

Where Should I Keep My Last Will?

by Edward A. Haman, Esq., June 2016

Where is a good place to keep your will? Learn the pros and cons of various locations, such as in your home, with your executor, and in your safe deposit box. Also, learn more about special considerations for your **digital estate**.

A **last will and testament** might as well not exist if it can't be located when you die. As important as having a will may be, it is equally important to store it in a safe place and have someone you trust know where to find it. Storage of other documents related to **end of life planning** should also be considered.

Your Will and Your Executor

The executor is the person you designate in a will to be responsible for probating your estate, and one essential part of the probate process is to file the original will with the probate court. The most important consideration in deciding **where to store a will** is that your executor must know where it is and be able to get it when you die. The executor also needs to know where you **store personal information** of all types.

Disclosing the Contents of Your Will

If you have your executor or a beneficiary keep your will, that person will be able to read the will. This information could get disclosed to one or more of your beneficiaries, and they might not be happy with the decisions you've made. However, if you have already discussed your plans with everyone involved, this is not a concern.

Your Executor

Often, the best place to store your will is with your executor. Since your executor is someone you trust, no one else needs to know the contents of the will or that it even exists. If you don't want your executor to know what your will says, you can place it in a sealed envelope, and ask that it only be opened upon your death. Your executor should store it in a safe place, such as his or her safe deposit box or personal safe at home.

In Your Home

Keeping your will in your house creates the risk of others having access to it, and the possibility of it being destroyed by fire or other natural disaster. Your executor would need to know where you keep it, and have access to your house. The best option to guard against loss of the will is to keep it in a large, heavy fireproof/waterproof safe securely tied into the structure of the home. Your executor would need access to the safe (the key or combination). A form of "poor man's safe" used by some is placing the will in a waterproof bag in the freezer; however, this is not recommended as there is no certainty of either safety or confidentiality.

Safe Deposit Box

A safe deposit box is not recommended as a storage place for a will. Even if your executor knows it is there, and is authorized to have access to the box, once the bank is aware of your death it may secure the box and require a court order to open it.

Your Lawyer

Your lawyer may store the original—sometimes for a nominal fee. However, many people don't maintain an ongoing relationship with an attorney, and it is common for lawyers to dissolve law firms and form new ones, so it may be difficult for your executor to locate the will when the need arises. Also, if you move some distance away from where your attorney practices, it would be more difficult for your executor to obtain the will.

The Probate Court

Some states allow you to file your will with the probate court or the county clerk, usually for a nominal fee. However, this would create more of a hassle if you decide to change your will, and it will not be helpful if you move to another county or state.

Digital Archives

There are companies offering online storage of documents and personal information. Some of these include **password storage**. Such online archives may be a good place to store information for an executor, however, a probate court may not accept a printed copy from such a digital **will vault** when an original is required.

Your Digital Estate

The digital age creates some **digital estate planning** issues that have not yet been resolved by the legal system. If you have files (documents, music, photos, or videos) stored on discs, your executor can simply give the discs to the intended heirs. If they are stored on a personal electronic device, you would need to give your intended heir (either directly or through your executor) the website, username and password to access the files.

Potential problems regarding **digital property** occur with email, online shopping accounts, social media profiles, blogs and files stored on a remote server. Do you think you own the songs you paid for and downloaded from iTunes, or the books from Amazon.com for your Kindle? Think again. The terms of use for both Apple and Amazon only license you the right to use these digital files—you do not acquire ownership.

So far, seven states have enacted legislation dealing with inheritance of digital assets (Connecticut, Delaware, Idaho, Indiana, Nevada, Oklahoma and Rhode Island). Even if your state does not have a law, you should consider a **digital estate plan**. Options include naming a **digital executor** in your will (who can be the same as your nondigital property executor), having online accounts owned by a trust, or informally giving login information to someone you trust and tell them what you would like done. But a will can be problematic, since wills eventually become public record.