The Butler Bulletin

Butler Wills and Estates 12/1/2016 Edition 2, Volume 3

How common is it for an executor to be dishonest?

We've talked before about executors who are dishonest or who deliberately act in a way that negatively impacts the estate they are meant to be distributing. Many questions on Lynne's blog focus on how to deal with a dishonest executor, how to recoup losses to the estate, and what legal action beneficiaries can take in these situations.

Just how common is it for an executor to be deceitful? How often do executors steal, and is it something that you need to consider when you appoint someone to look after your estate?

On almost every estate the executor will make a mistake, whether it involves money, the home, or specific items. It's a job that most people only do once, so it makes sense that there are bumps along the way. The difference between these executors and the ones who steal from the estate is clear – executors who have made an honest mistake are willing to rectify it and come forward as soon as they realize what has happened. They openly share their records with the beneficiaries who have a right to see them, and they are transparent about what they are doing.

Dishonest executors are not as common as those who have legitimately made a mistake, but unfortunately, they also aren't all that rare. There aren't any statistics about the proportion of executors who are dishonest, but it happens more than anybody would like to admit.

The reason so many people ask questions about how to handle these executors is because they are all dealing with the same problem – an executor has used estate money for his or her personal debts, is living in the deceased person's home rent-free, has taken home mementos, or otherwise mismanaged the estate.

Given how many people have this problem, it is something you should consider when choosing your executor. Nobody wants to think that it could happen in their family, but considering how many families it happens to, it is a possibility.

Who's Our Client?

Over the past year, we've met with many seniors, each of whom need different levels of help when it comes to day-to-day tasks, banking, and estate planning. Sometimes when elderly clients come to see us they bring a family member for support, most often a child. The vast majority of the time, these family members are more than willing to step out of the meeting when the time comes for their parent to talk to the lawyer alone.

Sometimes, though, the children feel they should contact us afterward with changes and edits to the drafts of their parents' documents. Nine times out of ten, this is because the parents have asked their children to email us, since email is faster than paper mail and easier than organizing a trip to our office.

When we have permission from our clients to discuss these matters with their children there is no issue. However, adult children are prone to thinking they know what Mom or Dad meant to say, and they take it upon themselves to inform us of these changes. These changes frequently include a different distribution of the estate, adding all the children "equally", or naming different decision makers.

If they are included in the discussion, there are a few things adult children should keep in mind about their parents' documents:

- There may be things that have happened that your parents have not told you about, whether financial or otherwise;
- These decisions have been discussed with an experienced lawyer who has satisfactorily answered your parents' questions;
- What you want may not be what your parents want;
- What you think is fair may not be the same as what your parents think is fair.

At the end of the day, our client is the person whose estate planning documents we're making. No matter what changes anyone else tells us to make, the only ones that get put into action are the ones our clients tell us they want. Any suggestions made by children are discussed with our clients to determine if they do actually want those alterations made.

Sometimes well-meaning children need to take a step back and let the parents make their own decisions. The children of our clients have no legal right to make changes to anything.

For My Family, with Love

This workbook is one of Lynne's best-selling books. It contains space for you to record important information that others will need when you've passed away or lost your capacity.

It includes sections such as:

- Contacts
- Passwords
- Finances including sources of income and debts
- Insurance policies
- Wishes for funeral arrangements
- Where important papers are kept

There is also ample room for personal messages.

This book does not take the place of a will or other legal documents; rather, it gives your family members the information they need to take care of you without providing them with any legal authority over your assets.

Once the workbook is complete, you can give it to your executor, keep it at home in a safe place, or store it with your estate planning documents.

If you'd like to order a copy for yourself or for a loved one, visit www.butlerwillsandestates.com or contact our office. $25.00

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

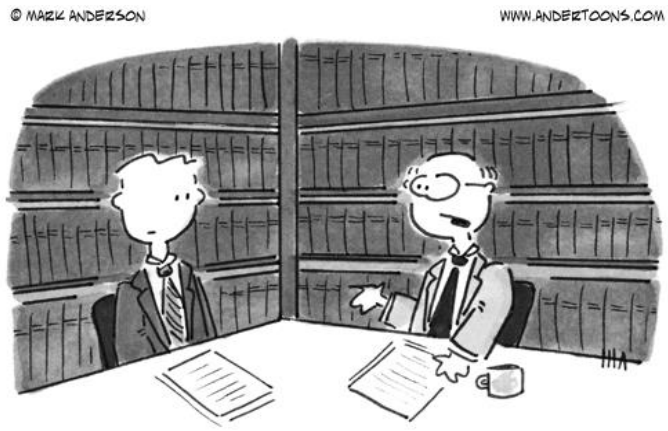
Question from a Reader

"My estate planning documents say that a form signed by two doctors is enough to prove that I've lost my capacity. If I lose my capacity but get it back again later, how do I prove that I have my capacity again?"

This is something we have been asked a couple times over the last year.

It is assumed that adults have mental capacity unless it has been proven otherwise. In terms of your documents, this means that if you have regained your capacity you simply need to say so.

Most often, Enduring Powers of Attorney are used when someone has developed dementia or Alzheimer's and aren't likely to regain their capacity.



"No that's insanity. You can't plead stupidity."

Did You Know…?

When someone passes, you can have his or her ashes turned into a diamond. Instead of the traditional urn, a company called Heart-In-Diamond offers rings or pendants featuring the diamond of your choice made from the ashes of your loved one.

Clients can choose the cut, colour, and setting for a completely unique piece. These aren't cheap, though – pieces cost up to $23 000.00

MOST FREQUENTLY ASKED QUESTIONS

There are some questions that we hear in almost every meeting when someone comes in to sign his or her estate planning documents. Since they pop up so often, we figured they're questions many readers have as well.

1 – What does "in specie" mean?

This term is found in your will. According to the law, if you leave someone a gift in your will it must be sold and the money given to the person. By adding this Latin phrase, you are saying that your executor may give the item to the person directly, instead of converting it to cash first.

2- What is Section 20 of the Mentally Disabled Persons' Estate Act and why does it say it does not apply?

Your Enduring Power of Attorney is likely to include a clause that says this act shall not apply to your document. When someone is in a situation where he or she no longer has capacity, the Public Trustee's office is legally allowed to step in and manage that person's finances and estate. By stating that you do not want this Act to apply, you are saying that you have made an Enduring Power of Attorney and you want it to take effect instead of the Act.

3 – What is the Public Trustee?

The Office of the Public Trustee is a branch of the government. They have several different responsibilities, depending on what the client needs. For estates, this can include being appointed as an Attorney under a Power of Attorney, acting as a guardian for minor children, or being the administrator of an estate.

4 – How do I get the forms on the Advance Healthcare Directive signed if my alternate decision maker doesn't live here?

The page that your alternate decision maker signs does not get used until the time comes when he or she would need to take over for you. While you sign the Advance Healthcare Directive now, that page is left blank.

For example, if you were in the hospital and unable to communicate, your alternate decision maker would need to sign that page at that time to be able to take over as your decision maker.

5 – I live common-law with someone, and my will says "I make this will in contemplation of marriage to ___". Does this mean I have to get married?

The short answer is no. Getting married automatically revokes a will, and the only way to avoid this is to say that you are making the will in contemplation of marriage to your partner. If you then marry the person you named, your will won't be revoked if you do get married. If you choose not to get married, your will is still valid.

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*