

# STATE OF NEW YORK

8501

## IN SENATE

February 6, 2024

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law and the state technology law, in relation to electronic wills

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Article 3 of the estates, powers and trusts law is amended  
2 by adding a new part 6 to read as follows:

3 PART 6. ELECTRONIC WILLS

4 Section 3-6.1 Short title

5 3-6.2 Definitions

6 3-6.3 Law applicable to electronic will; principles of equity

7 3-6.4 Choice of law regarding execution

8 3-6.5 Execution of electronic will

9 3-6.6 Harmless error

10 3-6.7 Revocation

11 3-6.8 Electronic will attested and made self-proving at time of  
12 execution

13 3-6.9 Certification of paper copy

14 § 3-6.1 Short title

15 This part may be cited as the New York electronic wills act.

16 § 3-6.2 Definitions

17 For purposes of this part the following terms shall have the following  
18 meanings:

19 (a) "Electronic" means relating to technology having electrical,  
20 digital, magnetic, wireless, optical, electromagnetic, or similar capa-  
21 bilities.

22 (b) "Electronic presence" means the relationship of two or more indi-  
23 viduals in different locations communicating in real time by electronic  
24 means to the same extent as if the individuals were physically present  
25 in the same location.

26 (c) "Electronic will" means a will executed electronically in compli-  
27 ance with paragraph (a) of section 3-6.5.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (d) "Record" means information that is inscribed on a tangible medium  
2 or that is stored in an electronic or other medium and is retrievable in  
3 perceivable form.

4 (e) "Sign" means, with present intent to authenticate or adopt a  
5 record: (1) to execute or adopt a tangible symbol; or (2) to affix to  
6 or logically associate with the record an electronic symbol or process.

7 (f) "State" means a state of the United States, the District of Colum-  
8 bia, Puerto Rico, the United States Virgin Islands, or any territory or  
9 insular possession subject to the jurisdiction of the United States.  
10 The term shall also include a federally recognized Indian tribe.

11 (g) "Will" includes a codicil and any testamentary instrument that  
12 merely appoints an executor, revokes or revises another will, nominates  
13 a guardian, or expressly excludes or limits the right of an individual  
14 or class to succeed to property of the decedent passing by intestate  
15 succession.

#### 16 § 3-6.3 Law applicable to electronic will; principles of equity

17 An electronic will is a will for all purposes of the law of this  
18 state. The law of this state applicable to wills and principles of equi-  
19 ty apply to an electronic will, except as modified by this act.

#### 20 § 3-6.4 Choice of law regarding execution

21 A will executed electronically but not in compliance with paragraph  
22 (a) of section 3-6.5 is an electronic will under this act if executed in  
23 compliance with the law of the jurisdiction where the testator is:

- 24 (a) physically located when the will is signed; or  
25 (b) domiciled or resides when the will is signed or when the testator  
26 dies.

#### 27 § 3-6.5 Execution of electronic will

28 (a) Subject to paragraph (d) of section 3-6.8 and except as provided  
29 in section 3-6.6, an electronic will must be:

30 (1) a record that is readable as text at the time of signing under  
31 subparagraph two;

- 32 (2) signed by:  
33 (A) the testator; or  
34 (B) another individual in the testator's name, in the testator's phys-  
35 ical presence and by the testator's direction; and

36 (3) either:  
37 (A) signed in the physical or electronic presence of the testator by  
38 at least two individuals, each of whom is a resident of a state and  
39 within a reasonable time after witnessing:

- 40 (i) the signing of the will under subparagraph two; or  
41 (ii) the testator's acknowledgment of the signing of the will under  
42 subparagraph two or acknowledgement of the will; or

43 (B) acknowledged by the testator before and in the physical or elec-  
44 tronic presence of a notary public or other individual authorized by law  
45 to notarize records electronically.

46 (b) Intent of a testator that the record under subparagraph one of  
47 paragraph (a) be the testator's electronic will may be established by  
48 extrinsic evidence.

49 (c) Notwithstanding paragraph (d) of subdivision one of section one  
50 hundred thirty-five-c of the executive law, for purposes of this section  
51 electronic wills may be notarized by notary publics that are not phys-  
52 ically present in the state of New York.

#### 53 § 3-6.6 Harmless error

54 Although a document or writing added upon a document was not executed  
55 in compliance with section 3-2.1, the document or writing shall be  
56 treated as if it had been executed in compliance with that section if

1 the proponent of the document or writing establishes by clear and  
2 convincing evidence that the decedent intended the document or writing  
3 to constitute any of the following:

- 4 (a) The decedent's will.
- 5 (b) A partial or complete revocation of the decedent's will.
- 6 (c) An addition to or an alteration of the decedent's will.
- 7 (d) A partial or complete revival of the decedent's formerly revoked  
8 will or of a formerly revoked portion of the decedent's will.

9 § 3-6.7 Revocation

- 10 (a) An electronic will may revoke all or part of a previous will.
- 11 (b) All or part of an electronic will is revoked by:
  - 12 (1) a subsequent will that revokes all or part of the electronic will  
13 expressly or by inconsistency; or
  - 14 (2) a physical act, if it is established by a preponderance of the  
15 evidence that the testator, with the intent of revoking all or part of  
16 the will, performed the act or directed another individual who performed  
17 the act in the testator's physical presence.

18 § 3-6.8 Electronic will attested and made self-proving at time of  
19 execution

- 20 (a) An electronic will may be simultaneously executed, attested, and  
21 made self-proving by acknowledgment of the testator and affidavits of  
22 the witnesses.
  - 23 (b) The acknowledgment and affidavits under paragraph (a) must be:
    - 24 (1) made before and in the physical or electronic presence of an offi-  
25 cer authorized to administer oaths under law of the state in which the  
26 officer is located; and
    - 27 (2) evidenced by the officer's certificate under official seal affixed  
28 to or logically associated with the electronic will.
  - 29 (c) The acknowledgment and affidavits under paragraph (a) must be in  
30 substantially the following form: I, \_\_\_\_\_, the  
31 testator, being sworn, declare to the undersigned officer that I sign  
32 this instrument as my electronic will, I willingly sign it or willingly  
33 direct another individual to sign it for me, I execute it as my volun-  
34 tary act for the purposes expressed in this instrument, and I am 18  
35 years of age or older, of sound mind, and under no constraint or undue  
36 influence.

37 \_\_\_\_\_  
38 Testator

39 We, \_\_\_\_\_ and \_\_\_\_\_,  
40 witnesses, being sworn, declare to the undersigned officer that the  
41 testator signed this instrument as the testator's electronic will, that  
42 the testator willingly signed it or willingly directed another individ-  
43 ual to sign for the testator, and that each of us, in the physical or  
44 electronic presence of the testator, signs this instrument as witness to  
45 the testator's signing, and to the best of our knowledge the testator is  
46 18 years of age or older, of sound mind, and under no constraint or  
47 undue influence.

48 \_\_\_\_\_  
49 Witness

50 \_\_\_\_\_  
51 Witness

1 Certificate of officer:  
2 State of  
3 County of

4 Subscribed, sworn to, and acknowledged before me by  
5 , the testator, and subscribed and sworn to  
6 before me by and  
7 , witnesses, this day of .

8 (Seal)

9 \_\_\_\_\_  
10 (Signed)

11 \_\_\_\_\_  
12 (Capacity of officer)

13 (d) A signature physically or electronically affixed to an affidavit  
14 that is affixed to or logically associated with an electronic will under  
15 this act is deemed a signature of the electronic will under paragraph  
16 (a) of section 3-6.5.

17 § 3-6.9 Certification of paper copy

18 An individual may create a certified paper copy of an electronic will  
19 by affirming under penalty of perjury that a paper copy of the electron-  
20 ic will is a complete, true, and accurate copy of the electronic will.  
21 If the electronic will is made self-proving, the certified paper copy of  
22 the will must include the self-proving affidavits.

23 § 2. The opening paragraph of paragraph (a) of section 3-2.1 of the  
24 estates, powers and trusts law is amended to read as follows:

25 Except for nuncupative and holographic wills authorized by 3-2.2 and  
26 electronic wills authorized by part six of this article, every will must  
27 be in writing, and executed and attested in the following manner:

28 § 3. Subdivision 1 of section 307 of the state technology law, as  
29 amended by chapter 543 of the laws of 2023, is amended to read as  
30 follows:

31 1. To any document providing for the disposition of an individual's  
32 person or property upon death or incompetence, or appointing a fiduciary  
33 of an individual's person or property, including, without limitation,  
34 wills, unless such will is executed pursuant to part six of arti-  
35 cle three of the estates, powers and trusts law, trusts, decisions  
36 consenting to orders not to resuscitate, powers of attorney and health  
37 care proxies, with the exception of: (a) contractual beneficiary desig-  
38 nations; (b) the registration of making, amending, or revoking an  
39 anatomical gift under section forty-three hundred ten of the public  
40 health law; (c) documents and forms authorizing or accepting funeral,  
41 cemetery and cremation services; and (d) the execution of a valid power  
42 of attorney for the purpose of transferring a salvage certificate of  
43 title and the execution of an odometer and damage disclosure statement  
44 in connection with such title whenever a loss in connection with a  
45 private automobile is determined by an insurer to be a total loss or  
46 constructive total loss under section three thousand four hundred twelve  
47 of the insurance law.

48 § 4. This act shall take effect immediately.