

## Checklist for the Mechanics of Signing Estate Planning Documents

Hi Firm - I have my first estate planning signing tomorrow that involves more than just a simple will. I am feeling anxious about the mechanics of it - particularly turning the original documents over to the clients. If anyone would be so kind as to review the checklist I've written myself below and provide comments and/or reassurance it would be much appreciated.

- Welcome and introduce the executors, notary, and witnesses
- Notary verifies identity of executors and witnesses
- Talk briefly to establish mental capacity and no undue influence (note I don't have any concerns with these clients, but want to have enough to draft a short memo to the file)
- Sign documents
  - revocable living trust (clients, notary)
  - certification of trust (clients, notary)
  - deeds conveying property to trust (clients, notary)
  - wills (clients, witnesses, notary)
  - durable power of attorney (clients, notary)
  - healthcare power of attorney (clients, witnesses, notary)
- Take all originals and scan to client file. Staple each document.
- Place wills into will envelope
- Place revocable living trust, durable POA and healthcare POA into document folder.
- Give clients the will envelopes and document folder.
- Keep certification of trust and deeds for recording and mail to clients when recorded to be added to document folder.

Am I missing anything? Closings and such have always made me nervous - something about all the papers not being stapled together ramps up my worry that something will be missed or misplaced. Thanks in advance

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- Welcome and introduce the executors, notary, and witnesses

Also, explain how signings work. Mr. Smith, you will be signing your will; and Mr. and Mrs. Jones will be signing as your witnesses; Mr. and Mrs. Smith will be signing their wills and Mr. and Mrs. Smith will be signing as their witnesses.

Now, let me explain how we do wills. Mr. Smith, you will sign your last will and testament; then Mr. and Mrs. Jones will sign as witnesses. Then, my notary will ask what may seem to be an odd question; he will ask whether you, Mr. Smith, just signed your last will and testament, and whether you, Mr. and Mrs. Jones, just signed as witnesses and whether you all signed in the presence of each other, in spite of the fact that we're all sitting around the table and know that you just did; I need all of you to give an audible "YES" to that question. Then, you will each sign the will a second time and then my notary will notarize the signatures.

The reason we do it like this is, to make the will self-proving. The first time everyone signs, you are making a valid will. The second time you sign you are swearing or affirming that you signed the will and did so in the presence of each other. This is to avoid having to track down the witnesses when someone dies; if the will is not made self-proving then when the will is offered for probate, the witnesses have to appear in front of the judge and swear to the will [strictly speaking that is not perfectly accurate, but it is largely accurate and I'm not going to go into details of alternative proofs of will in Florida at a will signing]. Once again, when my notary asks if you signed the will and did so in the presence of each other, I need you to give an verbal YES. Don't nod your head, and don't, as one joker did, say "Oh, Noooo, I didn't see that". I do NOT want to have to explain to a probate judge that a witness was joking when they denied having signed the will. OK?

As an aside, surprisingly, sometimes will signings can get bit raucous. Sometimes people are nervous and start making jokes and clowning around. I will tolerate a bit of this, I do get it, but you need to bring the persons attention back to the will signing. I will gently remind them that I may need to tell a judge

what happened and that I need everyone's attention. Gently, politely, of course, but I'll tell them that if we got off track, we may make mistakes.

- Notary verifies identity of executors and witnesses

Have your notary keep a log of who does what, what ID produced. My notary simply uses a bound notebook, lists name, and type of ID and notes who signed what and what the date is.

- Talk briefly to establish mental capacity and no undue influence (note

- I don't have any concerns with these clients, but want to have enough to draft a short memo to the file)

Well, the time to address this is BEFORE the signing; depending on circumstances. Nonetheless:

Having a routine can help; Doing this the same way each and every time; it makes it simpler and it also helps if the will is ever questioned.

I've drawn up at least 1500 wills, maybe close to 2000. That's a boatload of will signings. I am actually pretty good at remembering clients and the circumstances of preparing the wills, at least when I review the will (Oh, yeah, I remember this one). Nonetheless, the fact is, I may not necessarily remember the details of any particular will signing. So, this is what I do, after having done the explanation above of how we do this:

Mr. Smith, this is your last will and testament [picking up and showing him the good will I have printed out with the date filled in and with the will cover; usually I have given the client the good will and other documents when they come in to review before the signing] . I have prepared it at your direction, sent you a copy in the mail, you have read it, [if appropriate, I have made the changes we've talked about and sent you those changes] I've answered your questions, you understand it and it does what you want, right? Client answers YES. [very occasionally, like two or three times in my life, client says "no, I don't understand it, or no, I don't know" at which point we don't sign the will, we got a problem} Ok, then Mr. Smith sign here, and then we have witnesses sign and do the question and sign again and notarize it.

Two points; first, I do this every single time for every single document for every single client the exact same way; when we do POA, when we do Living will, same question: I've prepared it, you've read it, you understand it, you don't have any questions, it does what you want, right? Client says Yes.

The reason I do it like this is, as I said, I don't remember any particular will signing but if I am ever questioned "How do you know client understood it or that it did what they wanted?" I can honestly answer, because I asked him that: because I ALWAYS ask those questions before signing each and every document and client said YES. Standardized procedures help.

Second, personally, I like to do the wills first, even if I've got multiple clients doing multiple documents; because the will signings tend to be just a bit more complicated, with each party signing twice; I like to get those out of the way and it kind of gets into a rhythm; Mr. Smith first, then the Jones's as witnesses; Mrs. Smith second, Jones's as witnesses; Mr. Jones third, Smiths as witnesses, etc. etc.

Then we do second pass on other documents, typically with me and my notary as witnesses; we just can't do that on the wills as the notary has to notarize both testators signature and the witnesses; other docs they're not notarizing witnesses. It makes it a bit faster if we do it like that. It also helps me to move them in and out; if one couple is simply signing wills and no other docs, I collect my check and wave bye bye to them once the will signings are done.

OK, I don't use will envelopes or document folders any more. Nor do I use the heavy will stock or Bloomberg will wraps. Reason is, they're a pain in the butt to run thru the laser printer (particularly the will envelopes; my printer makes nasty noises when I use them) and frankly, they're don't hold laser ink real well; I find it tends to flake off. I simply use a good cotton bond, and roll my own will cover. I staple everything. I do NOT use loose leaf folders: I know lawyers like them but I find that it's too damn easy for clients to lose pages of documents; they'll take documents in and out and get out of order and the holes wear thru and it's just a mess. I staple everything; most people aren't going to undo staples and if they do they restaple it.

As far as the carrying the docs, I order in Budco Bank Bags. Zipper Wallets. They'e about \$3.50 each for 100, imprinted with my name, address, phone number and website.

<https://budcobank.com/asccustompages/products.asp?categoryID=456>

<https://budcobank.com/asccustompages/products.asp?categoryID=454>

Don't want to fold the docs, get the 8X12 size:

<https://budcobank.com/asccustompages/products.asp?categoryID=554>

A bit more expensive but at about \$5 a pop, it's still cheap marketing.

They come in nylon and vinyl (Leatherette); they come in various sizes, I can use them not only for wills but deeds and mortgages and anything else I draft; client gets legal documents from me, they get a bag; Banks used to give these things out but not so much anymore; clients love them.

And it screams "LOOK IN HERE" when the testator dies and the kids are going thru the house. And it's got my fingerprints all over it; it also screams CALL THIS LAWYER.

Ronald Jones, Florida

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Ronald - great script and protocol!

Miriam Jacobson, Pennsylvania

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I will add to the checklists (because I didn't see it) but on the wills the person should be signing and or initially each page.

This way you have some proof that the page was part of the will that was actually signed and not replaced at a later time

Erin M. Schmidt, Ohio

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Thanks a million Ronald - that is exactly the kind of "script" I was looking for, along with some reassurance that I'm not forgetting anything. Just writing it down helped me a lot also.

I am planning to staple the documents (other than the wills) and put them in a pocket folder - I like the envelopes/bags you linked to a lot, thanks for that resource. When you say you roll your own will cover, what does that look like? Literally roll it up and secure it somehow?

Erin - yes, I have a place for initials on each page of the wills - thanks :)

Dallas Lain

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I am planning to staple the documents (other than the wills) and put them in a pocket folder - I like the envelopes/bags you linked to a lot, thanks for that resource. When you say you roll your own will cover, what does that look like? Literally roll it up and secure it somehow?

No, I mean I simply do it on regular paper thru my laser printer, just like I "roll my own" letterhead.

I've got template

Last Will and Testament of

blank space for name

Dated blank space

and at the bottom, my name, address and phone number; it's saved under "WillCover"

Then after I print out all the wills that I'm signing that day, I simply open the template and fill in names and dates and print each one sequentially and simply staple it to the front of the will.

It's not like Bloomberg will covers where you kind of bend the top part around and shove the will into the slot and then staple thru them, I simply top left staple the will cover and the will together. It looks fine, and it's easy and cheap and simple.

Erin - yes, I have a place for initials on each page of the wills - thanks :)

Ronald Jones

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