Do You Keep Original Wills and Trusts?

I was talking to another estate planning attorney. He keeps all of the original wills and trusts that he writes. He is in California, the Bay Area.

Do you keep all of the original wills and trusts that you write?

Almost never.

Timothy A. Gutknecht, Illinois

Nope, but I do keep copies of the executed docs for my records. The originals go home with the clients.

Andrew C. McDannold, Florida

I recommend to all clients that they pay the $5 to have their will filed under seal with the clerk. I tell them if they take it home and it goes missing, the legal presumption is that they tore it up and no longer wanted it. Regrettably, clerks take only wills. I give all other originals to the client. My former boss kept originals so families would have to come back to his office when something happened. I don't feel the need to hold client docs hostage to get their families to come in later.

Ask Mr. Bay Area what his plans is to handle those originals when he becomes incapacitated, dies, or retires.

Deb Matthews, Virginia

No, I never keep the originals.

I started keeping electronic copies instead of paper copies only.

Additionally, since Florida allows for e-wills since beginning of this month it will be interesting to see how that goes because the electronic file is the original. The paper version is only a copy.

Alexandra Kleinfeldt, Florida

I do not believe it is in good taste, nor good customer service, to keep the original of any document. It holds the client hostage.

Echoing Deborah, what do you do if you move, die, or retire? I had a business client who came to me with his mother's will. The local attorney wrote himself in as the office that would probate the will. Unfortunately, the attorney died of cancer before the testator died. My client wanted to know if he could use another attorney and firm, and I told him he could. I also see, as a business attorney, contract lawyers draft in the notice provision a request a copy of all notices be sent to them. Again, years later when I am reviewing an agreement, I see the attorney is retired or moved to another firm. Who gets the notice copy then?

Christine J. Kuntz, Pennsylvania

I keep original trusts and amendments. I started doing this several years ago when I found that clients would alter or lose originals and then chaos would ensue after death and beneficiaries wanted me to "fix it." Also, I'm called upon occasionally to affirm that no revisions have been made and/or as to the trustee powers. I will only do so if I have all the originals so there are no surprises for me or my insurer. But everything else goes home with the client after all documents are scanned.

I have almost every document in or out of my office since 1997 scanned. That's when I went into private practice. It is such a luxury and time saver to be able to pull up virtually any document when a client from the past calls and expects me to remember every nuance of their matter. Most of my personal notes are also scanned. Original documents like birth and death certificates are returned to client

and as soon as matters are closed, all is shredded (after ensuring all has been scanned.)

Vicki Levy Eskin, Florida

Heavens, no. That's really old school: decades ago, attorneys used to charge relatively nominal amounts for estate planning, retaining original wills, with the idea that their firm would eventually be retained for the probate and charge a percentage of the estate. The market has not been that way for 40 years. Now it is almost universally acknowledged that retaining original documents is more a liability than an asset. I *do* scan the client documents and retain electronic copies of the signed originals.

Michael Koenecke, Texas

No, because who knows what will happen to you or the client between now and when the document is needed? I keep copies, but It is best for the client to have the original in case they need it or want to revoke it.

Lesley Hoenig, Michigan

I never keep originals. I do keep a signed copy.

Randy Birch, Utah

Do not keep the originals in California.

There is legal liability for keeping the originals you cannot destroy them.

I suggest scanning the originals and keeping electronic copy and retuning it back.

I heard horror stories from attorneys who have to rent expensive iron mountain warehouse to store the original wills and trust forever. This is because their old law partner now deceased did the wills and trusts and kept the originals.

David Seto, California

We kept some originals at the request of clients. We kept them in a safe deposit box at the bank across the street. Several of us were authorized accessors and knew where the key was kept. Just before I left that firm, one of the lawyers emptied the box and brought all the contents back in a banker's box, which is probably still sitting on the shelf in the file room.

I was uneasy about that due to the danger of fire or water damage from sprinklers or firemen, but that wasn't my call.

Marilou Auer (retired legal clerk/secretary), Virginia

No, I do not keep all originals. I do not think you can or should demand that.

But some clients like or want for their originals to be kept by their attorney. Some do not want their nosy child or caregiver to have access to documents, do not want to keep them in their home, and safe deposit boxes have their limitations and are not attractive to some people. Since I had the infrastructure in place (more on that below), I decided I would continue to offer it as a service but I would charge the clients for it, mostly to recoup costs of dealing with such originals after someone's death, but also to have them sign something regarding terms of storage. I am actually in the process of re-examining and upping the amount I charge clients to store their original documents. If you do not do it now, and your clients have not demanded it, I would _not_ recommend doing so.

When I formed a partnership with my father (an attorney, but not particularly good with tech or organizing systems and who was in the process of retiring) years ago, I inherited about 3,000 original wills, trusts, and other documents, some of which dated back to the early 1980's.

Florida has a mandatory will deposit statute, where you are required to deposit the original will when you learn of someone's death. In Florida you _Cannot_ deposit your own will with the Clerk during your lifetime, however- the testator has to be dead. They are kept in a concrete-lined, fireproof set of 2 lateral file cabinets, and the bottom drawer of each is now empty. Only original documents are kept in there. These cabinets are covered in tarps when a hurricane is coming, and those suckers survived with a tarp taped on them _and the roof was blown off the building of my (then my father's) office_ during a hurricane in 2004. Only a few documents even got wet.

Given the age of some of these wills and the testator's age when they made the will, it became obvious to me that at least some of these folks were deceased. I also discovered that our index for such was not entirely accurate, so I had a staff member go through our concrete-lined fireproof file cabinet where original documents are kept and make essentially a database of them. Then she investigated as best she could, using ancestry and internet searches of obituaries, to see if these folks who we hadn't had contact with in a while were deceased - and a whole lot of them were.

So, then we had to figure out where they resided at their death and deposit the wills. In Florida it is simple to do and well established, once you have a date of death. However, some states (cough, NJ, cough) charge a ridiculous amount just to deposit a will for a decedent. Some places sent them back because they didn't take wills without a case filing. This whole process was done when a particular staff member didn't have other high priority work to do, but it took YEARS and hundreds if not thousands of hours. We only found a few cases where we had an original trust for a decedent (and we usually had some sort of contact information for the trustee), but Wills were a real problem.

Then we, in batches, tried mailing each of the folks whose will we had originals of to let them know that we now charge a fee for storing original document, required yearly contact via postcard, and please either sign this contract and pay this fee, or come on by and pick up your Will, or send me a document with instructions on what to do with it, acknowledged by a notary. Most people actually signed and paid the fee, and they get a yearly postcard from me reminding them that we have some of their estate planning documents. Some picked them up. Some had done other documents that superseded them with another attorney - we asked them to either pick them up themselves or send us a notarized statement of where to send

it, and they could destroy if they wished. Quite a few we discovered that way were deceased, so deposited more Wills. Some we still haven't heard from, or the mailing was returned.

It is an organizational headache that I would not recommend entering into.

I already had the headache, so though I discourage it I do accept them if a client really wants me to. But I am charging more money for it.it

I have heard the argument about the family needing to contact you, and thus you should keep it, but frankly I do not think it matters much, and even if it does, it probably isn't worth it. Just because I am keeping a decedent's document doesn't mean that the family has to, or should even, hire me to do the probate or trust administration. And I really do not think they are any more likely to. You are keeping the document _for_ the client, not _from_ the client.

That said, there is a colleague of mine, and I use the term loosely as this guy is a jerk any way you look at it and his former clients seem to think so too, who has called me up several times for the sole purpose of yelling at me after I requested original documents on behalf of a client that he drafted and was holding, or sent him the information to deposit an original Will for a decedent that he was holding. For some reason, this jerk thinks that because he drafted a document years ago, in a very discrete engagement, this client and all of their descendants are now "his" and anyone else who does work for this past client or their fiduciaries has somehow poached the client. That is not how estate planning works, though.

Cynthia V. Hall, Florida

Cynthia,

Thanks for the exhaustive explanation of why you do not (generally) keep original documents, particularly wills and trusts. It is very instructive.

Like many attorneys of the time I was admitted to the Bar (1988), I was told it is a good way to "get the job" when the testator/testatrix later died. For me, it was simply a convenience to the client. In the early days, when a succession representative would come to get the Will, I would make it clear to them they had no obligation to me, except to sign a release acknowledging I turned over the

original Will. Some hired me, others didn't. I was fine with it, either way, because, as I wrote above, the holding was merely a convenience to the client.

About ten years ago, I started trying to return the originals I have in my bank box.

Some clients had had new Wills prepared, and they instructed me, in writing, to either return the originals to them for further handling, or to destroy the originals in my possession. One client simply refuses to take his back. Since I wrote his and his then wife's Wills, they divorced and the now ex-wife wrote a new Will in the new city and state in which she lives. She instructed me to shred her old Will. Although he knows he should prepare a new Will, he does nothing.

I do not want to have the responsibility of holding the client's original Wills. I have about 15, now, and I am trying to return those, too, to the still-living clients. I may have to institute a large fee per year, just for this client, to get him to take the Will back.

(Original Poster, don't do it!)

Mark E. Peneguy, Louisiana

I have one original set of documents at my office. They belong to a client who never came to pick them up from the office, and then abruptly changed her phone number and address. I have no idea what to do with them.

Tried sending the certified and they came back with no forwarding address.

Other than that, I only keep scanned copies.

Marshall D. Chriswell, Pennsylvania

No.

Anecdote: I as appointed trustee to wind up the practice of a lawyer who absconded with client’s funds.

I got an in-depth look at his practice. He kept clients' wills and charged $200 for Lifetime Fire Proof Safe Storage.

I later found a Six-foot-long, plastic storage tub with snap-lock handles and a Brother P-Touch Label:

FIRE PROOF SAFE.

Michael J. Sweeney, Connecticut

On Tuesday, July 21, 2020, 02:11:16 PM EDT, Michael A. Koenecke wrote:

"... [D]ecades ago, attorneys used to charge relatively nominal amounts for estate planning, retaining original wills, with the idea that their firm would eventually be retained for the probate and charge a percentage of the estate..."

Yep, that's the way it was when I entered practice in 1975.

Michael cited the primary reason for retaining wills: The old-timers used to say that their will safe was like a garden - take care of them, and eventually they will "ripen" into estates.

The other reason for retaining wills was obviate the need for a separate proceeding for an order to open and access a safe deposit box in which a will was believed to have been stored, which, under NY law, was "frozen" upon the holder's death pending a court order. [Subsequent changes to the law have eliminated the mandatory freeze of safe deposit boxes, although banks may, by regulation, still require a separate court order to access a box post-death.]

I was never comfortable with that practice - or the responsibility of safeguarding the original document for years and years thereafter - so I adopted / adapted the practice of the military Adj Gen's Office to my practice: After the will was signed, I made two copies of the signed doc, and gave the original and one copy of the signed will to the client, with instructions to keep the original in the very safest place the client had, the copy in the next safest place - and don't keep them in the same place. I retained the other copy of the signed will for my file.

I believe that returning the original will to the client showed respect for the client and his/her property - and I don't believe that I "lost" many estates as a result.

Rod Klafehn, New York

When I started practice years and years ago, we would execute two copies of the will, giving one to the client and retaining the other. This came in handy when the client had hidden the will so well that the heirs could not find it. However the Supreme Court of Georgia ruled that this was not so good of an idea. We started retaining a conformed copy of the will and then moved to a photocopy of the executed will. On a few occasions where the original will could not be found, we were successful in having the copy admitted to probate under the applicable statutes and case law.

John Miles, Georgia

I do not keep originals of much of anything. I always keep an executed digital copy, in case there is a later need to authenticate. If they want to have the original held, the Clerk of Court will file them in the courthouse vault for no charge.

Richard J. Rutledge, Jr., North Carolina

No. But reminds me. I have had a client's packet for several years. Cannot locate her. Reminds me, I will try a Publicdata search today. Not sure if I have searched there before. (Publicdata.com is an excellent, inexpensive, tool in Texas.)

Burning CDs of client documents came along late in my career. Nowadays, CDs with a customized label are a nice touch.

Rob Robertson, Texas

I used to burn CDs, add a nice customized label, and send them to clients. Then two clients in a row pointed out that they did not have a CD drive available. Now I buy inexpensive credit card sized flash drives and provide the files to the clients that way.

Michael A. Koenecke

I never keep originals. I scan all the executed documents to keep a record for my files and in the event that my clients misplace the originals. I send the originals to my clients and have them sign a document verifying they received them.

Christina Wentzel

I do not keep originals. I keep scanned copies and let the clients know if a writing that they sign that they have the originals. The Office of Disciplinary Counsel here is very clear that the burden of returning the original documents to the clients should the attorney cease practicing law for any reason is a heavy burden. I also do not want the liability of having the originals should there be some disaster like an office fire.

Naomi C. Fujimoto, Hawaii

It is a bad idea all around. People move and don't tell you. It is sometimes viewed as coercive to get the probate or post-death work. Tracking down and keeping up with people over time builds up. Eventually you will retire or discontinue practice, and it is an impediment to closing out your practice.

Here I scan all documents after signing. I outline the various options, along with pros and cons, for clients with regard to originals. There are good and bad points to all approaches, so it is a client choice.

When I started in practice, my law partner was of a mind to keep originals. I still have some. I wish I did not. It is a headache that will likely survive me.

Darrell G. Stewart, Texas

I do not keep originals either. I make a scanned copy and give the client the option of where to store the originals. Our courts allow a testator to file the original Will with the court for $50.00. It remains confidential until the testator's death. Then, upon receipt of a death certificate, the court opens a probate case, assigns a number and sends a copy to the personal representative listed.

I have seen attorneys print Wills on their pleading paper which includes name and address printed in the left margin. Same type of marketing for the future probate work, but I think it looks a little tacky so I don't do it.

Lisa A. Mariotti, Alaska

I don't keep original wills/trusts either but from a marketing viewpoint, I use a cover sheet. I used to use Bloomberg will covers but quickly started printing my own; it's pretty standard, it simply says "Last Will and Testament of XXXX Dated YYYY" and at the bottom it has my name, address and phone number. It simply gets stapled to original will as the top sheet. And as I've noted in the past, I give clients the documents in a "Bankers Bag" with my name and contact info on it.

At that point the heirs know enough to call you or not. I'm not going to hold the documents hostage by keeping originals.

Ronald Jones, Florida

I used to provide the originals together with the flash drive with scanned copies of the signed originals. These days, most of my clients want the originals and only electronic scanned copies, not even flash drives. CDs are so 20th century!

I once met an attorney who did a full set of Will documents for $25, claiming that he would get the lucrative business upon the death of the testator. I was shocked by this marketing loss leader tactic I was shocked by this marketing loss leader tactic. apparently, he was not the only one using it. I never succumbed to that or the document hostage tactic. There are no guarantees that the heirs will come back to you for the probate and

$25 would never in my legal career have begun to pay for the legal services involved.

Miriam N. Jacobson, Pennsylvania

My response when I hear about the $25 estate plan" is -- you pay $25 for an estate plan, you get a $25 estate plan.

Stay safe!

Jim Pardue, North Carolina

Yes, but clients don't know that.

Miriam N. Jacobson