

The Butler Bulletin

Butler Wills and Estates

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The Truth About Appointing a Trust Company as Your Executor

Having a trust company as your executor isn't as intimidating as it sounds. Often the first thing people think is that it is expensive, or that that a faceless company will be handling their money and possessions.

Here are a few misconceptions about appointing a trust company as your executor.

1 – They only accept very rich clients.

It is true that you need to have a minimum amount in investible assets in order to be accepted as a client by a trust company. However, this number isn't as high as people assume.

The minimum amount also varies from bank to bank, so if you are interested in appointing a trust company, it doesn't necessarily have to be the one at your usual bank.

2 – There isn't anybody who physically goes to your house.

Each company has a different name for this role, but there is an actual person who goes to your home after you pass away. He or she does very practical things, such as check to see if you have pets that need looking after, see if the electricity is turned on, make sure the windows are closed, etc.

This person will also look for important papers including financial statements or an original will, the same way any other executor would.

Most banks have a trust company. If you're considering appointing a trust company, talk to an estate planning lawyer about the one where you bank.

3 – The trust company will make decisions the deceased person didn't agree to.

This assumption is entirely false. Often we find this concern arises from the idea that the trust company has its own policies that override the wishes of the person who appointed them.

In reality, a trust company has no legal right to change what the will says. The company must follow the instructions in the will.

4 – It's very expensive.

The fee any trust company will charge is a percentage of the estate; logically, the larger the estate, the larger the fee. However, the company cannot charge whatever percentage it feels like.

Just as any executor can charge up to 5%, so can the trust company. This fee comes out of the estate and is not paid by anyone personally.

The percentage is clearly stated in a document that goes along with the person's will, which the client signs before signing his/her will.

FALL SEMINARS START THIS MONTH!

- SEPTEMBER -** SEPTEMBER 8 - EXECUTOR BOOT CAMP (2 HOURS)
 SEPTEMBER 22 - MOST COMMON QUESTIONS ABOUT PROBATE (90 MINUTES)
- OCTOBER -** OCTOBER 6 - TOP 10 ESTATE PLANNING MISTAKES (75 MINUTES)
 OCTOBER 20 - BEING A BENEFICIARY (60 MINUTES)
- NOVEMBER -** NOVEMBER 3 - EXECUTOR BOOT CAMP (2 HOURS)
 NOVEMBER 17 - TOP 10 ESTATE PLANNING MISTAKES (75 MINUTES)
- DECEMBER -** DECEMBER 1 - BULLETPROOF YOUR WILL (60 MINUTES)
 DECEMBER 15 - TOP 10 ESTATE PLANNING MISTAKES (75 MINUTES)

ALL SEMINARS ARE HELD AT 6:00 PM IN OUR OFFICE AT 14 FORBES STREET. FEE INCLUDES A COPY OF THE MATERIALS AND REFRESHMENTS.

It's Our 1 Year Anniversary!



We've officially been open for one year. The time has flown by, and we'd like to celebrate by giving something back to the people who have helped make this first year great (that's you!).

Throughout September, we're offering 10% off all books, kits, and guides on our website and in our office. To order online use coupon code **september10** at checkout.

We're also gearing up for our second annual Wills Week. This year will be even better than the last with discounts on our wills packages, free seminars online, and a complimentary in-house seminar.

Our guest speaker this year is Gregory Youden from CIBC Trust. We'll also be giving away a copy of Lynne's best-selling book "For My Family with Love"

Additional details will be in the October newsletter, and on our website in October.



THE LEGAL SIDE OF LOVE

We've now had a few clients who have made deathbed proposals to their partners. On the surface this is a very romantic gesture - these couples want to make sure they're together until the very end.

There are also a few important legal repercussions that come with being legally married. Here are a couple things to consider in regards to getting married.



Getting married invalidates any previous wills.

If you have a completely valid, up-to-date will and you get married, that will is now invalid. Why? Because getting married puts you in a new legal position in which you have a responsibility to look after your spouse financially.

The only time your will won't be voided by marriage is if the document clearly states that you have made it in contemplation of marriage. Marrying the person you said you would does not invalidate your will, because you have acknowledged your financial responsibility.



In NL, common-law partners have no inheritance rights.

That's right, none at all. If you die with a will that does not leave anything to your common-law spouse, he or she cannot expect to have it changed.

In a situation where you pass away without a will, your common-law partner still won't receive anything. According to the laws of intestacy, common-law spouses aren't included.



It isn't much of a surprise to our clients that we're animal lovers.

Our mascot Roxy is often at the office, and our clients are welcome to bring their dogs with them (Chelsea promises to give them back, although there is a good chance they will have been spoiled with snuggles).

Several of our clients have left charitable donations in their wills to various organizations, including Rescue NL.

We'd like to contribute as well. At the end of September, we will donate 15% of all sales of books, kits, guides, and online seminar registrations purchased throughout the month to Rescue NL.

Also, you can make a donation on our website's shop page via PayPal.

To find out more about this organization, visit <http://www.rescuennl.com>



CAN SOMEONE BE TOO OLD TO MAKE A WILL?

In previous newsletters we've discussed how a person needs to have mental capacity in order to make a valid will, but can someone be too old to make a new will?

This question tends to pop up when a senior makes changes – or gets an entirely new document – that his or her children or grandchildren don't like.

Often it's triggered by the senior redistributing his or her estate in a new way that causes tension among the parties, whether this is adding a new person or removing someone. When the people involved don't like the new arrangement, they immediately assume that Grandma has lost her marbles and that the new will can't be what she actually wanted.

This leads the disgruntled parties to begin thinking about contacting the lawyer who wrote the will, or contesting the will once the person passes. Sometimes it leads to trying to have the new will struck down as being invalid, even before the person has passed.

The short answer to whether or not someone can be too old to make a will is no. As long as the person has his or her mental capacity, he or she can make a new will that is valid (assuming all other requirements are met e.g. witnessing). There are no laws that state any particular age is too old to have a will made.

At the end of the day, trying to prove someone was mentally incapable of making a will due to their age is most commonly based on greed. Unfortunately, this means legitimate concerns about a senior's decision making ability can be overlooked.

If you are concerned about a senior, consider contacting a local senior's resource center. If your concern is regarding estate planning documents such as a will or Power of Attorney, contact an experienced estate planning lawyer.

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*

Have you read Lynne's blog?

With an average of almost 5000 visits per day, Estate Law Canada is one of the best-read Canadian legal blogs available.

Visit www.estatelawcanada.blogspot.ca to read articles, post your questions, and find links to books, forms, and more.

Did You Know...?

It's commonly misunderstood that once you hire a lawyer for one thing, you need to hire that lawyer for everything. Not all lawyers practice all kinds of law, just as not all doctors handle all kinds of medicine.

For example, if you hire a lawyer when selling your house, you are not obligated to hire that lawyer when you need a will made.

If you need assistance with a particular kind of law, it's best to choose a lawyer who focuses primarily in that area.

LISTEN FOR US ON VOCM, WEEKDAYS @ 1:30!