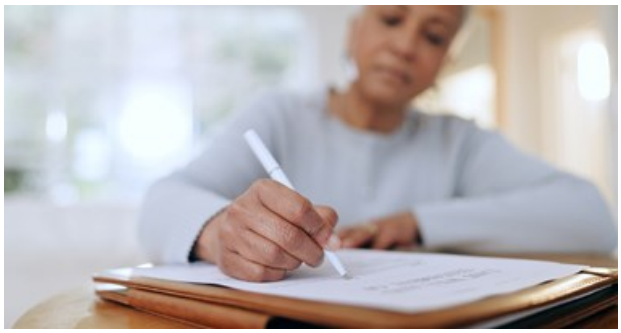


Why it's critical to know where your original Will is kept

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Knowing exactly where your original Will is kept is one of the most important parts of estate planning.

In Victoria, after a person dies, the executor of their Will is generally required to obtain a grant of probate of the deceased person's estate. The grant of probate is obtained from the Supreme Court of Victoria ('the Court') so that the executor can then act with legal authority and begin collecting the deceased person's assets and administering their estate. In submitting the application, the executor is required to provide the deceased person's original Will to the Court. It is therefore imperative that the Willmaker, and the executor, know where the original Will is kept and that it is not stored somewhere where it can be lost or destroyed.

This blog looks at why it is critical to ensure you know where your original Will is being held and the steps you should take to ensure safekeeping of, and easy access, to your original Will.

What happens to my original Will after it is signed?

It is important that a person's Will can be found easily and promptly after their death by those they have appointed as their executors. This is so that when it comes time to submit the original Will to the Court when the executors apply for a grant of representation to be made, the process is straightforward and stress-free.

Where a Will is located after the deceased's death is usually dependent upon the safe custody arrangements made by the Willmaker immediately after their original Will is signed. There is no single correct place or central register to store your Will, and it is a decision to be made by the Willmaker depending on their specific circumstances and preferences at that time.

After your Will is signed, you have several different options as to where your original Will can be safely stored.

The following storage options may be available to you after you sign your original Will:

- At home in a fire and flood proof safe or filing cabinet.
- In a bank safe deposit.
- The safe custody of your solicitor; or
- The Supreme Court of Victoria.

Whatever you decide, you should ensure you keep the Will in a secure and accessible place and record precisely where the original Will is kept, including providing a copy of the Will and the location of the original Will to your executors. If you do provide a copy to your executors, it should clearly be marked as a copy so that it is not mistaken for the original.

If you decide to store your original Will at your bank, usually in a bank safe deposit box, it is important that your bank confirms if this service is available to you and if there is a fee. It is also important that your executors know which bank holds the Will.

How do I store my Will at the Supreme Court of Victoria?

Your Will can be deposited at the Registrar of Probates for safekeeping.

Whilst there are no ongoing fees in relation to storage of your Will, there is a fee to initially deposit the Will and a further fee payable if the Will is uplifted in the future, such as if you wish to withdraw the Will from the safekeeping of the Court.

An application to deposit your Will for safekeeping at the Supreme Court of Victoria must be made via RedCrest - Probate, the Supreme Court of Victoria's online electronic filing and management system for handling Wills and deceased estates.

What precautions should I take if my original Will is stored at home?

If your Will is kept at home, it is important that it is kept in a secure and lockable safe or filing cabinet. This is to ensure it is not at risk of accidental destruction, such as if you develop dementia and accidentally dispose of it, or unauthorised interference, such as by relatives or other interested people who are not satisfied with the terms of the Will.

If the Will is lost by you, your executors may have difficulties obtaining a grant of probate from the Court, as the Court will presume that you deliberately destroyed it, unless this presumption can be rebutted (i.e. disproven).

If you store your original Will at home, your original Will could be kept alongside other important legal and financial documents, such as birth and marriage certificates, but it must be able to be easily found and accessible after your death. It is important that it is kept in a fire and flood proof location, so that the Will can be found if the property is destroyed by a fire or some other disaster.

It is also important to keep your original Will in pristine condition in an envelope or other protective cover without attaching other documents to it with pins, clips or staples as these may cause damage to the document and the registrar of probates may raise

questions about hole marks or imprints on the Will.

Because of the possibilities of accidental destruction or unauthorised access to your Will by third parties, and the problems that may be faced by your executors when trying to obtain a grant of probate of your estate in these circumstances after you die, it is generally considered best practice to store your Will at your solicitor's office, the Court or your bank and not in your home.

What if the law firm which retained my will no longer exists?

Many law firms offer their clients safekeeping facilities for their original documents, including their Will, at no additional cost. You should consult your solicitor to find out your options for storage of your Will after it is signed.

If your solicitor retains custody of an original Will and the legal firm splits, closes, changes its name or amalgamates with another firm, the executor can contact the Law Institute of Victoria which keeps a record of changes in legal firms.

If a Will is retained by a solicitor, a copy of the Will should be kept in the Willmaker's filing cabinet or with their important papers at home, and a copy provided to the executors. You should also tell your executors which law firm is holding the original Will and when it was deposited there.

What happens if my Will can't be found after I die - can I get probate of a copy of the Will?

Although the normal procedure is for the original Will to be lodged with the Court when making the application for a grant of representation, it is possible to obtain probate of a copy of the Will or from a Will constructed from memory.

In the absence of any other evidence, where a Will is last in the hands of the Willmaker and can no longer be found, the Court will presume that the Willmaker destroyed the Will. This presumption, however, can be rebutted with clear evidence to the contrary.

If an executor makes an application for a grant of probate of a copy of a Will, because the original is lost or destroyed, an explanation must be provided to the Court as to what happened to the original Will. The executor must also file an Affidavit as to the likely whereabouts of the original Will.

Where a copy of a Will is admitted to probate, the Court, if it accepts the application, will make the grant of representation subject to the original or a more authentic copy of the Will being located or made available.

What if there is no copy of my Will available?

If it is known that you had an unrevoked and valid Will at the time of your death, but the original is missing and there is no copy or other evidence from which the terms of the Will can be reconstructed, then it is unlikely your executor will be able to obtain a grant of probate of that Will.

The executor or some other interested person may need to obtain a grant of Letters of Administration of your estate 'on intestacy', in which case, a statutory formula will decide how your assets will be distributed, or, if you left a previous, valid Will which can be located, your executor may be able to obtain a grant of probate of your previous Will.

It is important however to ensure that you know the location of your original Will and that it is stored in a safe and accessible place, as your previous Will might not reflect your last wishes, or, if there is no previous Will, the rules of intestacy which will apply to the division of your estate may end up in a distribution that does not accord with your wishes.

Need help protecting your original Will?

It takes considerable planning and effort to prepare a Will so it is important that when the time comes it can be easily located and accessed. Smith Family Law can assist you in the preparation of your Will and advise you of the storage options for your original Will. Our experienced Wills and Estates lawyers can also assist you with an application for a grant of representation if you are an executor of a Will and the original Will cannot be located or has been unintentionally destroyed.

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