

# Digital Estate Planning – The E-Wills Act



**B. Wade Bowen**  
wbowen@mwillaw.com  
(870) 938.6254

02/10/2020

The year 2020 is upon us, and electronics are everywhere among us. Just three decades ago, in 1990, only 42% of U.S. adults said they used a personal computer at home or work, and emails could be sent only in plain text format. For somewhere between \$2,500 and \$3,500, one could buy the Motorola MicroTAC 9800X, a cell phone that could only be used to make and receive calls. People today still use computers and smartphones to communicate, but also to make dinner reservations, read the news, and even open bank accounts and invest money. The technology we use has in some ways advanced to replace every day items we use. Services like Apple Pay, for instance, seek to actively replace wallets and the cash and cards usually carried in them.

One interesting intersection of technology and law as it relates to estate planning is found in the area of wills. Every state imposes will formalities, requirements that must be followed in order to execute what is deemed to be a valid will. Formalities are said to serve several purposes. Primarily, they allow a probate court to determine that the purported will is authentic without the benefit of testimony from the testator, and help protect a testator from manipulation.

As our use of technology has increased, probate courts have increasingly encountered “electronic” versions of fact patterns akin those where a court is asked to determine whether notes scribbled on the back of a restaurant napkin constitute a valid and enforceable will. In [In re Estate of Horton](#), for example, a Michigan probate court was asked to determine if a valid will was made when the Duane Horton left an undated, handwritten journal entry before his death that stated “I am truly sorry about this . . . My final note, my farewell is on my phone. The app should be open. If not look on evernote, “Last Note[.]”<sup>[1]</sup> The journal entry also provided an e-mail address and password. The note referenced in the journal was found on the phone, and contained, among other statements, a full paragraph regarding the distribution of decedent’s property after his death and decedent’s full name typed at the end of the note.

Circumstances like these have led a few state legislatures to consider and, in a handful of instances, adopt laws governing what does and does not constitute a valid and enforceable “electronic will.” As one might guess, the adopted statutes are not perfectly consistently from state to state, potentially opening the door to confusion.

Enter the Uniform Law Commission, who in 2019 approved the Uniform Electronic Wills Act (“Act” or “E-Wills Act”). According to the comments, “the Uniform Law Commission became concerned that inconsistency would follow if states modified their will execution statutes without uniformity . . . 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 following, 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 Act allows a testator to make as a valid will an electronic record readable as text at the time of signing. A word processing document stored on a computer, and a record made on a tablet with a stylus will both suffice under the Act. Further, the Act contemplates electronic witnessing and notarization. The Act contains other provisions that incorporate principles also applicable to traditional wills, such as the harmless error doctrine and a rule allowing for self-proving wills. The full Act can be found [here](#).

The Act is important, as the attempted use of electronic wills is only likely to increase in the future, and the number of contexts in which the electronic will might arise is sure to increase as technology advances. In addition to the adoption of the Act, a future issue worth watching will be whether Act opens the door for the introduction of proposed legislation for other types of electronic documents such powers of attorney.

---

[1] It was, due to the harmless error doctrine.