

McDonald & Kanyuk, PLLC

Attorneys at Law
Concord, New Hampshire

“Best Practices” for Retaining Important Estate Planning Documents and Other Records

By: Joseph F. McDonald III, Esq.

Once you have completed your estate plan, you should develop a plan for retention of your original documents, copies of those documents, and other important records including life insurance policy binders, birth certificates, marriage certificates, tax returns, bank, financial and account statements, and the like. This memorandum will provide some guidance for you and your family concerning which of among these documents you should keep, for how long and where.

These questions are increasingly important as records and documents pile up and we transition from a paper to a virtual society. Records documenting various aspects of life arrive with nearly every mail delivery. Some of our clients characterize themselves as “pack rats”, retaining monthly account statements and other records for ten years or more even though they concede that they have no occasion to review any of them. Some retain copies of tax returns going back 30 years or more. Obviously, much of this is overkill. A few rules of thumb:

First, determine what to keep. In large measure that means knowing what to throw away. Bank statements and financial statements beyond three years can go. Same with tax returns. But if you own mutual funds, it's wise to keep tax-related documents that show your cost basis in a fund. Many investors typically reinvest the dividends and other distributions from mutual funds. The tax returns can help you better determine your real costs in a fund when you sell, which is used in calculating the capital gains tax you will pay.

Auto titles, insurance policies, birth marriage and death certificates and property deeds should be kept. Generally, they can be replaced, but the process isn't always fast. It can sometimes take weeks before a government entity produces the needed document, and that can be an unnerving task amid a crisis or death in the family.

Start with a safe-deposit box. As a general rule, documents you don't reference often, ranging from birth certificates to property deeds, are well-suited for safe-deposit box storage. With good reason. Stories abound in the aftermath of hurricanes, tornados and other natural disasters where amid a razed neighborhood a bank vault stood intact. Anecdotes like these encourage many advisors to counsel their clients to keep physical records and

computerized back-up copies of transactions and dealings in a safe-deposit box.

But beware: if a box is held in just one name, then a spouse or child could face obstacles in collecting its contents. So it is best to register safe-deposit boxes in two names if you're going to store vital records there. Also, in a safe place at home keep a record of what's in the box; several banks and brokerage firms either lost, or lost access to, their vaults in the World Trade Center collapse. Having a record will help you replace what's missing should you need to in a hurry.

Banks typically require a death certificate before they will grant permission for a non-owner to remove the contents of a safe-deposit box. When it comes to actually acting on directives in a will you're going to have to have the original.

Home is better for certain documents. We offer to safe-keep our clients' estate planning documents in the safe we maintain here in our office. Some clients prefer to retain their estate planning documents at home. If you make this choice, you should keep the originals of these documents (or copies if we safe-keep your originals) together with your life insurance policies, birth certificates, marriage certificates and even your passport in a secure place at home -- like a fireproof lock box or safe -- so that your family members can access them in an emergency. Any copies of the documents we keep for you will bear a legend indicating that the originals are kept at our office and provide contact information, including our telephone number.

If you do safe-keep originals at home, keep a separate record of your life insurance policies, annuity policies, etc. and contract numbers, maybe in your safe-deposit box, just in case the originals are lost somehow. Copies of legal items should be kept elsewhere as well, maybe with a sibling or child. But be careful: You don't want too many copies of your power of attorney floating around since it could allow the wrong person to access your accounts and gain control over your financial life.

Stock and bond certificates and other such securities issued in your name are best kept in your broker's vault. A broker will need the certificate in hand to complete any transaction. Moreover, it's a big hassle if you have to replace a lost certificate.

If you keep contract-based documents in a safe-deposit box, such as annuities or insurance policies, then at least keep on file at home the name of the insured, the insurance company, the policy or contract number and the value. That will help you or survivors more easily request a replacement document through the issuing company.

Documents relating to your "cost basis" in your home: it's also a good idea to keep records of home improvements and other papers that

document the cost basis for a home. The same holds for home-business records.

Going digital isn't the answer. A number of financial companies across the country regularly transfer transaction-based data to digital images. Many banks do the same with your checks. But on the home front it is different. Scanning documents into a computer is great for future reference, and it can make tracking down an original substantially easier, but for the most part records reprinted off a hard-drive aren't useful legally.

When it comes to using birth certificates or wills or even automobile titles, you must have the raised seal; otherwise you cannot use it.

Keep a record of your records. Probably the most important thing you can do is list what documents you have and where they are. And make sure family members and those who need access to them know where to find this master list.