COLORADO UNIFORM ELECTRONIC WILLS ACT

SECTION 1. SHORT TITLE. This act may be cited as the Colorado 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) Subject to subsection (B), to execute or adopt a tangible symbol; or to affix to or logically associate with the record an electronic symbol or process.

(B) the electronic signature of a testator or witness must be an electronic image of the testator's or witness' signature affixed to the electronic will.

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

(7) "Will" has the meaning set forth in section 15-10-201(59), C.R.S.

SECTION 3. LAW APPLICABLE TO ELECTRONIC WILL; 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(a) is an electronic will under this act if executed in compliance with the law of the jurisdiction where the testator is:

(1) physically located when the will is signed; or

(2) domiciled or resides when the will is signed or when the testator dies.

SECTION 5. EXECUTION OF ELECTRONIC WILL.

(a) Subject to Section 8(d) and except as provided in Section 6, 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 in the physical or electronic presence of the testator 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 within a reasonable time after witnessing:

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

(ii) the testator's acknowledgment of the signing of the will under paragraph (2) or acknowledgement of the will; or

(B) acknowledged by the testator before and in the physical or electronic presence of a notary public or other individual who is authorized by Colorado law to notarize records, and who is located in Colorado at the time of the notarial act is performed.

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

SECTION 6. HARMLESS ERROR. Section 15-11-503, C.R.S. applies to a will executed electronically.

SECTION 7. REVOCATION.

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

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

(1) a subsequent will that revokes all or part of the electronic will expressly or by inconsistency; or

(2) a physical act, if it is established by a clear and convincing evidence that the testator, with the intent of revoking all or part of the will, performed the act or directed another individual who performed the act in the testator's physical presence.

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) The acknowledgment and affidavits under subsection (a) must be:

(1) made in the physical presence of an officer authorized to administer oaths

under law of the state in which the testator signs pursuant to section 5(a)(2) or, if fewer than two attesting witnesses are physically present in the same location as the testator at the time of signing pursuant to section 5(a)(2), in the physical or electronic presence of a notary public or other individual who is authorized by Colorado law to notarize records, and who is located in Colorado at the time the notarial act is performed; and

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

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

I,______________________________, the testator, and, being sworn, declare to the
(name)

undersigned officer that I sign this instrument as my electronic will, I willingly sign it 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, being sworn, declare to the undersigned officer that the testator signed this instrument as the testator's electronic will, that the testator willingly signed it 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 instrument 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

Certificate of officer:

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)

____
(Capacity of officer)

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

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 the electronic will is a complete, true, and accurate copy of the electronic will. If the electronic will is made self-proving, the certified paper copy of the will must include the self-proving

affidavits.

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. TRANSITIONAL PROVISION. This act applies to the will of a decedent who dies on or after the effective date of this act.

SECTION 12. EFFECTIVE DATE. This act takes effect . . .

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Colorado Uniform Electronic Wills Act

By Herb E. Tucker

Date: August 27, 2020

UEWA Section	Prefatory Note
Section Title	NA
UEWA Statutory Language	NA
Uniform Law Commission Comment	See below for UEWA Prefatory Note
Current Colorado Law	NA
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	

UNIFORM ELECTRONIC WILLS ACT

Prefatory Note

Electronic Wills Under Existing Statutes. People increasingly turn to electronic tools to accomplish life's tasks, including legal tasks. They use computers, tablets, or smartphones to execute electronically a variety of estate planning documents, including pay-on-death and transfer-on-death beneficiary designations and powers of attorney. Some people assume that they will be able to execute all their estate planning documents electronically, and they prefer to do so for efficiency, cost savings, or other reasons. Indeed, a few cases involving wills executed on electronic devices have already arisen.

An early case involved a testator's signature typed in a word processing document, which was then printed in hard copy. In *Taylor v. Holt*, 134 S.W.3d 830 (Tenn. 2003), the testator typed his signature in a cursive font at the end of the electronic text of his will and then printed the will. Two witnesses watched him type the signature on the will, and then signed the printed copy of the will. The court had no trouble concluding that the typed signature qualified as the testator's signature. The statute defined signature to include a "symbol or methodology executed or adopted by a party with intention to authenticate a writing . . . ." TENN. CODE ANN. § 1-3-105(27) (1999).

In *Taylor* the will was not attested or stored electronically, but the case illustrates a situation in which the substitution of electronic tools for traditional pen and paper can lead to litigation.

In a more recent Ohio case, *In re Estate of Javier Castro*, Case No. 2013ES00140, Court of Common Pleas Probate Division, Lorain County, Ohio (June 19, 2013), the testator dictated a will to his brother, who wrote the will with a stylus on a Samsung Galaxy Tablet. The testator then signed the will on the tablet, using the stylus, as did the two witnesses. The probate court had to decide whether the electronic writing on the tablet met the statutory requirement that a will be "in writing." The court concluded that it did and admitted the will to probate. In *Castro*, the testator and all witnesses were in the same room and signed using a stylus rather than typing a signature. The Uniform Electronic Wills Act ("the E-Wills Act") gives effect to such a will and clarifies that the will meets the writing requirement. In *Castro*, the testator and witnesses had not signed an affidavit, so the will was not self-proving. Under the E-Wills Act, if a notary is present with the testator and witnesses, the will can be made self-proving. An alternative provided under the E-Wills Act allows a notary present electronically to prepare the self-proving affidavit.

An even more recent case illustrates what may be anticipated to be the most common electronic will scenario: that of a will prepared without witnesses and stored electronically. Shortly before his death by suicide, Duane Horton (a 21-year-old man) handwrote a journal entry stating that a document titled "Last Note" was on his phone. The journal entry provided instructions for accessing the note, and he left the journal and phone in his room. The Last Note included apologies and personal comments relating to his suicide as well as directions relating to his property. Mr. Horton typed his name at the end of the document. After considering the text of the document and the circumstances surrounding Mr. Horton's death, the probate and appeals court applied Michigan's harmless error statute and concluded that the note was a document that could be treated as executed in compliance with Michigan's requirements for execution of a will. *In re Estate of Horton*, 925 N.W.2d 207 (2018). Under the E-Wills Act, the note would be considered a will only if the state had adopted the harmless error provision of Section 6 and a court determined that the decedent intended the electronic writing to be the decedent's will and therefore excused the lack of witnesses.

Although existing statutes might validate wills like the ones in *Castro* and *Taylor*, litigation may be necessary to resolve the question of validity. Further, the results will be haphazard if no clear policy exists and given statutory variation across the states. States that have adopted the harmless error rule for will execution could use that rule to validate an electronic will, as the court did in *In re Horton*. However, harmless error requires a judicial decision based on clear and convincing evidence, so relying on harmless error could increase costs for parties and courts. Further, in the United States, only 11 states have enacted harmless error statutes. In a state that has not adopted a harmless error statute, a court might adopt the doctrine judicially, as endorsed by RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 3.2 (1999), or might use the doctrine of substantial compliance to validate a will that did not comply with the execution formalities. *See, e.g.*, *In re Will of Ranney,* 589 A.2d 1339 (N.J. 1991) (adopting substantial compliance prior to New Jersey's adoption of a harmless error statute.) However, courts are reluctant to adopt exceptions to statutory execution formalities. *See, e.g.*, *Litevich v. Probate Court, Dist. Of West Haven,* 2013 WL 2945055 (Sup. Ct. Conn. 2013); *Davis v. Davis- Henriques*, 135 A.3d 1247 (Conn. App. 2016) (rejecting arguments that the court apply harmless error). As more people turn to electronic devices to conduct personal business, statutory guidance on execution of electronic wills can streamline the process of validating those wills.

Goals of the E-Wills Act. Estate planning lawyers, notaries, and software providers are among those interested in electronic wills. As of 2019, state legislatures in Arizona, California, the District of Columbia, Florida, Indiana, New Hampshire, Texas, and Virginia have considered bills authorizing electronic execution of wills. Arizona, Indiana, and Florida have adopted new electronic wills legislation, and Nevada has revised its existing electronic wills statute.

Given the flurry of activity around this issue, the Uniform Law Commission became concerned that inconsistency would follow if states modify their will execution statutes without uniformity. The mobile population in the United States makes interstate recognition of wills important, and if states law on this question is not uniform, that recognition will be a significant issue. The E-Wills Act seeks:

- To allow a testator to execute a will electronically, while maintaining the safeguards wills law provides for wills executed on something tangible (usually paper);
- To create execution requirements that, if followed, will result in a valid will without a court hearing to determine validity, if no one contests the will; and
- To develop a process that would not enshrine a particular business model in the statutes.

The E-Wills Act seeks to preserve the four functions served by will formalities, as described in John H. Langbein, *Substantial Compliance with the Wills Act*, 88 HARV. L. REV. 489 (1975) (citing Lon Fuller, *Consideration and Form,* 41 COL. L. REV. 799 (1941), which discussed the channeling function in connection with contract law, and Ashbel G. Gulliver & Catherine J. Tilson, *Classification of Gratuitous Transfers*, 51 YALE L.J. 1, 5-13 (1941), which identified the other functions). Those four functions are:

- Evidentiary – the will provides permanent reliable evidence of the testator's intent.
- Channeling – the testator's intent is expressed in a way that is understood by those who will interpret it so that the courts and personal representatives can process the will efficiently and without litigation.
- Ritual (cautionary) – the testator has a serious intent to dispose of property in the way indicated and the instrument is in final form and not a draft.
- Protective – the testator has capacity and is protected from undue influence, fraud, delusion and coercion. The instrument is not the product of forgery or perjury.

Electronic Execution of Estate Planning Documents. In commercial and other contexts not involving a will, the Uniform Electronic Transactions Act (1999) (UETA) validates the use of electronic signatures. UETA§ 7(a). However, UETA contains an express exception for wills and testamentary trusts, making the E-Wills Act necessary if a legislature wants to permit electronic wills. UETA§ 3(b). As of 2019, all but three state have adopted UETA, with most of the enactments occurring in 2000 and 2001. The federal Electronic Signatures in Global and National commerce Act (E-SIGN) includes a similar exception. 15 U.S.C. 7003(a)(1).

Many documents authorizing nonprobate transfers of property are already executed electronically, and property owners have become accustomed to being able to use electronic beneficiary designations in connection with various will substitutes. The idea of permitting an electronic designation to control the transfer of property at death is already well accepted.

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Colorado Uniform Electronic Wills Act

By Herb E. Tucker

Date: August 27, 2020

UEWA Section	Section 1
Section Title	Short Title
UEWA Statutory Language	This [act] may be cited as the Uniform Electronic Wills Act
Uniform Law Commission Comment	None.
Colorado Subcommittee Comment	The Colorado enactment should call the act the "Colorado Uniform Electronic Wills Act".
Colorado Subcommittee Recommendation	Colorado should adopt this section with the addition of the word "Colorado" before "Uniform Electronic Wills Act."

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Colorado Uniform Electronic Wills Act

By Herb E. Tucker

Date: August 20, 2020

UEWA Section	Section 2
Section Title	Definitions
UEWA Statutory Language	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 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.
Uniform Law Commission Comment	**Paragraph 2. Electronic Presence.** An electronic will may be executed with the testator and all of the necessary witnesses present in one physical location. In that case the state's rules concerning presence for non-electronic wills, which may require line-of-sight presence or conscious presence, will apply. *See* Section 3. Because the E-Wills Act does not provide a separate definition of physical presence, a state's existing rules for presence will apply to determine physical presence. An electronic will is also valid if the witnesses are in the electronic presence of the testator, *see* Section 5. This definition provides for the meaning of electronic presence. Permitting electronic presence will make it easier for testators in remote locations and testators with limited mobility to execute their wills. The witnesses and testator must be able to communicate in "real time," a term that means "the actual time during which something takes place." MERRIAM-WEBSTER DICTIONARY, https://www.merriamwebster.com/dictionary/real%20time (last visited Sept. 22, 2019). The term is used in connection with electronic communication to mean that the people communicating do so without a delay in the exchange of information. For statutes using the term "real-time," see, e.g., CONN. GEN. STAT. ANN. § 16A-47b (2019) (real-time energy reports); COLO. REV. STAT.

	ANN. § 24-33.5-2102 (2019) ("communicate in real-time during an incident"); FLA. STAT. ANN. § 117.201(2) (2019) (in definition of "audio-visual communication technology" for online notarizations); ILL. STAT. ch. 220 § 5/16-107 (2019) (real-time pricing for utilities). In the definition of electronic presence, "to the same extent" includes accommodations for people who are differently-abled. The definition does not provide specific accommodations due to the concern that any attempt at specificity would be too restrictive and to allow the standards to keep current with future advances in technology. **Paragraph 5. Sign**. The term "logically associated" is used in the definition of sign, without further definition. Although Indiana has defined the term in its electronic wills statute, IND. CODE § 29-1-21-3(13) (defining logically associated as meaning that documents are "electronically connected, cross referenced, or linked in a reliable manner"), most statutes do not define the term. Most notably, the Uniform Electronic Transactions Act and the Revised Uniform Law on Notarial Acts (RULONA) use the term without defining it, due to the concern that an attempt at definition would be over- or under-inclusive as technology develops. Although often used in connection with a signature, the term is used in RULONA and in the E-Wills Act to refer both to a document that may be logically associated with another document as well as to a signature logically associated with a document. *See also* Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 *et seq*. **Paragraph 7. Will.** The E-Wills Act follows the Uniform Probate Code (UPC) in providing that the term "will" includes instruments that may not involve the disposition of property. The common law definition of "will" is well established, and a definition in the E-Wills Act might result in inadvertent changes to the common law understanding.
Current Colorado Law C.R.S. § 24-33.5-2102(h)	**15-10-201, C.R.S.** **(44.5)** "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. **(47.5)** "Sign" means, with present intent to authenticate or adopt a record other than a will: **(a)** To execute or adopt a tangible symbol; or **(b)** To attach to or logically associate with the record an electronic symbol, sound, or process.

	(49) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or insular possession subject to the jurisdiction of the United States. **(59)** "Will" includes any 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. "Will" does not include a designated beneficiary agreement that is executed pursuant to article 22 of this title. 24-21-502, C.R.S. **(2)** "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. **(3)** "Electronic record" means a record containing information that is created, generated, sent, communicated, received, or stored by electronic means. **(4)** "Electronic signature" means an electronic symbol, sound, or process attached to or logically associated with an electronic record and executed or adopted by an individual with the intent to sign the electronic record. **(11)** "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. **(12)** "Sign" means, with present intent to authenticate or adopt a record: **(a)** To execute or adopt a tangible symbol; or **(b)** To attach to or logically associate with the record an electronic symbol, sound, or process. **(13)** "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.
Arizona A.R.S. § 14-2518	An electronic will must meet all of the following requirements: 1. Be created and maintained in an electronic record. 2. Contain the electronic signature of the testator or the testator's electronic signature made by some other individual in the testator's conscious presence and by the testator's direction. 3. Contain the electronic signatures of at least two persons, each of who meet both the following requirements: (a) Was physically present with the testator when the testator electronically signed the will, acknowledged the testator's signature or acknowledged the will.

	(b) Electronically signed the will within a reasonable time after the person witnessed the testator signing the will, acknowledging the testator's signature or acknowledging the will as described in subdivision (a) of this paragraph.
Florida Fla. Stat. § 732.521 Fla. Stat. § 117.201	"Audio-video communication technology" has the same meaning as provided in s. 117.201. "Audio-video communication technology" means technology in compliance with applicable law which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another.
Indiana Ind. Code Ann. § 29-1-21-3	(1) "Actual presence means that: (A) a witness; or (B) another individual who observes the execution of the electronic will; Is physically present in the same physical location as the testator. The term does not include any form of observation or interaction that is conducted by means of audio, visual, or audiovisual telecommunication or similar technological means.
Nevada N.R.S. § 133.088(1)(a)	(a) A person shall be deemed to be in the presence of or appearing before another person if such persons are in: (1) The same physical location; or (2) Different physical locations but can communicate with each other by means of audio-video communication.

Colorado Subcommittee Comment	Adopt all UEWA definitions with the following modifications: (1) Refer to definition of "Will" under 15-10-201, C.R.S. (2) Modify the definition of "Sign" to require an electronic image of a signature (i.e. "handwritten signature") rather than just a typed name, etc.
Colorado Subcommittee Recommendation	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) Subject to subsection (B), to execute or adopt a tangible symbol; or to affix to or logically associate with the record an electronic symbol or process. (B) the electronic signature of a testator or

	witness must be an electronic image of the testator's or witness' signature affixed to the electronic will. (6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe. (7) "Will" has the meaning set forth in section 15-10-201(59), C.R.S.

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Colorado Uniform Electronic Wills Act

By John R. Valentine and Michael R. Stiff

Date: October 2, 2019

UEWA Section	Section 3
Section Title	Law Applicable to Electronic Wills; Principles of Equity
UEWA Statutory Language	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].
Uniform Law Commission Comment	The first sentence of this Section is didactic, and emphatically ensures that an electronic will is treated as a traditional one for all purposes. In this Section "law" means both common law and statutory law. Law other than the E-Wills Act continues to supply rules and guidance related to wills, unless the E-Wills Act modifies a state's other law related to wills. The common law requires that a testator intend that the writing be the testator's will. The Restatement explains, "To be a will, the document must be executed by the decedent with testamentary intent, i.e., the decedent must intend the document to be a will or to become operative at the decedent's death." RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 3.1, comment (g) (1999). A number of protective doctrines attempt to ensure that a document being probated as a will reflects the intent of the testator. Wills statutes typically include capacity requirements related to mental capacity and age. A minor cannot execute a valid will. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 8.1 (mental capacity), § 8.2 (age) (2003). Other requirements for validity may be left to the common law. A writing that appears to be a will may be challenged based on allegations of undue influence, duress, or fraud. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 8.3 (Undue Influence, Duress, or Fraud) (2003).

	The statutory and common law requirements that apply to wills in general also apply to electronic wills. Laws related to qualifications to serve as a witness also apply to electronic wills. For some of those requirements *see*, *e.g.*, Uniform Probate Code § 2-505.
Current Colorado Law	None
Arizona A.R.S. § 14-2518. Electronic will; requirements; interpretation	B. Except as provided in this section and sections 14-2519, 14-2520, 14-2521, 14-2522 and 14-2523, any question raised about the force, effect, validity and interpretation of an electronic will shall be determined in the same manner as a question regarding a paper will executed pursuant to section 14-2502.
Indiana Indiana Code. Ann. § 29-1-21-1. Purpose	The purpose of this chapter is to provide rules for the valid execution, attestation, self-proving, and probate of wills that are prepared and signed electronically. This chapter shall be applied fairly and flexibly so that a testator whose identify can be verified, who has testamentary capacity, and who is acting free from duress and undue influence may execute a valid electronic will consistent with the testator's intent. If an electronic will is properly and electronically signed by the testator and by the witnesses and is maintained as an electronic record or as a complete converted copy in compliance with this chapter, all the normal presumptions that apply to a traditional paper will that is validly signed and executed apply to an electronic will. (a) Except as provided in subsection (b), electronic wills are exclusively governed by this chapter. (b) If this chapter does not provide an explicit definition, form, rule, or statute concerning the creation, execution, probate, interpretation, storage, or use of an electronic will, the applicable statute from this article shall apply to the electronic will.

Indiana Code. Ann. § 29-1-21-2. Electronic wills exclusively governed by chapter – Exception	
Nevada Nevada Revised Statutes § 133.085. Electronic will	3. Except as otherwise provided in NRS 133.085 to 133.088, inclusive, and 133.300 to 133.340, inclusive, all questions relating to the force, effect, validity and interpretation of an electronic will that complies with the provisions of NRS 133.085 to 133.088, inclusive, and 133.300 to 133.340, inclusive, must be determined in the same manner as a will executed in accordance with NRS 133.040.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Adopt UEWA Section 3 as written.

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Colorado Uniform Electronic Wills Act

By: Letitia M. Maxfield and Susan Boothby

Date: November 20, 2019

UEWA Section	**SECTION 4.**
Section Title	**CHOICE OF LAW REGARDING EXECUTION.**
UEWA Statutory Language	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.
Uniform Law Commission Comment	Under the common law, the execution requirements for a will depended on the situs of real property, as to the real property, and the domicile of the testator, for personal property. *See* RESTATEMENT (SECOND) OF PROPERTY: WILLS & DON. TRANS. § 33.1, comment (b) (1992). The statutes of many states now treat as valid a will that was validly executed under the law of the state where the will was executed or where the testator was domiciled. For example, Uniform Probate Code § 2-506 states that a will is validly executed if executed according to "the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national." For a non-electronic will, the testator will necessarily be in the state where the will is executed. Many state statutes also permit the law of the testator's domicile when the testator dies to apply. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 3.1, comment (e) (1999). Some of the state statutes permitting electronic wills treat an electronic will as executed in the state and valid under the state law even if the testator is not physically in the state at the time of execution. *See, e.g.,* NEV. REV. STAT. 133.088(1)(e) (2019) (stating that "the document shall be deemed to be executed in this State" if certain requirements are met, even if the testator is not within the state). Thus, a Connecticut domiciliary could go online and execute a Nevada will without leaving Connecticut. If that happened, Connecticut should not be required to accept the will as valid, because the testator had not physically been present in the state (Nevada) that authorized the electronic will when the Connecticut domiciliary executed the will.

	This Section reflects the policy that a will valid where the testator was physically located should be given effect using the law of the state where executed. This rule is consistent with current law for non-electronic wills. Otherwise, someone living in a state that authorized electronic wills might execute a will there and then move to a state that did not authorize electronic wills and be forced to make a new will or die intestate if unable or unwilling to do so. An electronic will executed in compliance with the law of the state where the testator was physically located should be given effect, even if the testator later moves to another state, just as a non-electronic will would be given effect. A rule that would invalidate a will properly executed under the law of the state where the testator was physically present at the time of execution, especially if the testator was domiciled there, could trap an unwary testator and result in intestacy. ***Example***: Dennis lived in Nevada for 20 years. He met with a lawyer to have a will prepared, and when the will was ready for execution his lawyer suggested executing the will from his house, using the lawyer's electronic platform. Dennis did so, with the required identification. The lawyer had no concerns about Dennis's capacity and no worries that someone was unduly influencing him. Two years later Dennis moved to Connecticut where his daughter lived. Dennis died in Connecticut, with the Nevada will as his last valid will. Connecticut should give effect to Dennis's will, regardless of whether its execution would have otherwise been valid under Connecticut law.
Current Colorado Law CRS Section 15-11-506 CRS Section 15-11-502	 **Choice of Law as to execution.** A written will is valid if executed in compliance with section 15-11-502 or 15-11-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where, at the time of execution or at the time of death, the testator is domiciled, has a place of abode, or is a national. **Execution – witnessed or notarized wills-holographic wills.** (1) Except as otherwise provided in subsection (2) of this section and in sections 15-11-503 , 15-11-506 , and 15-11-513 , a will shall be: (a) In writing; (b) Signed by the testator, or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and (c) Either: (I) Signed by at least two individuals, either prior to or after the testator's death, each of whom signed within a reasonable time after he or she witnessed either the testator's signing of the will as described in paragraph (b) of this subsection (1) or the testator's acknowledgment of that signature or acknowledgment of the will; or

	(II) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments. (2) A will that does not comply with subsection (1) of this section is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting. (3) Intent that the document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting. (4) For purposes of this section, "conscious presence" requires physical proximity to the testator but not necessarily within testator's line of sight. (5) For purposes of this part 5, "will" does not include a designated beneficiary agreement that is executed pursuant to article 22 of this title.
CRS Section 15-11-503	**Writings intended as wills.** (1) Although a document, or writing added upon a document, was not executed in compliance with section 15-11-502 , the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute: (a) The decedent's will; (b) A partial or complete revocation of the will; (c) An addition to or an alteration of the will; or (d) A partial or complete revival of the decedent's formerly revoked will or a formerly revoked portion of the will. (2) Subsection (1) of this section shall apply only if the document is signed or acknowledged by the decedent as his or her will or if it is established by clear and convincing evidence that the decedent erroneously signed a document intended to be the will of the decedent's spouse. (3) Whether a document or writing is treated under this section as if it had been executed in compliance with section 15-11-502 is a question of law to be decided by the court, in formal proceedings, and is not a question of fact for a jury to decide. (4) Subsection (1) of this section shall not apply to a designated beneficiary agreement under article 22 of this title.
Florida	**Method and place of execution**.For purposes of the execution or filing of an electronic will, the acknowledgment of an electronic will

Fla. Stat. Section 732.522(4)	by the testator and the affidavits of witnesses under s. 732.503, or any other instrument under the Florida Probate Code: (1) Any requirement that an instrument be signed may be satisfied by an electronic signature. (2) Any requirement that individuals sign an instrument in the presence of one another may be satisfied by witnesses being present and electronically signing by means of audio-video communication technology that meets the requirements of part II of chapter 117 and any rules adopted thereunder, if: (a) The individuals are supervised by a notary public in accordance with s. 117.285; (b) The individuals are authenticated and signing as part of an online notarization session in accordance with s. 117.265; (c) The witness hears the signer make a statement acknowledging that the signer has signed the electronic record; and (d) The signing and witnessing of the instrument complies with the requirements of s. 117.285. (3) Except as otherwise provided in this part, all questions as to the force, effect, validity, and interpretation of an electronic will which comply with this section must be determined in the same manner as in the case of a will executed in accordance with s. 732.502. (4) An instrument that is signed electronically is deemed to be executed in this state if the instrument states that the person creating the instrument intends to execute and understands that he or she is executing the instrument in, and pursuant to the laws of, this state.
Nevada N. R. S. Section 133.088	**Performance of certain notarial acts by electronic means.** 1. For purposes of this title, including, without limitation, any declaration or affidavit made by an attesting witness as described in NRS 133.050, for all purposes relating to the execution and filing of any document with the court in any proceeding relating to an electronic will and for purposes of executing a power of attorney pursuant to NRS 162A.220, an advance directive or any document relating to an advance directive: (a) A person shall be deemed to be in the presence of or appearing before another person if such persons are in: (1) The same physical location; or (2) Different physical locations but can communicate with each other by means of audio-video communication. *** (e) Except as otherwise provided in subparagraph (3), regardless of the physical location of the person executing a document or of any witness, if a document is executed electronically, the document shall be deemed to be executed in this State and will be governed by the laws of this State and subject to the jurisdiction of the courts of this State if:

	(1) The person executing the document states that he or she understands that he or she is executing, and that he or she intends to execute, the document in and pursuant to the laws of this State; (2) The document states that the validity and effect of its execution are governed by the laws of this State; (3) Any attesting witnesses or an electronic notary public whose electronic signatures are contained in the document were physically located within this State at the time the document was executed in accordance with this section; or (4) In the case of a self-proving electronic will, the electronic will designates a qualified custodian who, at the time of execution: (I) If a natural person, is domiciled in this State; or (II) If an entity, is organized under the laws of this State or whose principal place of business is located in this State.
Indiana Ind.Code Ann 29-1-21-7	**Execution of electronic will** Sec. 7. An electronic will is legally executed if the manner of its execution complies with the law of: (1) this state; (2) the jurisdiction that the testator is actually present in at the time of execution; or (3) the domicile of the testator at the time of execution or at the time of the testator's death.
Arizona ARS Section 14-2506	**Execution; choice of law** A. A paper will is valid if it is executed in compliance with section 14-2502. An electronic will is valid if it is executed in compliance with section 14-2518. B. Notwithstanding subsection A of this section, a paper will or an electronic will is valid if its execution complies with the law at the time of execution of the place where the testator is physically present when the testator executes the will, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.
New Hampshire Revised Statutes Section 551:5	**Will Made Outside the State.** I. A will made out of this state, and valid according to the laws of the state or country where it was executed, may be proved and allowed in this state, and shall thereupon be as effective as it would have been if executed according to the laws of this state. II. A will made out of this state, and self-proved according to the

	laws of the state or country where it was executed, is self-proved in this state and shall be allowed as such by the probate court.
Colorado Subcommittee Comments	
Colorado Subcommittee Recommendation	Adopt UEWA Section 4 as written.

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Colorado Uniform Electronic Wills Act

By: Herb Tucker, Esq.

Date: August 12, 2020

UEWA Section	Section 5
Section Title	Execution of Electronic Will
UEWA Statutory Language	(a) Subject to Section 8(d)[and except as provided in Section 6], 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 in the physical [or electronic] presence of the testator 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] within a reasonable time after witnessing: [(A)] [(i)] the signing of the will under paragraph (2); or [(B)] [(ii)] the testator's acknowledgment of the signing of the will under paragraph (2) or acknowledgement of the 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 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 permits an electronic will only when the testator and witnesses are in the same physical location, and therefore prohibits remote attestation, should omit the bracketed words "or electronic" from subsection (a)(3) and Section 8(c).* *A state that has enacted Uniform Probate Code Section 2-502 or otherwise validates an unattested but notarized will should include subsection (a)(3)(B). Other states may include that provision for an electronic will because an electronic notarization may provide more protection for a will than a paper notarization.*
Colorado Alternative	**SECTION 5. EXECUTION OF ELECTRONIC WILL** (a) Subject to Section 8(d) and except as provided in Section 6, 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 in the physical or electronic presence of the testator 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 within a reasonable time after witnessing: (i) the signing of the will under paragraph (2); or (ii) the testator's acknowledgment of the signing of the will under paragraph (2) or acknowledgement of the will; or (B) acknowledged by the testator before and in the physical or electronic presence of a notary public or other individual **who is located in Colorado at the time the notarial act is performed and who is** authorized **by laws of Colorado** 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.
Uniform Law Commission Comment	**Comments** The E-Wills Act does not duplicate all rules related to valid wills, and except as otherwise provided in the E-Wills Act, a state's existing requirements for valid wills will apply to electronic wills. Section 5 follows the formalities required in UPC § 2-502. A state with different formalities should modify this Section to conform to its requirements. Under Section 5 an electronic will can be valid if executed electronically, even if the testator and witnesses are in different locations. Some states allow a will to be self-proved if the testator and witnesses sign an affidavit detailing the procedures followed in executing the will. The UPC treats the self-proving affidavit as creating a conclusive presumption that the signature requirements were met and a rebuttable presumption that other requirements for a valid will were met. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 3.1, comment (r) (1999). Rather than create extra requirements to validate an electronic will, the E-Wills Act creates extra requirements to make an electronic will self-proving when the testator and witnesses are in different locations. *See* Section 8. **Requirement of a Writing.** Statutes that apply to non-electronic wills require that a will be "in writing." The RESTATEMENT

	(THIRD) OF PROPERTY: WILLS & DON. TRANS. § 3.1, comment i (1999), explains: *i. The writing requirement.* All the statutes, including the original and revised versions of the Uniform Probate Code, require a will to be in writing. The requirement of a writing does not require that the will be written on sheets of paper, but it does require a medium that allows the markings to be detected. A will, for example, scratched in the paint on the fender of a car would be in writing, but one "written" by waving a finger in the air would not be. UPC § 2-502 requires that a will be "in writing" and the comment to that section says, "Any reasonably permanent record is sufficient." The E-Wills Act requires that the provisions of an electronic will be readable as text (and not as computer code, for example) at the time the testator executed the will. The E-Wills Act incorporates the requirement of writing by requiring that an electronic will be readable as text. One example of an electronic record readable as text is a will inscribed with a stylus on a tablet. *See In re Estate of Javier Castro*, Case No. 2013ES00140, Court of Common Pleas Probate Division, Lorain County, Ohio (June 19, 2013). An electronic will may also be a word processing document that exists on a computer or a cell phone but has not been printed. Under the E-Wills Act, the issue for these wills is not whether a writing exists but whether the testator signed the will and the witnesses attested it. The Uniform Law Commission decided to retain the requirement that a will be in writing. Thus, the E-Wills Act does not permit an audio or audio-visual recording of an individual describing the individual's testamentary wishes to constitute a will. However, an audio-visual recording of the execution of a will may provide valuable evidence concerning the validity of the will. The use of a voice activated computer program can create text that can meet the requirements of a will. For example, a testator could dictate the will to a computer using voice recognition software. If the computer converts the spoken words to text *before* the testator executes the will, the will meets that requirement that it be a record readable as text at the time of execution.

Electronic Signature. In *Castro*, the testator signed his name as an electronic image using a stylus. A signature in this form is a signature for purposes of the E-Wills Act. The definition of "sign" includes a "tangible symbol" or an "electronic symbol or process" made with the intent to authenticate the record being signed. Thus, a typed signature would be sufficient if typed with the intent that it be a signature. A signature typed in a cursive font or a pasted electronic copy of a signature would also be sufficient, if made with the intent that it be a signature. As e-signing develops, other types of symbols or processes may be used, with the important element being that the testator intended the action taken to be a signature validating the electronic will.

Requirement of Witnesses. Wills law includes a witness requirement for several reasons: (1) evidentiary—to identify persons who can answer questions about the voluntariness and coherence of the testator and whether undue influence played a role in the creation and execution of the will, (2) cautionary—to signal to the testator that signing the document has serious consequences, and (3) protective—to deter coercion, fraud, duress, and undue influence. Section 5 requires witnesses for a validly executed will.

Will substitutes—tools authorizing nonprobate transfers—typically do not require witnesses, and a testator acting without legal assistance may not realize that witnesses are necessary for an electronic will. The harmless error doctrine has been used to give effect to an electronic will executed without witnesses when the testator's intent was clear. In the electronic will context these cases have typically involved suicides that occurred shortly after the creation of the electronic document. *See, e.g., In re Estate of Horton*, 925 N.W. 2d 207, 325 Mich.App. 325 (2018). A state concerned that electronic wills will be invalidated due to lack of witnesses should consider adopting the harmless error provision in Section 6 of the E-Wills Act, even if the state has not adopted a similar provision for judicially correcting harmless error in execution.

Remote Witnesses. Because electronic wills may be executed via the internet, the question arises whether the witnesses to the testator's signature must be in the physical presence of the testator or whether electronic presence such as via a webcam and microphone will suffice. Some online providers of wills offer remote witnessing

as a service. The E-Wills Act does not include additional requirements for electronic wills executed with remote witnesses, but Section 8 imposes additional requirements before a will executed with remote witnesses can be considered self-proving.

The usefulness of witnesses who can testify about the testator's apparent state of mind if a will is challenged for lack of capacity or undue influence may be limited, because a witness who observes the testator sign the will may not have sufficient contact with the testator to have knowledge of capacity or undue influence. This is true whether the witnesses are in the physical or electronic presence of the testator. Nonetheless, the current legal standards and procedures address the situation adequately and remote attestation should not create significant new evidentiary burdens. The E-Wills Act errs on the side of not creating hurdles that result in denying probate to wills that represent the intent of their testators.

Reasonable Time. The witnesses must sign within a reasonable time after witnessing the testator sign or acknowledge the signing or the will. The Comment to UPC § 2-502 notes that the statute does not require that the witness sign before the testator dies, but some cases have held that signing after the testator's death is not "within a reasonable time." In *Matter of Estate of Royal*, 826 P. 2d 1236 (1992), the Supreme Court of Colorado held that attestation must occur before the testator's death, citing cases in several states that had reached the same result. Other cases have held a will valid even though a witness signed after the testator's death. *See, e.g*., In re Estate of Miller, 149 P.3d 840 (Idaho 2006). For electronic wills, a state's rules applicable to non-electronic wills apply.

Notarized Wills. A small number of states permit a notary public to validate the execution of a will in lieu of witnesses. Paragraph (3)(b) follows UPC § 2-502(a)(3)(B) and provides that a will can be validated if the testator acknowledges the will before a notary, even if the will is not attested by two witnesses. Because remote online notarization includes protection against tampering, other states may want to include the option for the benefit of additional security.

Definition of Electronic Presence

Section (2) Definitions: [(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.] **Comment** **Paragraph 2. Electronic Presence.** An electronic will may be executed with the testator and all of the necessary witnesses present in one physical location. In that case the state's rules concerning presence for non-electronic wills, which may require line-of-sight presence or conscious presence, will apply. *See* Section 3. Because the E-Wills Act does not provide a separate definition of physical presence, a state's existing rules for presence will apply to determine physical presence. An electronic will is also valid if the witnesses are in the electronic presence of the testator, *see* Section 5. This definition provides for the meaning of electronic presence. Permitting electronic presence will make it easier for testators in remote locations and testators with limited mobility to execute their wills. The witnesses and testator must be able to communicate in "real time," a term that means "the actual time during which something takes place." The term is used in connection with electronic communication to mean that the people communicating do so without a delay in the exchange of information. For statutes using the term "real-time," see, e.g., CONN. GEN. STAT. ANN. § 16A-47b (2019) (real-time energy reports); COLO. REV. STAT. ANN. § 24-33.5-2102 (2019) ("communicate in real-time during an incident"); FLA. STAT. ANN. § 117.201(2) (2019) (in definition of "audio-visual communication technology" for online notarizations); ILL. STAT. ch. 220 § 5/16-107 (2019) (real-time pricing for utilities). In the definition of electronic presence, "to the same extent" includes accommodations for people who are differently abled. The definition does not provide specific accommodations due to the concern that any attempt at specificity would be too restrictive and to allow the standards to keep current with future advances in technology.
Current Colorado Law C.R.S. § 15-11-502	**Execution - witnessed or notarized wills - holographic will** (1) Except as otherwise provided in subsection (2) of this section and in sections 15-11-503, 15-11-506, and 15-11-513, a will shall be:

	(a) In writing; (b) Signed by the testator, or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and (c) Either: (I) Signed by at least two individuals, either prior to or after the testator's death, each of whom signed within a reasonable time after he or she witnessed either the testator's signing of the will as described in paragraph (b) of this subsection (1) or the testator's acknowledgment of that signature or acknowledgment of the will; or (II) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments. (2) A will that does not comply with subsection (1) of this section is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting. (3) Intent that the document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting. (4) For purposes of this section, "conscious presence" requires physical proximity to the testator but not necessarily within testator's line of sight. (5) For purposes of this part 5, "will" does not include a designated beneficiary agreement that is executed pursuant to article 22 of this title.
C.R.S. 15-11-504	**Self-proved will** (1) A will that is executed with attesting witnesses may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the

	state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal.
Arizona A.R.S. § 14-2518	**Electronic will; requirements; interpretation** A. An electronic will must meet all of the following requirements: 1. Be created and maintained in an electronic record. 2. Contain the electronic signature of the testator or the testator's electronic signature made by some other individual in the testator's conscious presence and by the testator's direction. 3. Contain the electronic signatures of at least two persons, each of who meet both the following requirements: (c) Was physically present with the testator when the testator electronically signed the will, acknowledged the testator's signature or acknowledged the will. (d) Electronically signed the will within a reasonable time after the person witnessed the testator signing the will, acknowledging the testator's signature or acknowledging the will as described in subdivision (a) of this paragraph. 4. State the date that the testator and each of the witnesses electronically signed the will. 5. Contain a copy of a government-issued identification card of the testator that was current at the time of execution of the will. B. Except as provided in this section and sections 14-2519, 14-2520, 14-251, 14-2522 and 13-2523, any question raised about the force, effect, validity and interpretation of an electronic will shall be determined in the same manner as a question regarding a paper will executed pursuant to 14-2502.

	C. This section does not apply to a trust except a testamentary trust created in an electronic will.
Florida Fla. Sta. § 732.522	**Method and place of execution** For purposes of the execution or filing of an electronic will, the acknowledgment of an electronic will by the testator and the affidavits of witnesses under s. 732.503, or any other instrument under the Florida Probate Code: (1) Any requirement that an instrument be signed may be satisfied by an electronic signature. (2) Any requirement that individuals sign an instrument in the presence of one another may be satisfied by witnesses being present and electronically signing by means of audio-video communication technology that meets the requirements of part II of chapter 117 and any rules adopted thereunder, if: (a) The individuals are supervised by a notary public in accordance with s. 117.285; (b) The individuals are authenticated and signing as part of an online notarization session in accordance with s. 117.265; (c) The witness hears the signer make a statement acknowledging that the signer has signed the electronic record; and (d) The signing and witnessing of the instrument complies with the requirements of s. 117.285. (3) Except as otherwise provided in this part, all questions as to the force, effect, validity, and interpretation of an electronic will which comply with this section must be determined in the same manner as in the case of a will executed in accordance with s. 732.502. (4) An instrument that is signed electronically is deemed to be executed in this state if the instrument states that the person creating the instrument intends to execute and understands that

	he or she is executing the instrument in, and pursuant to the laws of, this state. **SUMMARY OF FLORIDA E-WILLS STATUTE AND REMOTE NOTARIZATION PROVISIONS** - The Florida Statute generally offers online notarization and witnessing of wills, trusts, powers of attorney and marital agreements. Online notarization creates a record. - Also, there is record keeping provisions in the Florida Statute. It provides for online notarization in real time with two-way audio-visual recording creating an electronic record and video. - Only qualified entities can serve as a custodian and they must insure that they have tamper evidence protection which would detect any efforts to amend the recorded document stored with the qualified custodian. **Steps Necessary to Create an Electronic Record** Step One: Notary - Witnesses must be in the US and residents of the US. - The remote notary must comply with strict standards and training regarding identity proofing. In addition, they must be able to authenticate the identity of the testator, as well as witnesses as set forth below.

	<u>Step Two: Verifying Identity of Testator and Screening the Testator</u>
	
	- The Notary will ask five questions of which four out of the five questions must be answered correctly. The questions relate to personal information that would only be known by the testator through credit records.
	
	- The Notary then screens the testator as to whether or not they are vulnerable adults. Generally, the testator must be 18 years of age or older and must be able to attest to the fact that they can perform activities of daily living and they do not have any mental or physical disability that would interfere with their ability to meet activities of daily living.
	
	- The first set of questions to determine whether or not the testator is a vulnerable adult and, therefore, prohibited from remote notarization, are the following three questions:
	
	    - Are they under any undue influence related to the execution of their will?
	
	    - Do they have any physical or mental disability that impairs their activities of daily living?
	
	    - Do they need assistance with their daily care?
	
	- If the Notary suspects that the testator is a vulnerable adult, then the witnesses must be in the physical presence of the testator and remote notarization is denied, as well as remote witnessing.

	Storage - Qualified Custodians can store the electronic will upon notice of death. - The Qualified Custodian must electronically transmit the electronic record to the appropriate court electronically. **Remote Witnesses** - The company providing electronic will services is going to provide online notary, as well as online witnesses. - The question is how are remote witnesses to an online will going to sign an attestation clause that they were in the physical presence of the testator and swear that the testator signed his or her will of their volition, free of undue influence. How do the witnesses know there isn't someone else in the room? **E-Notarization and Execution of E-Will** - E-notarization and execution of e-will – you can't have one without the other. - Currently Texas and Montana have e-notarization Bills pending. These states are not concerned about vulnerable testators.

Nevada N.R.S. § 133.088	1. For purposes of this title, including, without limitation, any declaration or affidavit made by an attesting witness as described in NRS 133.050, for all purposes relating to the execution and filing of any document with the court in any proceeding relating to an electronic will and for purposes of executing a power of attorney pursuant to NRS 162A.220, an advance directive or any document relating to an advance directive: (a) A person shall be deemed to be in the presence of or appearing before another person if such persons are in: (1) The same physical location; or (2) Different physical locations but can communicate with each other by means of audio-video communication. (b) An electronic notary public may electronically notarize electronic documents, including, without limitation, documents constituting or relating to an electronic will, in accordance with NRS 240.181 to 240.206, inclusive. (c) Any requirement that a document be signed may be satisfied by an electronic signature. (d) If a provision of law requires a written record, an electronic record satisfies such a provision. (e) Except as otherwise provided in subparagraph (3), regardless of the physical location of the person executing a document or of any witness, if a document is executed electronically, the document shall be deemed to be executed in this State and will be

governed by the laws of this State and subject to the jurisdiction of the courts of this State if:

(1) The person executing the document states that he or she understands that he or she is executing, and that he or she intends to execute, the document in and pursuant to the laws of this State;

(2) The document states that the validity and effect of its execution are governed by the laws of this State;

(3) Any attesting witnesses or an electronic notary public whose electronic signatures are contained in the document were physically located within this State at the time the document was executed in accordance with this section; or

(4) In the case of a self-proving electronic will, the electronic will designates a qualified custodian who, at the time of execution:

(I) If a natural person, is domiciled in this State; or

(II) If an entity, is organized under the laws of this State or whose principal place of business is located in this State.

2. Notwithstanding the provisions of subsection 1, the validity of a notarial act performed by an electronic notary public must be determined by applying the laws of the jurisdiction in which the electronic notary public is commissioned or appointed.

3. As used in this section:

	(a) "Advance directive" has the meaning ascribed to it in NRS 449A.703. (b) "Audio-video communication" means communication by which a person is able to see, hear and communicate with another person in real time using electronic means.
Indiana Ind. Code Ann. § 29-1-21-4	**Attestation; electronic signature; self proving clause** (a) To be valid as a will under this article, an electronic will **must** be executed by the electronic signature of the testator and attested to by the electronic signatures of at least two (2) witnesses in the following manner: (1) The testator and the attesting witnesses must be in each other's actual presence when the electronic signatures are made in or on the electronic will. The testator and witnesses must directly observe one another as the electronic will is being signed by the parties. (2) The testator and attesting witnesses must comply with: (A) the prompts, if any, issued by the software being used to perform the electronic signing; or (B) the instructions by the person, if any, responsible for supervising the execution of the electronic will. (3) The testator must state, in the actual presence of the attesting witnesses, that the instrument to be electronically signed is the testator's will.

	(4) The testator must: (A) electronically sign the electronic will in the actual presence of the attesting witnesses; or (B) direct another adult individual who is not an attesting witness to sign the electronic will on the testator's behalf in the actual presence of the testator and the attesting witnesses. (5) The attesting witnesses must electronically sign the electronic will in the actual presence of: (A) the testator; and (B) one another; after the testator has electronically signed the electronic will. (6) The: (A) testator; or (B) other adult individual who is: (i) not an attesting witness; and (ii) acting on behalf of the testator;

	must command the software application or user interface to finalize the electronically signed electronic will as an electronic record. The process described in this section may include as part of the electronic record for the electronic will any identity verification evidence pertaining to the testator or any document integrity evidence for the electronic will. (b) An electronic will may be self-proved: (1) at the time that it is electronically signed; and (2) before it is electronically finalized; by incorporating into the electronic record of the electronic will a self-proving clause described under subsection (c) An electronic will is not required to contain an attestation clause or a self-proving clause in order to be a valid electronic will. (c) A self-proving clause under subsection (b) must <u>**substantially**</u> be in the following form: "We, the undersigned testator and the undersigned witnesses, whose names are signed to the attached or foregoing instrument, declare: (1) That the testator executed the instrument as the testator's will. (2) That, in the actual and direct physical presence of both witnesses, the testator signed the will or directed another individual who is not one of the witnesses to sign for the testator in the testator's presence and in the witnesses' actual and direct physical presence; (3) That the testator executed the will as a free and voluntary act for the purposes expressed in it; (4) That each of the witnesses, in the actual and direct physical presence of the testator and each other, signed the will as a witness;

	(5) That the testator was of sound mind when the will was executed; (6) That, to the best knowledge of each attesting witness, the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies. That, to the best knowledge of each attesting witness, the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies. ________________________________ (insert date) (insert signature of testator) ________________________________ (insert date)(insert signature of witness) ________________________________ (insert date) (insert signature of witness)". A single signature from the testator and from each attesting witness may be provided for any electronic will bearing or containing a self-proving clause. (d) An electronic will that is executed in compliance with subsection (a) shall not be rendered invalid by the existence of any of the following attributes: (1) An attestation clause. (2) Additional signatures. (3) A self-proving clause that differs in form from the exemplar provided in subsection (c). (4) Any additional language that refers to the circumstances or manner in which the electronic will was executed.

	(e) **<u>This section shall be construed in a manner that gives effect to the testator's intent to execute a valid will.</u>**
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	**SECTION 5. EXECUTION OF ELECTRONIC WILL** (a) Subject to Section 8(d) and except as provided in Section 6, 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 in the physical or electronic presence of the testator 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 within a reasonable time after witnessing: (i) the signing of the will under paragraph (2); or (ii) the testator's acknowledgment of the signing of the will under paragraph (2) or acknowledgement of the will; or (B) acknowledged by the testator before and in the physical or electronic presence of a notary public or other individual who is authorized by Colorado law to notarize records, and who is located in Colorado at the time the notarial act is performed. (b) Intent of a testator that the record under subsection (a)(1) be the testator's electronic will may be established by extrinsic evidence.

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Colorado Uniform Electronic Wills Act

By: Stanley C. Kent

Date: February 5, 2020

UEWA Section	Section 6
Section Title	Harmless Error
UEWA Statutory Language	**Alternative A** A record readable as text 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 the decedent's will; (3) an addition to or modification of the decedent's will; or (4) a partial or complete revival of the decedent's formerly revoked will or part of the will. **Alternative B**

	[Cite to Section 2-503 of the Uniform Probate Code or comparable provision of the law of this state] applies to a will executed electronically. **End of Alternatives]** ***Legislative Note:*** *A state that has enacted Uniform Probate Code Section 2-503 or another harmless error rule for a non-electronic will, should enact Alternative B. A state that has not* *enacted a harmless error rule may not want to add a harmless error rule solely for an electronic will, but if it does, it should enact Alternative A.*
Uniform Law Commission Comment	**Comment** The harmless error doctrine was added to the UPC in 1990. Since then 11 states have adopted the rule. The Comments to UPC § 2-503 describe the development of the doctrine in Australia, Canada, and Israel, and cite to a number of studies and articles. See, also, RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS § 3.3 (1999); John H. Langbein, Absorbing South Australia's Wills Act Dispensing Power in the United States: Emulation, Resistance, Expansion 38 ADEL. L. REV. 1 (2017); John H. Langbein, Excusing Harmless Errors in the Execution of Wills: A Report on Australia's Tranquil Revolution in Probate Law, 87 COLUM. L. REV. 1 (1987). The focus of the harmless error doctrine is the testator's intent. A court can excuse a defect in the execution formalities if the

	proponent of the defective will can establish by clear and convincing evidence that the testator intended the writing to be the testator's will. The will formalities serve as proxies for testamentary intent, and harmless error doctrine replaces strict compliance with the formalities with direct evidence of that intent. The harmless error doctrine may be particularly important in connection with electronic wills because a testator executing an electronic will without legal assistance may assume that an electronic will is valid even if not witnessed. The high standard of proof that the testator intended the writing to serve as will should protect against abuse. A number of cases both in the United States and in Australia have involved electronic wills written shortly before the testator committed suicide. The circumstances surrounding the writing have led the courts in those cases to use harmless error to validate the wills, despite the lack of witnesses. See In re Estate of Horton, 925 N.W. 2d 207 (Mich. 2018) (involving an electronic document titled "Last Note"); In re Yu, [2013] QSC 322 (Queensland Sup. Ct.) (involving a document written on an iPhone and beginning, "This is the Last Will and Testament…"). Although in these cases the wills have been given effect, a will drafted in contemplation of suicide may be subject to challenge based on concerns about capacity. Even if a state adopts the harmless error doctrine, the other requirements for a valid will, including testamentary capacity and a lack of undue influence, will apply.
Current Colorado Law	**§ 15-11-503. Writings intended as wills**

	(1) Although a document, or writing added upon a document, was not executed in compliance with section 15-11-502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute: (a) The decedent's will; (b) A partial or complete revocation of the will; (c) An addition to or an alteration of the will; or (d) A partial or complete revival of the decedent's formerly revoked will or a formerly revoked portion of the will. (2) Subsection (1) of this section shall apply only if the document is signed or acknowledged by the decedent as his or her will or if it is established by clear and convincing evidence that the decedent erroneously signed a document intended to be the will of the decedent's spouse. (3) Whether a document or writing is treated under this section as if it had been executed in compliance with section 15-11-502 is a question of law to be decided by the court, in formal proceedings, and is not a question of fact for a jury to decide. (4) Subsection (1) of this section shall not apply to a designated beneficiary agreement under article 22 of this title. **§ 15-2.5-304. Substantial compliance with donor-imposed formal requirement** (1) A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if: (a) The powerholder knows of and intends to exercise the power; and

	(b) The powerholder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.
Current Law in other States	Electronic Will statutes enacted in other states have not codified the Harmless Error Doctrine. If Nevada, Florida and Arizona were to enact the Harmless Error Doctrine for paper wills, then presumably the Doctrine would also apply to electronic wills because of these provisions: **Nevada: § 133.085 (3) provides:** Except as otherwise provided in NRS …, inclusive, and …, inclusive, all questions relating to the force, effect, validity and interpretation of an electronic will that complies with the provision of NRS …, inclusive, and …, inclusive, must be determined in the same manner as a will executed in accordance with NRS .... [citations omitted] **Florida: § 732.522 (3) provides:** Except as otherwise provided in this part, all questions as to the force, effect, validity, and interpretation of an electronic will which comply with this section must be determined in the same manner as in the case of a will executed in accordance with section ... [citations omitted] **Arizona: § 14-2517 (B) provides:** Except as provided in this section and sections ..., any question raised about the force, effect, validity and interpretation of an electronic will shall be determined in the same manner as a question regarding a paper will executed pursuant to section ... [citations omitted]

	Indiana: The Indiana codification of its electronic will statute is interesting. For an electronic will to be valid in Indiana, arguably there must be strict compliance with statutory requirements for a valid electronic will. However, for an Indiana electronic will to be self-proving, only substantial compliance is required per section 29-1-21-4 which provides: **§ 29-1-21-4. Attestation; electronic signature; self proving clause** (a) To be valid as a will under this article, an electronic will **must** be executed by the electronic signature of the testator and attested to by the electronic signatures of at least two (2) witnesses in the following manner: (1) The testator and the attesting witnesses must be in each other's actual presence when the electronic signatures are made in or on the electronic will. The testator and witnesses must directly observe one another as the electronic will is being signed by the parties. (2) The testator and attesting witnesses must comply with: (A) the prompts, if any, issued by the software being used to perform the electronic signing; or (B) the instructions by the person, if any, responsible for supervising the execution of the electronic will. (3) The testator must state, in the actual presence of the attesting witnesses, that the instrument to be electronically signed is the testator's will. (4) The testator must:

	(A) electronically sign the electronic will in the actual presence of the attesting witnesses; or (B) direct another adult individual who is not an attesting witness to sign the electronic will on the testator's behalf in the actual presence of the testator and the attesting witnesses. (5) The attesting witnesses must electronically sign the electronic will in the actual presence of: (A) the testator; and (B) one another; after the testator has electronically signed the electronic will. (6) The: (A) testator; or (B) other adult individual who is: (i) not an attesting witness; and (ii) acting on behalf of the testator;

	must command the software application or user interface to finalize the electronically signed electronic will as an electronic record. The process described in this section may include as part of the electronic record for the electronic will any identity verification evidence pertaining to the testator or any document integrity evidence for the electronic will. (b) An electronic will may be self-proved: (1) at the time that it is electronically signed; and (2) before it is electronically finalized; by incorporating into the electronic record of the electronic will a self-proving clause described under subsection (c). An electronic will is not required to contain an attestation clause or a self-proving clause in order to be a valid electronic will. (c) A self-proving clause under subsection (b) must **<u>substantially</u>** be in the following form: "We, the undersigned testator and the undersigned witnesses, whose names are signed to the attached or foregoing instrument, declare: (1) That the testator executed the instrument as the testator's will.

	(2) That, in the actual and direct physical presence of both witnesses, the testator signed the will or directed another individual who is not one of the witnesses to sign for the testator in the testator's presence and in the witnesses' actual and direct physical presence; (3) That the testator executed the will as a free and voluntary act for the purposes expressed in it; (4) That each of the witnesses, in the actual and direct physical presence of the testator and each other, signed the will as a witness; (5) That the testator was of sound mind when the will was executed; and (6) That, to the best knowledge of each attesting witness, the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies. ______________________________ (insert date) (insert signature of testator) ______________________________ (insert date) (insert signature of witness) ______________________________ (insert date) (insert signature of witness)".

	A single signature from the testator and from each attesting witness may be provided for any electronic will bearing or containing a self-proving clause. (d) An electronic will that is executed in compliance with subsection (a) shall not be rendered invalid by the existence of any of the following attributes: (1) An attestation clause. (2) Additional signatures. (3) A self-proving clause that differs in form from the exemplar provided in subsection (c). (4) Any additional language that refers to the circumstances or manner in which the electronic will was executed. (e) <u>**This section shall be construed in a manner that gives effect to the testator's intent to execute a valid will.**</u> Note, too, that notwithstanding the apparent codification a rule requiring strict compliance with statutory will execution formalities, subsection (e) seems to codify the rule that underpins the Harmless Error Doctrine. In other words, the entire wills statute must be construed in a manner that gives effect to the testators intent to execute a valid will.

Colorado Subcommittee Comment	**I. History of § 15-11-503** The Uniform Law Commission promulgated the Harmless Error doctrine at *UPC*-503 as follows: > **§ 2-503. Harmless Error.** Although a document or writing added upon a document was not executed in compliance with Section 2-502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute: > (1) the decedent's will, > (2) a partial or complete revocation of the will, > (3) an addition to or an alteration of the will, or > (4) a partial or complete revival of his [or her] formerly revoked will or of a formerly revoked portion of the will. Colorado enacted the Harmless Error doctrine in 1994, effective 1995, at § 15-11-503, Colorado Revised Statutes. However, the Colorado enactment was narrower in scope than the Uniform Law because it applied only to wills. Colorado enactment provided: > **15-11-503. Writings intended as wills.** Although a will was not executed in compliance with section 15-11-502, the will is treated as if it had been executed in compliance with that section if the proponent of the will establishes by clear and convincing evidence that the decedent intended the will to constitute the decedent's will. Colorado amended 15-11-503 completely in 2001. The 2001 statute contained four subsections: Subsection (1) adopted *UPC*-503 such that the Harmless Error doctrine as of June 1, 2001, applied uniformly and broadly to not only wills but also to revocations, alterations and revivals of formerly revoked will.

	Subsection (2), which is not uniform, was added to restrict application of Harmless Error in two ways: • the doctrine only applies if the document in question is: (i) signed by the decedent; or (ii) acknowledged by the decedent as his or her will; or • it is established by clear and convincing evidence that the decedent erroneously signed a document intended to be the will of the decedent's spouse. Subsection (3), also not uniform, was added to confirm that application of the Harmless Error doctrine is a question of law to be decided by a court in formal proceedings and not a question of fact to be decided by a jury. Subsection (4) was added in 2010 after Colorado enacted the "Designated Beneficiary Agreement Statute." **II. Comparison of Harmless Error and Substantial Compliance.** Both doctrines are intent serving. Harmless Error allows a court to excuse, or to dispense with, defective compliance with the statutory formalities to create a valid will. Moving away from the traditional requirement of strict compliance with the formalities, the Harmless Error doctrine allows a court to excuse a defect in compliance if the court finds by clear and convincing evidence that decedent adopted the document as the decedent's will. *Restatement (Third) Property – Wills and other Donative Transfers,* section 3.3, cmt. b, explains: > The trend toward excusing Harmless Errors is based on the growing acceptance of the broader principal that mistake, whether in execution or in expression, should not be allowed to defeat intention nor to work unjust enrichment. The substantial compliance doctrine is similarly intent serving but in a narrower sense. The purpose is to excuse imperfect compliance with a formal requirement for execution of a power of appointment imposed by the donor on the power holder.

	However, the doctrine does not excuse compliance with formal requirements imposed by law. Further, the doctrine excuses compliance with formal requirements imposed by the donor only if application of the doctrine does not defeat a material purpose of the donor in imposing the formal requirement. *Restatement (Third) Property – Wills and other Donative Transfers,* section 19.10, cmts. a and c. Interestingly, application of Harmless Error is often described as "the rule of substantial compliance." *Restatement (Third) Property – Wills and other Donative Transfers,* section 3.3, Rptrs. notes on cmt. b. **III. Issue** Should this committee recommend enactment of the Harmless Error doctrine in the context of electronic wills and if so, should the committee recommend enactment of alternative A which is the uniform statute quoted above, or alternative B, which would to provide: Section 15-11-503, C.R.S. applies to a will executed electronically.
Colorado Subcommittee Recommendation	1. Adopt alternative "B" which will provide: **Section 15-11-503, C.R.S., applies to a will executed electronically.** 2. The Committee will revisit Section 2 (5) of the Act (definition of "sign") in light of the adoption of Section 15-11-503 (2) (the requirement that a document be either "signed" or "acknowledged" by the decedent as his or her will in connection with an electronic will.) For example, should a testator's valid "signing" of an electronic will be restricted to a "digitized signature", meaning a graphic image of the testator's signature? See Nevada Electronic Will Execution. Section 133.085

Colorado T&E Section Statutory Revisions Committee Subcommittee on the Colorado Uniform Electronic Wills Act

By: Hillary Hammond and Sarah Brooks

Date: July 21, 2020

UEWA Section	Seven
Section Title	Revocation
UEWA Statutory Language	SECTION 7. REVOCATION. (a) An electronic will may revoke all or part of a previous will. (b) All or part of an electronic will is revoked by: (1) a subsequent will that revokes all or part of the electronic will expressly or by inconsistency; or (2) a physical act, if it is established by a preponderance of the evidence that the testator, with the intent of revoking all or part of the will, performed the act or directed another individual who performed the act in the testator's physical presence.
Uniform Law Commission Comment	Revocation by physical act is permitted for non-electronic wills. The difficulty with physical revocation of an electronic will is that multiple copies of an electronic will may exist. Although a subsequent will may revoke an electronic will, a testator may assume that a will may be deleted by using a delete or trash function on a computer, as well as by other physical means. Guided by the goal of giving effect to the intent of most testators, the E-Wills Act permits revocation by physical act. Although a will may be revoked by physical act, revocation by subsequent will under subsection (a)(1) is the preferred, and more reliable, method of revocation. The lack of a certain outcome when revocation by physical act is used makes this form of revocation problematic. **Physical Act Revocation.** The E-Wills Act does not define physical act, which could include deleting a file with the click of a mouse or smashing a flash drive with a hammer. If an electronic will is stored with a third party that provides a designated mechanism for revocation, such as a delete button, and the testator intentionally pushes the button, the testator has used a physical act. If a testator prints a copy of an electronic will, writing "revoked" on the copy would be a physical act. Typing "revoked" on an electronic copy would also constitute a physical act, if the electronic will had not been notarized in a manner that locked the document.

	Sending an email that says, "I revoke my will," is not a physical act performed on the will itself because the email is separate from the will. The email could revoke the will under subsection (a)(1) as a subsequent will, if the email met the formalities required under Section 5(a) or met the burden of proof under Section 6. Of course, if there were a separate physical act, such as deleting an electronic will on an electronic device, such an email could be useful evidence in interpreting the testator's intent. If a testator uses a physical act to revoke an electronic will, the party arguing that the testator intended to revoke the will must prove the testator's intent. **Multiple Originals**. Although multiple copies of an electronic will may exist, a physical act performed on one of them by the testator with the intent to revoke will be sufficient to revoke the will. Traditional law applicable to duplicate originals supports this rule. RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 4.1, comment f, ¶ 2 (1999) is illustrative: If the testator executed more than one copy of the same will, each duplicate is considered to be the testator's will. The will is revoked if the testator, with intent to revoke, performs a revocatory act on one of the duplicates. The testator need not perform a revocatory act on all the duplicates. **Intent to Revoke.** Revocation by physical act requires that the testator intend to revoke the will. The E-Wills Act uses a preponderance of the evidence standard, which may be more likely to give effect to the intent of testators with electronic wills than would a clear and convincing evidence standard. A testator might assume that by deleting a document the testator has revoked it, and a higher evidentiary standard could give effect to wills that testators intended to revoke. The standard may increase the risk of a false positive but should decrease the risk of a false negative. The preponderance of the evidence standard is consistent with the law for nonelectronic wills. RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 4.1 (1999). *Example:* Alejandro executes a will electronically, using a service that provides witnesses and a notary. A year later Alejandro decides to revoke the will, but he is not ready to make a new will. He goes to the website of the company that is storing his will, enters his login information, and gets to a page that gives him the option to revoke the will by pressing a button labeled revoke. He affirms the decision when a pop-up screen asks if he is certain he wants to revoke his will. When Alejandro dies, his sister (the beneficiary of the electronic will) produces a copy he had sent her. The company provides information

indicating that he had revoked the will, following the company's protocol to revoke a will. The evidence is sufficient to establish that Alejandro intended to revoke his will, and under the E-Wills Act Alejandro's compliance with the company's protocol would qualify as a physical act revocation. His sister will be unsuccessful in her attempt to probate the copy she has.

Example: Yvette writes a will on her electronic tablet and executes it electronically, with two neighbors serving as witnesses. She saves a copy on her home computer. The will gives her estate to her nephew. Some years later Yvette decides she would prefer for her estate to be divided by her two intestate heirs, the nephew and a niece. Yvette deletes the will file on her computer, forgetting that she had given her tablet, which still has the will on it, to her nephew. She deleted the file with the intent to revoke her will, and she tells one of the witnesses as well as her niece that she has done so. When she dies her nephew produces the tablet and asserts that the will is her valid will. Her niece and the witness can testify that Yvette intended to revoke her will by the physical act of deleting the duplicate original on her computer. Under the E-Wills Act, a court could reasonably conclude that a preponderance of the evidence supports a finding of a physical act revocation. If the will on the computer had been deleted but the only person who could testify about Yvette's intent was the niece, the court might conclude that the niece's self-interest made her testimony less persuasive. The evidence in that case might not meet the preponderance of the evidence standard, especially if the niece had access to Yvette's computer.

Lost Wills. A testator's accidental deletion of an electronic will should not be considered revocation of the will. However, the common law "lost will" presumption may apply. Under the common law, if a will last known to be in the possession of the testator cannot be found at the testator's death, a presumption of revocation may apply. The soft presumption is that the testator destroyed the will with the intent to revoke it. RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 4.1, comment j (1999). The presumption can be overcome with extrinsic evidence that provides another explanation for the will's disappearance. A house fire might have destroyed the testator's files. A testator may have misplaced or inadvertently discarded files; age or poor health may make such inadvertence more likely. A person with motive to revoke and access to the testator's files might have destroyed the will. The presumption does not apply if the will was in the possession of someone other than the testator. If the document cannot be found and the presumption of revocation is overcome or does not apply, the contents of the will can be proved through a copy or testimony of the person who drafted the will.

	Physical Act by Someone Other than Testator. A testator may direct someone else to perform a physical act on a will for the purpose of revoking it. The testator must be in the physical presence of the person performing the act, not merely in the person's electronic presence. The use of "physical presence" is intended to mean that the state's rules on presence in connection with wills apply—either line of sight or conscious presence. UPC § 2-507(a)(2) relies on conscious presence.
Nevada Statute	**NRS133.120 Other means of revocation.** 1. A written will other than an electronic will may only be revoked by: (a) Burning, tearing, cancelling or obliterating the will, with the intention of revoking it, by the testator, or by some person in the presence and at the direction of the testator; (b) Another will or codicil in writing, executed as prescribed in this chapter; or (c) An electronic will, executed as prescribed in this chapter. 2. An electronic will may only be revoked by: (a) Another will, codicil, electronic will or other writing, executed as prescribed in this chapter; or (b) Cancelling, rendering unreadable or obliterating the will with the intention of revoking it, by: (1) The testator or a person in the presence and at the direction of the testator; or (2) If the will is in the custody of a qualified custodian, the qualified custodian at the direction of a testator in an electronic will. 3. This section does not prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator. [8:61:1862; B § 819; BH § 3007; C § 3078; RL § 6209; NCL § 9912] — (NRS A 1999, 2257; 2017, 3442)
Indiana Statute	**IN Code § 29-1-21-8 (2018)** IC 29-1-21-8 Revocation of electronic will Sec. 8.

	(a) This section describes the exclusive methods for revoking an electronic will. Before a testator completes or directs the revocation of an electronic will, the testator shall: (1) comply with; or (2) direct a third party custodian to comply, as applicable, with subsection (e). (b) A testator may revoke and supersede a previously executed electronic will by executing a new electronic will or traditional paper will that explicitly revokes and supersedes all prior wills. However, if the revoked or superseded electronic will is held in the custody or control of more than one (1) custodian, the testator shall use the testator's best efforts to contact each custodian and to instruct each custodian to permanently delete and render nonretrievable each revoked or superseded electronic will in the manner described in subsection (d). (c) If a testator is not using the services of a custodian to store the electronic record for an electronic will, the testator may revoke the electronic will by permanently deleting each copy of the electronic record associated with the electronic will in the testator's possession or control or by rendering the electronic record for the associated electronic will unreadable and nonretrievable. (d) The testator may revoke the testator's electronic will by executing a revocation document that: (1) is signed by the testator and two (2) attesting witnesses in a manner that complies with IC 29-1-5-3(b) or with section 4 of this chapter; (2) refers to the date on which the electronic will that is being revoked was signed; and (3) states that the testator is revoking the electronic will described in subdivision (2). A revocation document under this subsection may be signed and witnessed with the electronic signature of the testator and two (2) attesting witnesses, or signed and witnessed with signatures on paper as described in IC 29-1-5-6. (e) If a testator is using the services of an attorney or a custodian to store the electronic record associated with the testator's electronic will, the testator may revoke the electronic will by instructing the custodian or attorney to permanently delete or make unreadable and nonretrievable the electronic record associated with the electronic will. An instruction issued under this subsection must be made in writing to the custodian or attorney as applicable. A custodian or attorney who receives a written instruction described in this subsection shall: (1) sign an affidavit of regularity under section 13 of this chapter with respect to the electronic will to be revoked by the testator;

	(2) create a complete converted copy (as defined in section 3(3) of this chapter) of the electronic will being revoked; (3) make the signed affidavit of regularity a permanent attachment to or part of the complete converted copy; (4) follow the testator's written instruction by: (A) permanently deleting the electronic record for the revoked electronic will; or (B) rendering the electronic record associated with the revoked electronic will unreadable and nonretrievable; and (5) transmit or issue the complete converted copy of the revoked electronic will to the testator. (f) If the electronic record for a particular electronic will or a complete converted copy of the electronic will cannot be found after the testator's death, the presumption that applied to a lost or missing traditional paper will shall be applied to the lost or missing electronic will.
Florida Statute	**§ 732.506. Revocation by act.** A will or codicil, other than an electronic will, is revoked by the testator, or some other person in the testator's presence and at the testator's direction, by burning, tearing, canceling, defacing, obliterating, or destroying it with the intent, and for the purpose, of revocation. An electronic will or codicil is revoked by the testator, or some other person in the testator's presence and at the testator's direction, by deleting, canceling, rendering unreadable, or obliterating the electronic will or codicil, with the intent, and for the purpose, of revocation, as proved by clear and convincing evidence.
Arizona Statute	**14-2518. Electronic will; requirements; interpretation** ...B. Except as provided in this section and sections 14-2519, 14-2520, 14-2521, 14-2522 and 14-2523, any question raised about the force, effect, validity and interpretation of an electronic will shall be determined in the same manner as a question regarding a paper will executed pursuant to section 14-2502. **14-2507. Revocation of will; requirements** A. A testator may revoke a will in whole or in part: 1. By executing a subsequent will that revokes the previous will or part expressly or by inconsistency. 2. By performing a revocatory act on the will if the testator performs the act with this intent or if another person performs the act in the testator's conscious presence and by the testator's direction. For the purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating, rendering unreadable or destroying the will or any part of it. A burning, tearing or canceling is a revocatory act on the will whether or not the burn, tear or cancellation touched any of the words on the will.

	B. If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will. C. The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked and only the subsequent will is operative on the testator's death. D. The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will and each will is fully operative on the testator's death to the extent the wills are not inconsistent.
Current Colorado Law	**15-11-507. Revocation by writing or by act** **(1)** A will or any part thereof is revoked: **(a)** By executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or **(b)** By performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part of it or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph (b), "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a "revocatory act on the will", whether or not the burn, tear, or cancellation touched any of the words on the will. **(2)** If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will. **(3)** The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.

	(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.
Colorado Subcommittee Comment	A higher burden of proof should be required to overcome the presumption of revocation.
Colorado Subcommittee Recommendation	SECTION 7. REVOCATION. (a) An electronic will may revoke all or part of a previous will. (b) All or part of an electronic will is revoked by: (1) a subsequent will that revokes all or part of the electronic will expressly or by inconsistency; or (2) a physical act, if it is established by clear and convincing evidence that the testator, with the intent of revoking all or part of the will, performed the act or directed another individual who performed the act in the testator's physical presence.

<table>
<tr><td>UEWA Section</td><td>Section 8</td></tr>
<tr><td>Section Title</td><td>SECTION 8. ELECTRONIC WILL ATTESTED AND MADE SELF-PROVING AT TIME OF EXECUTION</td></tr>
<tr><td>UEWA Statutory Language</td><td>(a) An electronic will may be simultaneously executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses.

(b) 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 [or, if fewer than two attesting witnesses are physically present in the same location as the testator at the time of signing under Section 5(a)(2), before an officer authorized under [cite to Revised Uniform Law on Notarial Acts Section 14A (2018) or comparable provision of the law of this state]]; and

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

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

I, ___________________________, the testator, and, being sworn, declare to the (name) undersigned officer that I sign this instrument as my electronic will, I willingly sign it 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 ___________________, witnesses, being sworn, declare to the undersigned officer that the testator signed this instrument as the testator's electronic will, that the testator willingly signed it</td></tr>
</table>

	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 instrument 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 Certificate of officer: 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 ____________, ______. (Seal) ______________________________ (Signed) ______________________________ (Capacity of officer)

	(d) A signature physically or electronically affixed to an affidavit that is affixed to or logically associated with an electronic will under this [act] is deemed a signature of the electronic will under Section 5(a).
Uniform Law Commission Comment	***Legislative Note:*** *A state that has not enacted 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 remote online notarization by enacting the 2018 version of the Revised Uniform Law on Notarial Acts should cite to Section 14A of that act in subsection (b)(1). A state that has adopted a non-uniform law allowing remote online notarization should cite to the relevant section of state law in subsection (b)(1).* *A state that does not permit an electronic will to be executed without all witnesses being physically present should omit the bracketed language in subsection (b)(1) and the words "or electronic" in subsection (c) and Section 5(a)(3).* **Comment** If an officer authorized to administer oaths (a notary) is in a state that has adopted Section 14A of RULONA or a comparable statute, the notary need not be physically present. However, if the state has not adopted a statute allowing remote online notarization, the notary must be physically present in order to administer the oath under the law of that state. **Remote Online Notarization.** Section 14A of RULONA provides additional protection through a notarization process referred to as "remote online notarization." In remote online notarization, the person signing a document appears before a notary using audio-video technology. Depending on state law, the document can be paper or digital, but the signer and the notary are in two different places. Extra security measures are taken to establish the signer's identity. The E-Wills Act requires additional steps to make an electronic will with remote attestation self-proving. If the testator and necessary witnesses are in the same physical location, the will can be made self-proving using a notary who can notarize an electronic document but who is not authorized to use remote online notarization. However, if anyone

	necessary to the execution of the will is not in the same physical location as the testator, the will can be made self-proving only if remote online notarization is used. **Signatures on Affidavit Used to Execute Will.** Subsection [(d)] addresses the problem that arises when a testator and witnesses sign an affidavit, mistakenly thinking they are signing the will itself. UPC § 2-504(c) incorporated this provision into the UPC in 1990 to counteract judicial interpretations in some states that had invalidated wills where this mistake had occurred. **Time of Affidavit.** Under the UPC a will may be made self-proving at a time later than execution. The E-Wills Act does not permit the execution of a self-proving affidavit for an electronic will other than at the time of execution of the electronic will. An electronic will has metadata that will show the date of execution, and if an affidavit is logically associated with an electronic will at a later date, the date of the electronic will and the protection provided by the self-proving affidavit may be uncertain. If a testator fails to make an electronic will self-proving simultaneously with the will's execution, the testator can later re-execute the electronic will. The additional burden on the testator is justified given the possible confusion and loss of protection that could result from a later completion of an affidavit.
Current Colorado Law C.R.S. § 15-11-504	**Self-Proved Will** **(1)** A will that is executed with attesting witnesses may be simultaneously executed, attested, and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form: I, _______________, the testator, sign my name to this instrument this ____ day of ____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

	________________ Testator We, ________________ and ________________, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as [his] [her] will and that [he] [she] signs it willingly (or willingly directs another to sign for [him] [her]), and that [he] [she] executes it as [his] [her] free and voluntary act for the purposes therein expressed, and that each of us, in the conscious presence of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence. ________________ ________________ Witness Witness THE 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 _____, _____. (SEAL)(SIGNED) ______________________________ Official capacity of officer) **(2)** A will that is executed with attesting witnesses may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form: THE STATE OF ________________

<table>
<tr><td></td><td>COUNTY OF ________________

We, ________________, ________________, and ________________, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that [he] [she] had signed willingly (or willingly directed another to sign for [him] [her]), and that [he] [she] executed it as [his] [her] free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the conscious presence of the testator, signed the will as witness and that to the best of [his] [her] knowledge the testator was at that time eighteen years of age or older, of sound mind, and under no constraint or undue influence.

____

Testator

________________ ________________

Witness Witness

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

(SEAL)(SIGNED) ________________________________

Official capacity of officer)

(3) A signature affixed to a self-proving affidavit attached to a (3) will is considered a signature affixed to the will if necessary to prove the will's due execution.</td></tr>
<tr><td>Colorado Comment</td><td>COMMENT

A self-proved will may be admitted to probate as provided in Sections 3-303, 3-405, and 3-406 without the testimony of any attesting witness, but otherwise it is treated no differently from a will not self proved. Thus, a self-proved will may be contested (except in regard to questions of proper execution), revoked, or amended by a codicil in exactly the same fashion as a will not self proved. The procedural advantage of a self-proved will is limited to formal testacy</td></tr>
</table>

	proceedings because Section 3-303, which deals with informal probate, dispenses with the necessity of testimony of witnesses even though the instrument is not self proved under this section. Subsection (c) was added in 1990 to counteract an unfortunate judicial interpretation of similar self-proving will provisions in a few states, under which a signature on the self-proving affidavit was held not to constitute a signature on the will, resulting in invalidity of the will in cases in which the testator or witnesses got confused and only signed on the self-proving affidavit. See Mann, Self-proving Affidavits and Formalism in Wills Adjudication, 63 Wash. U. L.Q. 39 (1985); Estate of Ricketts, 773 P.2d 93 (Wash.Ct.App. 1989). **2008 Revision.** Section 2-502(a) was amended in 2008 to add an optional method of execution by having a will notarized rather than witnessed by two attesting witnesses. The amendment to Section 2-502 necessitated amending this section so that it only applies to a will that is executed with attesting witnesses. **Historical Note.** This Comment was revised in 2008.
Arizona Statutes	**A.R.S § 14-2519. Self-proved electronic will** In addition to the requirements of section 14-2504, to be self-proved, an electronic will must meet all of the following requirements: 1. Contain the electronic signature and electronic seal of a notary public placed on the will in accordance with applicable law. 2. Designate a qualified custodian to maintain custody of the electronic will. 3. Before being offered for probate or being reduced to a certified paper original, be under the exclusive control of a qualified custodian at all times **A.R.S §14-2504. Self-proved wills; sample form; signature requirements** A. A will may be simultaneously executed, attested and made self-proved by its acknowledgment by the testator and by affidavits of the witnesses if the acknowledgment and affidavits are made before an officer authorized to administer oaths under the laws of the state in which execution occurs and are evidenced by the officer's certificate, under official seal, in substantially the following form:

	I, _______________, the testator, sign my name to this instrument this _____ day of _______________, and being first duly sworn, do declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly, or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes expressed in that document and that I am eighteen years of age or older, of sound mind and under no constraint or undue influence. _______________________ Testator We, _______________, _______________, the witnesses, sign our names to this instrument being first duly sworn and do declare to the undersigned authority that the testator signs and executes this instrument as his/her will and that he/she signs it willingly, or willingly directs another to sign for him/her, and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind and under no constraint or undue influence. ____________________ Witness ____________________ Witness The 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 _______________. (Seal) (Signed)______________________

	______________________________ (Official capacity of officer) B. An attested will may be made self-proved at any time after its execution by its acknowledgment by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form: The State of _______________ County of __________________ We, ________________, _________________ and _____________, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument being first duly sworn do declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that he/she signed willingly, or willingly directed another to sign for him/her, and that he/she executed it as his/her free and voluntary act for the purposes expressed in that document, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his/her knowledge the testator was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence. _________________________ Testator _________________________ Witness _________________________ Witness

	Subscribed, sworn to and acknowledged before me by ______________, the testator, and subscribed and sworn to before me by _____________ and _____________, witnesses, this _____ day of ________________. (Seal) (Signed)______________________ ________________________________ (Official capacity of officer) C. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.
Florida	**732.523 Self-proof of electronic will.** —An electronic will is self-proved if: (1) The acknowledgment of the electronic will by the testator and the affidavits of the witnesses are made in accordance with s. 732.503 and are part of the electronic record containing the electronic will, or are attached to, or are logically associated with, the electronic will; (2) The electronic will designates a qualified custodian; (3) The electronic record that contains the electronic will is held in the custody of a qualified custodian at all times before being offered to the court for probate; and (4) The qualified custodian who has custody of the electronic will at the time of the testator's death certifies under oath that, to the best knowledge of the qualified custodian, the electronic record that contains the electronic will was at all times before being offered to the court in the custody of a qualified custodian in compliance with s. 732.524 and that the electronic will has not been altered in any way since the date of its execution.

732.503 Self-proof of will.—

(1) A will or codicil executed in conformity with s. 732.502 may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will, in substantially the following form:

STATE OF FLORIDA

COUNTY OF

I, , declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

Testator

We, and , have been sworn by the officer signing below, and declare to that officer on our oaths that the testator declared the instrument to be the testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the testator and of each other.

Witness

Witness

Acknowledged and subscribed before me by the testator, (type or print testator's name), who is personally known to me or who has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, and sworn to and subscribed before me by the witnesses, (type or print name of first witness) who is personally known to me or who has produced (state type of identification—see s. 117.05(5)(b)2.) as identification and (type or print name of second witness) who is personally known to me or who has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, and subscribed by me in the presence of the testator and the subscribing witnesses, all on (date).

	(Signature of Officer) (Print, type, or stamp commissioned name and affix official seal) (2) A will or codicil made self-proved under former law, or executed in another state and made self-proved under the laws of that state, shall be considered as self-proved under this section.
Indiana (Note: The provision regarding the self-proving affidavit is at IC29-1-21-4((b) & (c))	**IC 29-1-21-4 Attestation; electronic signature; self proving clause** Sec. 4. (a) To be valid as a will under this article, an electronic will must be executed by the electronic signature of the testator and attested to by the electronic signatures of at least two (2) witnesses in the following manner: (1) The testator and the attesting witnesses must be in each other's actual presence when the electronic signatures are made in or on the electronic will. The testator and witnesses must directly observe one another as the electronic will is being signed by the parties. (2) The testator and attesting witnesses must comply with: (A) the prompts, if any, issued by the software being used to perform the electronic signing; or (B) the instructions by the person, if any, responsible for supervising the execution of the electronic will. (3) The testator must state, in the actual presence of the attesting witnesses, that the instrument to be electronically signed is the testator's will. (4) The testator must: (A) electronically sign the electronic will in the actual presence of the attesting witnesses; or (B) direct another adult individual who is not an attesting witness to sign the electronic will on the testator's behalf in the actual presence of the testator and the attesting witnesses. (5) The attesting witnesses must electronically sign the electronic will in the actual presence of: (A) the testator; and (B) one another; after the testator has electronically signed the electronic will. (6) The: (A) testator; or (B) other adult individual who is: (i) not an attesting witness; and (ii) acting on behalf of the testator; must command the software application or user interface to finalize the electronically signed electronic will as an electronic record.

	The process described in this section may include as part of the electronic record for the electronic will any identity verification evidence pertaining to the testator or any document integrity evidence for the electronic will. (b) An electronic will may be self-proved: (1) at the time that it is electronically signed; and (2) before it is electronically finalized; by incorporating into the electronic record of the electronic will a self-proving clause described under subsection (c). An electronic will is not required to contain an attestation clause or a self-proving clause in order to be a valid electronic will. (c) A self-proving clause under subsection (b) must substantially be in the following form: "We, the undersigned testator and the undersigned witnesses, whose names are signed to the attached or foregoing instrument, declare: (1) That the testator executed the instrument as the testator's will. (2) That, in the actual and direct physical presence of both witnesses, the testator signed the will or directed another individual who is not one of the witnesses to sign for the testator in the testator's presence and in the witnesses' actual and direct physical presence; (3) That the testator executed the will as a free and voluntary act for the purposes expressed in it; (4) That each of the witnesses, in the actual and direct physical presence of the testator and each other, signed the will as a witness; (5) That the testator was of sound mind when the will was executed; and (6) That, to the best knowledge of each attesting witness, the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies.
Nevada	**NRS 133.086 Requirements for self-proving electronic will; acceptance of declaration or affidavit.** 1. An electronic will is self-proving if: (a) The declarations or affidavits of the attesting witnesses are incorporated as part of, attached to or logically associated with the electronic will, as described in NRS 133.050; (b) The electronic will designates a qualified custodian to maintain custody of the electronic record of the electronic will; and (c) Before being offered for probate or being reduced to a certified paper original that is offered for probate, the electronic will was at all times under the custody of a qualified custodian. 2. A declaration or affidavit of an attesting witness made pursuant to NRS 133.050 and an affidavit of a person made pursuant to NRS 133.340 must be accepted by a court as if made before the court.

	NRS 133.050 Attesting witnesses may sign self-proving declarations or affidavits to be attached to or associated with will. 1. Any attesting witness to a will, including, without limitation, an electronic will, may sign a declaration under penalty of perjury or an affidavit before any person authorized to administer oaths in or out of the State, stating such facts as the witness would be required to testify to in court to prove the will. The declaration or affidavit must be written on the will or, if that is impracticable, on some paper attached thereto. If the will is an electronic will, the declaration or affidavit must be in a record incorporated as part of, attached to or logically associated with the electronic will. The sworn statement of any witness so taken must be accepted by the court as if it had been taken before the court. 2. The affidavit described in subsection 1 may be in substantially the following form: State of Nevada } }ss. County of............................... } (Date)....................................... Then and there personally appeared .... and ...., who, being duly sworn, depose and say: That they witnessed the execution of the foregoing will of the testator, ...; that the testator subscribed the will and declared it to be his or her last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory. .... Affiant ....

	Affiant Subscribed and sworn to before me this ...... day of the month of ...... of the year .... Notary Public 3. The declaration described in subsection 1 may be in substantially the following form: Under penalty of perjury pursuant to the law of the State of Nevada, the undersigned, ... and ...., declare that the following is true of their own knowledge: That they witnessed the execution of the foregoing will of the testator, ...; that the testator subscribed the will and declared it to be his or her last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory. Dated this .... day of ...., ... Declarant .... Declarant 4. If a testator or a witness signing an affidavit or declaration described in subsection 1 appears by means of audio-video communication, the form for the affidavit or declaration, as set forth in subsections 2 and 3, respectively, must be modified to indicate that fact. 5. As used in this section, “audio-video communication” has the meaning ascribed to it in NRS 133.088.

	NRS 133.055 Signature affixed to self-proving affidavit or declaration that is attached to will considered signature affixed to will. A signature affixed to a self-proving affidavit or a self-proving declaration that is attached to a will and executed at the same time as the will is considered a signature affixed to the will if necessary to prove the execution of the will.
Colorado Subcommittee Comment	Note that a self-proving affidavit is permitted only at the time of signing the electronic will. Should this be clarified with the word "only" or some other limiting language? Or should a testator be allowed to self-prove an electronic will after the fact if the affidavit identifies the metadata or contains other information that proves that it refers to the correct electronic will? Also, Arizona, Florida, and Nevada buck uniformity and require custodians to maintain custody of the will in order for a self-proving affidavit to be valid. There is wisdom in this. See A.R.S. §§ 14-2520, et seq. (definition and duties if qualified custodian); F.R.S. §§ 732.524-525 (definition, bonding, liability, and receivership of qualified custodian); N.R.S. §§ 133.286 ("'Qualified custodian' means a person who meets the requirements of NRS 133.320."); 133.300, et seq. (qualifications, duties, and cessation of qualified custodian). Indiana does not require a custodian, but it defines a custodian and authorizes a custodian to maintain an electronic will for evidentiary purposes. I.R.S. §§ 29-1-21-3(4)-(6) (definitions), 29-1-21-10 (maintenance, receipt, and transfer of electronic will), 29-1-21-13 (affidavit of regularity signed by a custodian). Given that three of the four states require a custodian in order for a self-providing affidavit to be valid, and the fourth state (Indiana) permits it, the Uniform law is lacking in this regard. However, the subcommittee recommends that the CBA reserve proposing a final version of Sections 8 and Section 9 and engage in conversations with members of the Colorado legislature and Colorado's Commission on Uniform Laws. The subcommittee will continue to review and revise language that proposes qualified custodians or a similar concept via the state court administrator's office prior to the legislative session. The inclusion of a requirement for qualified custodians and/or use of the state court administrator's office for this purpose is likely to have fiscal impacts and be of interest to other stakeholders during the legislative process. The subcommittee supports adopting the language below subject to further review and comment during the legislative session.

Colorado Subcommittee Recommendation	(a) An electronic will may be simultaneously executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses. (b) The acknowledgment and affidavits under subsection (a) must be: (1) made in the physical presence officer authorized to administer oaths under law of the state in which the testator signs pursuant to section 5(a)(2) or, if fewer than two attesting witnesses are physically present in the same location as the testator at the time of signing under pursuant to section 5(a)(2), in the physical or electronic presence of a notary public or other individual who is authorized by Colorado law to notarize records, and who is located in Colorado at the time the notarial act is performed; and (2) evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will. (c) The acknowledgment and affidavits under subsection (a) must be in substantially the following form: I, ___________________________, the testator, and, being sworn, declare to the (name) undersigned officer that I sign this instrument as my electronic will, I willingly sign it 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 ___________________, witnesses, being sworn, declare to the undersigned officer that the testator signed this instrument as the testator's electronic will, that the testator willingly signed it 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 instrument 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

Certificate of officer:

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 ____________, _____.

(Seal) ______________________________

(Signed)

____

(Capacity of officer)

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

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Colorado Uniform Electronic Wills Act

By Peter W. Bullard

Date: August 7, 2020

UEWA Section	Section 9
Section Title	Certification of Paper Copy
UEWA Statutory Language	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.*
Uniform Law Commission Comment	None.
Current Colorado Law	None
Arizona A.R.S. § 14-2519. Self-proved electronic will. A.R.S. § 14-2523 Certified paper original of electronic will; affidavits.	In addition to the requirements of section 14-2504, to be self-proved, an electronic will must meet all of the following requirements: 1. Contain the electronic signature and electronic seal of a notary public placed on the will in accordance with applicable law. 2. designate a qualified custodian to maintain custody of the electronic will. 3. Before being offered for probate or being reduced to a certified paper original, be under the exclusive control of a qualified custodian at all times. A. On the creation of a certified paper original of an electronic will, if the electronic will has always been in the custody of a qualified custodian, the qualified custodian shall state in an affidavit all of the following: 1. That the qualified custodian is eligible to act as a qualified custodian in this state and is the qualified custodian designated by the testator in the electronic will or was designated to act in that capacity by another qualified custodian pursuant to section 14-2521, subsection C, paragraph 2. 2. That an electronic record was created at the time the testator executed the electronic will. 3. That the electronic record has been under the exclusive control

	of one or more qualified custodians since the execution of the electronic will and has not been altered since the time it was created. 4. The identity of all qualified custodians who have had custody of the electronic record since the execution of the electronic will. 5. That the certified paper original is a true, correct and complete tangible manifestation of the electronic will. 6. That the records described in section 14-2520, paragraph 4 are under the exclusive control of the qualified custodian. B. On the creation of a certified paper original of an electronic will, if the electronic will has not always been under the exclusive control of a qualified custodian, the person who discovered the electronic will and the person who reduced the electronic will to the certified paper original shall each state in an affidavit all of the following to the best of each person's knowledge: 1. When the electronic will was created, if not indicated in the electronic will. 2. When, how and by whom the electronic will was discovered. 3. The identity of each person who has had access to the electronic will. 4. The method in which the electronic will was stored and the safeguards in place to prevent alterations to the electronic will. 5. Whether the electronic will has been altered since its execution. 6. That the certified paper original is a true, correct and complete tangible manifestation of the electronic will. C. For the purposes of making the affidavit prescribed by subsection A of this section, the qualified custodian may rely conclusively on any affidavits provided by a predecessor qualified custodian.
Florida Fla. Sta. § 732.524(11) Qualified custodians.	Upon receiving information that the testator is dead, a qualified custodian must deposit the electronic will with the court in accordance with s. 732.901. A qualified custodian may not charge a fee for depositing the electronic will with the clerk, provided the affidavit is made in accordance with s. 732.503, or furnishing in writing any information requested by a court under paragraph (2)(b).

Indiana Indiana Code. Ann. § 29-1-21-3(3) and (6). Definitions. Completed converted copy and Document integrity evidence.	IC 29-1-21-3 Definitions Sec. 3. The following terms are defined for this chapter: . . . . (3) "Complete converted copy" means a document in any format that: (A) can be visually perceived in its entirety on a monitor or other display device; (B) can be printed; and (C) contains: (i) the text of the electronic will; (ii) the electronic signatures of the testator and the witnesses; (iii) a readable copy of any associated document integrity evidence that may be a part of or attached to the electronic will; and (iv) a self-proving clause concerning the electronic will, if the electronic will is self-proved. . . . . (6) "Document integrity evidence" means the part of the electronic record for the electronic will that: (A) is created and maintained electronically; (B) includes digital markers showing that the electronic will has not been altered after its initial execution and witnessing; (C) is logically associated with the electronic will in a tamper evident manner so that any change made to the text of the electronic will after its execution is visibly perceptible when the electronic record is displayed or printed; (D) displays any changes made to the text of the electronic will after its execution; and (E) displays the following information: (i) The city, state, date, and time the electronic will was executed by the testator and the attesting witnesses. (ii) The text of the self-proving clause, if the electronic will is electronically self-proved through use of a self-proving clause executed under section 4(c) of this chapter. (iii) The name of the testator and attesting witnesses. (iv) The name and address of the person responsible for marking the testator's signature on the electronic will at the testator's direction and in the actual presence of the testator and attesting witnesses. (v) Copies of or links to the electronic signatures of the testator and the attesting witnesses on the electronic will. (vi) A general description of the type of identity verification evidence used to verify the testator's identity. (vii) The text of the advisory instruction, if any, that is provided to the testator under section 6 of this chapter at the time of the execution of the electronic will. (viii) The content of the cryptographic hash or unique code used by the testator to sign the electronic will in the event that public key infrastructure or similar secure technology was used to sign or authenticate the electronic will. Document integrity evidence may, but is not required to, contain other information about the electronic will such as a unique document number, client number, or other identifier that an attorney or custodian assigns to the electronic will or a link to a secure Internet web site where a complete copy of the electronic will is accessible. The title, heading, or label, if any, that is assigned to the document integrity evidence (such as "certificate of completion", "audit trail", or "audit log" is immaterial).

Nevada Nevada Revised Statutes § 133.0865. Requirements for self-proving electronic will; acceptance of declaration or affidavit.	1. An electronic will is self-proving if: (a) The declarations or affidavits of the attesting witnesses are incorporated as part of, attached to or logically associated with the electronic will, as described in NRS 133.050; (b) The electronic will designates a qualified custodian to maintain custody of the electronic record of the electronic will; and (c) Before being offered for probate or being reduced to a certified paper original that is offered for probate, the electronic will was at all times under the custody of a qualified custodian.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Adopt UEWA Section as written.

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Colorado Uniform Electronic Wills Act

By Herb E. Tucker

Date: August 27, 2020

UEWA Section	Section 10
Section Title	Uniformity of Application and Construction
UEWA Statutory Language	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.
Uniform Law Commission Comment	None.
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	Adopted UEWA Section 10 as written.

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Colorado Uniform Electronic Wills Act

By Herb E. Tucker and John R. Valentine

Date: August 27, 2020

UEWA Section	Section 11
Section Title	Transitional Provision
UEWA Statutory Language	This [act] applies to the will of a decedent who dies on or after [the effective date of this [act]].
Uniform Law Commission Comment	An electronic will may be valid even if executed before the effective date of the E-Wills Act, if it meets the E-Wills Act's requirements and the testator dies on or after the effective date.
Current Colorado Law	Colorado law provides that, except as provided in certain named sections of the Colorado probate code: • Amendments to the Colorado probate code apply "to governing instruments executed by decedent's dying" after the effective date of the amendment (C.R.S. § 15-17-101(2)(a)); and • Amendments to the Colorado probate code apply to proceedings pending on the effective date of the amendment, regardless of when the decedent dies, unless the court determines that "in the interest of justice or because of infeasibility of application" the amendment should not apply (C.R.S. § 15-17-101(2)(b)). Subsection (2)(a) is more specific than Subsection (2)(b); therefore Subsection (2)(a) trumps Subsection (2)(b) if there is an inconsistency between them. *In re Estate of Ramstetter*, 411 P.3d 1043, 1048-1049 (Colo. Ct. App. 2016).
Colorado Subcommittee Comment	Section 11 of the E-Wills Act would not follow the rules of either Subsection 2(a) or Subsection 2(b) of C.R.S. § 15-17-101: • Subsection 2(a) would apply an amendment only to governing instruments executed after the effective date of the amendment, while Section 11 would apply to governing instruments executed before the effective date of the E-Wills Act if the decedent died after the effective date of the E-Wills Act.

	• Subsection 2(b) would apply an amendment to any proceeding pending on the effective date of the amendment, regardless of when the decedent dies, while Section 11 would not apply to probate proceedings pending on the effective date of the E-Wills Act. Therefore, if the E-Wills Act is adopted, Section 11 should be listed as an exception to the general application of C.R.S. § 15-17-101(2).
Colorado Subcommittee Recommendation	Adopt UEWA Section 11 as written.

Colorado T&E Section Statutory Revisions Committee Subcommittee on the

Colorado Uniform Electronic Wills Act

By Herb E. Tucker and John R. Valentine

Date: August 27, 2020

UEWA Section	Section 12
Section Title	Effective Date
UEWA Statutory Language	This [act] takes effect ….
Uniform Law Commission Comment	None.
Current Colorado Law	This act takes effect on its effective date, except that if a referendum against this act or an item, section or part of this act is ordered by a petition of the registered electors or by the general assembly in accordance with Colorado Constitution Article V, Section 1(3), this act or such item, section or part of this act shall not become effective until approved by a majority of the vote cast at a biennial regular general election. *See* Colorado Constitution Article V, Section 1(4). A petition of the registered electors for a referendum must be filed with the Colorado Secretary of State within ninety days after final adjournment of the session of the general assembly in which this act has been adopted. *See* Colorado Constitution Article V, Section 1(3). The act or portion thereof approved by a referendum will take effect on the date of the governor's official declaration of the vote on the referendum but "not later than thirty days after the vote has been canvassed." Colorado Constitution Article V, Section 1(4)(a).
Colorado Subcommittee Comment	
Colorado Subcommittee Recommendation	TBT during legislative process

Summary of Proposed Colorado Uniform Electronic Wills Act
CBA Joint T&E and ELS Subcommittee on E-Wills
August 27, 2020

Prefatory Note. Provides an overview of the Act.

Section 1. Short Title. In Colorado, the short title of the act will be the "Colorado Uniform Electronic Wills Act".

Section 2. Definitions. The definitions are consistent with Colorado law. Section 2(5) definition of the word "Sign" means, with present intent to authenticate or adopt a record. Section 2(5)(A) provides: "Subject to subsection (B), to execute or adopt a tangible symbol; or to affix to or logically associate with the record an electronic symbol or process." This section is consistent with C.R.S. § 24-21-502(12)(a)(b). The Committee added Section 2(5)(B) which provides: the electronic signature of the testator or witness must be an electronic image of the testator's or witness' signature affixed to the electronic will. Subsection (B) is consistent with Nevada's Electronic Will Act, Section 133.085 definition of "Sign".

Section 3. Law Applicable to Electronic Wills, Principles of Equity. This section follows Colorado law (e.g. C.R.S. § 15-10-103) by providing that the common law and principles of equity supplement the Act except to the extent modified by the Act.

Section 4. Choice of Law Regarding Execution. This section is consistent with C.R.S. § 15-11-506, which provides: "A written will is valid if executed in compliance with section 15-11-502 or 15-11-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where, at the time of execution or at the time of death, the testator is domiciled, has a place of abode, or is a national."

Section 5. Execution of Electronic Will. This section is consistent with C.R.S. § 15-11-502(1) for witnessed electronic wills and for notarized electronic wills except that section 5(a)(3)(B) for notarized electronic wills has been revised to require acknowledgement by the testator in the physical or electronic presence of a notary who is located in Colorado at the time the notarial act is performed and who is authorized by Colorado law to notarize records electronically.

Section 6. Harmless Error. This section provides that the harmless error doctrine in C.R.S. § 15-11-503 applies to an electronic will.

Section 7. Revocation. This provision regarding revocation of an electronic will is consistent with the rules of C.R.S. § 15-11-507 for a "paper will" except that the evidentiary standard to establish intent to revoke an electronic will by a physical act is heighten to clear and convincing.

Section 8. Electronic Will Attested and Made Self-Proving at Time of Execution. *

Section 9. Certification of Paper Copy *

Section 10. Uniformity of Application and Construction. This section is consistent with other Colorado uniform law enactments by providing that in applying and construing the E-wills Act consideration must be given to the promotion of uniformity of the law.

Section 11. Transitional Provision. This section is consistent with C.R.S. § 15-17-101 and Colorado case law.

Section 12. Effective Date. This section is consistent with Colorado law and the effective date will be determined during the legislative process.

***** The CBA E-Wills Committee believes that the adoption of an e-wills act this legislative session is imperative based on the uncertainties and complexities created by the pandemic and the existence of remotely executed wills during the pandemic. We have harmonized the uniform language for Sections 8 and 9 with the other subcommittee recommendations on the proposed Colorado Uniform Electronic Wills Act and if necessary, we would like the CBA to support the adoption of those provisions as proposed in our current draft. However, the subcommittee does support the use of qualified custodians in Colorado but only if there is a "public" option. We would not support adding qualified custodians as a requirement if the law provides *only* for private (i.e. paid) vendors to serve in that capacity. Our goal is to have Andy White on behalf of the CBA reach out to facilitate a conversation at the Capitol with Sen. Gardner and the other ULC Commissioners so that we can engage early and in a cooperative fashion on *any* possible amendments, but specifically as to Sections 8 & 9, and their fiscal implications in the 2021 session. We are asking the ELS and T&E to approved Sections 8 & 9 as proposed, with the understanding that we expect that the concept of qualified custodians may be introduced during the legislative session and will require the subcommittee to engage in review, consideration and drafting possible amendments for that purpose.