

The Weekly Scenario: Where to Keep Your Trust

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What if I can't find a copy of my Trust and how do I prove it exists?

Without a copy of the trust instrument, proving that such a trust is in existence can be a challenge. The attorney who drafted the trust, or the attorney or firm's successor, should keep a record of the trust on file. But sometimes law firms go under or lawyers retire, and files are lost.

One potential solution if no copy of the trust can be located is to file a declaratory action with the court. Such an action will provide clarification of the existence of the trust. The hope is that through the filing of the declaratory action, the court will issue an order of the existence of the trust and what the terms of the trust provide. A trustee will need to be appointed and if none exists, the court could appoint one at that time.

While there might not be an actual trust document, there will likely be other evidence of the existence of the trust such as references to the trust on titling documents (Deeds, account statements, etc.). There might be an annual tax return that was filed which an accountant could attest to with the tax records. The court can consider these extraneous documents in a ruling of the existence of a trust.

Clearly, having a copy of the trust instrument would be ideal. It would not be a bad idea to keep a copy in a safe deposit box or home safe (just be sure you are not the only person with access) with other important papers. You could also keep a copy in a cloud file, though accessing the cloud is not always 100% reliable. Your lawyer should have a cloud backup for all your executed legal documents.

As always, if you have any questions or would like to learn more, please contact Steve Shane at sshane@offitkurman.com or [301.575.0313](tel:301.575.0313).