

UNIFORM ELECTRONIC WILLS ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-EIGHTH YEAR
ANCHORAGE, ALASKA
JULY 12 - JULY 18, 2019

WITHOUT PREFATORY NOTE OR COMMENTS

COPYRIGHT © 2019

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 17, 2019

*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

UNIFORM ELECTRONIC WILLS ACT

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

SECTION 2. DEFINITIONS. In this [act]:

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

[(2) “Electronic presence” means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.]

(3) “Electronic will” means a will executed electronically in compliance with Section 5(a).

(4) “Record” 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.

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

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

(B) to affix to or logically associate with the record an electronic symbol or process.

(6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(7) “Will” includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate

succession.

SECTION 3. LAW APPLICABLE TO ELECTRONIC WILLS; PRINCIPLES OF EQUITY. An electronic will is a will for all purposes of the law of this state. The law of this state applicable to wills and principles of equity apply to an electronic will, except as modified by this [act].

SECTION 4. CHOICE OF LAW REGARDING EXECUTION. A will executed electronically but not in compliance with Section 5 is an electronic will under this [act] if executed in compliance with the law of the jurisdiction where:

- (1) the testator is physically located when the will is signed; or
- (2) the testator is domiciled or resides when the will is signed or when the testator dies.

SECTION 5. EXECUTION OF ELECTRONIC WILL.

(a) [Except as provided in Section 6, an] [An] electronic will must be:

- (1) a record that is readable as text at the time of signing under paragraph (2);
- (2) signed by:

(A) the testator; or

(B) another individual in the testator's name, in the testator's physical

presence, and by the testator's direction; and

(3) [either:

(A)] signed by at least two individuals[, each of whom is a resident of a state and physically located in a state at the time of signing and] who signed within a reasonable time after witnessing, in the physical [or electronic] presence of the testator:

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

[(B)] [(ii)] the testator's acknowledgment of the signing of the electronic

will under paragraph (2) or acknowledgement of the electronic will [or;

(B) acknowledged by the testator before and in the physical [or electronic] presence of a notary public or other individual authorized by law to notarize records electronically].

(b) Intent of a testator that the record under subsection (a)(1) be the testator's electronic will may be established by extrinsic evidence.

Legislative Note: *A state that has not adopted the Uniform Probate Code should conform Section 5 to its will execution statute.*

A state that enacts Section 6 (harmless error) should include the bracketed language at the beginning of subsection (a).

A state that wishes to permit an electronic will only when the testator and witnesses are in the same physical location should omit the bracketed words "or electronic" from subsection (a)(3) and Section 8(d) and should omit Section 8(c).

A state that has adopted or follows the rule of Uniform Probate Code Section 2-502 and validates by statute an unattested but notarized will should include subsection (a)(3)(B). Other states also may include that provision for an electronic will because an electronic notarization may provide more protection for a will than a paper notarization.

[SECTION 6. HARMLESS ERROR.

Alternative A

A record readable as text that is not executed in compliance with Section 5(a) is deemed to comply with Section 5(a) if the proponent of the record establishes by clear and convincing evidence that the decedent intended the record to be:

- (1) the decedent's will;
- (2) a partial or complete revocation of a will;
- (3) an addition to or modification of a will; or
- (4) a partial or complete revival of a formerly revoked will or part of a will.

Alternative B

[Section 2-503 of the Uniform Probate Code or comparable provision of state law]

applies to a will executed electronically.

End of Alternatives]

***Legislative Note:** A state that has enacted the harmless error rule for a non-electronic will, Uniform Probate Code Section 2-503, should enact Alternative B. A state that has not enacted a harmless error rule may not want to add one solely for an electronic will, but otherwise should enact Alternative A.*

SECTION 7. REVOCATION.

(a) An electronic will may revoke a previous will or part of a previous will.

(b) An electronic will or part of an electronic will is revoked by:

(1) any subsequent will that revokes the electronic will or part expressly or by inconsistency; or

(2) a physical act, if it is established by a preponderance of the evidence that the testator performed the act with the intent of revoking the will or part or that another individual performed the act in the testator’s physical presence and by the testator’s direction.

SECTION 8. ELECTRONIC WILL ATTESTED AND MADE SELF-PROVING AT TIME OF EXECUTION.

(a) An electronic will may be simultaneously executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses.

(b) If both the attesting witnesses are physically present in the same location as the testator at the time of signing under Section 5(a)(2), the acknowledgment and affidavits under subsection (a) must be:

(1) made before an officer authorized to administer oaths under law of the state in which execution occurs; and

(2) evidenced by the officer’s certificate under official seal affixed to or logically associated with the electronic will.

(c) [If one or both the attesting witnesses are not physically present in the same location as the testator at the time of signing under Section 5(a)(2), the acknowledgment and affidavits under subsection (a) must be:

(1) made before an officer authorized under [insert citation to Revised Uniform Law on Notarial Acts Section 14A (2018) or comparable provision of state law]; and

(2) evidenced by the officer’s certificate under official seal affixed to or logically associated with the electronic will.

(d) The acknowledgment and affidavits under subsection (a) must be in substantially the following form:

I, _____, the testator, sign this instrument and, being
(name)

sworn, declare to the undersigned officer that I sign this instrument as my electronic will, I sign it willingly or willingly direct another individual to sign it for me, I execute it as my voluntary act for the purposes expressed in this instrument, and 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 this instrument and, being sworn, declare to the undersigned officer that the testator signed this instrument as the testator’s electronic will, that the testator signed it willingly or willingly directed another individual to sign for the testator, and that each of us, in the physical [or electronic] presence of the testator, signs this electronic 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 _____,
(name)

the testator, and subscribed and sworn to before me by _____ and
(name)

_____, witnesses, this _____ day of _____, _____.
(name)

(Seal)

(Signed)

(Official capacity of officer)

[d][e] A signature physically or electronically affixed to an affidavit affixed to or logically associated with an electronic will under this [act] is deemed a signature of the electronic will for the purpose of Section 5(a).

Legislative Note: A state that has not adopted the Uniform Probate Code should conform Section 8 to its self-proving affidavit statute. The statements that the requirements for a valid will are met and the language required for the notary's certification should conform with the requirements under state law.

A state that has authorized webcam notarization by adopting the 2018 version of the Revised Uniform Law on Notarial Acts (RULONA) to should cite to Section 14A of the RULONA statute in subsection (c)(1). A state that has adopted a non-uniform law allowing webcam notarization should cite to the relevant section of state law in subsection (c)(1).

A state that does not permit an electronic will to be executed without all witnesses physically present should omit subsection (c) and should omit the words “or electronic” in subsection (d) and Section 5(a)(3).

SECTION 9. CERTIFICATION OF PAPER COPY. An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of an electronic will is a complete, true, and accurate copy of the electronic will. If the electronic will was made self-proving, the certified paper copy of the will must include the self-proving affidavit.

***Legislative Note:** A state may need to change its probate court rules to expand the definition of what may be filed with the court to include electronic filings.*

Court procedural rules may require that a certified paper copy be filed within a prescribed number of days of the filing of the application for probate. A state may want to include procedural rules specifically for electronic wills.

SECTION 10. 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 11. 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 12. APPLICABILITY. This [act] applies to the will of a decedent who dies on or after [the effective date of this act].

SECTION 13. EFFECTIVE DATE. This [act] takes effect