# The Butler Bulletin

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## Right of Survivorship for Joint Bank Accounts

For everyday purposes, a joint owner is a joint owner. But, when it comes to inheriting under an estate this may not be the case. Whether or not someone has the right of survivorship depends on the relationship between the owners.

The phrase "right of survivorship" means that someone receives the asset because they are the last remaining owner of it. Consider, for example, a joint bank account between a married or common-law couple. If one half of the couple passes away, the other person doesn't have to give up the bank account because the account has both names on it.

An issue arises when the bank account is owned jointly between people of different generations. For example, a mother who has an account and adds her daughter's name to it. Until 2007, the law considered the right of survivorship to apply to any jointly owned bank account. In the example of the mother and daughter this would mean that if the mother passed away, the daughter would still own the bank account.

However, the Supreme Court of Canada ruling in 2007 changed this practice. Now if a bank account is held jointly by intergenerational owners, and the older person passes away, the account is held in trust for the estate. It does not go to the remaining person by right of survivorship. Any funds in the account are held in trust until the remaining owner can prove that the older person intended for the younger person to keep the bank account.

This issue ended up in the courts because of a series of issues with elder financial abuse. There were several cases of a younger person taking advantage of a vulnerable older person, and taking over the bank account. It is incredibly difficult to prove what someone's intentions were after they've passed away. As a result, the problem is most often resolved in court, which costs everyone involved time and money.

The most common argument is that the act of putting someone's name on the account is in itself proof of an intention to give the person the account. Unfortunately, this isn't always true. Elderly parents can add their children's names for a variety of reasons – perhaps they need help with the banking, for the sake of convenience, they think it will avoid probate, or because they were forced to. Simply adding a name doesn't prove anything.

There are a few things that can be done instead that will help avoid this issue. If an older person needs help with the banking, use a Power of Attorney. This gives someone access without giving them ownership. A lawyer can make one, or the bank has forms that apply to only one account. Alternatively, the person can confirm in their will what their intentions are. This allows them to say exactly what they want and avoid any confusion.

***"Recently my wife and I had our wills done. Later we talked with our financial advisor, who told us something different from what the lawyer said. Why did I get opposite advice from my financial advisor than I did from my estate planning lawyer?"***

The main reason for the difference is that lawyers and financial planners have different areas of expertise. The information you got from your financial advisor probably didn't take the entire estate plan into consideration. Your financial advisor is focused on your money, whereas your estate planning lawyer is focused on your estate as a whole. There may be options that are great for just one account or investment, but these options may not work as well as intended when they are considered with the rest of your estate plan.

Consider, for example, leaving money to your children. Your estate lawyer should discuss with you what your goals are for providing for your kids, if there are any situations you want to avoid, what the relationship between your kids is like, what the legal ramifications are, and what the options are for reaching these goals. Your financial planner will have different suggestions, since he or she will likely be focusing more on concerns like tax and fees, and how to maximize your money.

Financial planners are an excellent resource for finding ways to make the most of your funds. We find that our clients who have met with a financial planner have a more thorough understanding of their assets. This makes the estate planning process make a bit more sense when the conversation turns to tax.

It's important to remember that your estate plan covers more than just your finances and who your money goes to. Obtaining information from both your financial advisor and estate planning lawyer will help you create a thorough, solid estate plan.

**Recently the Globe and Mail interviewed Lynne for an article about contesting wills in Canada. Augusta Dwyer interviewed lawyers across the country for her article, which you can read here.**

**For more information about contesting a will, such as who has the right to contest a will, what the process involves, and what the costs are, keep an eye out for Lynne's upcoming book, *Contesting a Will Without a Lawyer: The DIY Guide for Canadians*, which will be available in Chapters, Coles, Indigo, and through our office spring 2018.**

## What is a mutual will?

Most of the time when couples get their wills done, each person gets his or her own document. When the documents match (i.e. they each reflect the same wishes, such as passing everything to each other, then dividing the estate the same way among their children), these are called "mirror wills". They are named for the fact that when you look at the two documents, they are mirror images of each other.

When each person has the same document with matching instructions, you end up with mutual wills. However, this document is more than just each person having the same wishes. With a mutual will, there is a contractual obligation that neither person will change their document in the future without the other person.

While this may not be problematic while both people are still alive, an issue arises when one person passes away. The surviving spouse is prevented from changing his or her will to reflect life changes, such as remarrying.

Mutual wills are not very common. Make sure to discuss your situation and wishes with an experienced estate planner.

# FAQ About Organ Donation

One of the things we address when discussing options for an Advance Healthcare Directive is organ donation. This conversation can be tough for many people, but having it sorted out ahead of time gives your substitute decision maker the information they need to follow your wishes. Here are the answers to some of the questions we are asked most often, as well as information from Eastern Health.

*What kind of organs can be donated?*

The most common organs are the kidneys, heart, lungs, and liver. In terms of tissues, the corneas, heart valves, cartilage, and others can all be donated.

*Does donating cost anything?*

There are no costs for your family if you choose to be a donor. The only costs your family could have would be in relation to a funeral.

*Can I still have an open-casket service?*

Yes. According to Eastern Health, "the surgery to remove organs and tissues is performed with the same dignity and respect as any other surgery", so you will still be presentable for service.

*What if I have an illness?*

Depending on what that illness is, you may still be able to donate. Each person who indicates that they would like to be a donor is assessed by health care staff after he or she has passed away to determine if donation is possible.

*Can I only donate certain organs or tissues?*

Which organs or tissues you would like to donate is entirely up to you. Many clients state that they are happy to donate anything except for their eyes. What you include in your Advance Healthcare Directive is personalized for you.

## *Is there a question you want to ask Lynne to have answered on her blog?*

Lynne's blog is packed full of up to date information about wills and estates, and the best part is it's all Canadian, and has been visited by almost 6 million readers. If you have a question about a situation you're in that you would like answered on the blog, visit www.estatelawcanada.blogspot.ca and post your question on any thread. You can submit it anonymously or with your name.

Keep in mind that this a public forum, so please don't include any identifying information.

Did you know…?

On the website **www.freerice.com** you can play games to donate rice to the United Nations World Food Program.

Subjects for the games include humanities, languages, math, chemistry, geography, and sciences.


## *"I think the executor named in my dad's will won't do a very good job – can I get rid of them?"*

In short – no. It seems as though the work of the executor hasn't started yet. Until the executor makes mistakes on the estate, you have no say in who the executor is, regardless of your relationship to the person who made the will. Removing an executor before they make mistakes is equivalent to arresting someone before they commit a crime.

When your dad made his will, he had the opportunity to choose whomever he wanted as his executor. You may be right that the person he chose won't do a good job, but it is not up to you to decide who his executor will be. Take a moment and consider whether or not there are personal feelings influencing your desire to remove the executor. Often family resentments can come up in situations like this.

Alternatively, you may be right and the executor will do a terrible job. If this is the case, you can take the appropriate steps to have him or her removed. However, there is nothing you can do prior to the executor causing trouble.

There is nothing wrong with looking out for your dad. If you feel it is appropriate, you can talk to your dad and see what his reasoning was for choosing the person he did. This may clear things up or it may not, but remember that it is his decision. Making these decisions for your dad would take away his testamentary freedom.

*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*