

# Special Processes & Procedures

## Depositing Wills with the Circuit Court Clerk

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### Notice to the Public

This information is written to assist trial courts and circuit clerks. **Please do not contact our office with questions because Indiana Supreme Court policies do not permit our office to provide legal advice to the public.** We recommend that any person with questions about their case seek the advice of a licensed attorney. The Indiana Coalition for Court Access (<https://indianalegalhelp.org/>) can assist in finding low-cost legal help. Additionally, the Indiana Coalition for Court Access (<https://indianalegalhelp.org/what-if-i-dont-qualify/>) and Bar Associations provide options if you do not qualify for low-cost legal aid.

### Statutory Authority

Ind. Code 29-1-7-3.1 allows a person to deposit a will and/or codicil (hereinafter “will”) of a **living person** with the Circuit Court Clerk where the testator resided when the will was executed. The Circuit Court Clerk does not have to determine whether his or her county is the right place for the filing. The statute allows the Circuit Court Clerk to assume, without inquiring further, the depositor of the will is correct about the testator's county of residence.

### The Mechanics

- The Circuit Court Clerk collects a \$25.00 fee for the deposit of the will. I.C. 29-1-7-3.1(d). A court with probate jurisdiction in the county where the will is deposited shall waive collection of the fee if it certifies that the depositor is a participant of, or acting on behalf of a participant of, a Supreme Court Program, such as the Judges and Lawyers Assistance Program, and the certification accompanies the will. The Circuit Court may waive the fee if the depositor no longer practices law. I.C. 29-1-7-3.1(e).
- Pursuant to I.C. 29-1-7-3.1(d), the fee is deposited into the Circuit Court Clerk's Record Perpetuation Fund under I.C. 33-37-5-2.

- Upon receipt of the will, the Circuit Court Clerk provides the depositor with a receipt for the will, places the will in an envelope, and seals the envelope in the presence of the depositor.
- The Clerk then designates on the envelope: the date of the deposit, the testator's name and the depositor's name and address.
- The Clerk indexes the will alphabetically by the name of the testator. I.C. 29-1-7-3.1(f).
- A will filed under this statute does NOT receive a case number unless the number is assigned under the "CB-Court Business Record" designation.

## **Access to Will**

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- Public Access: Public access to the will is not allowed because the deposited will is not a public record under I.C. 5-14-3.
- Testator's or authorized person's access: During the testator's lifetime, the Clerk must keep the envelope containing the will sealed and deliver the envelope ONLY to the testator or a person authorized in writing, signed by the testator, to receive the envelope. After the death of the testator, the Clerk may deliver the will to the court that has jurisdiction of the administration of the decedent's estate. I.C. 29-1-7-3.1(g) and (h).

## **Retention of Will**

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Under I.C. 29-1-7-3.1(i), the Circuit Court Clerk may destroy the deposited will if

- the Clerk has not received notice of the Testator's death and
- at least one hundred (100) years have passed since the will was deposited.