

The Basics of Will Safekeeping

by Rebecca A. Schmelz
Probate Court Administrator



One very important function of a Michigan probate court is the responsibility of holding wills for safekeeping. It is a function that the court has maintained for many, many years. In fact, the Oakland County Probate Court's "will books," where each will received was hand-logged, date back to 1849.

While filing a will for safekeeping is not a mandatory requirement, it is a service that many residents utilize. It is also a process that many people don't understand because they have never encountered it before. For example, after a family member dies, some people proceed under the belief that, as it is in the movies, there will be a formal "reading of the will." Others call the court several months after a family member's death wondering when we will be sending them their check because they believe the court knows when everyone dies and receives all of a decedent's property to distribute. Thankfully, that's not the way things work and we can focus on the safekeeping of wills.

The requirements for filing a will for safekeeping are found in MCL 700.2515. The will may only be deposited in the county where the individual resides and it must be in written form.

At the time the will is deposited with the court, it is sealed in an envelope with identifying information. The information that must be provided at the time the will is deposited includes:

- testator's name
- testator's place of residence
- name of person depositing the will
- Social Security number of testator

The testator's Social Security number is only used for identification purposes in tracking and releasing a will. It is written on the outside of the will envelope, and is kept

completely private by the court and used for no other purpose. If the testator does not have a Social Security

(continued on page 33)

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(continued from page 29)

number, the court will accept a Michigan driver's license number instead, as allowed by statute. Once the will is deposited with the court, the court will provide verification of the will deposit. Clients should be advised to keep the verification in a safe place with other personal documents to assist with the retrieving of their will after their death.

During the lifetime of the testator, a will held for safekeeping can only be released to the testator or to someone authorized by the testator in writing to receive the will. The authorization must be proved by the oath of a subscribing witness. (See PC 548 *Authorization to Release Will Held for Safekeeping*.)

A request to deposit a will and a request to release a will may be handled through the mail. Only those requests that meet the statutory requirements will be processed.

There is a \$25 fee to deposit a will for safekeeping that must be paid at the time of deposit. There is no charge to retrieve a will. However, if a testator wishes to pull their will to review it and then redeposit it, there is a \$25 fee to redeposit the will. In addition, there is a \$25 fee to file a codicil to a previously filed will.

On occasion, testators will ask to withdraw their will so that they may make handwritten changes to it and then

redeposit it with the court. This is a topic that you may wish to discuss when working with clients who will be depositing their will with the court. If not done correctly, any handwritten changes can obviously cause uncertainty regarding the validity or intent of the will's provisions.

Upon the death of the testator, the custodian of a will or codicil, or anyone having possession of such a document, must forward it to the appropriate court with reasonable promptness after the death pursuant to MCL 700.2516. Anyone who neglects this duty without reasonable cause is liable for damages that are sustained by the neglect.

If you have the original of a will and know of the testator's death, the will should be forwarded to the probate court with a cover letter explaining the submission. There is no fee associated with submitting the will after death. If you must open an estate outside of Oakland County but know that the will is filed here for safekeeping, the court will forward the will to the necessary location upon receipt of a written request, proof of death, and the forwarding address.

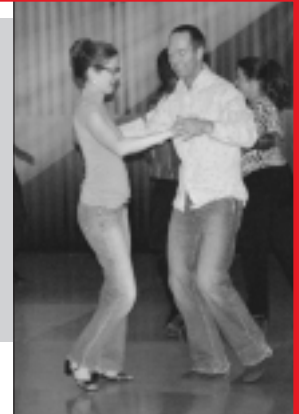
Additional information, including a brochure that may answer many of your clients' questions regarding the safekeeping of wills, is available at www.oakgov.com/probate.



RACHEL H. TUCKER

Joelson Rosenberg PLC
Farmington Hills

OCBA member since 2000



Rachel joined the OCBA to network and get to know other probate attorneys, to stay educated on current laws, and to socialize. The advice she would give a new attorney is to join – one can make great friends and have referrals, so there is always someone to whom you can go with questions.

She also knows sign language and has served the court for the deaf community.

Rachel enjoys swing dancing and participates in weekend competitions six to seven times a year. The competitions are held throughout the U.S., in places such as Texas, Florida, New York and Chicago. The participants are all professionals, from all walks of life and all ages, and even from other countries. Rachel has danced her way to the intermediate level. Her most recent competition was at the end of August 2012 in Cincinnati.

Rachel loves to travel. She goes on Caribbean cruises with her dancing friends. She's also been to Europe, South Africa, Vietnam, Japan, China, Israel and Thailand.

Her first job was as a short-order cook. She says she's a bad cook but, ironically, loves to watch "Top Chef."

Rachel's hero is her father, who passed away in September 2011. She says her father was the greatest you could design. He was very well balanced with a calm personality, and he knew how to live life. He understood people and could read them well. In addition, he gave great advice.

People call her by her nickname, "Red." She has the same hair color that her father did.

Fun Facts about Rachel

She likes to decompress by sitting on the beach with a trashy novel and a cocktail! And something most people don't know about Rachel is that you can find her singing karaoke at various places in Royal Oak and Wyandotte.