ELECTRONIC WILLS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 2-3, 2018 Drafting Committee Meeting

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February 21, 2018
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ELECTRONIC WILLS ACT

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ELECTRONIC WILLS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Electronic Wills Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Document” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) “Electronic will” means a will executed in compliance with Section 3.

(4) “Instrument” means a document that has been [executed] [authenticated or adopted].

(5) “Person” means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation, government or governmental subdivision, agency, or instrumentality.

(6) “Qualified supervisor” means a person that supervises the execution of an electronic will under Section 5.

(7) “Sign” means, with present intent to authenticate or adopt a document:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the document an electronic symbol, sound, or process.

(8) “Will” includes a codicil and a testamentary instrument that appoints a personal representative, revokes or revises another will, nominates a [guardian or conservator], or expressly excludes or limits the right of an individual or class to succeed to property of the testator passing by intestate succession.

(9) “Writing” includes an electronic writing stored in an electronic or other medium and...
retrievable in perceivable form.

SECTION 3. EXECUTION OF ELECTRONIC WILL. Except as otherwise provided in Section 4, an electronic will must be:

(1) a document;

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

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

(4) either:

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

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

(ii) the testator’s acknowledgment of the signing or acknowledgement of the electronic will; or

SECTION 4. HARMLESS ERROR. A document or writing added to a document that was not executed in compliance with Section 3 is treated as if it had been executed in compliance with Section 3 if the proponent of the document or writing establishes by clear-and-convincing evidence that the decedent intended the document or writing to be:

(1) the decedent’s electronic will;

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

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

(4) a partial or complete revival of the decedent’s formerly revoked will including electronic will or a formerly revoked part of the will including electronic will.
SECTION 5. QUALIFIED SUPERVISOR.

(a) An heir of the testator or a beneficiary under an electronic will may not act as a qualified supervisor.

(b) Except as otherwise provided in subsection (a), an attorney may act as a qualified supervisor.

(c) A person that acts as a qualified supervisor submits to the jurisdiction of the court in the [county] in which the testator executes the electronic will.

SECTION 6. ATTESTATION WHERE ALL WITNESSES PHYSICALLY PRESENT. An electronic will with attesting witnesses all of whom are physically present in the same location as the testator may be executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses. The acknowledgment and affidavits must be made before an officer authorized to administer oaths under law of the state in which execution occurs and who is physically present in the same location as the testator and attesting witnesses, and must be evidenced by the officer’s certificate under official seal, in substantially the following form:

I, _______________, the testator, sign my name to this instrument this date, (name)

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

__________________________
Testator

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

________________________
Witness

________________________
Witness

State of ________

County of ________

Subscribed, sworn to, and acknowledged before me by ________________, the testator, and subscribed and sworn to before me by ________________ and ________________, witnesses, this _____ day of _______, 20__. 

(Seal)

_________________________________
(Signed)

_________________________________
(Official capacity of officer)

SECTION 7. ATTESTATION WHERE ALL WITNESSES NOT PHYSICALLY PRESENT. An electronic will with attesting witnesses any one of whom is not physically present in the same location as the testator, whose execution is supervised by a qualified supervisor, may be executed, attested, and made self-proving, by acknowledgment of the testator and affidavits of the witnesses and the qualified supervisor. The acknowledgment and affidavits
must be made before an officer authorized to administer oaths under law of the state in which
execution occurs and must be evidenced by the officer’s certificate under official seal, in
substantially the following form:

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

____________________________
Testator

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

____________________________
Witness

____________________________
Witness

I, ________________, qualified supervisor, sign my name to this instrument, being
(name)
first sworn, and declare to the undersigned authority that I am a qualified supervisor and that I
have supervised the execution of this instrument. I further declare that the testator signs and
executes this instrument as the testator’s will, the testator signs it willingly or willingly directs
another to sign for the testator, the witnesses sign this will as witness to the testator’s signing,
and to the best of my knowledge the testator is [18] years of age or older, of sound mind, and
under no constraint or undue influence.

________________________
Qualified Supervisor

State of _________

County of _________

Subscribed, sworn to, and acknowledged before me by _______________, the testator,
subscribed and sworn to before me by _______________ and _______________, witnesses,
and subscribed and sworn to before me by _______________, qualified supervisor, this
______ day of ______, 20__.

(Seal)

___________________________________
(Signed)

___________________________________
(Official capacity of officer)

SECTION 8. ELECTRONIC WILL MADE SELF PROVING AFTER EXECUTION. An electronic will with attesting witnesses all of whom are physically present in
the same location as the testator may be made self proving at any time after its execution by the
acknowledgment of the testator and the affidavits of the witnesses. The acknowledgment and
affidavits must be made before an officer authorized to administer oaths under law of the state in
which the acknowledgment occurs and must be evidenced by the officer’s certificate under
official seal, attached or annexed to the will in substantially the following form:
I, ___________________________, the testator, and we, ____________________________,
(name) ___________________________, witnesses, whose names are signed to the attached or
(name) foregoing instrument, being first sworn, declare to the undersigned authority that the testator
signed and executed the instrument as the testator’s will, the testator signed it willingly or
willingly directed another to sign for the testator, the testator-executed it as the testator’s
voluntary act for the purposes expressed in the instrument, each of the witnesses, in the physical
presence and hearing of the testator, signed the will as witnesses to the testator’s signing, and to
the best of the witness’s knowledge the testator was at the time [18] years of age or older, of
sound mind, and under no constraint or undue influence.

________________________
Testator

________________________
Witness

________________________
Witness

State of __________
County of __________

Subscribed, sworn to, and acknowledged before me by __________________________, the testator,
and subscribed and sworn to before me by __________________________ and __________________________,

witnesses, this _____ day of _____, 20__.

(Seal)

(Signed)

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

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

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

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

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

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

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