

STATE OF NEW YORK

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IN SENATE

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Introduced by Sens. HOYLMAN-SIGAL, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 Caution to testator

9 3-6.6 Execution of electronic will

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 Filing of an electronic will

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) "Audit trail data" means data about the activities of data,
20 including but not limited to the electronic will's creation and
21 execution.

22 (b) "Electronic" shall have the same meaning set forth in subdivision
23 one of section three hundred two of the state technology law.

24 (c) "Electronic presence" means the relationship of two or more indi-
25 viduals in different locations communicating in real time by electronic

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

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1 means to the same extent as if the individuals were physically present
2 in the same location.

3 (d) "Electronic will" means a will executed electronically in compli-
4 ance with paragraph (a) of section 3-6.6 and subsequently filed with the
5 New York state unified court system in accordance with section 3-6.9.
6 The original electronic will shall contain audit trail data.

7 (e) "Record" means information that is inscribed on a tangible medium
8 or that is stored in an electronic or other medium and is retrievable in
9 perceivable form.

10 (f) "Sign" means, with present intent to authenticate or adopt a
11 record: (1) to execute or adopt a tangible symbol; or (2) to affix to
12 or logically associate with the record an electronic symbol or process.

13 (g) "State" means a state of the United States, the District of Colum-
14 bia, Puerto Rico, the United States Virgin Islands, or any territory or
15 insular possession subject to the jurisdiction of the United States.
16 The term shall also include a federally recognized Indian tribe.

17 (h) "Will" has the same meaning as in section 1-2.19.

18 § 3-6.3 Law applicable to electronic will; principles of equity

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

22 § 3-6.4 Choice of law regarding execution

23 A will executed electronically but not in compliance with paragraph
24 (a) of section 3-6.6 is an electronic will under this act if executed in
25 compliance with the law of the jurisdiction where the testator is:

26 (a) physically located when the will is executed; or

27 (b) domiciled when the will is executed or when the testator dies.

28 § 3-6.5 Caution to the testator

29 An electronic will shall include a disclosure substantially similar to
30 the following in twelve-point font or larger, boldface, double-spaced
31 type:

32 CAUTION TO THE TESTATOR: YOUR WILL IS AN IMPORTANT DOCUMENT. AS TESTA-
33 TOR, YOUR WILL SHOULD REFLECT YOUR FINAL WISHES. TO BE VALID, IT MUST BE
34 SIGNED BY YOU OR ANOTHER INDIVIDUAL AUTHORIZED BY YOU AND WHO IS IN YOUR
35 PHYSICAL PRESENCE AT THE TIME OF SIGNING. IT MUST ALSO BE SIGNED IN YOUR
36 PHYSICAL OR ELECTRONIC PRESENCE BY AT LEAST TWO INDIVIDUALS, EACH OF
37 WHOM IS A DOMICILIARY OF A STATE, AND EACH OF WHOM SIGNS THE WILL WITHIN
38 A THIRTY DAY PERIOD AFTER WITNESSING YOU SIGN THE WILL, OR ACKNOWLEDGE
39 THAT YOU SIGNED IT.

40 WITHIN THIRTY DAYS AFTER THE ELECTRONIC WILL IS EXECUTED, IT MUST BE
41 ELECTRONICALLY FILED WITH THE NEW YORK STATE UNIFIED COURT SYSTEM.

42 YOU MAY REVOKE YOUR ELECTRONIC WILL AT ANY TIME. YOU MAY DO SO BY
43 EXECUTING A SUBSEQUENT WILL OR SEPARATE WRITING CLEARLY INDICATING YOUR
44 INTENT TO REVOKE ALL OR PART OF YOUR ELECTRONIC WILL, OR BY REQUESTING
45 ITS REMOVAL FROM THE NEW YORK STATE UNIFIED COURT SYSTEM. ONCE YOU HAVE
46 REMOVED YOUR ELECTRONIC WILL FROM THE NEW YORK STATE UNIFIED COURT
47 SYSTEM, IT IS REVOKED.

48 § 3-6.6 Execution of electronic will

49 (a) Subject to paragraph (d) of section 3-6.8, an electronic will must
50 be:

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

53 (2) signed at the end thereof by:

54 (A) the testator; or

1 (B) another individual in the testator's name, in the testator's phys-
2 ical presence and by the testator's direction, in a manner consistent
3 with section 3-2.1 (a)(1)(C), subject to the following:

4 (i) The presence of any matter following the testator's signature,
5 appearing on the will at the time of its execution, shall not invalidate
6 such matter preceding the signature as appeared on the will at the time
7 of its execution, except that such matter preceding the signature shall
8 not be given effect, in the discretion of the surrogate, if it is so
9 incomplete as not to be readily comprehensible without the aid of matter
10 which follows the signature, or if to give effect to such matter preced-
11 ing this signature would subvert the testator's general plan for the
12 disposition and administration of their estate.

13 (ii) No effect shall be given to any matter, other than the attesta-
14 tion clause, which follows the signature of the testator, or to any
15 matter preceding such signature which was added subsequently to the
16 execution of the will; and

17 (3) signed in the physical or electronic presence of the testator by
18 at least two individuals, each of whom is a domiciliary of a state and
19 within a thirty day period after witnessing:

20 (A) the signing of the will under subparagraph two; or

21 (B) the testator's acknowledgment of the signing of the will under
22 subparagraph two or acknowledgment of the will.

23 (b) Intent of a testator that the record under subparagraph one of
24 paragraph (a) of this section be the testator's electronic will may be
25 established by extrinsic evidence.

26 § 3-6.7 Revocation

27 (a) An electronic will may revoke all or part of a previous will.

28 (b) An electronic will is revoked by:

29 (1) a subsequent will that revokes all or part of the electronic will;

30 (2) removal of the electronic will from the custody of the New York
31 state unified court system by:

32 (i) the testator;

33 (ii) another person duly authorized by the testator as proved by at
34 least two witnesses, neither of whom shall be the person removing the
35 electronic will; or

36 (iii) as otherwise authorized by the uniform rules of the surrogate's
37 court; or

38 (3) a writing of the testator clearly indicating an intention to
39 effect such a revocation or alteration, executed with the formalities
40 prescribed by this article for the execution and attestation of a will.

41 (c) An electronic will may be removed from the custody of the New York
42 state court system by order of a court of competent jurisdiction which,
43 if occurring during the lifetime of the testator, shall not be deemed a
44 revocation of the electronic will.

45 § 3-6.8 Electronic will attested and made self-proving at time of 46 execution

47 (a) An electronic will may be simultaneously executed, attested, and
48 made self-proving by acknowledgment of the testator and affidavits of
49 the witnesses.

50 (b) The acknowledgment and affidavits under paragraph (a) must be:

51 (1) made before and in the physical or electronic presence of an offi-
52 cer authorized to administer oaths under law of the state in which the
53 officer is located; and

54 (2) evidenced by the officer's certificate under official seal affixed
55 to or logically associated with the electronic will.

1 (c) The acknowledgment and affidavits under paragraph (a) must conform
2 with section fourteen hundred six of the surrogate's court procedure act
3 and must indicate that the will was signed electronically.

4 (d) A signature physically or electronically affixed to an affidavit
5 that is affixed to or logically associated with an electronic will under
6 this act is deemed a signature of the electronic will under paragraph
7 (a) of section 3-6.6.

8 § 3-6.9 Filing of electronic will

9 Within thirty days of its execution, an electronic will shall be elec-
10 tronically filed with the New York state unified court system either by
11 the testator or another person duly authorized by the testator. The
12 electronic will shall remain in the custody of the New York state
13 unified court system until such time as it is removed or revoked in
14 accordance with section 3-6.7. The failure to timely file an electronic
15 will with the New York state unified court system shall result in the
16 unfiled electronic will being deemed invalid.

17 § 2. Paragraph (a) of section 1-2.19 of the estates, powers and trusts
18 law, as amended by chapter 686 of the laws of 1967, and such section as
19 renumbered by chapter 595 of the laws of 1992, is amended to read as
20 follows:

21 (a) A will is an oral declaration or written instrument, made as
22 prescribed by 3-2.1 ~~[or]~~, 3-2.2 or 3-6.6 to take effect upon death,
23 whereby a person disposes of property or directs how it shall not be
24 disposed of, disposes of ~~[his]~~ their body or any part thereof, exercises
25 a power, appoints a fiduciary or makes any other provision for the
26 administration of ~~[his]~~ their estate, and which is revocable during
27 ~~[his]~~ their lifetime.

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

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

33 § 4. Subdivision 1 of section 307 of the state technology law, as
34 separately amended by chapters 543 of the laws of 2023 and chapter 33 of
35 the laws of 2024, is amended to read as follows:

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

52 § 5. This act shall take effect on the five hundred forty-fifth day
53 after it shall have become a law. Effective, immediately, the addition,
54 amendment and/or repeal of any rule or regulation necessary for the
55 implementation of this act on its effective date is authorized to be
56 made on or before such effective date.