

What If I Cannot Find the Original Will?

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I sometimes receive a call from a family after someone passes telling me that they cannot find the original Last Will and Testament.

Without the original Will, estate administration involves an application by a proposed Personal Representative ("PR", formerly known as the Executor) and usually a bond is needed. A surety company will issue the bond to protect the heirs and creditors should the PR fail to carry out their duties. Depending on the size of the estate, this bond can be several thousand to tens of thousands of dollars. Further, in order to sell any real estate property with no Will, the court will likely require additional steps are taken by the PR to ensure that the sale prices are fair and reasonable.

If a copy of the Will has been found but not the original, and there is no belief or evidence that the decedent destroyed the original intentionally, then Probate can still be accomplished with additional steps. Additional legal papers must be filed explaining to a judge that there was a thorough search and the original was not found, but there is no belief that it was intentionally destroyed. If the judge is satisfied, then the copy can be admitted to Probate and the named PR can carry on the role of estate administration. A hearing before the judge may or may not be necessary.

To avoid this outcome ask yourself some important questions like do you know where your original Last Will and Testament is stored? Is it accessible? Does your family know where to find it? Has your estate planning attorney retired? Was he or she storing the original Will? Has your Will been reviewed recently? Maybe it is time to review your Will to ensure it accomplishes your goals, reflect your wishes, and is available when needed.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.