RESOLUTION

RESOLVED, That the American Bar Association approves the Uniform Electronic Wills Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
REPORT

The Uniform Electronic Wills Act

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. Rules for wills differ because the person who made the will is deceased at the time 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.

Studies have shown that fewer than half of all American adults have a will. Moreover, people who regularly use the internet to communicate, shop, and transact business also expect to find legal services online, and may represent an untapped market for estate planners. 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 technological developments.

The ABA Advisor to the Drafting Committee was John T. Rogers. The work of the Drafting Committee is available at www.uniformlaws.org, the website of the Conference.


Respectfully submitted,

Carl Lisman
President, National Conference of Commissioners on Uniform State Laws
February 2020
GENERAL INFORMATION FORM

Submitting Entity: National Conference of Commissioners on Uniform State Laws

Submitted By: Carl Lisman, President

1. **Summary of the Resolution(s).**

   The National Conference of Commissioners on Uniform State Laws (NCCSUL) requests approval of the Uniform Electronic Wills Act by the American Bar Association (ABA) House of Delegates.

2. **Approval by Submitting Entity.**

   The National Conference of Commissioners on Uniform State Laws granted final approval to the Act at its July 2019 Annual Meeting.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

   No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   Technology and Access to Justice (01A105A); Legal Assistance for Active-Duty Military Personnel (90A114); Legal Assistance for Members of the Military Reserves (77M110).

   Approval of the Uniform Electronic Wills Act will allow attorneys in enacting states to provide technology-based access to justice by increasing access to online estate planning services. Estate planning attorneys will be able to offer lower-cost legal services without the necessity for an additional in-person meeting for execution of documents. The act will enable attorneys to provide estate planning services to remotely located individuals, including members of the military serving outside their state of residence.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

   Not applicable.

6. **Status of Legislation.** (If applicable)

   The Uniform Electronic Wills Act has not yet been adopted in any jurisdiction, but three states have adopted non-uniform legislation allowing the electronic execution of wills.
7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

   NCCUSL will present the Act to state legislatures for consideration and enactment.

8. **Cost to the Association.** (Both direct and indirect costs)

   None.

9. **Disclosure of Interest.** (If applicable)

   None.

10. **Referrals.**

    Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project, and those that expressed interest were provided with tentative drafts. The Drafting Committee’s work can be found at [https://www.uniformlaws.org/viewdocument/committee-archive-113?CommunityKey=a0a16f19-97a8-4f86-afc1-b1c0e051fc71&tab=librarydocuments](https://www.uniformlaws.org/viewdocument/committee-archive-113?CommunityKey=a0a16f19-97a8-4f86-afc1-b1c0e051fc71&tab=librarydocuments).

11. **Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address).** *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

    Tim Schnabel, ULC Executive Director
    111 North Wabash Ave., Suite 1010
    Chicago, IL 60602
    (312) 450-6604 (office)
    tschnabel@uniformlaws.org

12. **Name and Contact Information.** (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

    Carl Lisman, NCCUSL President
    Lisman Leckerling, P.C.
    Burlington, VT 05402
    clisman@lisman.com
EXECUTIVE SUMMARY

1. Summary of the Resolution.

That the American Bar Association approves the Uniform Electronic Wills Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2019 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue that the resolution addresses.

The Uniform Electronic Wills Act updates the common law rules for execution of wills. Under the act, an electronic will is legally executed and admissible for probate if the will was in a form readable as text at the time of its execution, electronically signed by the testator and two witnesses, and stored in a tamper-evident format. An electronic will can be made self-proving by including notarized affidavits from the testator and witnesses attesting to the validity of the instrument and its execution. The act also provides conditions for recognition of electronic wills executed under the law of another state.

3. Please explain how the proposed policy position will address the issue.

Approval of the Uniform Electronic Wills Act by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

There is no known opposition within the ABA.