



## LAW OFFICE OF LORIE L. BURCH, PC

### Frequently Asked Questions Regarding Your Estate Planning Documents (You may access an electronic version of this document at [www.burch-law.com](http://www.burch-law.com))

The following is a brief discussion of frequently asked questions now that your estate planning documents are signed. Please take the time to read this letter.

Q. Where is the best place to keep my signed original estate planning documents?

A. I recommend keeping your documents in a safe location at home – preferably a fire-proof safe. Some suggest keeping your documents in a safe deposit box because it will protect the documents from theft, fire, accidental loss, and most other types of damage or harm. A potential problem, though, is getting it opened after your death.

If you decide to keep your estate planning documents in a safe deposit box, consider naming a family member or your executor as a joint holder on the box. That should simplify matters following your death because someone will be able to get into the box without delay. However, if you and the person you name as a joint holder die at the same time, we are back to square one. Additionally, you may need access to the documents when the bank is not open.

Q. Should I give copies of my Will and other estate planning documents to others, such as my children and to the executor of my estate?

A. For some people, their estate planning documents are as private as their income tax returns, and nobody is ever given copies. For other people, estate planning documents are no different than a spare key to the house, and every family member and executor named in the documents is given a copy.

I suggest not making copies of your Will unless you make sure to provide all the same people copies of the new documents. If you don't, then there may be some arguments following your death over which document controls the disposition of your estate.

In contrast, I recommend making copies of your Directive to Physicians, Medical Power of Attorney, and HIPAA Release Authority. You should provide copies of these documents to your physician. You should also provide copies any time you are being admitted to a hospital or medical facility. Additionally, you may want to provide your named agents with copies so they are familiar with your wishes.

If you have designated in your Medical Power of Attorney that you will be keeping the original and/or copies at a specific location, you need to make sure that you do so. Make sure you keep track of who has your copies, however, in the event you change your documents.

**PLEASE NOTE:** I will retain electronic copies of your signed originals on file at my office. If you do choose to provide anyone with copies, I will provide as many copies as you'd like upon request. Additionally, if you would prefer me to email to you or burn a copy of all your documents onto a CD, I will be happy to do so. *You do not need to make copies from your originals as that may damage or even invalidate your documents.*

Keep in mind, none of these documents can serve their purpose unless people know they exist and know where to find them. Please do your best to make sure the appropriate people are informed regarding each document.

In order to assist you, I have included a medical identification card with this portfolio that you may keep in your wallet or purse. You may include where your documents are located, emergency contact information, and your doctor's contact information. My contact information is pre-printed on the medical identification card in the event that I may be of assistance as I will be retaining copies of all of your documents.

Additionally, I have a standard "Letter to Executors & Agents" available on my website at [www.burch-law.com](http://www.burch-law.com). You may download and edit this document so that you can inform your executors and/or agents that you have selected them and where your documents are located. If you do not have access to the internet, please let me know and I will provide you with a hard copy. Finally, I have provided you with a will memorandum that may assist you in compiling information. Please see the discussion below under "*Additional Comments*".

Q. I have a Will and I want to make a minor change. Is there a way for me to make the change myself without hiring a lawyer?

A. Yes, there are a few ways. One way is to make the change yourself by writing an amendment to your Will (called a "codicil") entirely in your own handwriting. You should be sure to date and sign the new document and clearly state which section of your Will you are modifying. When you write a codicil by hand, no witnesses or notary are required. You could also type the codicil, but if you do, you will need two witnesses to the signing.

I strongly recommend against this practice, however. If the change is important and you want to be sure it's done right, you should not try to make the change yourself, but instead you should hire a lawyer to prepare a codicil for you.

Q. Which assets are handled outside of probate?

A. There are a number of different kinds of properties that may pass outside the provisions of your Will.

The list includes life insurance, retirement plans, individual retirement accounts, and annuities. When you purchased or set up these types of assets and accounts, you were probably asked to fill out a form listing the beneficiaries who will receive payments upon your death. These investments will pass to the named beneficiaries regardless of whether you have a Will.

However, if you don't have a beneficiary named, if the beneficiary named is your "estate," or if all the beneficiaries are dead, then those investments will be paid to your estate and pass under your Will. I generally recommend against naming your estate as a beneficiary for any assets.

Certain bank and brokerage accounts will also pass outside your Will. For instance, payable-on-death accounts (sometimes called "POD" accounts) will be distributed to the named beneficiary. Additionally, accounts set up by one or more persons as joint tenants with *rights of survivorship* will pass to the surviving account holder or holders.

Some banks allow you to set up what they call trust accounts even though there is no written trust agreement. These types of accounts will pass to a named beneficiary without going through probate as well.

Not all joint accounts pass to the survivor. When joint accounts are set up as tenants in common, the portion of the account that was owned by the decedent passes under his or her Will.

You may find that most of your estate consists of non-probate property. Therefore, it is extremely important to coordinate the beneficiaries of all these properties to make certain your assets will be distributed as you want when you pass away. For example, if you have created a trust for a minor, you will want to change any beneficiary designations from the name of the child to the name of the trust. Please let me know if I may assist you in coordinating any beneficiary information.

Q. What powers does my agent have under the statutory durable power of attorney?

A. Please see the document titled "Elaboration on the Powers of an Agent Under this Power of Attorney" included with this portfolio.

Q. What do I do with the Appointment of Agent to Control Disposition of Remains?

A. If you had this document prepared, you need to have each of your named agents sign and date this document as soon as possible. Then I request that you return a copy to me.

Additional Comments:

I have provided you with a will memorandum, which you will find with your other estate documents. The will memorandum provides useful information to your Executor and beneficiaries. Additionally, the will memorandum allows you to make specific bequests of your personal effects. The will memorandum allows you to change your specific bequests without having to prepare a codicil (amendment) to your Will. You may add and cross-out items to this list as often as you wish. You may also add additional pages. Furthermore, the will memorandum allows you to fill out other useful information for your Executor and beneficiaries. The will memorandum serves as a guide to your Executor and beneficiaries and should, therefore, be kept with your Will at all times.

In addition, I encourage you to leave letters of instruction for anything that is not covered in your will memorandum, especially if you have detailed wishes regarding anything pertaining to your death, such as funeral and burial arrangements. Also, you could write letters of instruction regarding any matters that you feel are not covered by your estate planning documents and will memorandum. Please understand such letters and memorandum will not be legally binding, but they will greatly assist your family and loved ones with handling your affairs and fulfilling your wishes.

It was my pleasure assisting you with these important decisions. If you have any questions now or in the future, please do not hesitate to contact me.

Very truly yours,

Lorie L. Burch