

DRAFT
FOR DISCUSSION

ELECTRONIC WILLS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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February 21, 2018

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ELECTRONIC WILLS ACT

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1 retrievable in perceivable form.

2 **SECTION 3. EXECUTION OF ELECTRONIC WILL.** Except as otherwise

3 provided in Section 4, an electronic will must be:

4 (1) a document;

5 (2) signed electronically by the testator or another individual in the testator's name, in the
6 testator's conscious presence, and at the testator's direction;

7 (3) with the intent that the document be the testator's will; and

8 (4) either:

9 (A) signed electronically by at least two individuals, each of whom signed within
10 a reasonable time after the individual witnessed:

11 (i) the signing of the electronic will under paragraph (2); or

12 (ii) the testator's acknowledgment of the signing or acknowledgement of
13 the electronic will; or

14 **SECTION 4. HARMLESS ERROR.** A document or writing added to a document that

15 was not executed in compliance with Section 3 is treated as if it had been executed in compliance

16 with Section 3 if the proponent of the document or writing establishes by clear-and-convincing

17 evidence that the decedent intended the document or writing to be:

18 (1) the decedent's electronic will;

19 (2) a partial or complete revocation of the decedent's will including electronic will;

20 (3) an addition to or an alteration of the decedent's will including electronic will; or

21 (4) a partial or complete revival of the decedent's formerly revoked will including

22 electronic will or a formerly revoked part of the will including electronic will.

1 witnesses, sign our names to this instrument, being first sworn, and declare to the undersigned
2 authority that the testator signs and executes this instrument as the testator's will, the testator
3 signs it willingly or willingly directed another to sign for the testator, each of us, in the physical
4 presence and hearing of the testator, signs this will as witness to the testator's signing, and to the
5 best of our knowledge the testator is [18] years of age or older, of sound mind, and under no
6 constraint or undue influence.

7 _____
8 Witness

9 _____
10 Witness

11 State of _____

12 County of _____

13 Subscribed, sworn to, and acknowledged before me by _____, the testator,
14 and subscribed and sworn to before me by _____ and _____,
15 witnesses, this _____ day of _____, 20____.

16 (Seal)

17 _____
18 (Signed)

19 _____
20 (Official capacity of officer)

21 **SECTION 7. ATTESTATION WHERE ALL WITNESSES NOT PHYSICALLY**

22 **PRESENT.** An electronic will with attesting witnesses any one of whom is not physically
23 present in the same location as the testator, whose execution is supervised by a qualified
24 supervisor, may be executed, attested, and made self-proving, by acknowledgment of the testator
25 and affidavits of the witnesses and the qualified supervisor. The acknowledgment and affidavits

1 must be made before an officer authorized to administer oaths under law of the state in which
2 execution occurs and must be evidenced by the officer's certificate under official seal, in
3 substantially the following form:

4 I, _____, the testator, sign my name to this instrument this date and being
5 (name)

6 first sworn, declare to the undersigned authority that this instrument is my will, and I sign it
7 willingly or willingly have directed another to sign it for me, I execute it as my voluntary act for
8 the purposes expressed in this instrument, and that I am [18] years of age or older, of sound
9 mind, and under no constraint or undue influence.

10 _____
11 Testator

12 We, _____ and _____,
13 (name) (name)

14 witnesses, sign our names to this instrument, and being first sworn declare to the undersigned
15 authority that the testator signs and executes this instrument as the testator's will, the testator
16 signs it willingly or willingly directed another to sign for the testator, each of us, in the physical
17 or electronic presence and hearing of the testator, signs this will as witness to the testator's
18 signing, and to the best of our knowledge the testator is [18] years of age or older, of sound
19 mind, and under no constraint or undue influence.
20

21 _____
22 Witness

23 _____
24 Witness

25 I, _____, qualified supervisor, sign my name to this instrument, being
26 (name)

27 first sworn, and declare to the undersigned authority that I am a qualified supervisor and that I

1 have supervised the execution of this instrument. I further declare that the testator signs and
2 executes this instrument as the testator's will, the testator signs it willingly or willingly directs
3 another to sign for the testator, the witnesses sign this will as witness to the testator's signing,
4 and to the best of my knowledge the testator is [18] years of age or older, of sound mind, and
5 under no constraint or undue influence.

6 _____
7 Qualified Supervisor

8 State of _____

9 County of _____

10 Subscribed, sworn to, and acknowledged before me by _____, the testator,
11 subscribed and sworn to before me by _____ and _____, witnesses,
12 and subscribed and sworn to before me by _____, qualified supervisor, this
13 _____ day of _____, 20____.

14 (Seal)

15 _____
16 (Signed)

17 _____
18 (Official capacity of officer)

19 **SECTION 8. ELECTRONIC WILL MADE SELF PROVING AFTER**
20 **EXECUTION.** An electronic will with attesting witnesses all of whom are physically present in
21 the same location as the testator may be made self proving at any time after its execution by the
22 acknowledgment of the testator and the affidavits of the witnesses. The acknowledgment and
23 affidavits must be made before an officer authorized to administer oaths under law of the state in
24 which the acknowledgment occurs and must be evidenced by the officer's certificate under
25 official seal, attached or annexed to the will in substantially the following form:

1 I, _____, the testator, and we, _____,
2 (name) (name)

3
4 and _____, witnesses, whose names are signed to the attached or
5 (name)

6
7 foregoing instrument, being first sworn, declare to the undersigned authority that the testator
8 signed and executed the instrument as the testator's will, the testator signed it willingly or
9 willingly directed another to sign for the testator, the testator-executed it as the testator's
10 voluntary act for the purposes expressed in the instrument, each of the witnesses, in the physical
11 presence and hearing of the testator, signed the will as witnesses to the testator's signing, and to
12 the best of the witness's knowledge the testator was at the time [18] years of age or older, of
13 sound mind, and under no constraint or undue influence.

14 _____
15 Testator

16 _____
17 Witness

18 _____
19 Witness

20 State of _____

21 County of _____

22 Subscribed, sworn to, and acknowledged before me by _____, the testator,
23 and subscribed and sworn to before me by _____ and _____,
24 witnesses, this _____ day of _____, 20____.

25 (Seal)

26 _____
27 (Signed)

28 _____
29 (Official capacity of officer)

1 **SECTION 9. PROOF OF ELECTRONIC WILL.** A signature physically or
2 electronically affixed to an affidavit attached to a will under this [act] is deemed a signature
3 affixed to the will if necessary to prove the will’s execution. Intent that a document is a testator’s
4 electronic will may be established by extrinsic evidence.

5 **SECTION 10. CHOICE OF LAW AS TO EXECUTION.** An electronic will is
6 validly executed if executed in compliance with this [act] or in compliance with the law of the
7 place where at the time of execution the testator is physically located, or of the place where at the
8 time of execution or at the time of death the testator is domiciled, resides, or is a citizen.

9 **SECTION 11. REVOCATION.** An electronic will or part is revoked by a subsequent
10 will including electronic will that revokes the previous electronic will or part expressly or by
11 inconsistency.

12 **SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
13 applying and construing this uniform act, consideration must be given to the need to promote
14 uniformity of the law with respect to its subject matter among states that enact it.

15 **SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
16 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
17 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
18 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
19 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
20 Section 7003(b).

21 **SECTION 14. TRANSITIONAL PROVISION.** This [act] applies to a will executed
22 before, on, or after [the effective date of this [act]].

23 **SECTION 15. EFFECTIVE DATE.** This [act] takes effect