The Butler Bulletin

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"My dad has had Blue Jay's season tickets from the day they started. They are an annual option to purchase. The beneficiaries seem to think they are an asset. Can an executor obtain a judge's order to proceed in a certain direction? If so what are the steps?"

Season tickets to sporting events are one of those things that tend to get overlooked when someone is doing their estate planning. How the executor should proceed will depend on a few factors.

First, the organization that offers the tickets may have a specific policy for this situation. In some cases, the tickets can only be transferred to a surviving spouse. In other cases, a child or sibling of the deceased person may be eligible to receive the tickets. If the organization has a policy like this, the executor should follow it.

The organization will likely ask for copies of the death certificate and Probate before they will give you access to someone's account. However, they should be able to explain the general policy without seeing copies of these documents.

What you can do in this situation also depends on whether or not the deceased person had tickets or a seat license. While these terms tend to be used interchangeably, they refer to different situations. There are usually specific rules about transferring tickets, but seat licenses are different.

If a person purchases a seat license, they have paid for a license that is attached to certain seats, and then they have the option to purchase tickets every year. The seat license is likely only valid for a set number of years.

When it comes to asking a judge, the executor can always apply for a judge to give direction. However, you cannot ask the judge to give you permission to do something. When an executor asks for direction from a judge, the executor must remain completely neutral. What the executor wants to see happen is irrelevant.

To apply for direction from a judge, you need to need file a motion to be heard in chambers. This is a court time that is open to the public. Which province you live in will determine what the name of the form is to file this motion. The clerks at the Probate office of the Supreme Court will be able to tell you which form you need as well as tell you about any fees associated with filing the document.

When you file the motion, be sure to use the same file number that is on your Grant of Probate. You are filing something in relation to the estate, not starting a new case.

Along with the motion, you will be required to file an affidavit – a sworn document. This affidavit states the facts of your situation, and lays out for the judge who you are and what is going on.

You can hire an estate lawyer to help you with these documents, or you can complete them yourself. Hiring a lawyer will be more expensive.

The judge will most likely ask you what the organization's policy is regarding passing on tickets, so make sure you cover your bases by contacting the company before you appear in front of a judge.

What does probate cost?

Every time someone comes in for a wills package, the topic of probate comes up. Although applying for probate is not needed in every estate, it is required in most cases.

Probate is a grant from the Supreme Court that says the will is valid, and that everyone involved should do what it says.

The cost of applying for probate includes the fee charged by the courthouse, as well as any legal fees incurred by hiring a lawyer to complete the application.

What this process costs varies from province to province, and even from lawyer to lawyer.

Court Fee

The amount that the court charges depends on which province you live in. Included in the application is an inventory, which shows the value of the estate on the day the person passed away. The court uses this amount to determine what the probate fee will be.

The percentage that they take varies from one province another. For example, in Newfoundland and Labrador the fee is 0.6% of the amount on the inventory.

This fee is not subject to tax.

Legal Fee

If you choose to hire a lawyer to complete the application for you, you are responsible for paying for that work. Some lawyers will charge you an hourly rate, whereas others may charge a percentage of the value of the estate. This amount is usually between 1 and 5 percent.

As with paying for any service, the lawyer's fee is subject to tax.

If the estate is small and simple, you may want to consider completing the application on your own.

WHAT IS A CAVEAT?

Although caveats can be used in several types of law, we see them when it comes to applications for probate. Essentially, a caveat is document that is filed by a party opposing the probate application. A judge will not grant probate to one party while there is a caveat in place.

The first step to applying for probate is filing the Notice of Application. After the Notice has been filed there is a short period of time before you can file the rest of the application. In Newfoundland and Labrador, this waiting period is five business days. A caveat may be filed during this time, and it exists to allow all parties the opportunity to come forward.

Most often someone will file a caveat if they intend to contest the will, whether they have an issue with one part of it or the will as a whole. If the party that filed the caveat does not willingly remove the caveat, both parties must present the situation in front of a judge in open chambers. As with anything in court, this process is lengthy and expensive.

The Law Show is moving to a new time! Starting August 26, we will be on the air at 5:00 pm every Saturday on VOCM.

Did you miss an episode? Visit www.vocm.com to listen to any episode at any time – for free!

Please note that our office will be closed from Monday, August 14 until Monday, August 21. Messages will be returned on Tuesday, August 22.

What if my kids don't want my stuff?

We all collect things over the years that we feel have value. Sometimes it's something that has a monetary value, such as art or silver sets, and sometimes these collections are items that we have sentimental value. No matter what kind of item it is, we love the things we've picked up.

We like to think that the next generation feels the same way about these items that we do, but unfortunately, that isn't always the case. Almost every client we have wants to leave a special item to their children – a personal or household item the parent values and wants their child to enjoy.

But what if your kids don't want your stuff?

Of course, you can leave something to them anyway and hope they don't throw it away, or sell it for far less than it is worth. This often leads to people trying to include clauses in their wills that direct the child to keep the item and pass it down their children. This creates a trust rather than giving the item to the person. Once you give something to someone you can't control what they do with it.

A better alternative is to find someone else to give the item to. Antiques, art, books, and jewelry are popular with private collectors. There may be someone who would see the value in your items.

Antique pieces are also coveted by museums and historical societies.

If you have written materials, libraries and archives may accept them. This allows your items to be used instead of sitting in your kid's basement. Specialty items – like historical books – can also be donated to universities who offer a program in that area of study.

More general household items may be donated to any number of charities. Groups like shelters are always in need of clothing, and many other groups are open to accepting all sorts of donations. We recommend that clients who are interested in learning more about charitable donations take a look at the current Canadian Donor's Guide. The guide for 2017-18 can be found online at http://www.donorsguide.ca/

If you aren't sure whether or not your children will want any of your items, consider having an honest conversation with them. You may find that none of your personal possessions are valuable to them, but you may be surprised at what your children would like to have as a keepsake.

Frequently Asked Questions

These are some of the questions we are asked most often about signing estate planning documents, and what to do with them once they are signed.

I signed three Enduring Powers of Attorney and Advance Healthcare Directives, but only one will. Why?

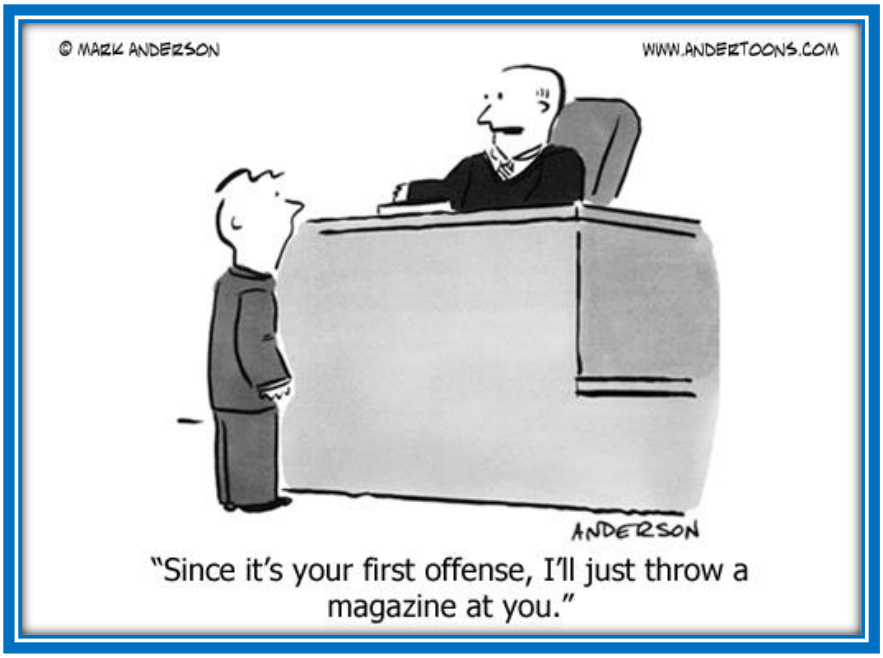
Legally there can only be on original will. As soon as you sign a new one it revokes the previous one, even if you sign them two minutes apart in one meeting. POAs and AHCDs are different – there can be multiple originals. We've found that one isn't enough for either document. Places like the land titles office and the hospital will take one, and if you only have one original you're left with nothing. The price for our wills package includes three of each of these documents per person. You take two home with you, and we keep one on your file.

What do you do with the POA and AHCD that you keep?

We don't do anything with it. The documents stay on your file in case you ever need another original in the future. Also, since we have the original we can make notarial copies of it, if in the future you want any.

Do I give a copy of my Advance Healthcare Directive to my doctor?

If you have a regular family doctor you can give one to him if you want. It is a good idea to keep one handy at home in case it is needed in an emergency. Often people keep them in the "kitchen papers" where their spouse or children could find it if necessary.



Did you know…?

Starting in October, people in Honolulu, Hawaii who text while crossing the street can be fined up to $35. If caught a second time within 1 year, the fine is $75, and a third offense is $99.

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*