

# How do I get a copy of someone's will?

*Obtaining a copy of the will is the first step, whether the matter involves finding out if beneficiaries were treated fairly or if there are concerns relating to the validity of a will. The most frequently asked question by a concerned party is: how do I get a copy of the will? This article deals with the legal avenues open to parties to obtain a copy of a testamentary document in Ontario Canada.*

**Charles B. Wagner**

TORONTO — Jennifer is frustrated. She lives in the United States and her late grandmother passed away in Ontario. Jennifer's uncle, who lives in Toronto, is acting like he is in charge and refuses to show her the will. All her requests for information are rejected.

Allen's father died and all of a sudden his mother is giving him the cold shoulder. He received an excerpt from the will, which indicates that Allen has inherited only \$5,000. When he calls his sister, she clams up and refuses to discuss the will. Allen knows his father was worth a lot of money. He also knows that his father loved him and would never disinherit him. Allen does not believe the will is valid and demands to see a copy. His relatives ignore him and the lawyer for the estate says he has instructions not to show him the will.

These stories are typical. Almost every week someone, who cannot get a copy of a will, calls. Are they entitled to get a copy? In Ontario, the answer is yes.

## First step: contact local court

In Ontario, people sometimes deposit their wills with the court registrar for safekeeping. The local court registrar will notify the estate registrar for Ontario who has a computer record accessible by all courts in the province. Until the person who made the will dies, no one other than the testator can have access to this database. However, after

his death, people can search the database at the local court house.

After someone dies, the person who is appointed by the will to manage the estate (the executor) normally applies to the court for a certificate of appointment with a will (probate). Why is that necessary when the authority of an executor to deal with the deceased's estate flows from the will itself? The reason an executor will apply for probate is because institutions will not permit the executor to deal with the deceased's assets until they are sure that the testamentary document in question is truly the last will and testament. For example, if there is no probate:

- banks are unlikely to release the deceased's money or give the executor access to the deceased's safety deposit box;
- public companies will not transfer shares to the estate;
- insurance companies are loathe to pay out on policies without first seeing a certificate of appointment; and
- the land registrar ordinarily does not permit the transfer of land based only on the will.

It is for this reason that, more often than not, executors apply for and receive a certificate of appointment with a will. This certificate of appointment gives these institutions the certainty that the document in question truly is the last will and testament of the deceased and permits the executor to carry out his duties.

If there has been an application for a certificate of appoint-

ment with a will, the easiest way to obtain a copy of a will is to approach the registrar at the Superior Court of Justice in the jurisdiction where the deceased resided. On the assumption that there is a will, every application for a certificate of appointment must include a copy of the will. The court will allow inspection of the file. For a fee, a photocopy of the will can be yours. Is it always that easy? No.

## Second step: go to court

What happens when the executor does not apply for probate?

Now why would that happen? We just discussed how certain institutions will not deal with the executor without probate. Sometimes the executor does not apply for probate either because he still wants control of the assets or because he just refuses to do the job. Alternatively, sometimes the executor does not need to apply for probate in order to access the assets. One such example may be when the only asset is shares in a private corporation. In all these cases, searching the court offices will prove fruitless because no application for probate has been made.

In these instances, those parties who want a copy of a testamentary document should go to a lawyer who can obtain an order compelling the person with a copy of the will to produce it.

Any person who appears to have a financial interest in an estate may apply to court to order any person (it does not have to be the executor) to produce and bring before the registrar any paper or writing being or purporting to be a will as long as it can be shown to be in the possession or under the control of such person. The person who goes to court to get a

copy of the will is relying on section 9 of the Estates Act, R.S.O. 1990, c. E.21 and Rule 74.15(1) of RULES OF CIVIL PROCEDURE - R.R.O. 1990, Reg. 194.

Who may bring such a motion? Anyone with a financial interest in the estate is entitled by right to go to court and seek this remedy. The certainty of obtaining such an order is reflected in its characterization, by Ontario's Rules of Civil Procedure, as a Non-Contentious Proceeding. Even though the Rules of Civil Procedure provide that this motion

may be made without notice to the other side, some recent case law [See Ignagni Estate (Re), 2009 CanLII 54768 (ON S.C.)] indicates that notice to the other side must be given unless it is a matter of great urgency. Nonetheless, regard-

less of whether notice is or is not required, it is generally accepted that the Rules of Civil Procedure take it as a given that a person with a "financial interest" is entitled to a copy of the will and these orders are given in the ordinary course.

*Charles B. Wagner is an experienced estate litigator combining an assertive approach to litigation with a keen understanding of business. His legal practice focuses on disputes related to will challenges, capacity litigation, executor removal, support claims and other related estate litigation. He is the managing partner of his boutique law firm and chair of the Estate and Trust Group, Lawyers Division B'nai Brith, member of the Toronto Lawyers' Association, and a litigator whose primary focus is estate litigation.*

## The Dr. Max & Gianna Glassman Programs to meet the needs of Jewish seniors

### NEXT WEEK'S SCHEDULE

Monday, Nov. 9: Exercise

Tuesday, Nov. 10: Movie: Europa Europa

Wednesday, Nov. 11: Exercise

Thursday, Nov. 12: Bingo

Friday, Nov. 13: Oneg Shabbat

Hours: 11:30 a.m. to 2 p.m. daily at 15 Hove St. • A light lunch is served.

To reserve your spot, please call by 9:30 a.m. each day: 416.633.6224 ext. 134



## NEEDED

On December 6, 2009, B'nai Brith Canada is once again, reaching out to those less fortunate in the Jewish Community.

Drivers and volunteers are needed to help with B'nai Brith's Chanukah Basket Delivery Program.

Student volunteers can count the hours donated towards their community service requirement.



You too can reach out and touch another person's life on Chanukah

Sunday, December 6, 2009  
8.30 a.m.

15 Hove St. (Bathurst & Sheppard)

To volunteer, contact Faith Goldberg at  
(416) 633-6224 ext. 109

email: fgoldberg@bnaibrith.ca

## Former Gush Katif residents break ground for synagogue in Givat Hazan

Gush Katif residents uprooted from their Gaza Strip community four years ago break ground for the Young Israel of Bnei Dekalim synagogue in Givat Hazan in southern Israel during the intermediate days of Sukkot. Approximately 150 former families from Neve Dekalim now reside in Givat Hazan, a community that expects to grow to 500 families.



PHOTO: COURTESY OF NATIONAL COUNCIL OF YOUNG ISRAEL