

What to do when an original Will is lost or destroyed

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Finding out that a loved one's will has been lost or destroyed can be stressful for executors and beneficiaries during an already difficult time. While this does not necessarily invalidate the deceased's intentions, it does require careful legal steps to ensure the estate is administered according to their wishes. Below is a guide on how you should proceed if your loved ones' will is lost or has been destroyed.

It goes without saying that it is essential to conduct a comprehensive search for any testamentary documents that your loved one may have left behind. This includes checking typical storage places such as safety deposit boxes, home safes, desks, or file cabinets. It is also important to contact the law firm that drafted the will, as it is common practice for law firms to retain original wills to ensure that they are safely kept. If the law firm cannot locate the original will, they may have a copy or a record of its location. A law firm may also post a notice to other firms who may have record of the will or its whereabouts.

It is also important to determine whether the original will was intentionally destroyed by the testator. If the testator has purposely destroyed their will, it is deemed to have been revoked under the laws of Manitoba. Additionally, if the original will was in the testator's possession and cannot be found after their death, the law presumes that the testator purposely destroyed the will with the intention of revoking it. This presumption can be rebutted by presenting evidence that the will was either lost or destroyed unintentionally. To challenge this presumption, the party seeking to prove the will must provide clear and convincing evidence that the testator did not intend to revoke the will.

If only a copy of the will is found, it may still be possible to apply for probate. The applicant must provide a copy of the will, along with evidence surrounding the circumstances in which the original will was lost or destroyed. Additionally, the court will ask for the consent of all people who would have an interest in the estate if the deceased had died without a valid will.

In cases where no will can be found, and there is no copy, an application can be made to the court to admit documents that reflect the testator's intentions. This may include letters, notes, or other writings that indicate how the deceased wished their estate to be distributed. The court will carefully consider whether these documents are consistent with the testator's intentions.

Finally, in circumstances where there is no valid will, an administrator must be appointed to apply for "Letters of Administration" which is the equivalent of a Grant of Probate. In this case, the estate will be distributed to the deceased's next-of-kin in accordance with the laws of Manitoba.

In the end, while the loss or destruction of an original will can complicate the estate administration process in Manitoba, it does not necessarily mean the testator's wishes cannot be honored. Given the complexities involved, consulting with an experienced estate lawyer is advisable to navigate this process effectively.

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