

Where's That Will?

By: Frank J. Dana III

Jane comes in to see me - she's trying to do planning (she needs to administer her husband's estate) - she can't locate the will she and Ed did a good many years ago.

But she has copies - won't they be OK?

We ask people who are doing planning to locate their original wills and the original copies of their other estate planning documents.

It's a common misconception that the Probate Court will accept a copy if you lose your will, but that's usually not correct. The copy can usually be used only when there's a good explanation for the absence of the original, like a house fire, for instance.

A lot of people's copies aren't signed, too.

We began to discuss how Jane might try to find the originals. She had kept them in a small home safe, and it was fireproof and had a combination lock. She and Ed always thought this was fine.

I explained that we always prefer that original wills and the original copies of their other estate planning documents be kept in their safety deposit boxes. She exclaimed that how would we ever get them out, and I explained that SC law has provisions allowing access to safety deposit boxes for the purpose of retrieving will. At the least, I'd prefer to know where they were and have to get them out, rather than not know where they were and have to locate them, which was what she was doing.

But they're so safe at home, and particularly since they're in a fireproof box. I told Jane that this just wasn't our experience and asked her how long the fireproof box was rated to withstand fire. Jane didn't know, and neither did she know how long it might take for a fire to consume her house. In fact, we have seen documents kept in similar safes destroyed by fire.

Beyond this, how many people knew the combination? Was it possible that someone was unhappy with what was in her will and might want to destroy it?

Also, was it possible that she had neglected to put it back the last time she needed to look at it?

Far better in my opinion to keep a copy at home for quick reference and keep the original in a safety deposit box, where it will be safe.

So what to do? Jane and I discussed the alternatives.

The first alternative was that she could turn the house upside down. But we've been there for 22 years! There's no telling how many closets and drawers I'd have to search. Another good

reason to keep the will somewhere other than at home, in my opinion.

Another was that she could call the attorney who had prepared the will, many years ago. Some law offices keep clients' original documents and possibly it was there.

A last alternative was simply to replace the wills with new ones. I asked her about Ed, who I knew was having a number of health problems, which actually had prompted her to begin to do this planning. Well, I think he could do that but sometimes these days he has some trouble and doesn't seem to follow what I'm trying to tell him.

I explained how we might have Ed's doctor evaluate how well he could understand business and financial matters.

Any way, it was a good thing I decided to start this! I'm glad I discovered it now. Think how hard it would be for me or Ed to discover this after the other is gone!