

Meeting Notes
Oregon Law Commission
Workgroup on Electronic Wills
January 26, 2025

I. Call to Order

In Attendance: Lane Shetterly, Eric Foster, Amy Zubko, Heather Gilmore, Jeff Petty, Matt Schrumpf, Ben Orzeske, Jamie Weddle-Jones, Tara Hendison, Channa Newell, Larriana Erland, LoriAnne Sills, Andrea Meyer, Stephanie Carter

Guests: Greg Young

II. Discussion

Lane Shetterly started the work group off with an introduction of Greg Young, the Chief Information Officer for the Uniform Law Commission. Work group members were interested in learning more about the functionality of the execution for E wills and the security of the document after the execution of an E will.

Greg Young shared with the group a demonstration of some of the security functions available with standard document software such as Adobe. There are simple additions to security that are commonly available such as password protections and limitations to editing and printing. However, Greg additionally demonstrated that these document protections available are easily overridable. Document encryption is not protective of a document that is open or being viewed and cannot protect against some methods of tampering. While tampering cannot be avoided, however it can be tracked as discussed below.

This leads to an emphasis on digital notarization which can track the digital fingerprint of a document which can identify any changes to a document. If the metadata of a document is altered from the time of the digital notarization, then software flags that. It is often used by banks and governments for contracts, payments or filings. It does not necessarily prevent tampering with the document but does verify whether any tampering has occurred.

Heather Gilmore voiced a clarification about how the judicial department interacts with these kinds of protections. Greg specified with Adobe for example as long as there is a digital

notarization included in the software, the metadata for a document is stored with the document and would be flagged if there was tampering at any point after “seal” was put in place during digital notarization. The follow-up discussion touched on what OJD would need in response to digital will.

Questions arose regarding the types of software used and the industry standard for character identification. Greg confirmed that the industry standard was SHA 256. In addition, the group discussed third parties being responsible for holding on to the documents to minimize access for tampering.

The conversation focused on the different levels of formality when it comes to will writing. In some cases, the will is written by a lawyer and notarized and in some cases, a will is written by a lay person and will not be as formal.

Ben Orzeske shared that the Uniform Law Commission chose specifically not to include language defining particular security requirements. This was done to ensure that states had the option to choose their own requirements, and that it does prevent implementation of developing technologies. The expectation under the uniform law is that the court presumes that a document that meets the types of protections we are discussing is valid. There is a path to disputing the validity of the will the same as paper wills.

Jaime Weddle-Jones from the Secretary of State’s office shared some background on remote notarization and the governing statutes and rules. ORS 194.305 provides the secretary of state with rulemaking authority and OAR 160-100-0805 through 0855 govern the process.

The group discussed when a will is self-proving, which Ben Orzeske shared that if the will is not self-proving, then the burden of proof is on the person submitting the will to the court. One issue raised was whether the focus on tech would result in a higher standard for electronic wills than paper wills. The issue was raised that electronic wills would potentially raise the knowledge requirements for lawyers and pro se litigants and increase the complexity of the process.

The group also briefly touched on submission of wills via Odyssey and whether that could be a basis to identify a way to submit electronic wills to the court.

Lane Shetterly invited OJD IT to come to the next meeting to discuss their processes.

Scheduling

Amy reminded the workgroup that it is not meeting in February, and that the May meeting will be rescheduled for the 18th.