REPORT OF THE ELECTRONIC WILLS WORK GROUP (LC 1)

Oregon Law Commission

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Introduction

The Oregon Probate Code was enacted in 1969 by the Oregon legislature. Under the current version of the Oregon Probate Code, ORS 112.235(4) provides, "[a]s used in this section and ORS 112.238, "writing" does not include an electronic record, document or image." As a result, electronic wills may not be executed by a testator under current Oregon law.

In 2019, the Uniform Law Commission adopted the Uniform Electronic Wills Act (the "Uniform Act") to bring "estate planning into the digital age by allowing the online execution of wills while preserving the legal safeguards to ensure a will's authenticity."[1] The Oregon Law Commission took up the project of Electronic Wills to help Oregon estate planning practitioners to move into the electronic age, and to provide better access to justice to Oregonians who may be more likely to sign an Electronic Will instead of a paper will.

History of the Project

On January 20, 2020 the Oregon Law Commission approved the creation of a workgroup to consider the adoption of the Uniform Act for Oregon.[2] While the workgroup was approved, due to timing, staff resources, and COVID, the workgroup was not created.

In August 2024, the Commission revisited the proposal and shared it with estate planning and administration practitioners who had previously expressed interest in the Oregon Law Commission's efforts. Practitioners reviewed the proposal for timeliness, identified any recent issues, both nationally or in Oregon, and provided feedback to assist the Commission prioritize proposals.

On December 5, 2024 the Program Committee met and Lane Shetterly, former OLC Commissioner and work group chair, provided a brief overview of the project. The Program Committee voted to submit the proposal to the full Commission for consideration. The proposal was approved by the

[1] Summary of Electronic Wills Act.
[2] The Uniform Act is a product of the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission. ORS 173.338(1)(b) directs the Oregon Law Commission to consider changes in the law recommended by the Uniform Law Commission in conducting the Oregon Law Commission's law revision program.

full Commission on January 10, 2025 and the work group began meeting in April 2025. Since that initial meeting, the work group met 15 times.

The Oregon Law Commission extends its deep appreciation to the work group chair and reporter, the work group members, and interested parties who provided thoughtful questions, feedback and analysis throughout the project.

Chair and Reporter

- Lane Shetterly – Oregon Law Commission (Work group chair; former OLC Chair), Uniform Law Commission (Commissioner), Attorney
- Eric Foster – Oregon Law Commission (Work group reporter); Foster Denman, LLP

Participants

- Victoria Blachly – Samuels Yolin Kantor LLP, Uniform Law Commission (Commissioner)
- Silvia Camacho-Scyoc – Oregon Department of Revenue
- Stephanie Carter – Hilary Carter Law
- Kevin Christiansen – Oregon Bankers Association
- Professor Susan Cook – Willamette University College of Law
- Larraina Erland – Sherman Sherman Johnnie and Hoyt, LLP
- Heather Gilmore – Heather Gilmore, PC
- Tara Hendison – Allen Trust Company
- Theressa Hollis – Fitzwater Law
- Andrea Meyer - AARP Oregon
- Carol Moreno Cifuentes – Office of the Secretary of State
- Channa Newell – Oregon Judicial Department
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- Matt Shields – Oregon State Bar
- Matt Schrumpf – Oregon Department of Justice
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Statement of the Problem Area and Objectives of the Measure

Existing Process for a Physical Will

With a few exceptions, under ORS 112.235, an Oregonian wishing to create a will (also known as a testator), whether using an attorney or not, must do so in writing. The testator must sign the will in the presence of at least two witnesses. Those witnesses must then sign the will. Wills executed under the Uniform International Wills Act[3] or executed appropriately in writing in other jurisdictions[4] are also valid. In addition, for physical wills, Oregon has adopted a doctrine known as "harmless error" which allows a physical will that was not signed with the formalities required under ORS 112.235 to be treated as valid if the physical will was in writing, signed by the testator, and the will's proponent(s) establishes the testator's intent that the decedent intended the writing to constitute the decedent's will, a partial or complete revocation of the decedent's will, or an addition to or an alteration of the decedent's will by clear and convincing evidence.[5]

Upon the testator's death, the physical will must be admitted to probate through a petition to probate the will, together with testimony of the attesting witnesses (which may be presented by affidavit, executed either at the time of the signing of the will or after).[6] If there is no objection to

[3] See ORS 112.232.
[4] See ORS 112.255.
[5] See ORS 112.238.
[6] See ORS 113.035.

the physical will, it is reviewed by the court, which may admit the physical will to probate based on evidence of the witness affidavits, witness testimony, or other evidence of the genuineness of the signatures on the document.[7] Upon appointment of the personal representative and admission of the will to probate, notice must be given to all interested persons, including heirs and devisees of the decedent.[8] If the physical will is contested, then the court holds a hearing without a jury based generally on the Oregon Rules of Civil Procedure and the Oregon Evidence Code.[9]

The Rise of Technology

People increasingly use electronic documents to handle legal matters, including all manner of public and private contracts and the transfer of property on death using non-probate tools such as Transfer on Death and Pay on Death beneficiary designations. As people become more accustomed to using electronic documents and electronic signatures, they may assume that they can create a legally valid electronic will. However, the widely adopted Uniform Electronic Transactions Act (UETA), which Oregon enacted in 2001,[10] specifically excludes wills from its scope.[11] Thus, a will that exists only in electronic form when executed is presumptively not valid in Oregon under current law. Previously in Oregon, a court might have used the harmless error doctrine[12] to give effect to a will that exists only in electronic form, as was done in *Guardianship & Alts., Inc. v. Jones (In re Estate of Horton)*, 325 Mich App 325, 925 NW2d 207 (2018). However, this possibility was removed with the passage of SB 168 in 2025, enacted as 2025 Oregon Laws chapter 34, which provides, "As used in this section and ORS 112.238, 'writing' does not include an electronic record, document, or image."[13]

This issue is compounded by the fact that, to attract online estate planning business, a few states have enacted laws that attempt to authorize residents of other states to remotely execute a will under the enacting state's law.[14] However, probate courts in Oregon will likely not recognize electronic or remotely executed wills because of ORS 112.235(4), setting up a trap for unwary testators whose carefully considered wills will likely be deemed invalid.

As the work group began discussions, members of the work group emphasized the access-to-justice aspect of permitting electronic wills, making the valuable legal service of a properly

[7] See ORS 113.055.
[8] In the case of a "harmless error" will, notice must be provided when the will is presented for probate, and interested persons have an opportunity to object to the will before it is admitted. See ORS 112.238.
[9] See ORS 113.075, 111.200, and 111.205.
[10] See ORS 84.001-84.063.
[11] See ORS 84.007.
[12] See ORS 112.238.
[13] See ORS 112.235(4): "As used in this section and ORS 112.238, 'writing' does not include an electronic record, document, or image."
[14] Arizona, Florida, Illinois, Indiana, Maryland, and Nevada are examples.

executed electronic will more accessible to the public. Some members more were hesitant about changing a long-standing legal process and identified a need for tailored fraud protection. On the whole, however, the group recognized that the world is trending in an ever-advancing technological direction. The overall work group objective was to use the Uniform Act to craft proposed legislation that takes similar processes and protections for physical wills in Oregon law and applies and adjusts them to a digital medium with additional securities.

Review of Legal Solutions Existing or Proposed Elsewhere

The Uniform Act permits testators to make an electronic will that is readable as text at the time the testator electronically signs the document.[15] The testator must sign the will and a separate declaration, which must be attested by the testator before a notary. The testator's execution of the will must also be witnessed by two witnesses who must also sign the will. An adopting state can opt for a version of the Uniform Act that requires the witnesses to be physically present with the testator at the time of signing, or for a version that allows for remote witnessing.

Like a physical will, an electronic will under the Uniform Act can be made "self-proving,"[16] the same as a physical will, so that the witnesses need not testify in upon the presentation of the will for probate, unless the will's authenticity is challenged. An affidavit of sworn, notarized statements by the testator and witnesses makes the will self-proving.[17] If a state has adopted the Revised Uniform Law on Notarial Acts (RULONA),[18] or a similar law permitting remote online notarization, an electronic will can be executed and made self-proving entirely via the internet, with the option to attach a secure audio-visual record of the execution.

In 2020, the Oregon Legislature enacted the Revised Uniform Law of Notarial Acts (HB 4212, Sections 19-32, 2020 Legislative Session, First Special Session), which authorized remote and electronic notarization. The sunset was removed from the act during the 2021 Legislative Session in SB 795. Remote notarization in Oregon can already be used for will signing and attestation, however the requirement to draft, sign, and submit a physical will continues to exist. Advocates of this process argue that notarization under RULONA would make a remotely executed electronic will less susceptible to tampering than a physical will due to electronic security features and the rigorous identity verification process that a notary requires of the testator and witnesses.

[15] Section 2(5) of UEWA defines "sign," with respect to an electronic will to mean "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."
[16] The term "self-proving" does not appear in the Oregon Probate Code.
[17] Uniform Act section 8.
[18] See generally ORS chapter 194, specifically ORS 194.205 and 194.277.

The Uniform Act also provides a useful rule for interstate recognition of electronic wills: the probate court of a state that adopts the Uniform Act will recognize an electronic will executed under the law of another state only if the testator was either physically present or domiciled in the other state at the time the will was executed. The Uniform Act does not require an electronic will to comply with any specific technical standard or process and therefore does not need to be updated to accommodate future technological developments.

Many states (or other governmental entities in the United States) have already adopted The Uniform Act, generally with slight modifications to meet their specific needs. In addition, seven states have adopted some non-uniform version of state-specific electronic will legislation. These 18 states include Colorado, the District of Columbia, Idaho, Kentucky, Minnesota, Missouri, North Dakota, Oklahoma, Utah, the U.S. Virgin Islands and Washington. Thus, it is apparent that electronic wills have arrived on the scene and that the majority of states that have recognized and validated electronic wills have done so through the Uniform Act.

The Proposal (LC 1)

Historically, many of the Uniform Law Commission's Uniform Acts have been introduced in Oregon as stand-alone acts with conforming amendments as needed. The Oregon Law Commission's Electronic Wills Work Group has proposed to adopt the Uniform Act not as a stand-alone series of new statutes, but by integrating the substantive provisions of the Uniform Act into the existing Oregon statutory scheme for physical wills. The group made this choice based on its understanding that, by integrating the Uniform Act into the existing statutory framework for wills and probate, it would make the Uniform Act clearer and easier for practitioners and for the public to understand and use. In addition, Oregon adopted its own probate code, not the Uniform Probate Code.[19] With that in mind, this report references both the current Oregon statutes amended by LC 1 and, where appropriate, the sections of the Uniform Act that are integrated into each statute (*See* the Uniform Electronic Wills Act Roadmap, attached to this report, for clarification as to which sections of the Uniform Act are enacted in which sections of LC 1, and where they are integrated into current Oregon statutes).

Section 1

Section 1 of LC 1 amends ORS 112.235 which governs the execution of a will and integrates sections 2 and 5 of the Uniform Act into the statute.

[19] Oregon adopted its probate code in 1969 when the legislature adopted Senate Bill 506.

Section 1(1) retains the existing execution requirements for physical wills. The execution formalities for an electronic will are addressed in Section 1(4) and (5).
For an electronic will, the electronic will must be:

- A record readable as text at the time of the signing (Section 1(4)(a)).
    - While this requirement does not allow for audio and video recordings to replace readable text, an audio or video recording of a testator and two witnesses can provide evidence of the validity of a will.
    - Signed by either the testator or another individual in the testator's name, at the testator's direction and in the testator's physical presence (Section 1(4)(b)).
- Signed by at least two witnesses in the testator's physical or electronic presence within a reasonable time after witnessing the signing of the will. Section 1(4)(c).[20]

Each of the two witnesses must either be a resident of the United States[21] or a federally recognized Indian tribe and be physically present within the United States or on the lands of a federally recognized Indian tribe at the time of witnessing the will.

In addition, Section 1 defines four terms: "electronic presence," "record," "sign," and "writing." The definitions were included in this section to provide guidance for an electronic will, and are specific to ORS 112.235. These definitions do not apply outside of that statute, except as otherwise expressly provided.

The definition of "electronic presence" in Section 1(6)(a) of the bill differs slightly from the definition of the term appearing in the Uniform Act. The bill defines "electronic presence" as "the relationship of two or more individuals in different locations communicating *simultaneously* by sight and sound to the same extent as if the individuals were physically present in the same location." (Emphasis added.) Section 1(2) of the Uniform Act uses the phrase "in real time" in place of "simultaneously." The work group adopted the definition in the bill to be consistent with the definition of "electronic presence" already found in Oregon's version of the Revised Uniform Remote Online Notarization Act, ORS 194.277, to avoid confusion with two different definitions of the same term used in two related Oregon uniform acts. No substantive difference from the definition found in the Uniform Act is intended.

Finally, Section 1(3) of LC 1 retains the rule that a will executed in compliance with the Uniform International Wills Act must satisfy the formalities of ORS 112.235(1) and (2), which governs

[20] The requirement that the witnesses sign the will "within a reasonable time" after witnessing the execution of the will is the same as the requirement for physical wills. ORS 112.235(1)(b)(B).
[21] The Uniform Act provides that each witness must be a resident of and physically located in "a state," which it defines as "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." The Uniform Act Section 2(6). ORS 174.100 already defines "United States" to include the same elements, so the work group elected to use the term "United States" for consistency with current Oregon law. No substantive difference from the Uniform Act is intended.

physical wills. LC 1 will not recognize or validate electronic wills executed outside the United States.

Section 2

Section 2 of LC 1 amends ORS 113.055, which governs the testimony and affidavits of attesting witnesses, and substantially incorporates language from Section 8 of the Uniform Act.

This section retains the current provisions of law that, upon the presentation of a physical will for probate after the death of the testator, an affidavit of the attesting witnesses may be admitted in lieu of their personal testimony as to the matters set forth in the affidavit and extends the same provisions to electronic wills. In the case of a physical will, the witnesses' affidavit may be signed at the time of the execution of the will or at any time thereafter, and the timing of the signing of the affidavit does not affect the procedure for admitting the will to probate. Section 2 of LC 1, however, makes a distinction in procedure for electronic wills based on whether the witnesses' affidavits were executed at the time the will was signed or after.

This section also includes the requirement for electronic wills that the testator must sign a sworn declaration, separate from the will itself, at the time the testator executes the will.

Under Subsection (1)(c), an attesting witness may provide evidence of execution by signing an affidavit contemporaneously with the signing of the electronic will. Both the testator's declaration and the affidavits of attesting witnesses must be made before an officer authorized to administer oaths and evidenced by the officer's certificate under official seal, affixed to or logically associated with the electronic will. If fewer than two attesting witnesses are physically present with a testator at signing, the officer must be authorized under ORS 194.277, which governs notarization for a remotely located individual, to notarize the documents.

The language of subsection (1)(c) differs from the corresponding language of section 8 of the Uniform Act. Section 8(a) of the Uniform Act provides that a will may be "*simultaneously* executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses." Section (1)(c) of LC 1 uses the word "contemporaneously" in place of "simultaneously." The work group considered that it was physically impossible for a will to be *simultaneously* signed, attested by the testator, witnessed by the witnesses and for the witnesses to then sign their affidavit. Those acts are separate and sequential and cannot be carried out all at the same time, as "simultaneously" would require. The work group chose to use "contemporaneously" to better recognize the separate and sequential nature of the acts, and to acknowledge and accept the Uniform Act's intent that they be carried out close in time to one another. In adopting the word "contemporaneously," the work group chose not to define it, with the intent that the standard

dictionary definition would suffice. The definition set out in Webster's 3rd New International Dictionary (unabridged edition, 2002) is: "at or near the same time."

Subsection (1)(c) includes model language for a testator's declaration, the witnesses' affidavits, and the officer's certificate. The sworn statements address the signing of the will, the voluntary nature of the execution, the testator's mental capacity to sign a will, and the absence of constraint or undue influence. An affidavit meeting these requirements may be received in evidence in place of the witness's appearance in court and has the same weight as testimony given in open court. The language of the testator's sworn statement and the witnesses' affidavit in Section 1(c) of LC 1 differs from the corresponding language of Section 8 of the Uniform Act. No substantive difference is intended, except that Section (1)(c) includes blanks to insert the time the testator signed the will (if known), the time the testator signed their sworn declaration (if known), the time the witnesses signed their affidavits (if known) and the time the notary signed their notarial statement. The inclusion of the time element of the signings is designed to provide guidance to courts whether the affidavits of attesting witnesses were signed contemporaneously with the execution of the electronic will. The inclusion of the time element is not intended as a condition of the validity of the will. The work group did not adopt a strict time limit within which the events must occur in order to establish that they were done contemporaneously, and left that decision to the courts to make a determination.

An electronic will that has been properly executed and is submitted to the court with the testator's declaration and the witnesses' affidavit that have been signed contemporaneously with the signing of the will may be admitted to probate in the manner of any other will that complies with the requirements of ORS 112.235, without the requirement of prior notice to interested persons or a hearing.[22]

Subsection (2) of the bill provides an alternative procedure for admitting an electronic will to probate where the affidavit was not signed contemporaneously with the electronic will or does not otherwise meet the criteria provided in subsection (1) of the bill, including when it lacks a testator's declaration. In that case, the otherwise validly executed will can still be probated, but the proponent must give the persons identified in ORS 113.035(5), (7), (8), and (9)[23] notice, a copy of the petition, and a certified paper copy of the electronic will that includes the witnesses' affidavits.

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[22] This is subject to the condition that an interested person may file a challenge to the witnesses' affidavit within 30 days after notice that the will has been admitted to probated and the personal representative has been appointed.

[23] **113.035 Petition for appointment of personal representative and probate of will.** Any interested person or the person nominated as personal representative named in the will may petition for the appointment of a personal representative and for the probate of a will. The petition must include the following information, so far as known:

(1) The name, age, domicile, post-office address and date and place of death of the decedent.

(2) Whether the decedent died testate or intestate.

(3) The facts relied upon to establish venue.

(4) The name and post-office address of the person nominated as personal representative and the facts that show the person is qualified to act.

Under this alternate procedure, found in subsection (2)(c), the court may admit the electronic will to probate if no person receiving the required notice files a written objection within 20 days of the date of the delivery of a notice of time for filing objections. Alternatively, the court may determine, after a hearing or on the basis of affidavits, that clear and convincing evidence proves the validity of the matters contained in the affidavit. In that event, the court must prepare written findings and enter a limited judgment admitting the electronic will to probate. This procedure for the admission of wills to probate that do not meet the criteria for wills with affidavits of attesting witnesses executed contemporaneously with the electronic will under Section 1(c) is not found in the Uniform Act.

LC 1 applies existing law to electronic wills regarding the court's authority to require a witness's appearance upon a timely motion or to order a deposition if the witness is beyond the reach of a subpoena. It also retains the existing provisions for proof when attesting witness evidence is unavailable and for contested proceedings currently found in ORS 113.055.

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(5) The names, relationship to the decedent and post-office addresses of persons who are or would be the heirs of the decedent upon the death of the decedent intestate, and the ages of any who are minors.

(6) A statement that reasonable efforts have been made to identify and locate all heirs of the decedent. If the petitioner knows of any actual or possible omissions from the list of heirs, the petition must include a statement indicating that there are omissions from the information relating to heirs.

(7) If the decedent died testate, the names and post-office addresses of the devisees, and the ages of any who are minors. If the will devises property to a person who did not survive the decedent or who is otherwise not entitled to receive the devise, the petition must include a statement explaining why the devise failed. If the petitioner knows of any actual or possible omissions from the list of devisees, the petition must include a statement indicating that there are omissions from the information relating to devisees.

(8) The name and post-office address of any person asserting an interest in the estate, or on whose behalf an interest has been asserted, based on a contention that:

(a) The will alleged in the petition to be the will of the decedent is ineffective in whole or part;

(b) There exists a will that has not been alleged in the petition to be the will of the decedent; or

(c) The decedent agreed, promised or represented that the decedent would make or revoke a will or devise, or not revoke a will or devise, or die intestate.

(9) The name and post-office address of any person asserting an interest in the estate, or on whose behalf an interest has been asserted, based on a contention that a parent of the decedent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent, as provided by ORS 112.047.

(10) Whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is not in the possession of the court or accompanying the petition and an authenticated copy of the will probated in another jurisdiction does not accompany the petition, the petition shall also state the contents of the will and indicate that it is lost, destroyed or otherwise unavailable and that it was not revoked.

(11) A statement of the extent and nature of assets of the estate, if any, to enable the court to set the amount of bond of the personal representative.

(12) If the petition states that no assets of the estate are known to the petitioner under subsection (11) of this section and the petition is not filed under ORS 114.453, a statement of the purpose for filing the petition.

(13) If the petition is filed under ORS 114.453, a statement that the petitioner is filing the petition for the sole purpose of pursuing a wrongful death claim, and the other information required under ORS 114.453. (2025).

Section 3

Section 3 of LC 1 amends ORS 111.005, which provides definitions for probate law, and incorporates language from Section 2 of the Uniform Act.

The proposal adds definitions of "electronic" (in Subsection (15)) and "electronic will" (in Subsection (16)) from the Uniform Act.

These definitions apply throughout ORS chapters 111 through 117 unless the context requires otherwise.

Section 4

Section 4 amends ORS 111.245, which addresses proof of documents, is based on the language of Section 9 of the Uniform Act. ORS 111.245 governs proof of documents under ORS chapters 111, 112, 113, 114, 115, 116, and 117. Under current law, ORS 111.245(1)(a), a certified copy of a physical will is sufficient to provide proof of the document.

LC 1, Subsection (1)(b) details the process for providing a certified copy of an electronic will. Under Subsection(1)(b), an individual may certify a paper copy of an electronic will by affirming under penalty of perjury that it is a complete true and accurate copy. If the electronic will includes the testator's declaration and an affidavit of attesting witnesses, the certified paper copy of the electronic will must include the declaration and affidavit.

Section 5

Section 5 amends ORS 112.255, which addresses the requirements for the valid execution of a will, including a will executed outside of Oregon, and adds language relating to electronic wills, based on Section 4 of the Uniform Act.

The requirements for a physical will are unchanged.

Definitions for Section 5, cross reference back to the definitions found in Section 1 of LC 1, Section 1(5)(b) and (c) which amends ORS 112.235 and provides the same definitions for "record," and "sign," as used for the execution of wills.

Section 5(2) limits execution under the Uniform International Wills Act to physical wills. This language, along with the language in Section (1)(3), clarifies an electronic will that is executed

outside of the United States may not be validated and received for administration under the Uniform International Wills Act.

Section 6

Section 6 of LC 1 amends ORS 112.285 which addresses the revocation of a will.
In Oregon, a physical will may be completely revoked or altered by another will under ORS 112.285(1) or completely revoked by a physical act performed either by the testator or at the direction of the testator under ORS 112.285(2). If another person destroys the will at a testator's direction and in a testator's presence, the act must be proved by at least two witnesses.

Oregon does not recognize partial revocation of a physical will by physical act under ORS 112.285(3). While a physical act affecting only part of a will does not revoke the affected provisions, clear and convincing evidence may show that the testator intended the physical act or acts to revoke the entire will. ORS 112.285(3).[24]

LC 1, Section 6(2) amends ORS 112.285(2) and identifies the process to revoke an electronic will by expanding the potential actions that may be taken to revoke a will. Currently in Oregon, a physical will that has been burned, torn, cancelled, obliterated or destroyed with the intent to revoke it is revoked. LC 1, Section 6(2) adds "deletion" to the list of physical acts that may revoke an electronic will when performed with the required intent. The workgroup intends that the commonly understood act of deleting a document from a computer would constitute the revocation of an electronic will under this section when the deletion is performed with the required intent.

Current law requires that revocation by another person at the direction of the testator must be done in the testator's physical presence. The work group did not provide for a process by which revocation of an electronic will by another person at the direction of the testator might be done remotely. Current law would apply and the revocation of an electronic will by another person must be performed in the physical presence of the testator.

With regard to the prospect that there may exist multiple copies of an electronic will, this comment from the official commentary to Section 7 of the Uniform Act provides guidance: "[A]lthough 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:

[24] Section 7 of the Uniform Act provides that a will may be revoked in full or in part. Since Oregon does not recognize partial revocation of physical wills the work group decided it would not be appropriate to establish a different rule for electronic wills, so did not align LC with that part of Section 7 of the Uniform Act. Otherwise, while the language of LC 1 is different than the language of Section 7 of the Uniform Act, no substantive difference is intended.

> '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.'"

The requirement for the testator to have the intent and purpose to revoke the will remains regardless of whether the will is an electronic or a physical will.

Section 7

Section 7 of LC 1 amends ORS 113.035 which addresses the required elements of a petition to admit a will to probate. LC 1 adds Subsection (10) to ORS 113.035 and moves the existing physical will provisions to subsection (11). With a physical will, a petition must state whether the original will is in the possession of the court or accompanies the petition. As a rule, the great majority of petitions for probate of wills, which are filed electronically through the Oregon Judicial Department's online case management system, attach a .pdf copy of the physical will to the petition. In that case, Oregon Uniform Trial Court Rule 21.070(3)(h) provides that the original will itself must be filed "conventionally" with the court within seven business days after the electronic filing. LC 1 does not affect these requirements for the probate of physical wills.

For electronic wills, Subsection (10) states that a petition to admit the will to probate must state "whether the electronic will is in the possession of the court or accompanies the petition." This subsection does not use the word "original" with reference to the electronic will (as Subsection (11) refers to an "original" physical will). This recognizes that, unlike physical wills, there is no such thing as an *original* electronic will, at least not as "original" is conventionally understood. The work group intends that UTCR 21.070(3)(h) does not apply to electronic wills. The work group discussed whether the court might require a certified paper copy of the electronic will to be filed conventionally, after the electronic filing of the petition and the electronic will. The work group did not express an opinion as to the merit of such a requirement, noting that it would require an amendment to the UTCR to impose such a requirement on electronic wills.

Section 8

Section 8 of LC 1 amends ORS 114.525, which governs the contents and accompanying documents of a simple estate affidavit. New Subsection (4) of the statute provides that if the decedent's last will is an electronic will, the affiant must file the electronic will along with the sworn declaration of the testator, and affidavits of attesting witnesses that are signed contemporaneously with the signing of the electronic will, with the simple estate affidavit. Electronic wills that do not meet the requirements of Section 1(c) may not be administered through the simple estate affidavit process. They must be administered under the "alternative" process described in Section 2 of the bill.

CONFORMING AMENDMENTS

Section 9

Section 9 updates ORS 9.757 which governs the Oregon State Bar's process for retaining client materials. The amendment to ORS 9.757(5) permits the Oregon State Bar to retain wills in digitized form, including electronic wills as defined in ORS 111.005. The change from "electronic form" to "digitized form" was made to clarify that both electronic and physical wills may be stored in a digitized form.

Section 10

Section 10 amends ORS 112.238, Oregon's "harmless error" statue, to exclude "electronic records, documents and images, including electronic wills," from the meaning of "writing" for purposes of the harmless error statute. Under current Oregon law, if a physical will is not executed in compliance with the requirements of ORS 112.235, a proponent may establish by clear and convincing evidence that the decedent intended the writing to constitute either a will, a partial or complete revocation of a will, or an addition or alteration of a decedent's will even if the execution of the physical will did not meet the criteria identified in ORS 112.235.

The writing must also have been executed before death and signed by the decedent or by another person using the directed-signature method specified in the statute.

Section 10 adds Subsection (6) to ORS 112.238, which excludes electronic documents and wills from the scope of the harmless error statute. The work group was of the opinion that the issue whether to bring electronic wills within the scope of the harmless error statute was best left for consideration in the future, after electronic wills themselves have become more common and mainstream among practitioners, the courts and the public.

Section 11

Section 11 of LC 1 amends ORS 112.800 which provides definitions for the disposition of wills. Subsection (2) adds electronic wills, as defined in ORS 111.005, within the provisions governing custody and disposition of wills.

Section 12

Section 12 of LC 1 updates ORS 112.810 which identifies the duties of a custodian for the disposition of wills and cross references ORS 111.245. Subsection (3) provides that "will" includes a certified paper copy of an electronic will for purposes of the custodian's delivery duties.

Section 13

Section 13 amends ORS 112.820 which addresses the disposition of a will and the process of disposing of a will by an attorney. The existing process remains unchanged, but Section 13 replaces "electronic: with "digitized" in ORS 112.820(4)(c) to distinguish retained copies from electronic wills.

Section 14

Section 14 adds electronic wills to the definition of "will" in ORS 119.006, for the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADA). It was necessary to add electronic wills to the definition of wills in RUFADA because the definitions in ORS 111.005 (see Section 3 of LC 1) do not extend to chapter 119.

Section 15

Section 15 states that bill captions are for readers' convenience and do not become statutory law or express legislative intent.

Section 16

Section 16 of LC addresses applicability and incorporates Section 11 of the Uniform Act. The language in LC 1, Section 1 – 14 apply to the will of a decedent who dies on or after the effective date of the 2027 Act.

Uniformity of Application; Intent to Adopt the Uniform Act

While, as noted above, LC 1 does not enact the Uniform Act as a stand-alone act, the intent of the work group was to functionally adopt the Uniform Act through LC 1 by the substantive integration of the Uniform Act into the existing Oregon statutes governing wills and probate.

Section 10 of the Uniform Act is a standard provision of uniform laws promulgated by the Uniform Law Commission, which provides:

> "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."

While it was not feasible to incorporate the above language into LC 1, it is the intent of the work group that courts and practitioners should recognize and honor its directive to apply and construe those provisions of the Uniform Act that are enacted by LC 1 in favor of uniformity among states that have adopted the Uniform Act. To that end, practitioners and courts should also look for guidance to the official commentary to the Uniform Act, published by the Uniform Law Commission, as it pertains to those provisions of the Uniform Act that are enacted by LC 1.

Other Sections of the Uniform Act Not Included in LC 1

Sections 1 (Short Title) and 3 (Law Applicable to Electronic Will; Principles of Equity) of the Uniform Act were not adopted into LC 1.

Section 1 was not included because LC 1 is not a stand-alone act, but incorporates discreet provisions of the Uniform Act into the current laws relating to wills and probate.

Section 3 was not included because, with the integration of the Uniform Act into existing law, there is no need to include the didactic declaration in Section 3 that electronic wills are "wills for all purposes," neither is it necessary to state that "the laws of this state applicable to wills and the principles of equity apply to an electronic will." (See ORS 111.095(1): "A probate court has the general legal and equitable powers of a circuit court.") The non-inclusion of Section 3 of the Uniform Act does not indicate a substantive difference with Section 3 of the Uniform Act.

Road Map

LC 0001 Uniform Electronic Wills Act Roadmap

Section 1	UEWA 2 and 5	112.235	Execution of paper wills
Section 2	UEWA 8	113.055	Attesting witnesses to wills
Section 3	UEWA 2	111.005	Definitions
Section 4	UEWA 9	111.245	Proof of documents
Section 5	UEWA 4	112.255	Choice of law regarding execution
Section 6	UEWA 7[25]	112.285	Revocation
Section 7		113.035	Petition to admit will to probate
Section 8		114.525	Simple estate affidavit
Section 9		9.757	Retention of client materials
Section 10		112.238	Harmless error
Section 11		112.800	Disposition of wills - definitions
Section 12		112.810	Disposition of wills - duties of custodian
Section 13		112.820	Disposition of wills - destruction
Section 14		119.006	Fiduciary access to digital assets
Section 15			Captions
Section 16	UEWA 11		Applicability

Amendment Notes

[25] Footnote 24 for discussion of UEWA Section 7.