

## Popular Threads on Solosez

### Where's The Best Place To Store A Will?

What do you tell your clients about the best place to keep a will? A strong box in the house?

Curious minds want to know.

Nahom Gebre, Norcross, Georgia

-----

In our safety deposit box, of course.

We send clients home with a nice, clearly marked copy that indicates on the cover where the original is stored. When the client decides to change their will, they remember and come back to us. When a client passes on, the family usually selects us to help probate the estate.

Be sure to keep a good index of the location of each will in your office. You don't want to be caught flat-footed if someone calls and asks about the location of their relative's will.

If you're unwilling or unable to get a box to store them in (by the way, get the absolute biggest box possible) recommend to your clients that they get a small box at a local bank for their will and other important papers. Perhaps you could work out a discounting arrangement with a nearby branch.

Mark Lyon, Law Clerk, Florence, Mississippi

-----

I find this to be the most perplexing part of estate work. Although NY has a procedure whereby wills can be filed in the surrogate court, it appears that this procedure is rarely used. My experience is that originals are kept in the client's lawyer's office, in safety deposit boxes, with the executor or in the home of the testator. When the testator dies the search begins. Not only is it hard to find the original sometimes, its also hard to figure out which ones are originals (especially when signed in black ink) and which are copies. I suggest that my clients keep their originals with me and keep a copy(marked as a copy) with my contact information on it in their homes - but I'm looking for suggestions also. Jim Gross, Albany, New York

-----

That is what I usually tell them, but if they are keeping their HCP and DPOA in there as well, I advise them to keep the Will in a sealed envelope (or different lockbox elsewhere in the house) so that if a child needs to access the HCP or Power of Attorney, they don't "accidentally" see the



### Subscribe to Solosez

**First Name**

**Last Name**

**E-mail Address**

Submit (input element)



### Unsubscribe from Solosez

**E-mail Address**

Submit (input element)



### Books

Click on the book for more info



Will and find out that they were partially left out (which happened with client of my old firm, not a pretty site.) which might influence their duties as agent (although if my client wanted to cut a child out of the will I might question them as to why they thought this child would make a good agent...)

Leanna Hamill, Hingham, Massachusetts

-----

Why a safety deposit box as opposed to an office safe? Jim Gross,  
Albany, New York

-----

I was always taught that a will should NEVER be kept in a safe deposit box because the bank will seal the box at the first indication that the owner is deceased, and a court order (such as the appointment of an executor) is required to open it.

Meg Tebo, Chicago, Illinois

-----

Many draconian probate procedures have been softened in recent years. The box is not sealed to wait for a court order in Ohio. Check local rules.

Frederick Mischler, Dayton, Ohio

-----

I advise clients NEVER to personally retain their own wills, but to keep them either with me (which is why I have a large vault filled with such instruments) or in a box maintained by the named executor or a controlled corporation or other entity to which there will be access after their deaths. This probably comes from my years of practice in New York, which historically required a court order to open a decedent's safe deposit box. More importantly, New York has a rebuttable presumption, if the decedent had custody of his own will and it could not be located at the time of his death, that he revoked it by destroying it. There was no such presumption if someone else had custody; in such case, if it could not be found, a copy could be used for probate. Other states may have different law and so these considerations may not apply across the country.

Alan P. Bernstein

-----

A quick note re the message from Jim Gross:

My state also allows filing, with our Chancery Records. We don't usually do it, because often clients make many revisions over their lifetime. Filing each and every one is tedious, and each of the versions survives in the record.

Additionally, the wills filed with the Chancery Clerk are public record. Anyone can go in and read them at any time. Most clients, at least in my area, don't want everyone "knowing their business". By not filing, they can keep their wishes and desires confidential, and keep any changes of heart they might have out of the scrutiny of a courtroom (and the public).

We often, however, file the will in the records as part of the probate process, especially when the will controls large amounts of land. Doing so simplifies title searches. If your state doesn't allow filing the will after death, and it transfers property, it never hurt to attach it as an exhibit to a deed.

Mark Lyon, Law Clerk, Florence, Mississippi

-----

I usually advise my clients to file their wills for safekeeping with the local Register of Wills for the county they live in. They are kept in a safe and the registers only charge \$5. The wills end up being probated there when the Estate is opened.

Justin S. Alex, Bel Air, Maryland

-----

You've received a lot of suggestions, so maybe my comments are a little late. I recommend that the client keeps the original in a safe deposit box, not at home. What if they die in a house fire that takes everything with them?

I also offer to keep the original in my safe deposit box. California statutes require an attorney with custody of the will to keep it either in a fireproof vault or in a bank safe deposit box.

I also make it clear that they MUST keep the family informed of the location. California has the same rebuttable presumption about lost wills. I use an example of the uncle of a life-long friend. The uncle, retired Navy officer and single, had a very detailed will. He dropped dead of a heart attack in an airport. He had a copy of the will with him in his brief case, but no indication of the location of the will. The family's long-time personal attorney (from when I was a kid) did get the will probated, but it took an inordinate amount of time. This war story gets clients' attention.

As for sealing the box, at least in California, that's less of a problem, since the inheritance tax was repealed. Even then, there was a provision allowing opening the box to locate the will.

I like the suggestion of leaving the original with the executor, but if the executor is family, there could be problems with subsequent changes that reduce the executor's share. They may claim that they never got the amended will, etc.

Raymond L. Stuehrmann, Thousand Oaks, California

-----

Might sound weird, but depending on the client, I sometimes recommend that people seal their wills and other important documents in an airtight/watertight container and put it in a FREEZER. A lot of clients don't have the money for a safety deposit box, are too lazy to get one, or generally not real sophisticated. This is a "poor boy" method that most people understand and can do. Freezer won't burn in a house fire.

Of course, someone other than the client needs to know where the will is located since relatives are unlikely to think of the freezer.

Sometimes our methods and advice have to reflect the realities of the client's life/circumstances. Telling every client to put a will in a safety deposit box is wishful thinking.

Francisco L. Romero, Fort Collins, Colorado

-----

Traditionally this may be true. However, many states, including Texas, have a procedure to access the safety deposit box for the purpose of obtaining the will. I will note that large national banks sometimes do not have procedures reflective of Texas law in this area.

Basic choices are:

1. With the lawyer (some don't want them, though);
2. In a freezer bag in the freezer (freezer will survive many calamities);
3. In a safety deposit box (works here anyway, although cumbersome at times);
4. In a firebox at home (like the freezer, may survive fire but not relatives); or
5. In a safe at home (may or may not be fireproof -- check on that and who has combination).

Like many choices, there are pros and cons to each approach. I try to discuss the options with each client, including known pros and cons, and then let them make a choice. Darrell G. Stewart, San Antonio, Texas

-----

Well, Illinois probate law hasn't been fully updated since Lincoln was alive, or so it would seem reading the statutes -- it's all a series of piecemeal amendments. So, as far as I know, wills in the client's safe deposit box are still problematic here. But, I'll leave the final word on that to my own Illinois probate mentor/guru, Jay Goldenberg.

Meg Tebo, Chicago, Illinois

-----

I agree--offering to keep the will in the firm safe deposit box encourages repeat business AND probate business at the end of life. We also send out a closing letter for our file in EVERY case that details where the will may be found -- either in our box or in the client's own box or whatever -- so that it is clear by looking at our file which wills we have and what a client told us when they left with their will. the only down side to keeping wills

in your firm box is that when you get ready to wrap up your practice, you have to contact all those folks and get their wills back to them. I've been involved in that process once in my life in terms of working with a family wrapping up a lawyer's practice and it was a nightmare .... WHICH leads to another suggestion:

Take that list of will clients and MAKE SURE you send each of those folks an annual holiday card. if the card comes back with a change of address, you update your files/records. That way, if you NEED to contact the client to pick up the will, you'll have a current address for them.

Jean Maneke, Kansas City, Missouri

-----

Jean, great idea!

Maybe send the client a card for other than a traditional holiday, say July 4th, so it stands out.

Deborah Matthews, Alexandria, Virginia

-----

Let's look at some variations on this theme:

1. Wills in client safe deposit box.
  - A. Client dies. Who can get into box?
  - B. Who knows client even has will?
2. Wills in attorney's safe deposit box or office safe.
  - A. Who in family knows that the will exists?
  - B. Attorney now has huge stack of wills and clients have moved elsewhere or had will revised by another attorney.
  - C. Solo attorney wants to retire and can't find all the people who gave him wills to hold. Consider cost to find all these people.
3. Client keeps will in drawer at house.
  - A. House burns down, now what.
  - B. Client marks up original and never gets changes properly executed. Is will defective?
  - C. Family doesn't know where he put the original.
4. Client gives will to family member or friend for safekeeping.
  - A. Who remembers that the will exists.

B. Client moves to another state and forgets about old will.

C. Holder denies ever getting original.

I'm sure there are more variations. I have yet to find the one "right" solution to this problem. I used to hold on to all my client originals. I learned this from a very wise attorney who said that I could do probate work as my retirement plan. However, a significant number of these clients from years ago are still in the area. Many have moved to other states. We have a far more mobile society that we did 30-50 years ago. I haven't been able to find many of those for whom I'm holding wills. I don't want to think how much time it will take if I have to look for them way down the road. Sure, I've sent letters and gotten either no forwarding address or forwarding address expired over a year ago. So, great topic for consideration and I'm eager to hear if anyone has found the holy grail of will storage.

Bruce Dorner, Londonderry, New Hampshire

-----

In my view the option where the attorney holds the will has the least problems overall, though perhaps the most problems for the attorney. (On the other hand, the attorney's problems are arguably mitigated by the possible probate and other work she gains.) I agree that a correct answer to this question is elusive and that all options are imperfect. Shouldn't there be a widely used confidential original will repository in each county/parish? As a fairly recent practitioner in this area, it seems to me that this important procedure is awfully hit or miss. Jim Gross, Albany New York

-----

This is correct, Meg.

My will is in my refrigerator. With the titles to the cars and the passports. Learned that from my grandfather, the fireman -- its the last thing to go in a fire. Also, the enclosed door compartments are fairly safe from water damage and molds, too.

You were all expecting something far more sophisticated from me, I'm sure.

Mary L. C. Daniel, Winchester, Virginia

-----

I've heard the refrigerator suggestion - but what about moisture running the ink or damaging the paper? Do you put the docs in something and then in a section of the refrigerator? Also, I'd be afraid that my client's housekeeper might throw it out accidentally. Also, not much confidentiality there - not if anyone is allowed in the refrigerator. Adrian Jonrowe, Austin, Texas

-----

OK, OK, I relent.

In the interests of revolutionizing the legal industry in my spare time, even prior to getting my bar results on 11/18, I admit that I have studied all the comments on this issue and FOUND --

YES, FOUND, the Holy Grail of Where to Keep a Client's Will.

I figure if clients sometimes get under their attorney's skin, then we should have a right to get under their skin too.

Now, don't think I am crazy, but it appears that the conundrum is that lawyers can't or clients won't keep in touch, or relatives or clients or both move away, or clients may be penalized by state law if they retain the operative copy.

So, my first thought, which is to be discarded, was to get all wills electronically stored in a digital on-line encrypted server. But, this did not seem permanent enough.

Then, the brain really clicked on: passive RFID tags, implanted inside the skin of the soon-to-be-decedent's person.

See <http://en.wikipedia.org/wiki/RFID>

This way, a simple scan at death would reveal the location of all documents pertinent to the estate. (Just don't sit on the counter at K-Mart, or you might be priced along with the groceries.)

Will my patent attorney please contact me right away?

Art Macomber

-----

Brilliant, my man, brilliant!

Except that most RFID implementations can be read remotely. Do you want your client, while he or she is still alive, broadcasting this info? Do you want Uncle Jack and Niece Sally to be able to read the info remotely, know where they stand in the great estate plan of life? How -bout da common but e-sophisticated crook, who now knows that your client is loaded, and thus is a target?

Next!

James S. Tyre, Culver City, California

-----

This is way off topic, but, I once held \$20 mil. worth of company stock certificates in a cardboard box under my desk for one week for a transaction I was working on. I remember the lawyers arguing over who would be responsible for holding the physical certificates, and of course, I

drew the short straw. And no, my firm back then was too cheap to purchase a firesafe lock box, and yes, the client was too cheap to use a bank, and no, there was no other place in my cramped office to put the certificates. I put a bunch of crumpled up paper on top of the box in order to disguise the box as garbage. Then I wrote on the side, DO NOT THROW AWAY, so the janitorial staff wouldn't chuck it. That was a pretty interesting week. Luckily for me, nothing happened and we closed the deal on time. A few other members of the team joked that they had been thinking of swiping a few certificates since they knew I'd be the natural suspect for any theft. What a great buncha guys to work with. So glad I don't work there anymore. Gene Lee

-----

I have heard of keeping important dox in the freezer -- not the fridge. Freezing solid eliminates mold and moisture issues, as long as they are defrosted in open air when the time comes. One idea: If you have a deep freeze in the basement or garage, put the dox inside a couple layers of freezer Ziploc bags, and then perhaps inside a clearly marked, but LOCKED metal box. Someone wanting to pry would then have to be willing to first find/steal the key and then open the box. This is less likely than the bored babysitter simply finding a bag in the freezer and deciding to snoop. For ease of family after death, the key should be kept in an obvious place -- jewelry box, dresser drawer, or even a regular keychain. Worst case scenario, they'd have to break open the box -- meanwhile, they'd know there was a will and where to find it, but it wouldn't be easy for them to snoop.

An aside: I used to work in asset-backed securities for a large bank. Whenever anyone went to see a client and would be returning with important original dox, say, an allonge for several million dollars worth of commercial paper, the rule was you had to return to the office to secure it in the vault, no matter how late your flight got in. If this was plainly impossible (i.e. so late that running around with it was more dangerous to the document AND the employee than simply going home), the rule was you had to put the redwell in your freezer as soon as you got home and bring it to the office first thing in the morning. There were often interesting stories about spouses, roommates, etc. finding a redwell in the freezer the next morning while looking for frozen waffles and wondering if they were suddenly part of a conspiracy involving stolen documents or something.

Meg Tebo, Chicago, Illinois

-----

As an executive in banking, occasionally we had to deal with interesting paper issues. I sent a couple of young credit analysts to New York City with about 400 million in bearer bonds once. On a serious note, there is no reason for anyone to know that the catalog case you are carrying is bearer bonds unless your demeanor gives it away, because you act nervous and worried. Today, acting nervous and worried brings a new set of problems.



On occasion, I have had multimillion dollar cashier's checks left here in my name alone for a transaction (which I did all I could to discourage -- the check not the transaction). On rarer occasion, I have had several thousand dollars in cash. Basic theory is to put it in a safe if available and make sure it is locatable but buried in the yards of paper files a law office generates otherwise. Corollary rule is that I and someone else know where it is and this provides some backup for getting run over on the way home.

Regarding pros and cons of varied locales for the wills, one makes choices based on circumstances and discussions. I have clients for which I hold the will. I have clients with their will in their freezer. I have clients with their will in a safety deposit box. I have clients with wills in a firebox. No doubt, I have clients with wills in their desk drawer, on which they have handwritten comments about changes or their most recent pizza order as well. All but the last option are legitimate client choices after discussion of the pros and cons, to my view. No universal solution and no holy grail to be found, here at least.

Darrell G. Stewart, San Antonio, Texas

-----

I agree that the average thief wouldn't know you had zillions in commercial paper in your hands unless you advertised it -- nor would the average thief know what the heck to do with it if he stole it. The problem was whether the employee might become the victim of a general wallet or purse-snatching, thus causing them to drop the papers or receive an injury that prevented them from securing the papers SOMEWHERE so they didn't just wind up as litter. Or, some thieves will take everything the victim has in their hands, and figure out later what has value and what doesn't. The emptiness of the bank's parking garage in the wee hours was the most common reason why an employee would take the papers home for the night if his or her plane was very late. The fact that the papers wind up in a dumpster somewhere after thief decides they're of no use to him is little consolation to the client who, in order to complete a huge transaction, needs to verify that the papers are in the hands of the bank.

Once, we had a note for \$75 million signed by none other than The Donald (Trump) himself. It went missing for a few hours. A whole team of us were literally locked IN the vault so as to search for it. The fear was that it was stolen for autograph value or something by a file clerk or cleaning person, without the thief recognizing that it was actually transferable commercial paper. I recall it was eventually found, misfiled. I remain amazed to this day just how often such dox, whether signed by someone famous or just someone powerful enough to sign a \$75 million loan or whatever, were misfiled, temporarily lost or otherwise treated like just another piece of paper around that place. It wasn't uncommon for someone, meaning any old low level employee who happened to answer a phone call from someone needing our address, to receive a fed ex package with hundreds of millions of dollars worth of documents inside. And you know who some of the worst offenders were? Other banks and LAW FIRMS. Occasionally, they weren't even sent by traceable overnight carrier, but regular old U.S. mail!! It was crazy.

Meg Tebo, Chicago, Illinois

-----

I usually recommend that my clients keep their wills in a safe deposit box. I keep copies (which I scan and store electronically), but I will not store any clients' original documents for safekeeping.

My father had a small town law practice in the 1950s. He closed his practice and went to work for the state attorney general's office in 1960 and remained there for 30 years. After he retired he worked in house for a couple of different entities but never had a private practice again. After he died in 1994, I found that he still had most of the papers from his 1950s law practice stored in his barn. Among the papers were four original wills. It took me a couple of years to track down the one surviving client and the heirs of the other three and confirm that they all had subsequently moved and executed new wills with new attorneys.

The moral of the story is that if you safekeep clients' wills or other documents be prepared to keep them forever. There are many things that I wish to leave my children when I go, but the responsibility for safekeeping my clients' documents is not one of them.

Neal A. Kennedy, Marble Falls, Texas

-----

Washington State allows for access to safe deposit boxes for the purposes of searching for a will even if the deceased is the only signer. Also, King county has a service where the court system deposits the will in its depository for a \$20 fee.

Some attorneys, including me, do not follow the practice of the law office holding on to originals as it is a possible ethics violation on at least a personal level if not State bar level.

I recommend to clients that they keep their will secure and a note of where the will is kept with their accessible POA and HCAD.

Frank Selden, Bellevue, Washington

-----

I just went through this about a year ago. Despite the fact that there is a statute allowing access to a safety deposit box to get a will, the bank refused and I had to initially petition for probate using my file copy of the will. It was just a hassle. Veronica Schnidrig, Portland, Oregon

-----

Over 90% of my clients take my advice and leave it with me. I tell them: if you have it and it can't be found, it's presumed you destroyed it to revoke it. If I have it and something happens, a piece of paper is destroyed and the family can prove the contents from the copy I furnished you.

If it's in the box, it's technically not "sealed" but unless it's jointly owned, who can get it? if the bank knows he's dead, the agent loses rights. even in good times, there's a delay. in bad, you need some court proceeding to get in.

I also advise clients to give people their health care powers, possibly property powers depending on degree of trust, but at a minimum 1. say "if anything happens, there's this red folder in my desk with important papers. 2. set up the red folder.

I have recently scanned all my wills, and have them on my computer, so I can discuss immediately on call.

This does leave the problem of what do you do when you approach retirement? The ISBA Trusts and Estates Section Council has proposed legislation for storing with the county clerk.

And then there was the case of the attorney who supposedly kept his wills in a safe ..... and the safe was stolen! The only thing around was an unsigned draft. HE claimed on affidavit that it had been executed and witnessed, but on depo he admitted he wasn't sure who the witnesses were and it was just his general practice. (I represented the "disinherited" son).

Jay S. Goldenberg, Chicago, Illinois

-----

Thanks guys. Interesting war stories. Personally, I don't want to be saddled with the original, and I tell my clients to keep it in a fire proof box in the house, and to let the personal representatives know where it is located.

Nahom Gebre, Norcross, Georgia

-----

There are downsides to every possible storage place.

IF the will mirrors what would happen under intestacy, or is close to it (i.e., all to my spouse; if my spouse predeceases me then all to my children per stirpes in equal shares) I don't see a real problem with keeping it in the house. If the will is destroyed, or lost, you can probate on an intestate basis. The will can be useful; appointing a PR, waiving bond, etc. but it's not like their estate plan is going to come crashing down if the will can't be found.

Now, you cut an heir out of the will, or change the distribution, maybe you need it in a safe deposit box. If the cut out heir finds it, they may destroy it.

Ronald A. Jones, Florida

-----

I do not want to be saddled with trying holding onto originals and trying to

to track people down etc etc. I also have nightmares of me holding 100+ original wills and me dropping dead and putting my poor wife through the task of trying to find the original owners or getting calls for the next 40 years looking for an original will.

We are very lucky here in Vermont in that we can file the original wills with the probate court for \$20.00 and the originals are kept under seal until presented with an original death certificate, then the court opens and keeps the original and provides the executor with a certified copy to bring to the attorney to probate. Additionally, you can revise the will at any time without paying an additional filing fee and the prior will is returned to the maker unopened so there is no trail of any prior wills. I don't keep wills and strongly encourage my clients to file with the probate court. I give the client a three ring binder with copies of everything with a face page that states that the originals are located at: \_\_\_\_\_ And I have the client complete that in their handwriting and keep a copy in my file so that I can at least provide the next of kin a starting point on where the will might be located.

John C. Thrasher, Rupert, Vermont

[Back to Popular Threads](#)