

CAN I SEE YOUR WILL? WHAT YOU NEED TO KNOW ABOUT WHO HAS ACCESS TO THE WILL

Many People Wonder if They're Allowed to Look at the Will, Maybe They Want a Copy of it and They May Wonder if Problems Await Them As Soon As Someone Else Sees the Will and Determines There's Not Been a Fair Distribution of Assets



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Being named a beneficiary brings with it a number of questions, especially if it's a new experience. Many people wonder if they're allowed to look at the will, maybe they want a copy of it and they may wonder if problems await them as soon as someone else



sees the will and determines there's not been a fair distribution of assets. Is it public record? Do you have to accept what's been left to you? It's already a difficult time, but for many, learning they will benefit from the death of a friend or loved one only adds to that stress. Learning others have access to the will further complicates it.

DO I GET A COPY OF THE WILL?

The estate planning lawyer for the deceased will make available copies of the will to those who have an interest, based on that state's laws. You can be sure the legal advocate is interested in both honoring his client's final wishes while also remaining within the confines of the law. Typically, though, the recipients of the actual will typically include the representatives indicated in the will, any named beneficiaries, the deceased's accountant or financial advisor, state, local and any federal government bodies with interests, successor trustee if one exists, and/ or the Department of Public Records.

As some estates are taxable for state and/or federal estate tax reasons, a copy of the last will and testament may need to be submitted along with the tax return for the estate. If the state does not impose an estate or inheritance tax, a copy of the last will and testament will not need to be submitted to the state.

ACCESS TO THE WILL

Any beneficiaries named in the will are certainly entitled – and will receive – a copy of the deceased's last will and testament. It's rare that a formal reading of the will happens anymore, therefore, ensuring every beneficiary receives a copy is crucial. Further, the one overseeing this distribution also has access to the will for obvious reasons. He or she will also be the one ensuring a proper inventory is maintained and that any debts are settled.

If there are minor children involved, the guardian of those little ones also must have access to the will. They must protect the minors' rights and can do that only if they're provided a copy so that they can use it to care for the children.



ACCOUNTING

Believe it or not, it's not uncommon for many people, even if they're not incredibly wealthy, to have an accountant, especially if they're small business owners. In those instances, the accountant has obvious needs that require access to the will if he's or her's to



honor his or her deceased client's wishes. Further, he or she is better able to complete his or her instructions in regard to the payment of estate debts, estate taxes, and income taxes. Contact must be made with him or her so that he or she can carry out his or her duties. Not only that, but his or her duties might involve the apportionment of the properties and assets of the estate among the beneficiaries.

Often, there are revocable living trusts. If it wasn't fully funded, then the successor trustee requires a copy of the will so that he or she can ensure it goes through any proper probate process.

Remember, if a will requires probate, it becomes public record. In those cases, anyone has access to the details once it's been formally filed for the probate process. Keep in mind that's rare for a court to seal any last will and testament, but it can happen if required. Generally speaking, though, it's reserved for cases in the headlines or perhaps when there are minor children involved whose identities must be protected.

THANKS BUT NO THANKS

Finally, as far as declining anything left to you in a will, it can be done. It's called a disclaimer. Usually, this happens if the gift would end up costing you money in taxes or if you just don't want it (and yes, that happens).

Other times, people will decline because they would prefer it go to another family member who could better benefit from it. One example includes a boat left to the youngest daughter of a widower. She divorced and had no use for the boat. She knew that her sister and brother in law would enjoy many summers on the lake. She declined to accept it and it passed to her sibling. Remember, though, the challenge is in the reality of it not always being in your control. In many, if not most, instances, the property would then pass to your own heirs – your children, perhaps. You'll need to speak with your own legal advocate to ensure you're not just moving the same problem to another area in your life.

Want to learn more? Contact our estate planning lawyers today for answers to all of your questions.

About the Author



Daniel A. DeBruyckere

Attorney DeBruyckere approaches each challenge not just with solid expertise, but also with a passion for helping others plan well for the future. As a husband with three children and two grandchildren, it's his own family experience that provides the motivation to ensure all of his clients are well protected. Besides his extensive background in the issues he specializes in, Dan's clients find that he genuinely cares about them, and that he pays attention to the details that matter to each person and their families.

EXPERIENCE

Attorney Daniel A. DeBruyckere has been practicing law in New Hampshire and Massachusetts since 1998, and has helped hundreds of clients with their estate planning and elder care issues. He is very well respected in the area of estate planning, probate, trust administration, elder law issues, and business planning.

Admitted in Massachusetts and New Hampshire, Attorney DeBruyckere is a former adjunct faculty member of the Massachusetts School of Law and is a member and past president of the Greater Salem Bar Association. He is also a member of the Essex County Bar Association, Massachusetts Bar Association, New Hampshire Bar Association, as well as a member of the National Association of Elder Law Attorneys.

EDUCATION

Attorney DeBruyckere is a graduate of Southern New Hampshire University, summa cum laude, and Massachusetts School of Law, cum laude. He served as editor of the Massachusetts School of Law's Law Review and was a regional finalist in the American Trial Lawyers' Association Trial Advocacy Competition.

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