

# CAN YOUR WILL BE KEPT TOO SAFE?

*Surprisingly, the answer is yes!* BY RENEE A. BOUCHARD-KAISER, ESQ.

“Oh that’s where that is!” – a common catch phrase during spring cleaning. We’ve all done it – put something in a “safe” place, only to forget exactly where that safe place is. Maybe you can’t track down the spare car key or perhaps you’ve misplaced the gift you bought for grandson’s birthday which is next month...it happens. And, hey, let’s face it - our memories are not quite what they were 20, 30 years ago. That said, when it comes to your estate planning documents, you simply cannot afford to let them get lost in the sauce!

## Hide and Seek

We were recently engaged by family members to probate and administer a person’s Will and Estate. During the initial estate settlement meeting with family members, we explained that in order to probate the Will and have the Personal Representative named in the Will duly appointed by the Court, we were required to file the original Will with the Register of Wills. Unfortunately, family members had only a copy of the Will.

We advised the family members to search through the person’s personal papers, safe deposit box, dressers, night stands, home safes, etc. After a couple of weeks of searching, family members called saying the Will could not be found. We advised them to continue searching through the home and look through the refrigerator, freezer, other appliances and unlikely hiding places. Unfortunately, their search continued to turn up nothing. Understandably, this worried and caused them great distress. They were concerned that their loved one’s last wishes would not be fulfilled and assets would have to be distributed according to our State of Maryland’s intestacy laws (which was significantly different than what the Will stated).

Without the original Will, we had to prepare and file a

Petition to Accept a Copy of the Will in Lieu of the Original (as well as file the requisite notices to interested parties) with the Orphans’ Court. Once the paperwork was filed, the Orphans’ Court placed the matter on its docket and our firm was required to appear before the Court to argue the matter. Fortunately, the Petition was granted, the copy of the Will admitted to Probate, the Personal Representative officially appointed to act for the Estate and Letters of Administration were issued to the Personal Representative to confirm her appointment.

We gave the Personal Representative the Letters of Administration and advised that she was now able to gather the assets of the deceased family member and begin to administer the Estate. Furthermore, we instructed that she now had the authority to prepare the decedent’s house for sale, re-title the decedent’s vehicles and have the decedent’s house and personal property appraised.

## Lost and Found

A month or two later, while in the midst of moving furniture out of the decedent’s home, one of the movers dropped a small sofa and a secret compartment in the sofa fell onto the floor. Low and behold the missing Will was found inside! The personal representative called immediately to explain what happened and we obtained the Will so we could file it with the Estate’s file located at the Register of Wills.

This happens often. Many years ago, after searching for days for a deceased client’s Will, her nephew (the executor) found it in a file called obsolete papers. Apparently, she was concerned that her brother would find her Will and destroy it, but she figured out her brother would not bother to look in this file, but her nephew, a former lieutenant in the Army, would be determined enough to look everywhere.

*(continued on reverse)*

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## What Should You Do?

In our estate planning practice, once the ink has dried on our clients' Will, his or her signature has been witnessed and notarized, we instruct them to make certain the Will is kept safe and briefly explain what could happen.

That said, we are often asked, "How do you keep a Will safe?" There are several ways to do this:

1. Place the Will in a safe deposit box and be sure to let a family member know where the key and your box are located (or, better yet, make a trusted family member as an authorized person on the safe deposit box).
2. File the original Will with the Register of Wills in your County (though some Counties will not do this anymore AND what happens if you move, will someone remember to go look at the Register of Wills where you had once lived?).
3. Let us retain the original Will in our fire proof Will safe (but note that some law firms will not do this) or
4. Keep the Will located in a safe place in your home such as a wall or fire proof safe and tell someone you trust where it is located (and, if in a safe, the combination or passkey).

## The Bottom Line

In the event you pass away, someone needs to be able to find your original Will, locate your assets, and have access to your accounts, passwords, PIN numbers, emails and log-in names. So, if you keep your original Will at home (which we do not recommend), do not keep the original in a secret compartment that no one would ever find, unless you tell your Personal Representative where it is. We also advise against wrapping a Will in tin foil and keeping it in your refrigerator or freezer!

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