bulletin

Butler Wills and Estates

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Commonly Asked Estate Law Questions

Frequently readers and clients send us questions for the newsletter, and we do our best to answer them to keep people informed about estate law. We wanted to see what other questions people have that we can answer. It turns out that many of the questions posted online by clients are less about estate law, and more about legal services. Here are some of the questions we found, and our answers.

How much does a will cost? Why does it cost that much?

How much a will costs varies from one firm to another, as most lawyers charge an hourly fee. There are several factors that impact the price of a will being charged at an hourly rate, such as how complicated it is and the seniority of the lawyer. An experienced lawyer will charge more than a lawyer who is new to the profession.

As far as we know, we are the only firm to charge one set price for our estate planning packages. Many firms advertise a starting price for a basic will, but that price may change if your will turns out to be complicated. Our price is the same whether or not you need something complicated.

Can I change my will whenever I want to? Will it cost me money?

As long as you have your capacity, legally you can change your will whenever you like. This question seems to be more about whether or not the client can return to the same lawyer to change the will at any time without being charged for the work.

A law firm is a business like any other. If you run out of milk a week after you go grocery shopping, the store will expect you to pay for the carton. It is safe to say that you will be charged for making changes to your will in the future.

How much you are charged may depend on how complicated the change is. For example, naming a new executor but keeping the rest of your will the same is a small change compared to redistributing all of your assets. Our policy is not to charge our clients for changes if they have made their wills with us in the previous six months.

When it comes to changes, a solid estate plan should account for most scenarios for the next five to ten years, such as naming an alternate executor in case the first is unavailable.

How will my executor know where my will is?

It's up to you to tell them. If you don't, he or she can look in the most likely places, such as strong box or safety deposit box. However, if you put your will somewhere obscure – like in the back of a framed picture – it will be significantly harder for your executor to find it.

There's an App for That

Recently we were made aware of an online app that lets people make their own wills. The app proudly states that this process can be done in less than 8 minutes. Since this seems like a great way to make sure someone will sue your estate, we tried it out. We deliberately chose a simple scenario, and here's what we found:

Signing Up

The only thing you need to sign up is an email address. The app does not have any means to verify the user's identity. While this is fine for apps like Candy Crush, it's not ideal for one that can have a massive impact on the lives of an entire family.

The Law Society has a regulation called "know your client". This regulation stipulates that if someone is coming to get a will made for John Smith, it had better be John Smith that the lawyer is talking to. We get photo ID from everyone on their first visit in order to comply with this regulation. Not only does it protect the lawyer, it also protects the client. Having a legal document in your name floating around that you didn't make causes endless trouble.

We can only imagine the emotional and financial turmoil that would exist if someone didn't like the will someone else made and fraudulently created a new one. Boom. lawsuit.

5 → Are you a: Medical Professional, Accountant, Business Owner, Majority Share Holder in a Corporation, Controller of a Corporation^{*}

You likely will have options that will offer tax advantages to your beneficiaries. We recommend a consult if you are any of the above.

 Yes
 No

11 → Children

a. Do you have any children under the age of 18?

 Yes ✓
 No

The Questions

Once you sign up with your email, the app asks you some basic questions, starting with your full name and which province you live in. We entered Newfoundland. Above is a sample of the questions. In #5, it doesn't give you the option to select any other type of profession. In #4, the question refers to children under the age of 18. The following questions are about who you want to appoint as the guardian of any minor children, so presumably, the creators are assuming age 18 as the age of majority. This would be fine, except for the fact that the age of majority is not the same across the country, and that we previously selected Newfoundland as the province of residence (where the legal age is 19). The selection of province comes in to play later, as well.

Distribution Suggestions

Question #15 asks if the user wants to transfer their estate to their spouse, and then equally among any children. The note beneath the question says that this is a good default, as it applies to most people. The developers of the app are forgetting that wills should not be cookie cutter replicas, and that each person's family situation is unique. While there is some attempt made to determine what the user needs, the lack of attention to detail and dependency on pre-types templates make the few questions asked absolutely pointless.

15 → Do you wish to transfer your estate to your spouse, unless your spouse predeceases you, in which case to your children equally?^{*}

This is a very good default and will cover most cases. If you have specific assets you would like to assign to specific people, then press "No"

 Yes
 No

The Wording

Overall, the wording in this document is extremely old fashioned. It's the type of document that is designed to be read by a lawyer or a judge, not a layperson. For example, many of the sentences go on for a full paragraph, using legal language that is not easy for people to understand.

There are also several inconsistencies throughout the document in terms of his/her. While this may seem minor, it shows that the developer is not interested in paying attention to the details.

Irrelevant Laws

Remember how we said the selection of the province would be important later? Here it is. Despite the fact that we selected Newfoundland, there are three separate references to Ontario laws. In each case, the clause states that such a law will or will not apply in a given circumstance. Since this will is not made for Ontario, these laws wouldn't apply anyway. If that were the case we might as well use laws from Madagascar, or the moon since they are just as relevant.

There is also a clause that deals with business interests, even though we checked "no" for being a business owner.

Powers That Don't Exist

This is a mistake that can cause a lot of issues. There are numerous spots where the will refers to the "absolute uncontrolled discretion" of the Trustee. While this seems to be an attempt to give the Trustee the power to do what needs to be done, in reality, it gives the impression that the Trustee can run rampant and do anything. All Trustees are legally bound by being required to do what is in the best interest of the estate, whether or not there is gibberish like "absolute uncontrolled discretion".

Another non-existent power applies to the definition of "children". Anyone who has been to our seminar, "Top 10 Mistakes" knows that this is something we make sure our clients understand. Legally, the definition of children includes biological and adopted children, but not step-children. You can treat your step-children the same as biological children, you just have to specifically say so. Most importantly, the law doesn't recognize illegitimate children – biological is biological, whether or not you were married.

In this will, there is a clause that says that children "does not include a person born outside marriage". If all of your biological children are adults, you are under no obligation to include them. But what if your illegitimate child is a minor? All of a sudden this will has created a lawsuit. To make matters worse, the same clause says that an illegitimate child can be treated the same as biological children if "in the unanimous opinion of my Trustees, demonstrated a settled intention to treat such person as his or her child". In no circumstances is the Trustee allowed to change the legal definition of children.



Hello there,

Thank you for choosing WillowBee, the free will builder, to draft your free will. WillowBee uses our proprietary technology to identify your needs and draft an appropriate will accordingly. Although, you have finished preparing your will and have received a PDF, there are still a few steps to go before your will is completed and legally binding. We will go through those steps below:

1. First, you must print your will and prepare for it to be signed, we recommend printing at least two copies, so that should one copy be lost or misplaced you will still have a copy available.

Bad Instructions

Once you download your will, the app gives you instructions for signing the document. They got the part about having two witnesses but have make a rookie mistake in terms of instructions for printing the will. They "recommend printing at least two copies".

Legally, you can only have one will. As soon as you sign a new one, you revoke the previous one. Many people are thinking *but they're identical and being signed at the same time*. In terms of the law, this doesn't matter. The second one you sign, whether it be within seconds or years of the first one, revokes the previous will.

Would you like
a consult with a Lawyer?

It is always best to have a lawyer review your situation to be sure everything is covered.

	Machine Built	Lawyer Concierge
Individuals	Yes	Yes
Couples		Yes
Own shares in a business	Yes	Yes
Format	PDF	PDF and Word
Power of attorney	No	Yes
Video information gathering session	No	Yes
Lawyer drafting custom clauses for your situation	No	Yes
Video review with a lawyer	No	Yes
Cost	Free	\$299

No, I just want my free will (free)

Yes, I want the concierge service (\$299)

Your Money for Nothing and Your Will for Free

At the end, you get the option to pay \$299 for a lawyer to review your document. If you're going to pay for a will, get it done by a professional from the beginning. This "lawyer concierge" is a cash grab, designed to give customers a sense of security in the fact that they saved money while getting a legal document.

Unfortunately, it is a false sense of security. The money people think they are saving will be endlessly multiplied in litigation fees.

There are some grievous errors in this document. Before you assume that having a bad will is better than having no will, remember that there are simple procedures in place to deal with situations in which someone passes away without a will. If you pass away with an invalid, incomplete, or disastrous will, your family will face significantly more stress, spend a lot more money, and end up in more fights than they would have otherwise.

Can social media hurt your legal case?

Posting anything and everything on social media has become the norm for many people. However, your accounts on sites like Facebook, Twitter, and Instagram aren't always seen only by your friends and family. Over the last few years there have been several cases where someone has been involved in a personal injury case and their social media presence has impacted their claim. Posting anything online makes it possible for pretty much anyone to see it, despite privacy settings. In these examples, people posted things on their social media and had it used against them in court.

One of the cases comes to us from British Columbia in 2015, in which a woman sued for hundreds of thousands of dollars for trauma relating to two car accidents. Part of this woman's claim was that she became isolated and depressed due to her injuries. Unfortunately for her, she posted several images of herself partying with friends. Based on these images, the judge dismissed her claim, due to the inconsistency they created between her claim and her actions.

This kind of situation has been happening for years. In 2007, a woman had her case dismissed due to pictures of a St. Patrick's Day celebration that she posted online. This woman's case included both mental and physical injuries, including back pain and memory issues, which she claimed negatively impacted her social life. The images she posted suggested the opposite, and her request for general damages was dismissed.

While these examples focus on personal injury cases, rather than estate law, there are some factors that apply to estate situations as well. Whether or not the person posts something that directly contradicts their claim, posting anything might not line up with what you've said in your affidavits. We've come to think of our social media accounts as a place where we can and should share absolutely everything about ourselves, but remember that these sites are public forums. Writing a status isn't nearly as important as sticking with what you've said in court.

If you want to share what's going on with your case, talk to a friend or family member, but avoid posting it publicly.

COMING SOON

We're working on providing some new options for people looking for information about wills and estates. Within the next month, we'll be able to provide our readers with these new resources:

1 – A YouTube channel with free wills and estates seminars. Our live seminars are pretty popular, but it would be more convenient for people to be able to watch a seminar when they want, from the comfort of their own home. Our YouTube channel will feature answers to our most frequent questions in video format.

2 – Transcripts of *The Law Show* will soon be available for download. We're working on getting each of the episodes loaded on to our website so visitors can listen whenever they like, and soon we'll have transcripts for people who want the information but are hard of hearing.

3 – Posting all episodes of *The Law Show* on our website. Some of the episodes are currently available to listen to whenever you like, free of charge, and we're in the process of getting all of them uploaded.



Another Weird Law

We love finding strange laws, and this one tops the list as one of our favourites. According to the Canadian Aviation Regulations, "no pilot-in-command of an aircraft shall permit a person to enter or leave the aircraft during flight unless. . . (a) the person leaves for the purpose of making a parachute descent".

Part of this kind of makes sense. If you don't have a parachute, the person in charge of the plane should probably stop you from getting off the flight in mid-air.

It's the second part of this law that is disconcerting. How would someone enter a plane during flight? Surely gravity would prevent this scenario.

If you do happen to bring your own parachute, you may exit and enter as you wish, as long as you have the pilot's permission.

Did you know...?

We've been named the #1 Estate Planning Lawyers in St. John's on Three Best Rated for three years in a row!

This site chooses the best businesses in each city based on reviews, customer satisfaction, trust, and cost.

We've been named #1 every year since we opened.

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