

Trusts and Wills

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Michigan Trust Code

Don't forget that the Michigan Trust Code (MTC) became effective April 1, 2010, along with associated court rule changes. For those of you who practice in the area of estate planning, there are some very important changes you will need to address. If you are planning on filing a trust proceeding with the probate court, there are no major procedural changes from the court's perspective. Before filing a proceeding, however, the court rule changes and the MTC should be reviewed regarding timing of action, interested persons, applicability of MTC, etc.

Wills

An individual's will may be filed with the probate court for safekeeping. The requirements for this filing are found in MCL 700.2515. The will must be deposited in the county where the individual resides. In order to be accepted for deposit, the will must be in written form.

At the time the will is deposited with the court, it is sealed in an envelope with identifying information. The information that must be provided at the time the will is deposited includes:

- testator's name
- place of residence
- name of person depositing the will
- Social Security number of testator

It is important to note that the testator's Social Security number is written on the envelope, which is then placed in safekeeping. The 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 purpose. If the testator does not have a Social Security number, the court will accept a Michigan driver's license number instead, as allowed by statute. Once the will is deposited

with the court, verification that the will has been filed for safekeeping will be provided.

After a will is deposited with the court, during the lifetime of the testator, the will can only be released to the testator or to someone authorized by the testator in writing to receive the will. The authorization must be proved by the oath of a subscribing witness. (See PC 548, *Authorization to Release Will Held for Safekeeping*.)

A request to deposit a will and a request to release a will may be handled through the mail. Only those requests that meet the statutory requirements will be processed.

Please note that there is a \$25 filing fee to deposit a will, which must be paid at the time of deposit. There is no charge to retrieve a will. However, if a testator wishes to pull their will to review it and then redeposit it, there is a \$25 fee to redeposit the will. In addition, there is a \$25 fee to file a codicil to a previously filed will.

Occasionally we see individuals pull their wills to make handwritten changes and then redeposit the will. This is something you might wish to counsel a client about as it can later cause confusion regarding the validity of the will. Clients should also be advised to retain the deposit receipt they receive from the court in a safe place. This simplifies the retrieval process for them or the person who will eventually handle their estate.

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

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



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