



TRUSTS AND ESTATES LAW SECTION

2025 Executive Committee

Memo in Support

May 23, 2025

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By: M. of A. Lavine

By: Senator Hoylman-Sigal

Assembly Committee: Judiciary

Senate Committee: Third-Reading

Effective: 540 Days after passage

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AN ACT to amend the Estates, Powers and Trusts Law and the State Technology Law, in relation to electronic wills.

LAW AND SECTIONS REFERRED TO: Creates Sections §3-6.1 through §3-6.9 of the Estates, Powers and Trusts Law (“EPTL”); amends EPTL §§1-2.19 and 3-2.1 and State Technology Law §307.

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The bill amends the EPTL and State Technology law to create a framework under which electronic wills can be executed in the State of New York. Presently, thirteen states¹ and the District of Columbia have legislation that permits testators to execute wills electronically, rather than by paper. The bill was crafted by reviewing those jurisdictions’ legislation, as well as the Uniform Electronic Wills Act (“UEWA”), incorporating those provisions that comport with preexisting New York law, and tailoring the remainder of the bill to ensure that electronic wills would be secure.

For nearly two hundred years, the substantive law of wills has required that all wills be executed in writing, and that the will must be executed in the physical presence of at least two attesting witnesses.² During the Covid-19 pandemic, Governor Cuomo passed Executive Order 202.14, which permitted wills to be executed utilizing audio-visual technology. This meant that during the pandemic, a paper will could be validly executed even if the testator and attesting witnesses were in separate physical locations so long as they were communicating in real time by the proper technology (Facetime, Zoom, etc.)

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¹ Arizona, Colorado, Florida, Idaho, Illinois, Indiana, Maryland, Minnesota, Nevada, North Dakota, Oklahoma, Utah, and Washington.

² EPTL §3-2.1.

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Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

and the will execution comported with EPTL §3-2.1.³ While Executive Order 202.14 was in effect, countless wills were executed in this manner. Yet, in the four years since the Executive Order's enactment and repeal, practitioners and the Surrogates have not observed that this resulted in an increase in wills that were invalidly or fraudulently executed.

This bill goes a step further and sets forth a mechanism that allows wills to be executed electronically. Much like the Covid-19 will executions, the legislation requires that the testator and the attesting witnesses be in each other's "presence" (if not in the same physical location) by using audio-visual technology that enables them to interact in real time. Unlike the Covid-19 will executions, electronic wills would be signed electronically, and the "original will" would be an electronic document, rather than a paper instrument. To ensure that the original electronic will is genuine and is found after the testator dies, the bill requires that the electronic will is filed with the New York Unified Court System within thirty (30) days of its execution, or else it is deemed invalid.⁴

Despite these differences, an electronic will execution would have the same requirements as a paper will execution. This ensures that paper and electronic wills are treated the same, rather than creating a two-tiered system for estate planning and will executions. It would also continue to promote the primary functions served by will execution formalities, including that the will provides permanent and reliable evidence of the testator's intent, expresses the testator's intent in a manner that can be easily interpreted by the courts and executors, and that the will was not the product of forgery, perjury, fraud, or undue influence.⁵

By modernizing New York's substantive law of wills, the bill would improve access to justice for the millions of New Yorkers who presently do not have a will. Electronic wills would be easier and less expensive to create and execute than a paper will and would enable New Yorkers to create an estate plan without needing to make multiple visits to an attorney's office. They also enable underserved communities to have additional access to legal help.

For the reasons set forth above, the New York State Bar Association Trust and Estates Law Section **SUPPORTS** this legislation.

³ See *Matter of Holmgren*, 74 Misc. 3d 917 (Sur. Ct. Queens Co. 2022) ("The [Executive] Order...did not, as many wrongfully assume, replace the formal execution requirements of EPTL 3-2.1. Rather, it solely authorized the use of audio-visual technology to satisfy the 'presence' requirements contained in the statute.")

⁴ The Office of Court Administration ("OCA") has been consulted regarding this bill, and has advised that it is willing and able to create a filing system for electronic wills. To enable OCA to do so, the bill would not become effective until 18 months after its passage.

⁵ See, e.g., John H. Langbein, "Substantial Compliance with the Wills Act," 88 Harv. L. Rev. 489 (1975).