

The Butler Bulletin

Butler Wills and Estates

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The legal meaning of “next of kin” - And why it’s no longer enough to make you a decision maker.

Just about everyone has heard the term “next of kin”, even if they aren’t familiar with the law. We’ve all seen one move or another where someone is in the hospital, and the person at their bedside tells the doctor that he or she is the person’s next of kin. Cut to a scene in which the doctor asks this person for permission to perform a major surgery.

Legally, a person’s next of kin is his or her closest living blood relative. This can be any kind of blood relative, whether it’s a parent or child, or more removed like an aunt or cousin, as long as it is the closest blood relationship. Regardless of which relationship it is, many families operate on the unspoken assumption that whoever their next of kin is will be the person who makes medical decisions for them if they are no longer able to do it themselves. In many cases, people rely on their spouses to be the one to talk to doctors.

As recently as one generation ago, this was a valid way of doing things. In many small communities across the country, local hospitals still operate this way despite the fact that it isn’t accepted in urban hospitals. Legally, the person who is making medical decisions must be appointed by the person for whom they are speaking. Being someone’s next of kin no longer bears any weight.

Because of this, it is unlikely that a doctor will follow the wishes of someone who has not been legally appointed.

The repercussions of this are endless – whether the situation requires a minor procedure like inserting a feeding tube, or an invasive surgery like removing a tumor, if there is no one to consent to the surgery the doctor cannot perform it.

So why is it that your next of kin can no longer automatically speak for you?

As an adult in Canada, it is assumed that you have capacity and you are responsible for your own decisions. Because of this, no one can decide for you unless you appoint them in a legal document.

A large part of this is also that your next of kin may not know what you want. Some families openly discuss their wishes, while others don’t. Emergency situations can arise without giving you the opportunity to talk about anything.

Another part of it is that there are more decisions to be made than simply whether or not to “pull the plug”. Your spokesperson could potentially have to make decisions about nutrition, hydration, pain-killers, and more.

The decision your next of kin makes not only influences the doctor’s actions – he or she now has to live with the outcome of that decision, whether or not it went well.

The Executor's Tool You've Probably Overlooked

There are some things executors can do to make their job easier. Since this is a role most people only take on once in their lifetime, most executors are unaware of many of the options they have when it comes to dealing with the beneficiaries.

One thing executors can do that benefits everybody involved is hold a Reading of the Will. Most executors have not considered holding a Reading, since it seems outdated. While a Reading is an old-fashioned idea, the benefits are still applicable for modern estates.

During a Reading, the executor and all of the beneficiaries meet at a lawyer's office. The lawyer will explain what the will says, as well as what the beneficiaries can expect from the estate. Everybody has the opportunity to ask questions, and the lawyer can clear up any confusion about the contents of the will and what the executor should be doing.

You may want to consider holding a Reading of the Will if:

- There are multiple beneficiaries;
- There is some discord among the beneficiaries;
- You aren't sure how to interpret the will; or
- There are some clauses in the will that are likely to cause disagreement among the beneficiaries.

The major benefit of holding a Reading is that everybody receives the same information at the same time, from the same source. This prevents the spread of misinformation and keeps everybody on the same page. The executor's job is much easier when everyone knows what is reasonable.

Also, the fee for holding a Reading can be paid out of the estate so no one has to worry about paying out of pocket.

The Truth About Credit Card Debt

Just about everybody has some sort of debt. Credit card debt is one of the most common ways that people owe money. What happens to that credit card debt once you pass away?

Credit card companies are notorious for calling the spouse of the deceased person and requesting that he or she pay the balance of any credit cards. In some cases, they get aggressive and threaten to take the person to court for the amount owing, or to pass the case on to a collection agency.

Unfortunately, the vast majority of people accept what the credit card company is saying. They pay up because they don't want to be taken to court, or because they assume the credit card company knows what they are talking about. The truth is, the remaining spouse is not responsible for paying the credit card debt of his or her deceased spouse.

No matter what the credit card company says, they cannot legally force you to pay the amount your spouse racked up.

Unreasonable Executor Expenses

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In most estates, the executor will end up paying for some things out of pocket. He or she is entitled to be reimbursed for these expenses, over and above whatever the executor's fee is. When the executor prepares the accounting, these expenses are included for the beneficiaries to see.

Of course, only expenses that are considered to be reasonable are valid. Just because an expense is loosely related to the estate does not mean it can be claimed.

Here are some examples of items that are *not* reasonable expenses.

- χ Lawn care in the winter in a province with snowy winters;
- χ Per diem or food allotments;
- χ Flights to attend the funeral;
- χ Massages for relieving stress from dealing with the estate;
- χ A rental car when out of town;
- χ Clothes to wear to the funeral;
- χ The cost of bringing family or your pet with you on a trip to do estate work;
- χ Entertainment for yourself for your off hours while you are out of town working on the estate.

While some of these examples seem ridiculous, they are real life examples we've seen in different estates.

I DON'T LIKE THE ANSWER MY LAWYER GAVE ME. NOW WHAT?

We've all been to a professional with a problem and come out feeling dissatisfied. Sometimes it's because we feel like we didn't get an answer, and sometimes it's because we don't like the information we received.

If the issue is that you feel like your lawyer hasn't properly answered your questions, go get a second opinion. It's no different than going to the doctor and deciding to ask another medical professional. There is nothing wrong with asking for clarity. If you strongly believe your lawyer is incorrect, ask for a more senior person. Senior lawyers are more expensive, but that is because they have a greater wealth of knowledge.

You can also find another firm to take your business. Try to find one that focuses primarily on the kind of law you need help with. For example, if you need help with a worker's compensation case, choosing a lawyer who spends 99% of their time doing divorces isn't your best bet.

However, if you just don't like the info given to you, the problem probably isn't the answer you received. In this situation, the problem is likely that you expected to hear something else.

Quite often, this situation arises from misunderstanding what the law is and how it works. There is a great deal of misinformation floating about the internet. Several sources may quote the same misinformation, making it incredibly easy to absorb incorrect facts.

Going to a lawyer and hearing the opposite of what you expected exacerbates the problem because it is a surprise. Legal situations tend to be emotional, and this surprise can be overwhelming.

Once you get home, review what you learned when you met with your lawyer. It may make more sense once you've had a chance to take a mental step back.

Our first podcasts are up!

We've got our first podcasts up on our website. Every week we'll have a new episode, which you can listen to online or download for free. Once it's downloaded, you can listen to it as many times as you want.

Episode 1 - Giving Away Personal Items

Episode 2 - Can the Executor Do That?

Episode 3 - What to Do if the Executor Is Abusing His Power

Episode 4 - How to Be a Better Beneficiary

If there is a topic that you would like us to cover, please email us or use the "contact us" form on our website.



Did You Know...?

Lynne is the new editor of MC², the national magazine for Mensa Canada. Also known as "The High IQ Society", Mensa members must score in the top 2% in intelligence tests to be accepted. Lynne has been a member since 1991, and has taken the next step by moving into the position of Editor.

Mummers Outlawed

In June of 1861, the Newfoundland government outlawed mummering. The existence of the Act was prompted by an event in which three men from Bay Roberts were attacked by mummers. The three men were assaulted with various instruments, and one of the men died of his injuries. Other mummers followed suit, and were often armed with tools such as hatchets and ropes.

Once the Act was put into effect, any person wishing to mummer had to obtain written permission from a magistrate. Those persons who engaged in mummering without written permission were found guilty of being a public nuisance.

The punishment was either a fine of 20 shillings or seven days in prison.

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