

## Lost will? Proving a copy

---



Few people realise that there is no obligation to register a will when it is complete, or quite how important it is to make sure it is not only stored safely but that others know where to find it when it is, eventually, needed. Minds are usually focussed on the content of the will and the relief in its completion, rather than safe storage should the worst happen.

### Why does it matter?

After death, the Executors will usually have to obtain a Grant of Probate before they can deal with an estate, and they must send the original will with the application for the Grant.

If no one knows where the will is, this causes a problem. At best it will delay the administration of the estate, until the will is found. What if the will cannot be found? Fortunately, all is not lost. It may be possible to send a copy of the signed will with the grant application but not without jumping through several hoops.

If it is known, or believed, that a person had their will in their possession (in their lifetime) and the original document cannot be found following their death, the court's starting point is to assume that the deceased destroyed the original will with the intention of revoking it.

It is up to the applicant to rebut that presumption by providing evidence, in a formal document known as an affidavit, that the deceased did not intend to destroy the will and did intend it to be effective.

The person making the affidavit will have to confirm and explain the situation in as much detail, as possible, including:-

- that the copy will is a true and complete copy of the original
- that the will was executed correctly
- the circumstances surrounding the loss of the will
- whether the will was seen before death
- whether the deceased spoke about the will (believing it to be in existence).

Anyone who would benefit if the copy will is not accepted must also agree to the application e.g. beneficiaries under an earlier will or under the Intestacy Rules, which set out how estates must be distributed when there is no will. If the court accepts the evidence, it will allow the copy will to be used in support of the application for the Grant of Probate – but success is not guaranteed.

## What can you do to avoid these problems?

Safe ways to store a will include placing it with the [Probate Service](#) (run by HM Courts and Tribunals Service). Another is with the solicitor who drew up the Will (Cripps PG offer this service). There is also Certainty, who run a national Will registration service. They will not see the contents of your Will and will only register the details of its whereabouts to make it easier for your loved ones to locate. [Certainty](#) can search for an unregistered original will too, by contacting many solicitors and asking them to check their records. Where it appears that an original Will has been lost, we recommend that you obtain legal advice about the options available.

If you have any queries or would like assistance with using a copy will and dealing with an estate please contact our [wills, trusts and probate team](#).



[Tara Payne](#)

Probate Manager (Senior Associate)