The Original Will:
Can It Be Located?

In a world that is increasingly paperless, many people are becoming accustomed to conducting a variety of transactions digitally. When it comes to one's Last Will and testament, however, only an original, signed document will do.

A photocopy is not good enough.

Many people mistakenly believe that a photocopy of a signed Will is sufficient. In fact, most states require that a deceased's original Will be filed with the probate court. If the deceased's will cannot be located, there is a presumption in most states that it was destroyed by the deceased with the intent to revoke it. This suggests that the court will generally administer the estate in question as if a Will had never been written. It is possible to overcome this presumption — for example, if all interested parties agree that a signed copy reflects one's wishes, they may be able to convince a court to admit it. Nonetheless, to avoid costly, time-consuming legal headaches, it is best to ensure that the original Will can be located by the family when needed.

Storage options

There is no perfect place to store a Will — it depends on the individual's circumstances and comfort level with the storage arrangements. Regardless of the physical storage location, it is critical that it be stored safely, and that the family knows how to find it. Options include:

- Having an accountant, attorney or another trusted advisor hold the Will and ensuring that the family knows how to contact him or her, or
- Storing the Will at one's home or office in a fireproof lockbox or safe and ensuring that a trusted individual knows where it is and how to retrieve it.

Storing a Will in one's safe deposit box is not a good idea since banks typically seal these boxes denying access until an executor is appointed. This clearly becomes a problem since the executor cannot be appointed until the Will is offered for probate. Storing an original Will and other estate planning documents safely —and communicating their location to one's family — will help ensure that the wishes are carried out. For further discussions regarding estate plans and security, contact your Anchin Relationship Partner or E. Richard Baum, a Tax Partner in Anchin Private Client, at info@anchin.com or 212.840.3456.

ANCHIN
Private Client

Jared Feldman, CPA
Leader
jared.feldman@anchin.com

Mela Garber, CDFA
Tax Leader
mela.garber@anchin.com

1375 Broadway, New York, NY 10018 • 212.840.3456 • www.anchinprivateclient.com