

Uniform Electronic Wills Act (2019)



Key Features:

- Translates the traditional wills act requirements (writing, signature, attestation by witnesses)
- Encourages inclusion of the harmless error rule
- Remote execution provisions are optional, but appealing in the post-COVID-19 environment
- Optional notarization procedure is integrated with RULONA

Choice of Law Regarding Execution



Uniform E-Wills Act Rule:

- An enacting state will recognize a will executed in compliance with the law of the jurisdiction where the testator is:
 - physically located when the will is signed, or
 - domiciled or resides when the will is signed or the testator dies

Execution Requirements



Sec. 5(a) *retains and translates* the traditional wills act requirements:

- Must be readable as text when executed (no audio, video; sorry, Alexa!)
- Signed on a device or in any other manner with requisite intent that it be the testator's will; and
- Properly witnessed (2 persons in most states, a few allow 1 notary instead)
 - Bracketed provisions allow states to validate remote witnessing and execution with an audio/video link (recommended in the post-COVID-19 environment)

Sec. 5(b) allows extrinsic evidence of intent

Self-Proving Wills



- Self-proving wills include notarized affidavits by the testator and witnesses verifying the testator's capacity, intent to make a will, and the lack of undue influence. Their authenticity need not be established unless challenged.
- An e-will can be made self-proving by including **contemporaneously executed** affidavits (different rule than for paper wills)
- Integrates with RULONA's rules for secure remote notarization:
 - Notary must register with the state and comply with state-issued security regulations for tamper-evident documents
 - Must verify the identity of the signors using two forms of identity-proofing
 - Audio-video recording of execution must be maintained for ten years

Harmless Error



- The **harmless error** doctrine allows the probate court to excuse lapses in execution formalities to implement the testator's intended plan of distribution
- The proponent must prove by ***clear and convincing*** evidence that the testator intended the record to be a will
- Section 6 of the uniform act provides two alternatives:
 - Alternative A, for states that do not have a harmless error statute, applies to e-wills only
 - Alternative B, for states that already have a harmless error statute, applies the state's current law to e-wills

Admission to Probate



- Some probate courts still require filing an original document
 - Section 9 of the Uniform E-Wills Act includes a procedure for certification of a paper copy of an electronic will
 - Probate courts, like all other courts, are rapidly adapting to electronic filing procedures

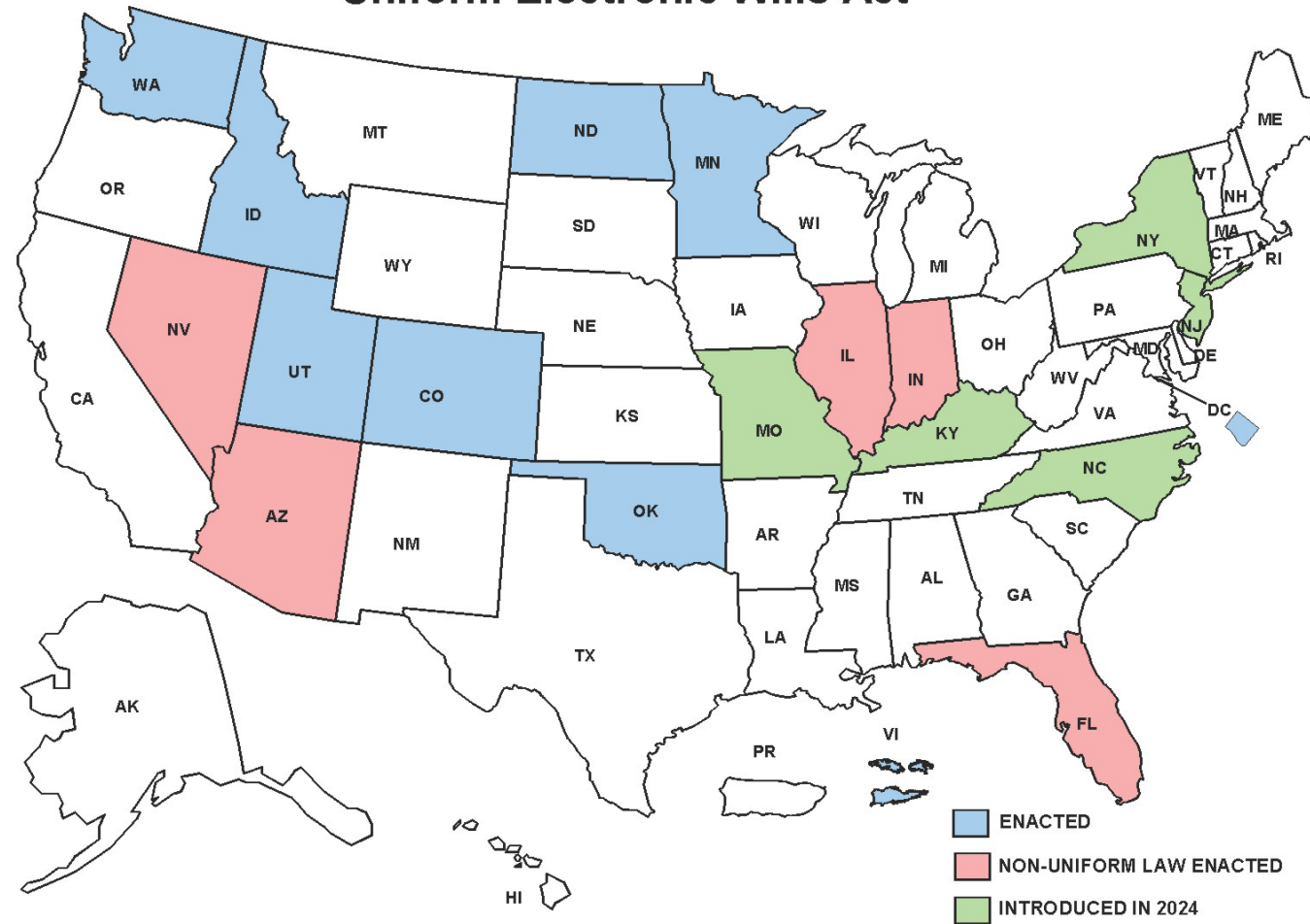
Optional Provisions



- A state must decide the following issues before introducing a bill based on the Uniform Electronic Wills Act:
 - Whether to permit remote witnessing via videoconference (e.g. Zoom)
 - Recommendation: Include optional remote witnessing provisions because it has become expected in the post-pandemic era
 - Whether to allow notarized, but unwitnessed wills
 - Recommendation: Adopt the same rule your state uses for paper wills
 - Whether to incorporate the harmless error rule
 - Recommendation: Adopt the same rule your state uses for paper wills

The National Picture

Uniform Electronic Wills Act



Enactment Issue: Security Concerns



- E-wills are perceived to be vulnerable to post-execution tampering
- Rebuttal:
 - Electronic wills are **more secure** than traditional wills.
 - Pages cannot be substituted
 - Words cannot be marked out or added in
 - Can be stored with bank-level security procedures
 - Can be stored in tamper-evident files that create a record of any tampering attempts
 - Testator can control custody, amendment, and revocation

Enactment Issue: Will Storage



- The law should require e-wills to be securely stored to prevent tampering.
- Rebuttal:
 - The Uniform E-Wills Act does not include storage provisions because experience from the Uniform Probate Code shows that jurisdictions are unlikely to implement them in a uniform manner
 - An enacting state can create its own secure registry, authorize storage by private vendors, or allow individuals and their attorneys to decide how to store electronic wills – just like traditional paper wills
 - If an e-will is notarized remotely under RULONA or a similar statute, the law already includes provisions to ensure document integrity.