

Oregon Law Commission

OLC Electronic Wills Work Group

Questions on Uniform Electronic Wills September 26, 2025

Additional Questions

- What is the “original” electronic will? Under current law, and with a very narrow exception, the original (or an authenticated copy of the will probate in another jurisdiction) must accompany the petition. The original is signed by the testator and two witnesses. It’s generally understood to be the “wet” ink signatures by testator and witnesses. The court has physical possession of the original paper will. I guess I can’t envision what the “original” electronic will looks like. Is it a specific file type? Does it have some kind of verification data?
- Section 5(c) says “Either (A) signed in the physical or electronic presence of the testator by at least two individuals after witnessing the signing of the will” OR “(B) acknowledged by the testator before a notary public.” Does this make a different standard for electronic wills in which two witnesses are not required? Like, if you have a notary, you don’t need a witness? The legislative note maybe implies that option would be removed.
- Some of the same concerns apply to Section 8 of the draft.
- ORS 113.055 currently covers the affidavit of attesting witnesses, which is the evidentiary “proof” that establishes the paper original as admissible. I’ve had too many conversations with attorneys about validity vs. admissibility, and what the different parts of the execution and attestation apply to. How does a witness attest that the electronic will is the one they witnessed the testator execute? What I’m trying to get at here, is the evidentiary, I don’t know, “chain of custody” type question. Maybe this is related to the first question above, about what actually makes an original electronic will. There’s sort of a big question, from the court’s perspective, that whatever the electronic will *was* is still what the electronic will *is* when the court “takes possession.” Like, how would anyone who wasn’t a witness to the electronic will, or functionally “store” the electronic will until probate, know whether changes to it had been made? It feels like to establish the purported eWill is the “original” eWill, you’d need to have evidence that the contents are identical or evidence that the electronic will “file” is the same?