

The Butler Bulletin

Butler Wills and Estates

6/1/2017

Edition 2, Volume 39

Under what circumstances can I get my inheritance early?

Recently, we received a question at thelawshownl@gmail.com asking what needs to be done in order for the children of a 96-year-old parent to receive their inheritance before the parent passes away. Apparently, four of the five children involved agreed that they should have their inheritance now, rather than wait until the parent has passed away.

We've had questions similar to this one in the past. Whether there is one child involved or ten, the situation is the same. Sometimes one of the children is acting under Power of Attorney, and feels it would be fair to distribute the estate "early".

This question has a simple answer – nothing can be done. Before your parent passes away, it is not your inheritance. It is your mother or father's life savings, what they use to pay for care, or what they spend on things to make life more enjoyable. Just because the majority of the children decide they want it early does not give them any legal right to receive it.

Having a majority vote is irrelevant. Whether one or all of the children feels this way does not change the fact that it is not yet your inheritance.

Perhaps you need it because you are in dire financial straits. In this case, rather than decide that you need your parent's money more than he or she does, try asking your mom or dad if he or she would be willing to help you out. If they say yes, you're covered. If they say no, that is up to them and you can try somewhere else.

Of course, there are a few things the parent can do to protect him or herself. Assuming the parent still has his or her capacity, (s)he can change his or her will to remove the four out of five children. Presumably, if your parent is 96 years old, you are over the age of 19 and therefore your parent has no legal responsibility to leave you anything.

Also, your parent can spend every dime on whatever they want so there is nothing left. Perhaps a day at the spa or a weekend trip should be in order. If he or she is in long term care, he or she can purchase any number of things to make daily life more pleasant. If your parent doesn't want to collect items, he or she can make a charitable donation, or pay for their favourite restaurant to deliver a meal every once in a while.

At the end of the day, chances are good that someone who is 96 doesn't have the mobility or autonomy that they once had. The small things can make all the difference.

What Happens When Someone with a Mental Disability is a Client



Recently we had a client come in to have a Power of Attorney drafted for his sister. Due to a mental disability she has had since birth, our client's sister is unable to fully express herself verbally. In the previous few weeks the sister moved in with her brother, and he needed to get a Power of Attorney and Advance Healthcare Directive to be able to take of her.

So what happens when someone in this situation comes in to our office?

The Way We Communicate Varies

When someone can't communicate verbally, there are other ways to have conversations with them. Immediately assuming that someone has no capacity because they don't respond is a huge mistake. Sometimes clients can't hear us, but they understand if we write it down. Alternatively, people who struggle with fine motor skills communicate quite well by nodding or shaking their head to "yes or no" questions.

The Conversation Changes

For most people the kinds of questions we ask in regards to healthcare decisions are emotionally challenging. These kinds of questions are even harder for someone who doesn't completely understand the context. Of course, we can't make a document for someone who doesn't know what it is for. In that situation, someone would have to apply for guardianship.

To make sure the person knows what is going on, the conversation has to change. We still need the same info, but the usual questions tend to be upsetting for people with mental disabilities because the context is missing.

Instead of laying out a situation in which the person is in a position where they can't communicate with a doctor, we ask them to think about "what if one day...". This is easier for people to digest because it seems very far away, rather than something that could happen to them right now. Sometimes we do still upset our clients. When this happens we take a break and talk about something else.

The Attitude Stays the Same

We believe that every one of our clients deserves to be treated with respect, no matter what their situation is. When our clients come in we do what we can to put them at ease. Whether it is as small a gesture as a cup of tea or chatting about the weather, snuggling our office dog, or making small talk about friends and relatives, we'll do our best to make our clients comfortable.

TUNE IN TO VOCM AT 11:30 AM EVERY THURSDAY TO LISTEN TO THE LAW SHOW.

DID YOU MISS AN EPISODE? HEAD TO VOCM.COM TO LISTEN ONLINE —
ANY EPISODE, ANY TIME.

Talking About “The End”

One of the documents we include in our wills package is an Advance Healthcare Directive. Essentially, this document appoints someone to make medical decisions for you if you lose your mental capacity. When people think about their estate planning, they most often think about their will only. Sometimes people think about who would take care of their money. However, medical decisions tend to be forgotten. During an estate planning meeting we discuss your will and Enduring Power of Attorney, but we also talk about medical situations such as illness, physical incapacity, and organ and tissue donation.

This topic tends to be very emotional for people. Quite often, families avoid talking about these issues because they feel like they cause too much stress. Planning your will is more intangible, whereas talking about health issues feels more real.

Although this is a difficult topic to discuss, it helps in the long run. Openly discussing with your spouse, partner, or children what you want to have happen helps keep the lines of communication open. When the time comes, your decision maker won't be overwhelmed by the task at hand because you've all prepared for the possibility.

This conversation doesn't have to be sad and depressing. There are things you can do to make the discussion go more smoothly.

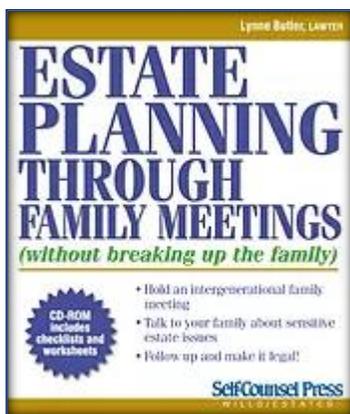
Avoid judgement. Each person is entitled to his or her own wishes. If your spouse's idea of what he or she wants is completely different from yours, remember that you each get to make your own document.

Remain patient. These are scenarios most people don't spend time thinking about. It may take your family member a while to decide what would be best for them. Remember your goal is talk about it, rather than make decisions on every possible topic.

Look at the big picture. Advance Healthcare Directives don't list every possible illness or injury. Consider broader categories, such as a medical condition you aren't reasonably expected to recover from, and how that would be different if the doctors said you would be fine with treatment.

Be kind to each other. If your partner is reacting negatively because he or she is anxious, unsure of what to say, or overwhelmed by the conversation, responding with angry comments won't help. Try to stay positive and understand what it is that is making them uncomfortable.

Prevent distractions. Turn off your cell phone, TV, etc. to make sure nothing interrupts you. It is an important discussion that deserves your full attention. This includes input from people you don't want present during the conversation. If you would prefer to talk about these issues without your children present, make sure they aren't around when you start the discussion.



One of Lynne's best-selling books is *Estate Planning Through Family Meetings*. Originally published in 2010, this book has helped countless families have hard discussions. It includes topics such as the consequences of not planning, what should be covered in family meetings, and possible non-financial solutions that may work for your family. Each copy also comes with a CD filled with forms and checklists to help you get started.

If you'd like to pick up a copy, *Estate Planning Through Family Meetings* is available on our website and in our office.

Can the estate lawyer be the administrator of an estate?

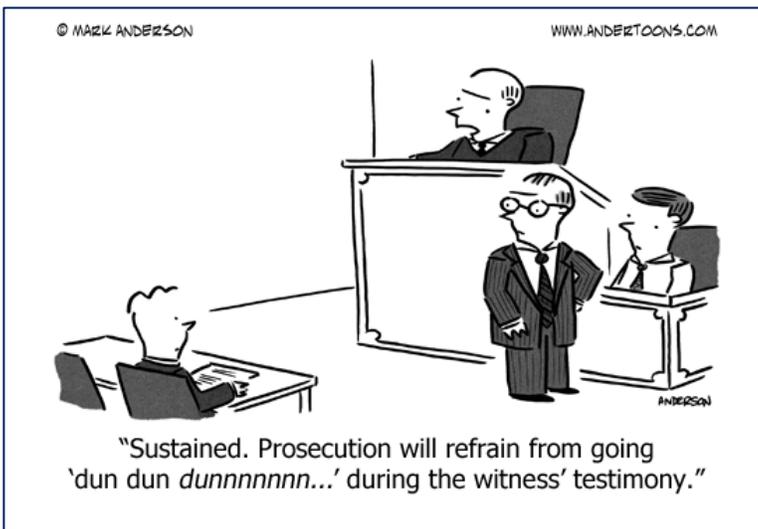
•••

Being an administrator is basically the same job as being an executor, except the person filling the role has not been appointed in the deceased person's will.

Occasionally, when someone passes away there is no one to apply for the role of administrator. Whether this is because the person has no family, their only living relative is a minor, or because all of their relatives live in another province, it leaves a bit of a sticky situation.

It is possible for the estate lawyer to be appointed as the administrator of the estate. It isn't common, and having the lawyer apply for the job is usually the last possible option.

In cases where the family isn't able to pay for a lawyer, the Public Trustee's office is able to help. For more information about the Public Trustee and their role in estates, click [here](#) to visit the government of Newfoundland website.



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

Do you carry an "in case of emergency" card?

It's important to know who you would call in the event of an emergency, especially if you live alone or have limited mobility. It never hurts to be prepared.

But what happens if you aren't able to call someone for help? For example, if you are in an accident by yourself and the hospital needs to contact someone for you. They won't know that you have an Advance Healthcare Directive, where it is kept, who your relatives are, or anything else about you.

This is when an "in case of emergency" card comes in handy. This card lists who you would want to be called as well as their phone number so someone other than yourself can call for help.

Feel free to print out the one below, or make your own to store in your wallet.

IN CASE OF EMERGENCY PLEASE
CONTACT:

NAME

PHONE NUMBER

Did you know...?

Advance Healthcare Directives are recognized internationally. The next time you travel, consider putting one in the bottom of your suitcase.