

The Butler Bulletin

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How Do I Know What I Can Repay Myself For?

A General Guide to Legitimate Estate Expenses for Executors

There can be a bit of confusion when it comes to an executor paying him- or herself back from an estate. An executor (or administrator) has the right to be reimbursed for any out-of-pocket expenses reasonably incurred in the management of the estate. This amount is on top of any payment for taking on the job.

However, some executors get a bit carried away, and some beneficiaries think executors get too much. Here are some examples of what an executor can and cannot claim as an estate expense. This list is not comprehensive, but should give you an idea of what is reasonable and what isn't.

1. The Probate Fee

If the executor paid this fee out of his own money, the amount can definitely be paid back. Not every estate needs probate, but for the ones that do, this is an unavoidable expense and should be paid from the estate.

2. Legal Fees

The legal fees for obtaining the Probate are different than fees for handling the estate. The fees for getting the Probate can be paid out of the estate. If the executor hands all the work in the estate over to a lawyer, the executor cannot be compensated on top of paying the lawyer.

3. Funeral Bill

This is another expense that may have been paid by the executor personally because he or she did

not yet have access to estate funds.

4. Mileage

If an executor had to travel to complete work on the estate, he or she can claim an amount per kilometer. This amount should be clearly calculated and recorded for the beneficiaries to see.

Additional mileage for non-essential travel is not the same thing.

Rule of thumb for estate expenses: *Is it reasonable?*

5. Attendance at the Funeral

Family members of the deceased person need to pay their own way to the funeral. Many people believe that the estate should pay for out of town family to attend the funeral, but this is not true.

6. Final Bills

When someone passes away, there are always a few final bills like power, phone, or property tax. If the executor isn't able to arrange it so that estate funds pay these bills directly, he or she can pay them out of pocket and be reimbursed.

Remember to be careful when paying estate expenses out of pocket. You may find yourself in a situation where there is not enough money to cover all the bills, and you won't be able to repay yourself. A good alternative is taking the bills into the deceased person's bank, and asking a banking officer to pay them directly out of the person's account. This way the money never goes through your hands. This isn't always possible, but it could save you a lot of trouble.

What if I don't understand my will?



Wills can contain a lot of words that most people don't use in everyday conversation. If you have reviewed your will and you aren't sure what something means, there are a few things you can do to clear up any confusion. It's important that you understand what your document says so that you can be sure that it reflects your wishes.

Take a look at Lynne's blog.

Lynne's blog, www.estatelawcanada.blogspot.ca has been read by more than 6 million people. Many of the articles are answers to reader's questions, so you may find that someone else has already asked your question. It is written using language that non-lawyers can easily understand (i.e. there's no legalese).

Ask the lawyer who drafted it.

The lawyer who wrote your will can explain to you what each clause means, and why it is important for your document.

Have it reviewed by another lawyer.

If the lawyer who made your will is not available, is no longer practicing, or you would like a second opinion, you can contact another lawyer for a will review. You can ask specific questions, or get an opinion on the entire document. A review of the document as a whole is a good idea if it has been several years since your document was made, or if there have been significant changes in your life.

How Do I Pay the Probate Fee Without an Estate Account?

This is a situation many executors and administrators find themselves in. The probate fee is due at the time your application for Letters of Probate or Administration are filed. Once completed, these are the documents that give you access to the deceased person's bank accounts. The probate fee can be paid out of the estate since it is a legitimate estate expense, but it's a bit of a catch 22 – you can use an account to pay a fee that gives you access to the account.

In these situations, there are a couple options. First, you can pay the fee out of pocket and reimburse yourself from the estate account once you have access. This is an easy option if the estate is small and the fee is not too large. Be sure to keep thorough records of everything you pay out of pocket so that when it comes time to reimburse yourself, you can show the beneficiaries exactly where the money went.

The second option is to take an estimate to the bank and ask for a draft or money order that is payable directly to the Supreme Court. We find this is the most convenient option for our clients, especially when it comes to Letters of Administration.

Taking a formal estimate from a law firm shows the bank that you are trying to access the money for a legit expense, rather than taking it for your own use.

Also, since the draft or money order can only be cashed by the person whose name is on it, the bank knows that you will not be able to keep the funds for yourself, or spend them on something other than the probate fee.

If you are applying for probate or administration by yourself without hiring a lawyer, you can still show the bank what you need the funds for, and the draft or money order will still be payable to the Supreme Court.

Banking officers are used to seeing situations like this, so your request won't be strange. If the person you are talking to isn't sure what to do, he or she may need to contact someone higher up to process your request.

RESOURCES FOR NEW GUARDIANS

When someone is appointed as the legal guardian of a mentally disabled person, he or she has a legal obligation to make the most of the person's resources, and use those resources to the person's maximum benefit. Of course, if you don't know what those resources are it can be difficult to maximize them. You also can't keep accurate records if you're guessing as to what a person owns.

Here are a few places new guardians can check for information about the financial status of the person they have guardianship for. Remember that in order for any institution to release information to you they will likely request a copy of the Letters of Guardianship. This protects the privacy of the person who needs help, and ensures that the institution is sharing info with someone who is legally entitled to see it.

1. THE CARE HOME

If the person you have guardianship for has lost his or her capacity and is living in a care home, check with the trust officers at the home. They have thorough records of all of the money that has been placed in the person's trust account, and what it was spent on.

2. THE LOCAL BANK

Since the closest relatives of a person have the first right to apply for guardianship, you may already know which bank the person uses. You can schedule an appointment with a banking officer to review which accounts are active, and find out if there are any investments or liabilities such as mortgages. If you aren't sure which branch the person used, you can contact any branch. The records are all accessible by bank employees online, so a banking officer can direct you to the right branch.

3. CANADA REVENUE AGENCY

In cases where someone needs a guardian because of the onset of dementia, the person whom you now have guardianship over most likely filed taxes in previous years. As his or her legal guardian, Canada Revenue Agency is able to provide you with information. You may be able to find out about RRSPs, or other registered investments.

4. THE PUBLIC TRUSTEE'S OFFICE

If at any time the person has been a ward of the state, or required assistance but did not have a valid Power of Attorney in place, the Public Trustee may have a trust account for them. Like any institution that handles money belonging to others, the Public Trustee's office will have complete records of all the money they held on to, and what that money was spent on. This includes a total at the end that should match up with the balance in their account.

5. THE PERSONS' HOUSE

Just about everybody keeps some kind of banking information in their house, whether it is organized in a home office or stacked in a kitchen drawer. These papers can give you a lot of information about where the person has accounts and investments.

There are additional episodes of *The Law Show* available on our website!

Listen to topics like Joint Property, Myths and Misconceptions About Estate Planning, and Executor's Duties at any time – for free!

Meet our new team members!

We're excited to announce that we have added two new people to our team, starting in August.

Greg is our new articling student who will be studying under Lynne and taking on new clients.

Also new to our office is Matt, our new office support assistant. He is here part-time while attending Memorial University.

Estate Planning for Young Families

Estate planning is one of those things that is considered as being only for seniors. It gets thought of in conjunction with retirement planning, homecare, and RRIFs. The reality is that many people can benefit from a solid estate plan, no matter how old they are.

Whether or not you should have an estate plan depends on several factors, and each person's situation is different. If you are not part of the age considered "eligible" for estate planning, think about the following situations, and which ones apply to you:

- Do you have minor children, or do you plan on having children in the near future?
- Have you inherited a large sum of money?
- Is a disabled (mentally or physically) individual dependent on you for care?
- Do you have an existing will, but plan on getting married soon?
- Have you been diagnosed with a long-term or critical illness?

If any of these situations apply to you, you may want to consider seeing an estate lawyer. While an estate plan may not be the first thing on your to-do list, having one could save you a ton of trouble down the road.

When there are minor children involved, the parents need to consider who will be the guardian of those children if something were to happen to both of the parents. This is a serious topic that can be difficult to talk about, but not having this discussion is worse than having a hard conversation.

In the event that something were to happen to both of the parents of a child under the age of 19, nobody automatically gets put in charge. Someone would need to apply to the court to be granted guardianship of the children. Ideally, there is one person who wants to apply and nobody else in the family has an issue with that.

In reality, arguments about who should look after the children tend to happen, and can lead to discord and lawsuits among family members. To avoid this, talk to an experienced estate lawyer about what the options are for including guardianship of your minor children in your will.

The same situation applies to people who are legally adults, but who are financially dependent on you. For younger families this is often a sibling who has a mental or physical disability that prevents them from earning a living. If you are the guardian of someone, you need to plan ahead and consider what would happen to that person if you were no longer around.

Also, remember that in Newfoundland and Labrador getting married revokes your will. If you have an existing will that does not explicitly state that it was made in contemplation of marriage to a specific person, it will no longer be valid once you're married.

For a limited time only, take

30% off any book purchase at www.butlerwillsandestates.com!

Enter code **save30 at the checkout to take advantage of this discount until **August 31, 2018.****

Power of Attorney FAQ

If you've had a wills package done with us, you know that we include a sheet with frequently asked questions about the Power of Attorney document. We've updated this sheet to be more user-friendly for people acting under a Power of Attorney, and easier for everyone to make sense of. Here are some of the updated bits of info on the Power of Attorney info sheet.

DO

- Act in good faith, and in the best interest of the person.
- Allow the person to make as many decisions as he/she can.
 - Pay the person's bills on time.
 - File the person's tax returns.
- Keep thorough records of everything you do, and what you spend.
- Make sure the document is brought into effect properly.

DON'T

- Mix the person's money with your own. You should not have joint accounts.
- Allow anyone except a co-Attorney to have access to the funds.
- Sell one of the person's assets below market value in order to give a friend or relative a deal.
 - Act before the document is in effect.
- Change beneficiary designations on any policy.
- Pay yourself, unless the document specifically states you are to receive remuneration.

The main thing to keep in mind when acting under a Power of Attorney is that your role is to act on someone else's behalf. You have a fiduciary duty to make the most of the person's money, and to protect it from loss. Obviously, you can't control the value of the dollar, but you can put measures in place to protect against theft and fraud.

Something we see more often than we should is a person acting under the Power of Attorney who has taken a portion of the person's money and divided it among the person's children. The train of thought is that they are treating everyone equally by giving them all the same amount, so it isn't a problem. However, this is theft. The Attorney does not own the money, and therefore does not have the legal right to give it away. The children who receive the money should be complaining that the Attorney stole money from their parent, but most often nobody says anything. In the case that someone does speak up, the Attorney can be removed from the role by the courts.

Specifically, this is *theft by power of attorney*, and is defined in the Criminal Code of Canada. An Attorney who commits this crime can not only be removed from the role, but may also be personally responsible for paying back the amounts taken. As long as you act in the person's best interest and are careful, you won't run into trouble. Attorneys can always ask for help if they need it, including consulting a lawyer or accountant. It's better to ask for help before you get in over your head.

QUESTION FROM A READER

My father died in December 2016. Two days ago the funeral home that looked after him had a letter come from Canada Revenue Agency and the reason for it was "We are writing to you because we need your help to get information about his estate.". How do I handle this?

The first question is, why did the letter go to the funeral home? The fact that the letter went to the funeral home rather than to the address of the executor (who is responsible for funeral arrangements) suggests that the executor has not been handling the estate.

Regardless of why the letter was addressed to the funeral home, how you handle this situation depends on a few things. Firstly, are you the executor of the estate? If not, the executor is the only person who has the legal authority to give info to Canada Revenue Agency, and the only person anybody at CRA will give info to. If you aren't the executor, you should pass this letter on to the person who is.

If you are the executor, you need to contact CRA to find out what information they are looking for. Be sure to check that the contact info on the letter is legitimate – if the letter looks a little off, such as an incorrect logo or no return address, or if you aren't sure that is actually from CRA, use the contact information on their website.

A letter like this has the potential to be a scam.

Canada Revenue Agency likely won't release info about an estate to someone who does not have the legal authority, simply because it is incredibly risky for them. If nobody is the executor (in the situation that your dad didn't have a valid will when he passed) then somebody will need to apply to the Supreme Court to be appointed as the Administrator of the estate. This is essentially the same as being the Executor, except someone needs to be appointed by the court to do the job. Once someone is in charge, that person can contact CRA to sort out what info they need.



Did you know...?

The results of the 2017 Justice Survey are now available. This survey was conducted by the Department of Justice, and can be viewed on the Library of Archives site http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/justice_canada/2018/012-17-e/index.html

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