

# The Butler Bulletin

Butler Wills and Estates

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## OPENING AN ESTATE BANK ACCOUNT

*Why you should use one, and when to set it up.*

Whether you are an executor or an administrator, you'll more than likely need to set up a bank account for the estate.

Why? Because once the person has passed away, their money belongs to the estate and you need somewhere to put any amounts coming in to the estate.

Some executors think it is easier to put the money into their own bank account, and that as long as they keep careful records there's no problem. However, this isn't a good option. Not only will you have trouble depositing cheques that don't have your name on them, but there will be a slew of issues down the road like proving you haven't stolen any of the money or spent it on your personal expenses.

Alternatively, if you have hired a lawyer to help you with managing the estate, you could potentially use the lawyer's trust account in lieu of an estate bank account.

However, this will get expensive quite quickly. Also, you won't have access to the funds the way you would if you set up the account. Every time you need to do something with the money you'll have to go through the lawyer, which is time you pay for.

This is where the estate bank account comes into play. Since the account is for the person who passed away, any cheques that are made out to their name can be deposited into the account. In addition, the only money that will be in this

account is directly related to the estate (e.g. CPP Death Benefit, money from the sale of the house, etc.). Since you set it up, you can access it whenever you want.

For example, if you need to pay a bill it is much more convenient to write a cheque from the estate account than it is to contact the estate lawyer.

So now you know why you should use an estate bank account, but when is the best time to set it up? Obviously you can't open it before the person passes away, but you also can't wait for too long after.

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*Using an estate bank account protects you from potential pitfalls, like being accused of using estate money for personal reasons.*

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The answer depends on whether you have been named the executor, or if you have been appointed as the administrator. For the most part these jobs are the same, but when it comes to situations like this the title makes a difference.

If you are an executor, you are allowed to open the account as soon as you take over the estate. In order to do this, you will need a copy of the will and death certificate. Take these documents to the bank and they will help you open the account.

In cases where there is an administrator, the process is slightly different. Because the administrator is not named in any document prepared by the deceased there is nothing to show that this person has any legal right to access the deceased person's money.

Before you can open the estate account, you need to obtain Letters of Administration from the

court. These documents are the equivalent of Probate, and tell the bank that you are legally allowed to take charge of the deceased person's money.

As an administrator you need these documents before you can do anything, even if everyone involved is in agreement that you will do the work.

## Vulnerable Clients

Recently, the Society of Trust and Estate Practitioners included an article in one of their publications regarding working with vulnerable clients. This is the kind of client that we see on a regular basis, and many of our customers have friends or relatives who are included in the "vulnerable" category. In some cases, this is because they are seniors, have reduced mental capacity such as dementia, have physical health issues, or do not have a family support system. Regardless of the cause, being vulnerable puts you in a position to be taken advantage of.

The article suggested several qualities vulnerable people should look for when choosing an estate lawyer. Here are their suggestions, and our thoughts regarding each one.

### Reputation

A reputation isn't built in a day, whether you're talking about an individual or a business. Reputations are developed over time, and good reputations require hard work and a lot of effort. Mistakes are inevitable, but how a person handles the situation speaks volumes about how much they care about their work.

### Convenience

Not only should the firm be accessible for clients, but it should be convenient. The idea of convenience extends beyond the physical location – it includes things like how easy it is to get in touch with the lawyers and what support resources are available.

### Price

The price shouldn't be the only factor you consider when choosing a law firm, but it should definitely be on the list. Everyone operates within a budget.

### Tangibles

This includes things like the actual facilities, and what you receive for your money. Is the office easy for you to get to? Do you have emails or letters with updates? When your estate planning is finished, what do you walk away with?

### Responsiveness

The article refers to responsiveness as the willingness to provide a prompt service. When you are choosing a lawyer, how long to do you have to wait to get an appointment, and how much time does it take to have the work completed? There are some services that take longer than others – for example, applying for probate takes much longer than getting your will written – but your lawyer should be able to give you an estimate of how long you can expect the work to take.

### Empathy

When you are talking to a lawyer about personal and family situations, they should be empathetic. Many of the topics covered in estate planning are emotional, and talking to someone who understands what you're feeling makes the process much easier.

## Power of Attorney vs. Adult Guardianship

Almost every week we receive a call or email from someone who has a question about getting a Power of Attorney for an aging parent.

Sometimes this is the best option for their situation, and sometimes they need to be appointed as the guardian of their parent in order to achieve the same goal.

So when should each of these documents be used? Here is a summary of each one to help you determine which would be the appropriate in different circumstances.

### Power of Attorney

- Attorney is chosen by the maker
- Is made by the person while they still have mental capacity
- Most often is set up to come into effect later, once the person no longer has mental capacity
- Attorney is responsible for financial matters only

### Adult Guardianship

- Guardian is appointed by the court
- Guardianship is granted after the person is no longer able to look after him/herself
  - Comes into effect immediately
- Can include giving the guardian choices in all aspects of life, including regarding health care

## Finding Legal Information Online

As with any other subject, it is important to use reliable sources when looking for legal information. However, making a decision based on incorrect legal info leads to repercussions that can have a permanent impact. Here are some tips to help you find accurate legal info online.

1. Research the author – If the person says that they are a licensed lawyer, look up the firm they work at to make sure they are legitimate. If they say they are an author, search online for their books.
2. Vet the source – Sites like WordPress and Wiki can have articles posted by anyone, whereas sites like the Supreme Court of Canada are regulated and therefore more reliable.
3. Check for spelling and grammar errors – Any article can have a typo, but keep an eye out for poor spelling and grammar. These mistakes are giant red flags that the content isn't up to scratch.
4. Note the dates of the posts – Info that was accurate ten years ago might be out of date now. Laws change, and posts that haven't been updated or revised may no longer be relevant. Also, someone who wrote one or two articles last year and hasn't touched their blog since isn't dedicated to providing quality work.
5. One of these things is not like the others – Content that is drastically different from every other site is probably wrong. This is when twenty sources say one thing, but one or two say something else. The one or two that disagree are most likely incorrect, or the author hasn't fully addressed the issue.
6. Find a specialist – Anybody who claims to be an expert in everything from finance to law to tax likely knows very little about anything. It takes years of experience to become an expert in one thing, so beware of authors that offer info on every topic.

Always remember that info online cannot replace a personalized conversation with a lawyer. Online content is information, not advice.



We'd like to say thank you to Gregory Youden from CIBC for joining us on The Law Show on April 20 to discuss using a trust company in your estate planning.

We had some great conversation and shared a ton of info about the different roles a trust company can play in your plans.

If you missed the episode, visit [www.vocm.com](http://www.vocm.com) to listen to this show and every episode that has aired.

## *We'd love for you to listen!*

Tune in Thursdays at 11:30am to listen to The Law Show. If you have questions that you would like us to answer on the air, please send them to [thelawshownl@gmail.com](mailto:thelawshownl@gmail.com)

If we choose to answer your question on the show we'll contact you to send you a free copy of one of Lynne's books.

Please note that due to the high volume of questions we have received already, we may not be able to answer each one by email.

## *DID YOU KNOW...?*

ACCORDING TO A RECENT SURVEY BY BMO, ONLY 15% OF RESPONDENTS FELT THAT IT WOULD BE FAIR TO DISTRIBUTE THEIR ASSETS UNEQUALLY AMONG THEIR CHILDREN.

THIS RESPONSE INCLUDED SEVERAL SITUATIONS, SUCH AS ONE CHILD BEING UNABLE TO PROVIDE FOR HIM- OR HERSELF DUE TO HAVING SPECIAL NEEDS.

## **NOTICE OF CHANGE OF HOURS**

STARTING **MONDAY, MAY 1** OUR HOURS OF OPERATION WILL BE CHANGING. WE WILL BE OPEN **10AM TO 6PM.**

AS ALWAYS, WE ARE AVAILABLE OUTSIDE OF THESE HOURS BY APPOINTMENT.



*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)*