

How Do You Scan Estate Planning Documents?

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Here is my current process:

1. Scan each document through my Brother all in one. (this means I have to get up and put in each document, scan it, out in the next one. It usually takes me almost an hour for a couple's EP docs)
2. Scans are randomly named and sent to my Scans file. I then save each one in the correct name, such as "Bill Smith POA" into Bill Smiths folder.
3. Then I copy everything.
4. Then I staple the copies and stamp them "copy."
5. Put them in folders.
6. Mail them to client.

Someone, please tell me there is a better way. Maybe it involves a ScanSnap??

Thanks!

Ryan

Ryan N. Morey, Colorado

First, what scanner are you using that it takes an hour?

I have Scansnaps. After the signing, while the clients are still at the conference table, my staff scans all of the originals. Even with my lengthy docs - Wills, RevTs, POAs, AMDs, Certifications of Trusts, Deeds of Assignments, and Memos of Instruction my staff estimates maybe 7 minutes for a couple's entire estate plan.

Clients get all originals, unless the originals Wills are lodged in the courthouse for safekeeping and then they get a photocopy of the original Will. When the receipt comes back from the clerk, it gets forwarded to the client with instructions to affix it to the front of the Will copy.

Scans are automatically saved to the S; drive (scans, cute huh?). Then the docs are saved in TimeMatters under the client.

We no longer print the scans or make photocopies.

This is always my process. If an original ever does go missing, we can testify with certainty that the scan is of the original because our process

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is always as described above. Plus the ScanSnap scans in color so the blue ink of the signer can be seen.

Ryan, if you charge \$300 an hour, by the second estate plan and the reduced scanning time the ScanSnap has paid for itself.

Deb Matthews, Virginia

Yes. I do almost the entire same process as you do and it takes about 10 minutes to scan will, DPOA, AMD for a husband and wife with a snap scan.

Christopher M. Guest, Washington, D.C

It would depend on your volume.

I also use a brother multi-function [MFC 7020 - a 5 year old model, newer ones probably have much better features] and PaperPort software. I am able to scan whole documents with the auto document feed. For double sided, I do have to scan the second side separately, but PaperPort offers the option to scan the other side, and somehow is able to interleave the pages so that they are in the proper order. I scan only one document at a time for that reason. I name all scanned documents as they are scanned, and after scanning as many documents as needed, I copy them to the client directory/folder, using Windows Explorer. Although it may be more efficient to allow the program to randomly name documents, I find it more efficient to name them as they are scanned, rather than having to go back and figure out what each random name is and then renaming.

I don't make paper copies. All originals go to the client, and except if there's a reason for me to keep an original, everything is filed on my computer. It's very very rare for me to have a reason to keep originals. I refuse to be a file storage service for clients.

I know that the ScanSnap is MUCH faster - see David Crosson's newly-thrilled post today. But I don't have the volume to justify it.

When I do estate plans, it's typically for a couple. It isn't instant, but doesn't take an hour. The Brother is at my desk, so I don't have to walk back and forth to feed it.

Miriam N. Jacobson, Pennsylvania

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I don't know what the scanning speed of your Brother is, but my assistant has a ScanSnap on his desk and he drops one doc in and as he is saving it, the next doc is scanning. Probably takes him 10 minutes max to scan and save an entire trust-based estate plan with all the ancillary docs. We also don't have the step you mention of sending things to a "scan" file. As it is scanning, a prompt appears on the screen and you point it to the client file, give it a name and it is saved the first time right in the client's file. No going back and renaming it.

Overall, an hour to scan and save seems like waaaaaaay too much time, so the ScanSnap might be a really great investment. We have had a paperless office for about 18 months now and every document that comes into or leaves this place is scanned at my assistant's desk and that ScanSnap never even blinks - works great!!

Erin Kick, Ohio

I also use a ScanSnap and don't print the scans or make photocopies. I also scan everything with OCR on, and through my Mac, I can search for any word in any document, and it will come up instantly.

David A. Shulman, Florida

Huh.

My scansnap won't scan the next file until the last one is saved.

And I sorta understand why lawyers keep original wills, but I don't understand keeping original powers of attorney and health care documents. People need their originals.

Best,
Ellen

Ellen Victor, New York

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I used to use my Brother 9840 - 12-15 ppm. Then, I graduated to an Epson GT-S80 - 35-45 ppm. About a year ago, I bought a BizHub C351 - 55-60 ppm.

Here is my process:

1. Documents are scanned and automatically saved to a "watched" folder on the network;
2. A Mac on the network watches the folder and automatically OCRs the document;
3. The workflow add a "+" to the file name after the OCR so we can visually tell whether the document has been processed;
4. My assistant renames the documents using the format "12-08-01 RLT Smith Living Trust" and then copies them to the client folder on the network; (each scan is checked for quality at this stage)
5. The documents are automatically synced to the Box.com directory, which triggers a notification to my assistant;
6. My assistant then copies the Box file and folder links into Infusionsoft and creates a note that the documents are ready;
7. Infusionsoft automatically emails the client with instructions on how to access their documents in our password-protected client area on the website;
8. My assistant burns a CD and places it inside the client binder;
9. My assistant opens the will and applies a "Copy" stamp in Acrobat, then prints the document;
10. The original will is placed in a faux leather Will Envelope, which is wrapped with gold thread and sealed with red wax;
11. The entire package - the binder with documents and CD, plus the original will envelope - is delivered to the client by messenger.

I do not keep a copy of the documents. I have a scanned copy stored locally and backed up on Box.com. The entire process involves about 15-20 minutes of manual labor.

If I had a slow scanner, I would probably save the documents as PDF from Word, and then replace the signed page.

Cheers,

David Allen Hiersekorn, California

We keep an original of the POA and Advance Directive, and of any other document - we have the client sign 2 copies. We also scan in everything so we have a digital copy. We do this because it's what we've always done. Now that I think about it, we could probably get away with scanning everything and then giving it to the client, unless we do an in-home execution (and even then, we could mail everything back).

-Justin

Justin Meyer, New York

I have a Scansnap (1500) on my desk. LOVE it. After the signing, the clients have a choice to either wait 10-15 minutes (there's a coffee shop downstairs) or come back another day to pick up their 'book'.

I scan the docs (can only afford one Scansnap and I'm NOT giving it up to my assistant, I love it too much - a client comes in with some documents and I can scan them right there while they're telling me about the case, without leaving my office), it takes just a few minutes.

In the client's 'file' on the computer I make a sub-folder called "Scanned Documents". Under that, for a couple, I'll make "Mary's Documents" and "Joe's Documents". I scan from my scansnap directly to a pdf in the appropriate subfolder, titling the document "Will", "Trust", "Power of Attorney", etc. If a trust is too long to scan in one go, I scan the first half, then the second, then merge them into a single pdf.

After each document is scanned I staple it and put it into the binder.

Once the docs are all scanned I copy the subfolder(s) onto a stick drive (which I've titled "Estate Plan" - nothing longer is allowed for naming the drive) and put that into a pocket in the binder.

Clients get original documents and pdf scans on flash drive. I get scans on my computer.

C.

Cynthia Hannah-White, Hawaii

On the "can't afford a second ScanSnap" position, you might consider getting a second on the very remote chance that the first has a stroke. Of course, the first will only die at the worst time for you. And getting the second one will keep the first one healthy.

Deb Matthews

Yeah, actually I am planning on getting another one. But that's AFTER:

- a new computer (mine's about 8 years old, still running XP...);
- some decent chairs for the conference room; and
- new carpet for the office.

And all of those will have to await a windfall, like a couple of my clients paying their bills. :-)

C.

Cynthia Hannah-White

My assistant looked so long and lovingly at my ScanSnap that I bit the bullet and bought her one.

We shared a stapler and hole punch and other things while I saved up, but that ScanSnap came first!

Ellen Victor

It also takes me far too long to copy and scan client documents. The ScanSnap won't accept stapled documents. So you have your clients (and witnesses) sign unstapled documents? Your clients sign an unstapled Will?

Rick Bryan, New York

Sure. Why not? I'll sometimes give them the will unstapled. A clip works.

David Shulman

Yes, I have my clients sign an unstapled Will. And then I scan it, and then I staple it.

Ellen Victor

Yes, I have my clients sign unstapled documents for exactly that reason. Only one client asked why and I said it made it quicker to scan the documents in. Client said "oh, that makes sense."

Also, holding original wills (and other estate planning documents) creates a liability level I am not comfortable with along with the time period you have to hold a will i.e. potentially could be 50+ years. And if you want to close up shop, you'll have to find the client to give them the will (not an easy task).

Christopher Guest

Is there some rule in NY about stapling?

David Shulman

I think the concern about unstapled, or unstapling, documents is that there's the possibility of someone substituting something; taking one page out and putting in another with different provisions.

Could it happen? yeah.

And it's probably happened sometime; but at some point you just need to make a decision; is this going to wind up being challenged on this basis? And the answer is almost always going to be "no". Particularly if you can say "I always do it this way". And, remember, you presumably have an electronic copy of the document as generated by the word processor file; you can always show that the original hard copy, the scanned electronic copy and the word processor copy are identical (except for signatures, etc. on word processor copy).

Ronald Jones, Florida

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Probably a hearing would be required if the Surrogate or someone objecting finds that there is an issue. Personally, I would not have the client sign an unstapled will in NY as I feel the fact that it was unstapled would have to be brought up to the Surrogate.

Here is a cite to a good example of a matter where it may have been unstapled after execution:

http://www.courts.state.ny.us/Reporter/pdfs/2011/2011_30415.pdf

And see *In re Estate of Griffin*, 81 A.D.2d 735, 736, 439 N.Y.S.2d 492, 493 (3d Dep't 1981) (holding that where will was unstapled at execution, only signed last page, which contained no dispositive provisions, could be probated)

Jon Michael Probststein, New York

I actually think that there is a rule that the Will must be submitted to the court stapled or otherwise bound, and they will check to see if staples were removed.

David Shulman

Yes, our Surrogate's court clerks examine the Wills to see if there are staple holes, and an affidavit is required to explain why it has been unstapled.

As I tell my clients, it is very difficult for a dead person to explain after the fact why he/she removed the staples.

Ellen

Ellen Victor

We have the client initial each page of the will and then sign at the end. We staple it after the fact so we don't have to deal with the unstapling/restapling (and subsequent staple affidavits) when we scan it in.

-Justin
Justin Meyer

In the vein of helping the group with a different perspective on this topic, as I have been helped numerous times in the past; I have spent a lot of years reading and researching and practicing in the field of estate planning, and so what I'd say to the group is that: the general answer to "why not" is not because there's 'a rule' against it, but because such practice is contrary to longstanding and accepted professional standards of practice in the field of estate planning. Such practice may be more convenient and efficient to the ScanSnap generation, but most definitely having clients and witnesses sign unfastened testamentary documents would be categorically disfavored by the senior members of the estate planning bar. That doesn't mean the documents are voidable, but it's poor practice, in my opinion. Now, that's not to say that those same senior statesmen wouldn't themselves, privately, on occasion, oversee the execution of estate planning documents without stapling them first for ease of photocopying, etc., but absolutely in public such practices would be disavowed. More specifically, such practice invites questions as to 'due execution' and whether a document offered as an individual's original 'health care proxy' or 'power of attorney' was altered (e.g., insertion of different pages) between the time it was signed, and the time it was stapled. Why, why even invite such a query? Because we're so in love with our desktop scanners and saving time and bragging about how efficient we are with our 'paperless' office systems? In my opinion, those are quite inadequate justifications. With respect to a person's last will and testament, or inter vivos trusts with testamentary dispositions, the risk of a will being denied probate, or at a minimum, serving up grounds for objections on a silver platter, may be small or it may be not small; regardless, why create this remote possibility? Do the job right and they'll be one less item which could go wrong down the road. With respect to having clients leave the office with their original last will and testament held together with a paperclip, perhaps in your state the procedures are different; here in New York that would be beyond the pale of professional standards of practice. I would be shocked if anyone disagreed that in NY (or any other jurisdiction for that matter) such practice meets acceptable standards for estate planning practitioners.

Try this, for all you folks who have clients sign unstapled wills: next time you're in Surrogate's Court, ask the clerk as an aside, 'hey, some lawyer told me the other day they have their clients and witnesses sign unstapled wills, so later on they can be scanned, and then afterwards the lawyer says he staples the will together with the affidavits of attesting witness and the will back. What do you think of that?' Ask the same

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question to your close colleagues. I'll wager the overwhelming majority would say that's not a good idea.

At the risk of coming off as 'holier than thou,' I think you guys are making a mistake and laying a foundation for some client or beneficiary, years from now perhaps, to be harmed by the current practice of signing unstapled wills. Don't forget "problems" only arise when there's controversy, but that's where this practice will hit the fan, and the attorney-draftsman will be in the cross-hairs. If no one objects, big deal: no harm, no foul. How about when siblings go to war over guardianship of mom or dad, or over their parents' estate? Whether or not the case turns on the fact that mom signed an unstapled health care proxy or power of attorney; probably not, realistically. But personally I would most definitely not want to be examined as to this practice in front of a judge whom I appear in front of regularly. And it comes out the testator signed an unstapled will, left the office with a photocopy, and only at some point later were those pages, purportedly, permanently fastened together. "So, when did you staple the will together? Five minutes after it was signed? Five hours, or five weeks, or was it stapled a few minutes before it was offered for probate?" So how long did the will sit around in a folder, or on your desk, before you got around to scanning and stapling it? Through how many persons' hands did this document pass before it was stapled? "Oh, so you didn't staple it yourself? Your assistant stapled it. I see. So can you be certain this stapled document is the same as the unstapled document? Really? How can you be certain? But you oversaw the execution of the will, and then someone else took the papers, scanned them, and then stapled them up. I see. Can we examine your assistant on that point? Let's examine the attesting witnesses too to see if they can say for certain the unstapled papers which they witnessed being signed are the same as the stapled pages being offered for probate. Oh, they can't say for certain? That's unfortunate. By chance, Ms. Attorney, after the testator left the office and you were looking over the unstapled document, by chance did you notice a typographical error on page 4, and reprint the page before stapling the will so as to make it look nice? And after the client left the office, did you reprint page 5 and change the testator's dispositive provisions? Are you sure? Because my client is certain the decedent told her she was getting 25%, and here it says 15%, on the will which wasn't stapled together until the client left your office. Maybe your assistant changed and reprinted page 5 before it was scanned and stapled. This purported will which is being offered for probate, which is now stapled, is not in the same form as when it was signed and witnessed, now is it Ms. Attorney? It wasn't stapled when it was signed, and now it is, and the attesting witnesses are not sure the document is the same, because they didn't see it being stapled either. "Judge, respectfully, we've done

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enough here to raise legitimate questions as to whether this purported will was duly executed according to the laws of the state of New York, so as to rebut the presumption of due execution and shift the burden of proving due execution to the proponents."

Rick Bryan

Twenty years ago, pre-ScanSnap, we had clients sign unstapled wills. Initial each page in front of witnesses. Make the photocopies, then fasten to blue back.

David Masters, Colorado

I always have clients sign unfastened (paper-clipped) estate planning documents, so that I can scan them before stapling, tying, and sealing them. People often find it challenging to sign tied documents, because of the tendency of the pages to "flip." The signed documents are scanned, tied, and sealed while the client waits. I do it myself, in front of them, and they leave with originals. (If there are no last-minute changes or corrections, I may tie one of the copies in advance to save time, and so it is executed after having been tied, but not yet sealed.)

Notwithstanding the concerns about substitutions on-the-spot, **my** documents leave the office tied and sealed, duplicate originals, signed in blue ink, with a notation on the documentation declaring the same. And I have a scanned copy in my files for authentication, should the future need arise.

I've rarely had a client bring me a prior will that hadn't clearly been unstapled for copying at some point (often multiple times), though if I unstaple to make a copy for my files (to use a guidance in drafting a new document), I am quite adept at putting new staples back in old holes. Often, they do not have backs.

I have found that my practices are more formal and consistent than most of what I hear of from others.

-Rick

Richard J. Rutledge, Jr.

Please excuse my ignorance of this area of the law, but would you be able to affix a footer or header on the will, e.g. Belil Will 8/2/12) and page number? I routinely do this on pleadings.

Jeena R. Belil, New York

to staple or not - I have a footer on every page of wills for witnesses and the testat* to initial and date;

I also use headers at the top of the page giving the document an English name, e.g. Smith Will or, if h/w, Mary Smith Will, Joe Smith Will. Then of course, the computer document name - whatever your system is.

After signing, I do make an extra copy for the client to take along with the original, and scan for my file.

Miriam N. Jacobson

In Missouri each page of the will was dated and signed/initialed at the bottom of each page. This was to ensure that no pages were interchanged.

Erin M. Schmidt

And for the importance of the stapling, here's a case where the attorney mistakenly stapled the fourth page where the signatures were, before the third page, where the residuary dispositions were. The court held that only the part of the will before the signatures were valid and the third page, although clearly numbered, was invalid and the estate would pass through intestacy. The attorney testified that it was his mistake, but no matter.

http://scholar.google.com/scholar_case?case=17587832985285210037&q=123+Misc.+2d+809&hl=en&as_sdt=2,33

Ellen Victor

Rick,

Not to sound like a jerk but what is the senior estate planning bar view on the buggywhip?

and I say this because of this comment

*At the risk of coming off as 'holier than thou, *

*

*

most of your entire post comes off this way.

I agree that a mistake could happen and pages could be misplaced. But, whether the document is signed, scanned and then given to your client or stapled, signed, unstapled, copied/scanned, stapled and then given to your client. Which one seems less likely chance of a mistake. And regardless of the process, mistakes happen. See the previous email. If you have a process in place that tracks what happens to your will, how it was executed then I see no reason to have the documents stapled prior to execution.

Processes are best if they are simple which equates to less chances for a mistake to occur.

There is certainly a good point to make sure you properly execute the estate plan and keep with your process.

I've had my more techie clients ask me why they can't do this over the internet. My answers is "don't worry that is coming eventually."

Christopher Guest
