

Electronic Wills

1. Background
 - a. Traditional wills acts don't contemplate e-wills
 - b. The Uniform Electronic Signatures Act (UETA) (1999) applies to bilateral commercial transactions with e-sign. Wills are unilateral.
2. Uniform Law Commission (July 2019) (UEWA)
 - a. [Final Act with Comments](#)
 - b. [Why your state should adopt the Uniform Electronic Wills Act.](#)
3. State Laws
 - a. PASSED
 - i. Nevada (passed in 2001 and amended in 2017)
 1. [NRS Chapter 133](#)
 2. NRS 133.085
 3. NRS 133.088 (Electronic Notary Provisions)
 4. 2017. Witnesses. Physically present or remote with technology.
 5. 2017. Deemed to be executed in Nevada even if done on-line.
 6. Updated law includes trusts, POA's and remote notarization.
 - ii. Indiana (2018)
 1. Ind. Code Ann. Section 29-1-21
 2. [HB 1303](#)
 3. Indiana: Also introduced at the beginning of this year, HB 1107 provided that citizens of Indiana could create electronic wills and trusts of which were signed electronically. It also sought to authenticate electronically created and signed living wills and health care powers of attorney. HB 1107 required further authentication similar to the requirements of Arizona's bill (the lone exception being that video recordings of the testator would have also been a form of additional authentication available to Indianans). But like Arizona's bill, the bill in Indiana also failed to get off the ground and did not pass through either house prior to the legislator's 2017 adjournment. HB 1107: A Bill for an Act to amend the Indiana Code concerning Probate, I.N. Legis., (2017).
 4. Final law. Two witnesses, in the presence of each other. No remote witnessing.
 - iii. Arizona (2019)

ARS Ann. Section 14-2500

 1. Arizona: SB 1298 was introduced in January 2017. Though it failed to gain much steam, it sought to authorize the practice of creating

and signing of both wills and trusts electronically. While there was no mention of digital signatures in the Arizona bill, it stated wills and trusts may be e-signed. Authentication was not to be as simple as a signature however. The bill's "Authentication Method" mandated that a form of government ID be provided by the testator. Furthermore, the testator would have had to provide biometric identification such as a fingerprint. Testators could have foregone biometric authentication and authenticated through more technology driven means including Public Key Infrastructure and Knowledge-Based Authentication methods. SB 1298: An Act amending Title 14, Chapter 2, A.Z. Legis., (2017).

2. Two attesting witnesses are in the physical presence of Testator.
 3. Passport, driver's license.
 - iv. Florida (2017 introduced, vetoed by Gov, passed May 2019, effective 1/1/2020)
 1. [HB 277](#)
 2. [SB 548](#)
 - v. Covers remote online notarization. Electronic notarization since 2007. Witnesses can be outside the state of Florida. Extreme certification of identity. Questions to be answered to identify yourself. UETA is the foundation.
 - vi. District of Columbia
 1. 18-113
 2. Only effective for the time period that the Mayor determines there is a public health emergency
 - vii. New York and Connecticut issued executive orders allow for temporary electronic notarization or execution of wills.
 - viii. Utah
 1. Adopted Uniform Electronic Wills Act. Utah Code 75-2-1401 (effective 8/31/2020)
 - ix. Colorado
 1. Adopted Uniform Electronic Wills Act. Colo Rev State 15-12-1508 (signed 01/21/2021)
- b. PENDING
- i. Ohio
 1. *In re Estate of Javier Castro*, Case No. 2013ES00140, Court of Common Pleas Probate Division, Lorain County, Ohio (June 19, 2013). *Castro* appears to indicate that wills executed electronically but in conformity with normal execution formalities would likely be valid under existing statutes in most states (or at

least in Ohio), without a need for legislation specifically authorizing electronic wills. Samsung Galaxy tablet. Witnesses.

2. Harmless Error Doctrine. Need two witnesses.

- a. Ohio RC 2107.18
- b. Ohio 2107.03. Method of will making.
- c. [“Electronic Wills and Ohio Probate Law”](#)
- d. [Ohio HB 692 \(June 2020\)](#)

ii. Michigan

1. In re Estate of Horton, 925 N.W. 2d 207, 325 Mich. App. 325 (2018) The Court held that the Probate Court did not err in determining the contents of the Evernote document were sufficient to express Horton’s testamentary intent because the document was written with the testator’s death in mind. It contains requests regarding funeral arrangements and dictates the distribution of the testator’s property after his death.
2. Michigan recognizes the “harmless error” rule. Doesn’t require two witnesses.
3. [Horton Case on Electronic Wills](#)
4. [Remote execution of estate planning documents from April 30, 2020 through December 31, 2020.](#)

iii. New Hampshire

1. The New Hampshire Electronic Wills Act (SB 40) as written was far less stringent on authentication. The bill only required that the will be e-signed by the testator and then e-signed by a notary or two witnesses. These signings were to be also capable of being done by means of live video and audio conference. SB 40: An Act relative to electronic wills, N.H. Legis., (2017).

iv. Virginia

1. Virginia HB 1643, sought to validate and regulate e-wills by amending the Virginia Code Title 64 to make Virginia electronic wills valid once e-signed by the testator and also e-signed either by notary or two witnesses. The e-will in Virginia would then have been required to be placed into the control of a qualified custodian who must have been in possession of visual records which proved the identities of all signers of the will - all provided contemporaneously with the actual signing of the document. HB 1643: Electronic Wills, V.A. Legis., (2017).
2. 2021 session. HB 1856 Electronic wills legislation. passed the House.

v. Tennessee

1. Taylor v. Holt: The testator drafted his will on his personal computer and signed it using a cursive-type computer font distinguishing the signature from the rest of the will's writing. Taylor v. Holt, 134 S.W.3d 830, 831 (Tenn. Ct. App. 2003). As written, the will left the entirety of the testator's estate to his girlfriend. Upon the testator's death, his sister, who would have been the sole intestate beneficiary, disputed the will as being defective due to a lack of proper signing. Tennessee defines the term signature as "any other symbol or methodology executed or adopted by a party with intention to authenticate a writing or record."
2. The Tennessee Court of Appeals found that the will had been sufficiently signed to satisfy probate. This ruling could be interpreted as precedent in validating electronic wills in Tennessee. However, it is important to note that at the time of the testator's creation of his will, two of his neighbors were present when he e-signed the Word document. Furthermore, the will was then printed and both neighbors signed the will with a pen. Therefore, it appears the court's ruling was based on the principle of harmless error and not a ruling which categorized e-signed wills as acceptable in Tennessee.

vi. California

1. AB 1667 February 2019

vii. Texas

1. 86 (R) HB 3848 introduced March 7, 2019, died in chamber

viii. Georgia

1. Executive order that allows wills to be witnessed and notarized remotely (April 2020)

ix. Alaska

1. SB 90 (JUD) introduced March 19, 2021

4. NC General Statutes Commission

- a. Uniform Laws Electronic Will Act
- b. Estate Planning Section, Legislative Committee, E-Wills subcommittee drafted a memo to GSC outlining issues with ULC E-Wills statute
 - i. Memorandum
- c. Formed a Committee to meet with Clerks, AOC, subcommittee members
 - i. Harmless Error – Smitherman – No
 - ii. Choice of Law – Foy
 - iii. Electronic signature

- iv. Remote notary
- v. Remote witnessing
- vi. Qualified Custodian
- vii. Revocation
- d. Draft Legislation
- e. Session 2023-2024

5. Articles

- a. <https://actecfoundation.org/podcasts/digital-will-electronic-will-ewill/>
- b. https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_38/issue-5--june-2017/the-future-of-electronic-wills/
- c. <https://www.forbes.com/sites/christinefletcher/2019/10/25/the-pros-and-cons-of-electronic-wills/#3338f28d5457>
- d. <https://www.forbes.com/sites/ashleaebeling/2019/01/17/electronic-wills-are-coming-whether-lawyers-like-it-or-not/#5cbba2ad71df>
- e. <https://www.ncbar.org/media/987264/epdecember2019-article-2.pdf>