

Special Processes & Procedures

Circuit Court Clerk's Will Record

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Statutory Authority

Ind. Code 29 -1-1-23(3) requires the clerk to create a Record of Wills containing those wills admitted to probate by the court plus a record of the testimony of subscribing witnesses. The Clerk is required to attest the genuineness of the probated will and the testimony under their signature and seal and, upon request, certify them as a complete record. The Record of Wills must contain an index containing the names of the testators.

Related Statutes & Requirements

I.C. 29-1-7-14 provides that a certificate of probate, containing the number and page of the Record of Wills, shall be attached or endorsed on all probated written wills in the custody of the court. In the rare event the will is not in the court's custody or was oral, the order probating the will must state the will's contents, and the certificate of probate is attached to the order of probate.

If written objections to the probate of a will are filed with a court having jurisdiction over the probate of a will, the clerk is required to copy the objections in the Record of Wills as well as impound the will and copy its terms into the Record of Wills. If the person who filed the objections does not file an action to resist probate of the will within thirty days, the will may be probated without notice. I.C. 29-1-7-16.

If the probate of a will is revoked by the court, the clerk must record the revocation in the Record of Wills. I.C. 29-1-7-22.

Means of Creation & Maintenance

Historically, the Record of Wills has been a document created on the paper pages of record books containing alphabetized index pages. The contents of wills, subscribing witness testimony, certificates of probate, objections to probate, and revocation of probated wills were copied onto the pages. More recently, this information may have been photocopied onto the pages or integrated into the book's pages.

The statutes that define the Record of Wills do not specify the method of creation of the Record but the information to be entered as well as creation of an index is clearly stated. Thus, clerks may continue maintenance of the Record of Wills in a paper format, or they may create it digitally if the required information and indexing is present.