



THE UNIFORM ELECTRONIC WILLS ACT

- A Summary -

A generation ago, nearly all legal documents were printed on paper and existed only in physical form. Today, electronic documents are exceedingly common. Correspondence, financial statements, and even binding contracts are created, signed, and archived in a digital format. But under the law of most states, a person's last will and testament is only valid in tangible, usually paper, form. Why are the rules for wills different than for other legal documents? Because the person who made the will is deceased when a probate court must determine whether the document is authentic.

Traditionally, wills were not enforceable unless they were in writing, signed by the testator, and witnessed by two other people. These requirements showed the testator had thought about who should receive the testator's property and made an effort to leave clear, written instructions. If any provision of the will was challenged by an heir, the witnesses could provide evidence to the court that the testator was of sound mind when signing the will, that the document was not fraudulent and accurately reflected the testator's wishes, and that the testator made the will voluntarily rather than through coercion.

These requirements for executing wills are still important, but in the internet age paper is no longer necessary. Electronic documents can also be securely signed, witnessed, and archived until needed. Moreover, people who use the internet to communicate, shop, and transact business also expect to find legal services online. The Uniform Electronic Wills Act ("E-Wills Act") brings estate planning into the digital age by allowing the online execution of wills while preserving the legal safeguards to ensure a will's authenticity.

The E-Wills Act requires a testator to make a will that is readable as text at the time the testator electronically signs the document. The testator's signature must be witnessed by two people who add their own electronic signatures. Adopting states can opt for a version of the E-Wills Act that requires the witnesses to be physically present with the testator at the time of signing, or for a version that allows remote witnessing.

Like a paper will, an electronic will can be made "self-proving" so the witnesses need not testify in probate court unless the will's authenticity is challenged. This is done by including sworn, notarized statements by the testator and witnesses. If a state has adopted the Revised Uniform Law on Notarial Acts of 2018, or a similar law permitting remote online notarization, an electronic will can be executed and made self-proving entirely via the internet, with a secure, audio-visual record of the execution attached to the file.

In an effort to attract online estate planning business, a few states have enacted laws that attempt to authorize residents of *other* states to remotely execute a will under the enacting state's law. However, some probate courts will not recognize remotely executed wills, setting a potential trap for unwary testators whose carefully considered wills could be deemed invalid. The E-Wills Act provides a useful rule for interstate recognition of wills: The probate court will recognize a will executed under the law of another state only if the testator was either physically present or domiciled in the other state at the time the will was executed.

The E-Wills Act does not require electronic wills to comply with any specific technical standard or process, and therefore will not need to be updated to accommodate future developments.

For further information about the Uniform Electronic Wills Act, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.