

Executor must have access to original will

Many people are aware of the importance of having up-to-date estate planning documents, including Wills, durable financial powers of attorney, medical powers of attorney and advance directives for health care. Much thought goes into the preparation of such documents, but if your loved ones cannot locate the documents it could cause unnecessary expense as well as confusion and delay in the handling of your affairs. Additionally, in light of the recent flooding in our area, it is necessary to ensure that your documents are in a safe and secure location protected from environmental hazards.

Individuals named in estate planning documents, especially documents needed to continue your affairs or make health care decisions during periods of incapacity, should have easy access to such documents. If the named individual cannot locate such document, then the document is of little use. Failure to locate estate planning documents could necessitate a court supervised guardianship proceeding that could have been avoided if the proper document was readily available.

Additionally, your named Executor in a Will must have access to the original Will so that upon your death, the Executor can admit the Will to probate, if necessary. If the original Will cannot be located, Texas law presumes that the Will has been destroyed. The Executor might be able to overcome this presumption, however, admitting a copy of a Will to probate is more time consuming and expensive. Additionally, there are no guarantees that the Court will admit a copy of a Will to probate, which means that there is a potential that your property will not pass pursuant to the terms of your Will.

In order to ensure that your estate planning documents can be properly located it is advisable to store original estate planning documents, as well as other important legal documents in a safe and secure location. Deeds, life insurance policies and other important documents should be kept in the same place. It is advisable to shred any old or revoked estate planning documents. Many clients choose to keep their documents at home in a fire resistant safe. Due to the potential for flooding in our area, if you choose to keep your documents at home, you will want to ensure that the container is waterproof. Alternatively, you may choose to open a safe deposit box at your financial institution. Be aware that if you decide to store your original estate planning documents in a safe deposit box your Executor must have access to the box and the key.

It is also important to keep your documents in a logical place and to make sure you communicate to your named representative where your documents are kept. The trunk of your car, in the freezer or in a random box in your garage are not the best places to store important documents. If the individual named in the document needs to find those documents quickly, he or she does not have the time to search through your entire home to locate such documents.

If you choose to keep your documents in a home safe or safe deposit box at the bank, make sure that the individual named in the document has access. If in a safe deposit box, make sure the named individual has a key to the box and that his or her name is listed as having access to the box. You will want to ensure with the bank that the people listed on the box will have access in the event of your death or incapacity. If the documents are in a home safe, make sure the named individual has a combination or key to the safe.

By having properly executed estate planning documents you have already committed to planning for incapacity and death. Now, you will want to ensure that your stated wishes are carried out by ensuring that the individuals that you have entrusted with your finances and health care decisions, have access to these documents.

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