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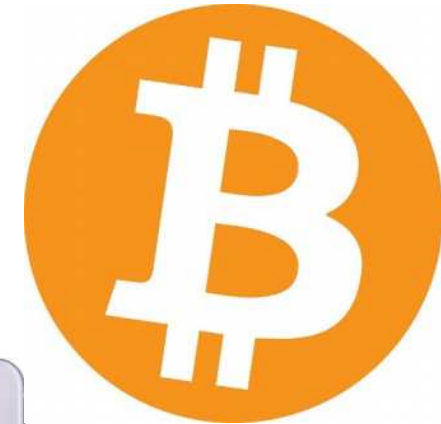
TRUST AND ESTATE LAW

The Future is [almost] Here

Electronic Wills in California

Presented with the gracious assistance
of Thomas W. Shaver, Esq., and the
Executive Committee of the Trust and
Estate Section of the California
Lawyers' Association (TEXCOM)

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Uniform Transactions Act, Civ. Code §§1633.1-1633.17

Civ. Code §1633.7:

- (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- (c) If a law requires a record to be in writing, an electronic record satisfies the law.
- (d) If a law requires a signature, an electronic signature satisfies the law.

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Civ. Code §1633.3:

* * *

(b) This title does not apply to transactions subject to the following laws:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

Electronic Wills Without Special Legislation: Signature Formalities

Taylor v. Holt (Tenn. 2003) 134 S.W.3d 830, Electronic version of testator's signature on will held valid. Witnesses present signed electronically, too.

Estate of Javier Castro (Lorain Cnty. OH. Ct. Com. Pl. 2013) 2013ES00140, Testator's signature on an electronic will document made with a stylus on a Samsung Galaxy Note tablet is valid. Will enforced under OH "harmless error" law.

Electronic Wills Without Special Legislation: Harmless Error Rule

Cal. Prob. Code §6110(c)(2):

If a will was not executed in compliance with paragraph (1) [regarding witnessing a will], the will shall be treated as if it was executed in compliance with that paragraph if the proponent of the will establishes by clear and convincing evidence that, at the time the testator signed the will, the testator intended the will to constitute the testator's will.

Electronic Wills Without Special Legislation: Harmless Error Rule

Estate of Horton (Mich. Ct. App. 2018) 325 Mich.App. 325.

Electronic Wills Without Special Legislation: Harmless Error Rule



Electronic Wills Without Special Legislation: Harmless Error Rule

Estate of Horton (Mich. Ct. App. 2018) 325 Mich.App. 325.

- No signature
- Handwritten note in decedent's journal directed reader to phone.
- "Last Note" in Evernote app contained dispositive estate language.

States' Attempts to Address E-Wills

Three States with Electronic Will Statutes:

- Arizona
- Florida
- Indiana
- Nevada

States with Pending Electronic Will Legislation:

- California
- D.C. (enacted temporary Electronic Will legislation due to COVID-19)
- New Hampshire
- Virginia

Uniform Electronic Will Act (“UEWA”)

- Not adopted in any state
- Adapts provisions from Uniform Probate Code to electronic wills
- Allows for flexibility to correspond to existing state law

California's Proposed Legislation – AB1667

Introduced in Assembly on February 22, 2019. Has been amended several times.

Currently in the Senate.

The current draft requests the Law Revision Commission to deliver a study to the legislature regarding the feasibility of electronic wills on or before September 30, 2022.

Are Electronic Wills Dead in California?

Electronic will found valid under Prob. Code 6110(c)?

- California's "harmless error" statute only applies to witnessing of wills.

Electronic wills found valid in other states?

- Ancillary probate of an electronic will.
- Will found valid in another state is valid in CA (P.C. §12522.)

Why All the Fuss About Electronic Wills, Anyway?

Most assets do not pass subject to a will:

- Assets held in trusts
- Assets with beneficiary designations
 - IRAs and 401(k) accounts
 - Life Insurance
 - POD and TOD accounts
- Jointly-held assets.
- Transfer on Death Deed

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