

# CLIENT AND FRIEND NEWSLETTER

August 2024

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## VSED – AN END OF LIFE ALTERNATIVE BY BETH A MCDANIEL, JD, CELA

Recently I delved into the interesting topic of Voluntary Stopping Eating and Drinking (VSED), also known as terminal or end-of-life fasting. I now have a greater understanding of VSED's complexities and significance. For years, our firm's form Healthcare Directive (Living Will) has...

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## A FEW ANNOUNCEMENTS



In June 2024, I had the honor of joining the national board of directors of the National Academy of Elder Law Attorneys (NAELA), an organization that has significantly benefited my career. As a director, I will

contribute to programs and publications, including co-hosting our 2025 annual meeting from May 7-9, 2025 in Bellevue, Washington. NAELA's website (naela.org) features an attorney search tool, 'Find a Lawyer,' which is a valuable resource for helping friends and family locate elder law attorneys across different states. I look forward to sharing insights and information from NAELA that I believe will be of...

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## WHAT HAPPENS WHEN YOUR ORIGINAL LAST WILL IS LOST BY BETH A. MCDANIEL, JD, CELA



As adults, we must keep track of numerous important documents such as drivers' licenses, car titles, passports, life insurance policies, and birth certificates. Thankfully, for all of these, there are mechanisms to replace...

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## CONT: A FEW ANNOUNCEMENTS

...interest to you.

As of July 2024, I am honored to be able to announce that I have been named a 'Super Lawyer,' for the fifth consecutive year by legal publisher Thomson Reuters in the areas of probate and estate planning.

Per Thomson Reuters, this recognition is given to 5% of lawyers based upon peer recognition and professional achievement. While I am humbled by this honor, my foremost aspiration is to provide a superior client experience, which I believe is the greatest achievement of all.

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## CONT: VSED – AN END OF LIFE ALTERNATIVE

...contained the following optional provision:

If it appears I have made the decision to voluntarily stop eating and drinking (VSED), which would be evidenced by me no longer eating food and drinking liquids on my own, it is because I have a terminal or life-limiting disease and do not wish my death to be prolonged.

If at the end of life, an individual chooses to voluntarily stop eating or drinking, it is important to respect their decision and focus on their comfort. You may have

known someone who hastened their death by stopping eating and drinking. For instance, I often think of the elderly mother of one of my father's best friends, who stopped eating and drinking after being told her broken back was inoperable and thus she would be bedridden for the rest of life.

It turns out that VSED is a little more complex than that. My recent learning began with a recommended podcast episode (Best Life Best Death Podcast Episode #145. 'VSED Part 1: One Family's Experience of a Terminal Fast -

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## CONT: VSED – AN END OF LIFE ALTERNATIVE

featuring, Kate Christie, Author of the VSED handbook). Ms. Christie, a Seattle resident, shared her mother's experience with VSED, illustrating VSED can be an intentional choice.

Ms. Christie's mother, diagnosed with dementia, had witnessed the difficult final years of family members with similar diagnoses. Resolved to not endure the same fate, she decided to start VSED on the following February 1, after enjoying a final holiday season. Before beginning VSED, she put her legal documents in order and recorded a few videos affirming her decision to her family and herself.

To support her, her family assembled a team of paid caregivers, hospice workers, and a death doula to best ensure her comfort during her final days. Having such a team best assured her family could serve as her emotional support system. The week prior to starting VSED, she completed a pre-colonoscopy type prep to clear

her colon, underscoring the thorough planning of her decision.

A few other aspects of VSED:

- VSED typically takes about ten days, and proper associated care is not covered by insurance.
- There is a focus on appropriate medications to ease delirium, hallucinations, shortness of breath, and anxiety symptoms.
- Symptoms of thirst are managed through brushing teeth, applying lip balm, oral swabs, and spraying a fine mist.
- Dry mouths are soothed with cool air and a humidifier, while dry skin is soothed with lotion and cool, wet cloths.
- Caregivers and visitors should avoid eating or drinking in locations where the food and drink can be seen or smelled.
- Ideally, all family members should support the choice; however, hold-harmless agreements can protect against any reports to...

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## CONT: VSED – AN END OF LIFE ALTERNATIVE

- ...adult protective services, which happened to the Seattle family on the podcast episode mentioned above.
  - VSED is not considered suicide and therefore does not affect any life insurance policies in place.
  - While death with dignity is legal in only eleven states, VSED is legal in all fifty states.
- VSED is certainly not a choice for everyone. It requires an individual with significant resolve and determination. The decision to undergo VSED is deeply personal and can only be made by the individual themselves. For more information, the Seattle-based organization VSED Resources Northwest has resources on their website: [vsedresources.com](http://vsedresources.com).

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## CONT: WHAT HAPPENS WHEN YOUR ORIGINAL LAST WILL IS LOST

...these documents if they get lost.

across it who is not entirely happy about its provisions.

One of the few legal documents that truly cannot be replaced is a Will and Testament (“Will”). A Will can be lost in various ways, such as during a move, in a house fire, or due to a stolen safe. Sometimes an otherwise responsible individual inadvertently misplaces or loses the original Will following their loved one’s death. In a more sinister scenario, a Will may go missing after an individual comes

Although someone who lost their Will can contact their attorney to re-sign and thus recreate a lost Will -- or reprint and re-witness a self-created Will -- there is no mechanism to replace a lost Will after the executing party’s death.

In Washington, there is a way to admit a copy of a Will to probate if the original Will cannot be found. Of course, first

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## CONT: WHAT HAPPENS WHEN YOUR ORIGINAL LAST WILL IS LOST

you need to have a copy of the Will. If a copy of a Will cannot be located, a diligent attorney should indefinitely retain at least an electronic copy of all Wills they have drafted. Additionally, diligent, retired attorneys should provide a means for families to obtain copies of Last Wills.

Here are the steps to admit a lost Will to probate in Washington (RCW 11.20.070):

1. Notice must be given to all interested parties, including all individuals and organizations named in the Will, as well as those individuals who would have inherited if the decedent had died without a Will. This includes estranged children or next of kin in cases where the Will leaves the estate exclusively to friends and organizations. If written consent for admitting the Will cannot be obtained from all interested parties, a hearing must be noted

regarding admitting the lost Will, with notice to all interested parties.

2. The provisions of the lost Will must be proven by clear, cogent, and convincing evidence, which must include a witness who can testify to its contents and the authenticity of the copy of the Will, in the form of a sworn declaration. From experience, the court prefers to receive sworn declarations, from two witnesses to the execution of the original Will. This can be challenging if the witnesses are deceased or cannot be located. Fortunately, in most cases, we have been able to locate witnesses, including widows of deceased attorneys who can testify as to their spouse's life work.

The witnesses must state that they were present, and the testator (individual who signed the Will) was of sound mind and was not under undue influence. If a witness is deceased, the Court usually will accept testimony from another individual that the witness

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## CONT: WHAT HAPPENS WHEN YOUR ORIGINAL LAST WILL IS LOST

worked in a law office and regularly witnessed Wills as part of their job duties. Additionally, a sworn declaration must be obtained from another individual affirming the signature on the copy of the Will belongs to the testator, that the testator was of sound mind when the Will was signed, and that there is no evidence the Will was intentionally destroyed by the testator.

As you can imagine, this process incurs additional costs and causes further delays to the appointment of a personal representative.

Here are a few ways to safely store a Will, and some pros and cons for each:

### Safe Deposit Box

**Pros:** Storing documents in a safe deposit box is one of the best ways to protect them from theft, fire, flood, and other potential hazards.

**Cons:** In most cases, renting a safe

deposit box involves ongoing fees. While issues with safe deposit boxes are rare, they do occasionally occur. For instance, I have a colleague in Pennsylvania who had to hang up her savings bonds to dry after the bank's safe deposit boxes flooded. Additionally, I have had at least one client who had to remove their documents due to a bank closure.

It is essential to have at least one other signor on your box. Otherwise, the bank will require a court order to drill the box. Legally, the attorney be present to witness the drilling. Co-signors should be advised to not immediately, upon the box holder's death, close-out the box and remove the contents, as safe deposit contents can too easily become lost. Ideally, the co-signor should not remove the Will from the safe deposit box until they are able to immediately drop it off at the attorney's office or file it with the courthouse. Other items in the safe deposit box should not be removed until a fiduciary is in place

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(such as a personal representative or trustee).

### Home Safe or Fireproof Box

**Pros:** These can be secure, convenient places to store all important documents in one location.

**Cons:** Unless the home safe is bolted to the floor, thieves notoriously steal them. Additionally, if the key or passcode is not known or readily available, there will be delays. As to fireproof boxes, they protect their contents from fire for only 20 minutes to one hour. Moisture, mold, and mildew can be a problem for both safes and fireproof boxes. To protect against these, it is advised to air out and disinfect the safe or fireproof box regularly and store silica gel packets in them.

Superior Court Will Repository - For \$20.00, you can store your Will with a County Superior Court Clerk's Office under seal (RCW 11.12.265) .

**Pros:** This one-time fee is inexpensive. You can later add a Codicil for no additional fee. As Wills in the repository are under seal, the contents of them are not of public record. You can remove your Will from the repository at any time. Upon your death, anyone can unseal your Will by presenting to the clerk a certified death certificate. According to the Clerk's Office, stored Wills, or records regarding their withdrawal, are retained for one hundred years.

**Cons:** For anyone else to remove your Will from a repository during your lifetime, including a guardian/conservator, an agent under a General Power of Attorney, or your named personal representative, a court order is required. The requesting party will need to demonstrate to the court that there is good cause for removing the Will. A reason to petition the court to move the Will is so that the agent can be familiar with and respect the testator's intent for their estate as it is



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their duty to do so. For example, if the agent becomes aware that the testator leaves a family cabin to a child in his Will, the agent should do his or her best to preserve the cabin and uphold their duty to respect the testamentary intent of the testator.

It is important to safeguard Wills as losing a Will leads to further expense, delay, and possible thwarted intentions.

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If have questions or wish to make an appointment, please contact our client care coordinator, Margo Passeau, at (425) 296-3121 or [margo@bethmcdaniel.com](mailto:margo@bethmcdaniel.com).

Disclaimer: this newsletter is informational only and should not be construed as legal advice.

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