

Where There's A Will...

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The Oakland County Probate Court currently holds well over 80,000 wills for safekeeping. Last year alone, 993 wills were either filed with the court for safekeeping or following the death of the testator.

MCL 700.2515 outlines the requirements for filing a will with the court for safekeeping. The will should be deposited in the county where the individual resides. To be deposited, the will must be a written will. At the time the will is deposited, it is sealed in an envelope with identifying information on the outside.

To deposit the will, the depositor must provide the testator's name, place of residence, and the name of the person depositing the will. In addition, the testator's Social Security number is placed on the envelope. (The Social Security number is only used for identification purposes in tracking and releasing a will. It is kept completely private by the court and used for no other purposes.) On the rare occasion where the testator does not have a Social Security number, the court will accept a Michigan driver's license number instead, as allowed by statute. Upon filing, the court will provide verification that the will has been filed for safekeeping.

Once the will is filed, and during the lifetime of the testator, the will can only be released to the testator or to someone authorized by the testator in writing (proved by the oath of a subscribing witness) to receive the will. (See PC 548 Authorization to Release Will held for Safekeeping.)

Both requests to file and release a will may be handled through the mail. However, only those requests that fully meet the statutory requirements will be processed.

There is a \$25 fee to file a will for safekeeping, which must be paid at the time the will is filed. There is no charge to retrieve the will. It is not uncommon for a testator to request their will be pulled so that they may simply review it. If they wish to refile the will, there will be a \$25 fee. In addition, there is a \$25 fee to file a codicil to a will already filed.

On a practice note, you may wish to counsel your client not to make handwritten revisions to their will if they pull it for review.

This can later be a cause for great confusion as to the validity of the will and its provisions. Clients should also be advised to retain the receipt they receive from the court in a safe place. This makes it easier for them, or the person handling their estate, to verify a will was filed and for Probate staff to retrieve the will.

It's also a wise idea to refrain from putting the testator's Social Security number in the body of a will. Many Probate Registers are not comfortable with altering a will in any way, even to redact a Social Security number. The result is that once the testator dies and an estate is opened, the will (and the Social Security number in it) becomes public record. This is different than using the Social Security number on the envelope to file the will for safekeeping. The envelope never becomes public record.

Upon the death of the testator, MCL 700.2516 requires that a custodian of a will or codicil, or anyone having possession of such, shall forward it to the appropriate court with reasonable promptness after the death of the testator. Anyone who neglects to perform this duty without reasonable cause is liable for damages that are sustained by the neglect.

During 2006, the Oakland County Probate Court completed a project that involved relocating the storage of all wills filed with the court, and updating the relevant filing system. Previously, parties were advised to provide the court with advance notice of requests to remove a will because a delay of up to 2-3 hours was possible before the will could be retrieved. As a result of the relocation and updating, wills can now be retrieved immediately upon request.

Additional information, including a brochure that may answer many of your clients' questions regarding the safekeeping of will, is available at www.oakgov.com/probate.