

## **Is an Electronic Will Right for You and Your Family?**

Electronic wills—often called “e-wills”—are an emerging alternative to traditional paper-based estate planning documents. As more aspects of daily life move online, states are gradually adapting their laws to recognize wills that are created, signed and stored in digital form. This shift raises important questions about legality, security and whether an e-will is the right choice for you and your family.

### **Traditional will vs. e-will**

Historically, strict formalities have governed valid wills: they must be in writing, signed by the testator (the person making the will), and witnessed — typically in person — by at least two individuals. These requirements were designed to prevent fraud and ensure the testator’s intent is clear. E-wills challenge these conventions by allowing some or all of these steps to occur digitally.

An e-will generally refers to a will that’s created and maintained in an electronic record rather than on paper. Depending on state law, it may be signed electronically and witnessed remotely, often via an online conferencing platform.

### **E-wills and the UEWA**

Because estate law is largely governed at the state level, the validity of e-wills can vary widely across the United States. Some states have enacted their own statutes authorizing e-wills, while others still require traditional paper documents. To bring more consistency to this landscape, the Uniform Law Commission introduced the Uniform Electronic Wills Act (UEWA) in 2019.

The UEWA is a model law designed to help states adopt clear and consistent rules for e-will. While not automatically binding, it serves as a template that state legislatures can enact, in whole or with modifications. Its goal is to modernize will-making while preserving safeguards against fraud and undue influence.

Under the UEWA, an e-will is defined as a will executed electronically, meaning the record itself is digital. Importantly, the act allows for electronic signatures from both the testator and witnesses. This can include typing a name, using a stylus or applying a secure digital signature, depending on the platform used.

One of the most notable features of the UEWA is its flexibility around witnessing. The act permits “remote witnessing,” allowing witnesses to observe the signing of the will through real-time audio-visual communication, such as a video conference.

To address concerns about authenticity and coercion, the UEWA includes optional provisions that states can adopt. For example, it allows for the use of a “qualified custodian” — a person or entity responsible for securely storing the electronic will and maintaining its integrity. The custodian must follow specific requirements to ensure the document isn’t altered and can be reliably retrieved when needed.

The UEWA also provides a “harmless error” rule, which gives courts some flexibility to validate a will that doesn’t strictly meet all formal requirements, as long as there’s clear evidence of the

testator's intent. This mirrors a trend in estate law toward prioritizing intent over technical compliance, though it still requires careful documentation.

### **Pros and cons**

E-wills offer several significant advantages, including:

***Convenience.*** People who live in rural areas, or otherwise lack easy physical access to lawyers, notaries and witnesses, can execute these documents in a matter of minutes rather than hours or days.

***Encouragement of estate planning.*** Young people are accustomed to the speed and convenience of online transactions, so the availability of e-wills may encourage them to plan their estates earlier than they would otherwise.

***Security.*** E-will laws that incorporate fingerprint scanning (or other identity verification procedures), archived video recordings and other security features provide some protection against fraud and abuse.

Potential disadvantages include:

***Uncertainty.*** Will states without e-will laws recognize e-wills executed in other states?

***Cybersecurity issues.*** As with any type of online transactions, hacking and identity theft is a concern, so it's critical for vendors that provide e-will services to incorporate robust security features into their offerings.

***Susceptibility to fraud and undue influence.*** Some have expressed concern that e-wills will be more susceptible to challenges based on fraud or undue influence. But it appears that these concerns generally revolve around the possibility that people will execute e-wills without involving an attorney.

The first disadvantage — uncertainty over whether e-wills will be recognized by other states — is particularly relevant if you execute an e-will in a state that allows it, but later move to another state that does not. Although the UEWA contemplates that the second state would give effect to the e-will under the laws of the first state, some states may not be so inclined.

### **Seek professional help**

For many individuals, a traditional will may still be the most straightforward option. However, e-wills offer convenience and accessibility that align with modern lifestyles. The key is ensuring that any will — electronic or paper — complies with the laws of the relevant state and is executed with proper legal guidance. Contact your attorney for guidance.