

The Butler Bulletin

Butler Wills and Estates

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What Happens When Estate Debts Outweigh the Assets

Just about everybody knows what it is like to not have enough money to go around. Sometimes this situation carries over into your estate once you pass away. Quite often people refer to this situation as a 'bankrupt estate'. However, this term only applies if the executor or administrator has formally applied for bankruptcy.

The correct terminology is an 'insolvent estate'. This refers to an estate where there are not enough assets to pay all of the debts. When this happens, the people involved tend to think there is no work to do on the estate because there is nothing to inherit – after all, isn't it the executor's job to divide up everybody's inheritance?

Giving out shares of the estate is only part of the process. While there may not be anything for relatives and friends to inherit, there is still work to do. Unfortunately, unpaid creditors do not go away if you ignore them.

Insolvent estates require that the executor or administrator take some extra steps. Solvent estates simply pay the bills and move on, but insolvent estates call for cooperation between the executor and the creditors.

It is up to the executor to sell the assets that do exist, and pay the creditors as much as possible. To do this, the executor and creditors need to come to an agreement as to how much each creditor will get. There is only so much to go around, so it is highly unlikely any creditor will be paid in full. Rather, the executor and the

creditors agree on an amount.

Most often, this amount is a set number of cents on the dollar. For example, the agreement may be thirty cents on the dollar. This is equivalent to the executor paying thirty percent of the amount the deceased person owed.

When there are several creditors, the executor needs to reach an agreement with each one. Since all debts need to be paid before the beneficiaries can receive anything, the executor cannot hold back any money as inheritance for the beneficiaries.

It is in everybody's best interest to keep the negotiations running smoothly. We all know that going to court is expensive, and it can quickly drain the remaining few assets in an insolvent estate.

Sometimes the executor may declare that the estate is bankrupt – by formally applying for bankruptcy – or the creditors will petition the estate into bankruptcy. Simply walking away or doing nothing is not the same thing as applying.

If the estate declares bankruptcy, the role of executor or administrator comes to an end.

The estate will be under the control of the Trustee in Bankruptcy. If the executor wants to add his or her request for compensation to the list of creditors, this is the time to do so.

Did you miss an episode of *The Law Show*?

Our weekly show on VOXM has moved to Saturdays at 5pm. With the change, a few people have mentioned that they have missed a couple episodes. Not to worry – you can listen to any episode online at www.voxm.com for free! Here are all of the topics we've covered so far:

September 2, 2017 - Dealing with Digital Assets (even if you think you don't have any)

August 26, 2017 - Bullet-Proofing Your Will

August 17, 2017 - Practical Tips and How-To's

August 10, 2017 - Estate-Related Words and Phrases Explained

August 3, 2017 - Answering Beneficiary Questions

July 27, 2017 - Adult Guardianship

July 20, 2017 - Common Mistakes in Home-Made Wills

July 13, 2017 - Finding & Working with a Lawyer

July 6, 2017 - Executor's Accounting

June 29, 2017 - Estates Gone Wrong

June 22, 2017 - Changing &/or Removing Executors

June 15, 2017 - Dying Without a Will

June 8, 2017 - Blended Families

June 1, 2017 - Beneficiaries Contesting Wills

May 25, 2017 - Answering Listeners' Questions

May 18, 2017 - Enduring Powers of Attorney

May 11, 2017 - Executor's Duties

May 4, 2017 - Myths and Misconceptions About Estates

April 27, 2017 - Joint Property

April 20, 2017 - Using a Trust Company in Your Estate Planning (with CIBC)

April 13, 2017 - The Building Blocks of Estate Planning

April 6, 2017 - All About Probate

Do you have a suggestion for a topic? Send an email to thelawshownl@gmail.com

NOMINATE LYNNE'S BLOG

Since 2009, Lynne has been blogging about Canadian estate law. *Estate Law Canada* is visited by an average of 5000 people day, all of whom are looking for reliable, Canadian information.

The Expert Institute is accepting nominations for their third "Best Legal Blog" contest. The blogs with the most nominations are eligible to be part of the public vote. If you'd like to nominate Lynne's bog, click [here](#) and scroll down to the "nominate a blog" button.

Nominations are accepted until September 15.

Blog Title – Estate Law Canada

Blog Address – <http://estatelawcanada.blogspot.ca/>

Question from a reader:

"What do I do if someone's names don't match? I need to apply to be the administrator for my mom, but her birth certificate says one name but her ID and all her bank stuff says a different one."

This is one of those situations that seems more complicated than it is. It also isn't that uncommon. A lot of people use their middle names instead of their first names.

Even people who use their given first names find there is a difference between how they have spelled it their entire lives and how it appears on their birth certificate. This results in one name being on their birth certificate and a different one on everything else.

Fortunately, this problem has a simple solution. When you are filling in the forms for administration, simply put the name on their birth certificate, then "also known as" and the name they went by on a daily basis.

For example, if someone's given name is *Anne Margaret Smith*, but she goes by *Maggie Smith*, the form should read as:

In the Estate of ANNE MARGARET SMITH, also known as MAGGIE SMITH.

This ties the two names together so there is no trouble down the road. If you receive a Grant of Administration for Anne Margaret, then try to access the assets of Maggie Smith, you'll be denied.

However, if both names are on the administration, it shows that both names apply to one person.

IF I GAVE A CHILD UP FOR ADOPTION, CAN I STILL LEAVE AN INHERITANCE FOR THAT CHILD?

A lot of the conversation about adoption in estate planning is focused on children who were put up for adoption potentially contesting the wills of their biological parents. Sometimes this does happen, but it certainly isn't the only possible scenario.

As adopted children grow into adults, some of them have a desire to reconnect with the people who gave birth to them. This is a very personal decision, as is the decision to place a child for adoption. Once the parents and children reconnect, the relationship can become very intimate. When it comes to estate planning, this can cause some confusion.

Children who have been adopted by another family have no legal right to the estates of their biological parents. This is true regardless of the nature of their relationship. For children who have reconnected with their biological parents, this can feel very unfair.

In order to prevent this situation, the parents can leave something to this child in their will. It is their money, property, and belongings, and they can divide it however they wish.

To eliminate confusion, the child should be referred to by name. Be sure to include both the first and last name. Assuming the person will be included in the phrase "my children" won't work, because legally they are someone else's child.

If you want to leave something to a child that you have reconnected with, you can do so. How you distribute your estate is entirely up to you. As long as you don't exclude someone who has a legal right to inherit (a dependent) you can give whatever you want to whomever you want.

WILLS WEEK IS COMING UP!

Each year we aim to add something new to Wills Week. Last year we collaborated with CIBC to bring you great information about using a trust company in your estate planning, and this year Wills Week will have even more to offer.

In addition to seminars, we will be hosting a trade show full of companies involved in estate planning. We've brought together banks, law firms, and more to provide you with all the information you need to get started on your estate planning.

LOCATION – The Capital Hotel, 208 Kenmount Road

DATE - Saturday, October 7

TIME - 12pm to 5pm

Throughout the afternoon there will be presentations and seminars, as well as exclusive discounts and offers from our vendors. There will also be complimentary refreshments.

Keep an eye on our website www.butlerwillsandestates.com for more information, a list of vendors, and a schedule of the presentations.

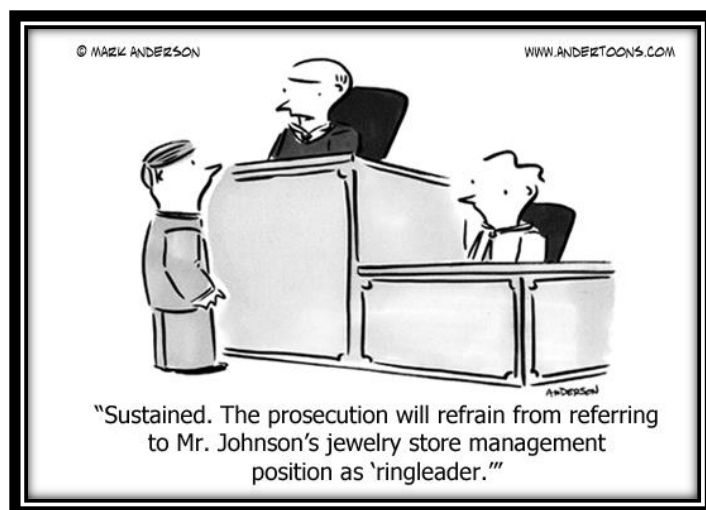
Did you know...?

According to the 2011 BMO Leger Poll, surveyed executors reported experiencing the following when handling an estate:

Administrative complications – 47%

Emotional issues – 31%

Legal issues – 26%



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*