

**Colorado Bar Association Trusts & Estates Section
Electronic Wills Subcommittee**

Minutes of October 2, 2019

If you would like to join the meeting from your computer, tablet or smartphone.

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United States: [+1 \(408\) 650-3123](tel:+14086503123)

Access Code: 131-931-325

PARTICIPANTS

In Person:	By Phone:
John Ferguson	Pete Bullard
Russ Gamble	Joe Hodges
Mimi Goodman	Tracy Tyree
Hillary Hammond	
Stan Kent	
Michael Kirtland	
Letty Maxfield	
Mike Stiff	
Herb Tucker	
John Valentine	
Gordon Williams	

This meeting was held at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.

The meeting was called to order at 12:30 p.m. by the Chair and adjourned at 1:30 p.m.

- Discussion regarding Section 2, Paragraph (2) Definitions. Electronic Presence.
 - Revision to UEWA [“Electronic Presence” means the **interaction** of two or more individuals in different locations communicating in real time to the same extent as if individuals were physically present in the same location.]
- Discussion regarding whether Colorado is a state that wants to permit electronic wills only if executed with everyone physically present and whether the subcommittee will recommend deletion of the bracketed provision above that permit electronic presence.
- Discussion by Stan Kent whether CEPAEDA C.R.S. § 15-23-101 should serve as a platform for digital storage of electronic wills by State Judicial or its subcontractor.
- Discussion of omitted requirements that “e-will” be tamper proof or other technological criteria.

- Discussion whether the Colorado E-Will Statute should permit flawed electronic wills to be admitted to formal probate pursuant to the “harmless error doctrine” C.R.S. § 15-11-503.
- Discussion regarding definition of “Sign”. The UEWA definition of “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.
 - Under Colorado Probate Code § 15-10-201(47.5) and the Revised Uniform Law on Notarial Acts (RULONA), “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 a logically associate with the record an electronic symbol, sound or process.

AGENDA FOR NOVEMBER MEETING

- Herb Tucker will continue to review Section 2 Definitions (6) “State” and (7) “Will”.
- John Valentine and Michael Stiff will begin Section 3 “Law Applicable to Electronic Wills and Principles of Equity.”

INITIAL ASSIGNMENTS

Uniform E-Wills Act Section	Assignments
Prefatory Note	Herb Tucker
Section 1: Short Title	Herb Tucker
Section 2: Definitions	Herb Tucker
Section 3: Law Applicable to Electronic Wills; Principles of Equity	John Valentine and Mike Stiff
Section 4: Choice of Law Regarding Execution	Letty Maxfield and Susan Boothby
Section 5: Execution of Electronic Will	Tracy Tirey
Section 6: Harmless Error	Stan Kent
Section 7: Revocation	Hillary Hammond
Section 8: Electronic Will Attested and Made Self-Proving at Time of Execution	Michael Kirtland and Gordon Williams
Section 9: Certification of Paper Copy	Pete Bullard
Section 10: Uniformity of Application and Construction	Unassigned
Section 11 Relation to Electronic Signatures in Global and National Commerce Act	Unassigned
Section 12 Applicability	Unassigned
Section 13 Effective Date	Unassigned

The next meeting will be on November 6, 2019 at 12:30 p.m. to 1:30 p.m. at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.

**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	<p>The first sentence of this Section is didactic, and emphatically ensures that an electronic will is treated as a traditional one for all purposes.</p> <p>In this Section “law” means both common law and statutory law. Law other than this act continues to supply rules and guidance related to wills, unless the act modifies a state’s other law related to wills.</p> <p>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.</p> <p>Wills statutes typically include capacity requirements related to mental capacity and age. A minor cannot execute a valid will. <i>See</i> 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. <i>See</i> 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.</p> <p>Laws related to qualifications to serve as a witness also apply to electronic wills. For some of those requirements <i>see, e.g.</i>, Uniform Probate Code § 2-505.</p>
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.
<p>Indiana Indiana Code. Ann. § 29-1-21-1. Purpose</p>	<p>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.</p>
<p>Indiana Code. Ann. § 29-1-21-2. Electronic wills exclusively governed by chapter – Exception</p>	<p>(a) Except as provided in subsection (b), electronic wills are exclusively governed by this chapter.</p> <p>(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.</p>
<p>Nevada Nevada Revised Statutes § 133.085. Electronic will</p>	<p>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.</p>
<p>Colorado Subcommittee Comment</p>	
<p>Colorado Subcommittee Recommendation</p>	