

WILLS

ADMINISTRATIVE RULES FOR WILLS

NDCC 30.1-11.1

Deposit of will in testator's lifetime:

The testator or the testator's agent may deposit a will with a Recorder for safekeeping. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will must be delivered only to the testator or to a person authorized in a writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the recorder shall notify any person designated to receive the will and deliver it to that person on request; or the Recorder may deliver the will to the appropriate court.

Depositing a will:

The testator or the testator's agent may deposit a will.

A "Certificate of Deposit of Last Will and Testament" will be filled out as receipt of the will and a testator may provide a list of persons designated by testator to receive the will after the death of the testator.

The will must be sealed and kept confidential.

Safekeeping, examination and withdrawal of a will during Testator's lifetime:

The County Recorder may disclose the fact that the testator has deposited a will for safekeeping to members of the general public who request the information, as this is public information, but may not disclose the contents of the will.

A Recorder may, at the request of the testator or the person designated in writing by the testator, deliver to the testator the deposited will and permit the testator to review the will in a private part of the Recorder's office. The testator may return the will under seal to the Recorder for deposit without the will leaving the Recorder's office.

If the testator or person designated in writing by the testator requests to withdraw their will, leaves the Recorder's office with the will and wishes to redeposit the will later, a filing fee of \$10.00 will be charged to refile the will.

A Personal Representative named in the will may not receive the will without specific written authorization from the testator during testator's lifetime. The will may not be the source of information naming the personal representative.

A conservator may be allowed to examine the deposited will of a protected testator after providing the Recorder with a copy of the conservator's order for appointment or letters of conservatorship. These orders or letters will be examined by the Recorder to determine whether there are restrictions on the powers of the conservator because these restrictions are effective regarding third persons such as the Recorder.

Requiring proof of identification from persons claiming to be authorized to examine the will and requiring the person examining the will to sign a receipt not only reasonably protects the Recorder's office but also helps to provide proof for a prosecution if the person is acting falsely.

During the testator's lifetime, a deposited will must be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will.

A testator may withdraw their will from deposit at any time upon signing a receipt.

Releasing will after death of testator:

Upon being informed of the testator's death and upon request, the Recorder shall notify any person designated to receive the will and deliver it to that person or the Recorder may deliver the will to the appropriate court.

Proof of death must also be established prior to release of a will. This can be done by providing a copy of the death certificate or an obituary.

The "Certificate of Deposit of Last Will and Testament" may list the persons who can receive the will after the death of the testator, or the testator may have left a designation in writing with another person.

The Recorder may permit a person who is authorized in a writing signed by the testator to receive the will or to examine the will. If there is no designation in writing regarding delivery to a person after death, then the will may only be delivered to the appropriate court.

If an attorney requests the will a letter indicating they are representing the family, date of death of the testator and copy of the death certificate should be provided.

Requiring proof of identification from persons claiming to be authorized to receive the will and requiring the person receiving the will to sign a receipt not only reasonably protects the Recorder's office but also helps to provide proof for a prosecution if the person is acting falsely.

(see forms on following pages)