CLERKS RESPONSIBILITIES
FOR THE
SAFEKEEPING OF WILLS

Deborah L. Rushing, Yoakum County Clerk
drushing@yoakumcounty.org
Last Will

and

Testament
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS

.ITEM  ESTATES CODE, Chapter 252. Safekeeping and Custody of Wills
  .ITEM  Subchapter A. Deposit of Will with County Clerk
  .ITEM  252.001 Will Deposit; Certificate
    .ITEM  (a) A testator, or another person for the testator, may deposit the testator’s will with the County Clerk of the county of the testator’s residence. Before accepting the will for deposit, the clerk may require proof satisfactory to the clerk concerning the testator’s identity and residence.

    (b) The County Clerk shall receive and keep the will on the payment of a $ 5.00 fee LGC, Sec. 118.052 (3)(E); __ Record Management Fee LGC, Sec. 118.052 (3)(G); __ Courthouse Security fee LGC, Sec. 291.008 (d).

    (c) On the deposit of the will, the County Clerk shall issue a certificate of deposit for the will.
CERTIFICATE OF DEPOSIT

File No. .................................................................

OFFICE OF THE COUNTY CLERK

................................................................. County, Texas

Last Will and Testament

— OF —

Testator .................................................................
Address ........................................................................
City and State .............................................................

RECEIVED FROM

...........................................................................

this ................. day of ........................................ 20

Persons to be Notified of Deposit after Testator's Death:

Name .................................................................
Address ........................................................................

Name .................................................................
Address ........................................................................

Name .................................................................
Address ........................................................................

Testator's Signature ..........................................................
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS

252.002 Sealed Wrapper(Envelope) Required

- (a) A will intended to be deposited with a County Clerk shall be enclosed in a sealed wrapper.

- (b) The wrapper must be endorsed with:
  
  - (1) “Will of”, followed by the name, address, and signature of the testator, and
  
  - (2) the name and current address of each person who is to be notified of the deposit of the will after the testator’s death.
Last Will and Testament

Testator
Address
City and State

RECEIVED FROM
this day of 20

Persons to be Notified of Deposit after Testator's Death:

Name
Address
Name
Address
Name
Address

Testator's Signature

Sealed and filed this day of 20

County Clerk
By Deputy
252.003. Numbering of filed Wills and Corresponding Certificates

(a) A County Clerk shall number wills deposited with the clerk in consecutive order.

(b) A certificate of deposit issued under Section 252.001(c) on receipt of a will must bear the same number as the will for which the certificate is issued.
252.004 Index

A County Clerk shall keep an index of all wills deposited with the clerk under Section 252.001.
## WILLS FOR SAFEKEEPING INDEX

Yoakum County Clerk Office

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*Could be possible famous people who filed wills in Yoakum County.*
252.051 Will Delivery

During the lifetime of the testator, a will deposited with a County Clerk under Subchapter A.,
may be delivered only to:
(1) the testator; or
(2) another person authorized by the testator by a sworn written order.
252.052. Surrender of Certificate of Deposit; Exception

(a) Except as provided by subsection (b), on delivery of a will to the testator or a person authorized by the testator under Section 251.051, the certificate of deposit issued for the will must be surrendered by the person to whom delivery of the will is made.

(b) A County Clerk may instead accept and file an affidavit by the testator stating that the certificate of deposit issued for the will has been lost, stolen, or destroyed.
AFFIDAVIT

(For use when Certificate of Deposit of a Will for Safekeeping is not available)

THE STATE OF TEXAS
COUNTY OF YOAKUM

BEFORE ME, the undersigned authority, on this day personally appeared
________________________________________, (PRINT the first and last name of the person who will sign this statement.) who swore or affirmed to tell the truth, and stated as follows:

"My name is _______________________, (Print the first and last name of the person who will sign statement.) I am of sound mind and capable of making this sworn statement. I have personal knowledge of the facts written in this statement. I understand that if I lie in this statement, I may be held criminally responsible. This statement is true."

________________________________________

(The person who has personal knowledge must sign, DO NOT SIGN, until you are in front of a notary.)

State of Texas
County of ____________________________

SWORN to and SUBSCRIBED before me, the undersigned authority, on the _______ day of ______________________, 20____ by ____________________________

(Print the first and last name of the person who is signing this affidavit.)

________________________________________

SEAL

Notary Public, State of Texas
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS

- ESTATES CODE, Section 252.101
  - Subchapter C. Actions by County Clerk on Death of Testator.
    - A County Clerk shall notify, by registered mail, return receipt requested, each person named on the endorsement of the will wrapper that the will is on deposit in the clerk’s office if;
      - (1) an affidavit is submitted to the clerk stating that the testator has died; or
      - (2) the clerk receives other notice or proof of the testator’s death sufficient to convince the clerk that the testator has died.

Section 252.102. Will Delivery on Testator’s Death.

On request of one or more persons notified under section 252.101, the county clerk shall deliver the will that is the subject of the notice to the person or persons. The clerk shall obtain a receipt for delivery of the will.
DATE: ____________________

Dear Sir or Madam:

Pursuant to Section 252.101 of the Texas Estates Code, “If there shall be submitted to the Clerk an affidavit to the effect that a (the) testator of any will deposited (with the clerk) for Safekeeping has died, or if the Clerk shall receive any other notice or proof of the death of such testator which shall suffice to convince Him/her that the testator is deceased, the clerk shall notify by registered mail with return receipt requested the person or persons named on the endorsement of the wrapper of the will that the will is on deposit in this office, and, upon request, He/she shall deliver the will to such person or persons, taking receipt therefore.”

Please let this letter serve as notice to you that the Last Will and Testament of __________________________________________ has been deposited in the Yoakum County Clerk’s Office, and you are the first person named on the endorsement of the envelope (wrapper) thereof to be given notice once the testator is deceased. We have received notice that __________________________________________ (name of deceased) passed away on or about the __________________________, 20___ in __________________________ (place of death).

Please be advised that if you are not one in the same person listed on the endorsement please notify the Court by calling, Deborah L. Rushing, Yoakum County Clerk, 806-456-7491 ext. 3. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Deborah L. Rushing
Yoakum County Clerk
The following are times when the clerk should check the index for wills filed under this section:

- When application is filed for probate of estate as administration alleging no will.
- When application is filed for probate of estate for lost will.
- When application is filed for determination of Heirship saying no will found.
- When application is filed for probate of estate as court-created independent administration.
- When small estate affidavit is filed (statute says person had to die without a will).
- If clerk’s office is official repository for death certificates in county, when death certificate is filed.
- Basically, anytime a probate case is filed.
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS

ESTATES CODE, Section 252.103. Inspection of Will by County Clerk

A County Clerk shall open a will wrapper and inspect the will if:

(1) the notice required by Section 252.101 is returned as undelivered; or

(2) the clerk has accepted for deposit a will that does not specify on the will wrapper the person to whom the will is to be delivered on the testator’s death.

ESTATES CODE, Section 252.104, Notice and Delivery of Will to Executor.

If a County Clerk inspects a will under Section 252.103, and the will names an executor, the clerk shall:

(1) Notify the person named as executor, by registered mail, return receipt requested, that the will is on deposit with the clerk; and

(2) deliver, on request, the will to the person named as executor.
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS

- ESTATES CODE, Subchapter D. Legal Effect of Will Deposit.

- Section 252.151 Deposit Has No Legal Significance

- The provisions of subchapter A providing for the deposit of a will with a County Clerk during the lifetime of a testator are solely for the purpose of providing a safe and convenient repository for a will. For purposes of probate, a will deposited as provided by subchapter A may not be treated differently than a will that has not been deposited.
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS

- ESTATES CODE, Subchapter D. Legal Effect of Will Deposit
  - Section 252.152. Prior Deposited Will in Relation to Later Will
    - A will that is not deposited as provided by Subchapter A shall be admitted to probate on proof that the will is the last will and testament of the testator, notwithstanding the fact that the testator has a prior will that has been deposited in accordance with Subchapter A.

Section 252.153. Will Deposit Does Not Constitute Notice.

The deposit of a will as provided by Subchapter A does not constitute notice, constructive or otherwise, to any person as to the existence or the contents of the will.
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS

- ESTATES CODE, Subchapter E. Duty and Liability of Custodian of Estate Papers.

  Section 252.201 Will Delivery (Drop Off Wills)

  On receiving notice of a testator’s death, the person who has custody of the testator’s will shall deliver the will to the clerk of the court that has jurisdiction of the testator’s estate. Many drop off wills can originate from attorney’s offices who are closing their practices. They can also be dropped off by many other individuals believing that the wills are probably not ever going to be probated, but need to be kept somewhere just in case. There are no clear instructions on these, just do the best you can.

  Make a separate Index for Drop off wills.

  (If the client leaves a will and it is determined that probate is unnecessary, Section 252.201 gives an effective answer to the question of what to do with the will. It can be delivered to the clerk, and advise the clerk that it is not likely that they will be offered for probate.)
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS


Section 252.202. Personal Service on Custodian of Estate Papers

On a sworn written complaint that a person has custody of the last will of a testator or any papers belonging to the estate of a testator or intestate, the judge of the court that has jurisdiction of the estate shall have the person cited by personal service to appear and show cause why the person should not deliver:

(1) the will to the court for probate; or
(2) the papers to the executor or administrator.
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS


Section 252.203 Arrest; Confinement

On the return of a citation served under Section 252.202, if the judge is satisfied that the person served with the citation had custody of the will or papers at the time the complaint under that section was filed and the person does not deliver the will or papers or show good cause why the will or papers have not been delivered, the judge may have the person arrested and confined until the person delivers the will or papers.
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS


▲ Section 252.204. Damages

▲ (a) A person who refuses to deliver a will or papers described by Section 252.202 is liable to any person aggrieved by the refusal for all damages sustained as a result of the refusal.

▲ (b) Damages may be recovered under this section in any court of competent jurisdiction.
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS

- ESTATES CODE, Chapter 253. Change and Revocation of Wills

- Section 253.001. Court May Not Prohibit Changing a Will.

  (a) Notwithstanding, Section 22.007(a), in this section, “court” means a constitutional county court, district court, or statutory county court, including a statutory probate court.

  (b) A court may not prohibit a person from executing a new will or a codicil to an existing will.

  (c) Any portion of a court order that purports to prohibit a person from executing a new will or

  A codicil to an existing will is void and may be disregarded without penalty or sanction of any kind.
CLERKS RESPONSIBILITIES FOR THE SAFEKEEPING OF WILLS

- Section 253.002.

- A written will, or a clause or devise in a written will, may not be revoked, except by a subsequent will, codicil, or declaration in writing that is executed with like formalities, or by the testator destroying or canceling the same, or causing it to be destroyed or canceled in the testator’s presence.
TEXAS JUDICIAL PROBATE ACADEMY

May 9-11, 2018

Moody Gardens Hotel, Spa and Convention Center

Galveston, Texas