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Reformation of Will Statutes and the Legality of eWills

Kareem A. Elsheryie

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I. Introduction

“The purpose of a last will and testament is to wind up and settle the testator's affairs and to communicate the testator's intent and instructions for the orderly and efficient distribution of the testator's assets.”¹ Understandably, the topic of wills makes people uncomfortable because it forces them to confront their own mortality. Those who decide to draft wills are concerned enough to think about the disposition of their assets and belongings after their death. Some may decide to retain an attorney to help draft their will for various reasons including owning a large number of assets, their desire for people to meet certain requirements before receiving assets, or because they are afraid their will may be invalid for failure to comply with legal formalities. However, this all presupposes that the testator has the financial resources to hire an attorney. Other people may not have the financial resources to hire an attorney; therefore, they will try to draft their own will, and if they are aware of the legal formalities to executing a valid will, comply as best as they can. Regardless of whether a lawyer is involved or not, drafting a valid will can be an arduous task. While other tasks have become less arduous with the development of technology, the legal formalities for drafting wills have largely remained the same; the formalities have been described as complex, and they largely rely on in-person execution and witnessing of wills for them to be valid. While some in the legal community have defended these formalities as necessary to carry out the proper intentions of the testator, others have called for change. Specifically, they have advocated for the incorporation of technology into the drafting and execution of wills. While there are some companies that offer online will drafting services, they require testators to print out the will and physically execute it in front of witnesses; this is required, as these companies put it, for the testator's will to be legally binding. However, there

¹ Gerald Lebovits, *Will of Fortune: New York Will Drafting—Part 2*, 89-JAN NYSTBJ 64 (2017).

are new companies offering eWill solutions which allow testators to fully draft and execute their wills online. Not only do these eWill companies incorporate the latest technology, but they advertise themselves as a more convenient and efficient solution for drafting wills.

II. The History of Will Formalities and Will Statutes

“American probate law has ... three basic execution formalities: that a will be in writing, signed by the testator, and witnessed.”² These formalities have their roots in English laws, specifically the “Statute of Wills of 1540, the English Statute of Frauds of 1677, and the English Wills Act of 1837.”³ While there is no national probate law in the United States, organizations such as the American Bar Association and others have attempted to draft codes to promote “uniformity, or at least some congruity, among certain state [probate] laws.”⁴

The Model Probate Code (“MPC”) was drafted by the American Bar Association in the 1940s.⁵ However, there were soon efforts by the public to reform the MPC and other state probate laws. “The probate system has earned a lamentable reputation for expense, delay, clumsiness ... and worse.”⁶ The public thought of probate administration as a relatively easy and straightforward task; they could not understand why, in their opinion, the MPC and other laws insisted on making it complicated. For example, the MPC insisted on judicial proceedings for most probate matters.⁷ Anti-probate sentiment was so widespread in the 1960s that books were written on how to avoid probate. One book in particular, *How to Avoid Probate!* written by Norman Dacey, sold over 600,000 copies by 1969.⁸ This book contained forms for its

² Anne-Marie Rhodes, *Notarized Wills*, 27 QPROBLJ 419 (2014).

³ *Id.*

⁴ Karen J. Sneddon, *Beyond The Personal Representative*, 50 STCLR 449 (2009).

⁵ *Id.*

⁶ John H. Langbein, *The Nonprobate Revolution And The Future Of The Law Of Succession*, 97 Harv. L. Rev. 1108 (1984).

⁷ Richard Wellman, *The Uniform Probate Code: A Possible Answer to Probate Avoidance*, 44 Ind. L.J. 191 (1969).

⁸ *Id.*

purchasers to use when drafting wills.⁹ Furthermore, there was (unfortunately) a general mistrust of lawyers during this time. Mr. Dacey noted that lawyers are naturally conflicted between what is good for them, such as compensation, and what is good for their clients.¹⁰ In response to this anti-probate movement, people began looking to non-probate methods such as joint tenancies.¹¹

In the early 1960s, the American Bar Association and the Uniform Law Commissioners began drafting the Uniform Probate Code (“UPC”) in response to these reform efforts¹². “The public hue and cry over the expense of probate and [the use of non-probate measures] may have been the inspiration . . . to take a more aggressive approach to reform than the [MPC.]”¹³ Specifically, probate reform focused mainly on less judicial involvement in probate. “[T]he overarching theme of the [UPC] would be to remove courts from the process of probate and administration to the greatest extent feasible.”¹⁴ While less judicial involvement was the goal, people would also welcome a flexible approach with judicial involvement in the probate of larger, and more complex estates. The UPC was promulgated in August 1969, and soon after “the intensity of hostility to probate . . . abated a little.”¹⁵ However, the UPC has only been adopted in its entirety by a handful of states.

The UPC requires wills to be (1) in writing, (2) signed by the testator or someone else in the testator’s presence, and (3) either signed by two witnesses, acknowledged by the testator, or

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* See also John H. Langbein, *The Nonprobate Revolution And The Future Of The Law Of Succession*, 97 Harv. L. Rev. 1108 (1984).

¹² Lawyers also had an interest in probate reform, both for reputational purposes, and because non-probate alternatives posed a financial threat to their business. See Richard Wellman, *The Uniform Probate Code: A Possible Answer to Probate Avoidance*, 44 Ind. L.J. 191 (1969).

¹³ Sarajane Love, *Estate Creditors, the Constitution, and the Uniform Probate Code*, 30 U. Rich. L. Rev. 411 (1996).

¹⁴ *Id.*

¹⁵ John H. Langbein, *The Nonprobate Revolution And The Future Of The Law Of Succession*, 97 Harv. L. Rev. 1108 (1984).

signed before a notary.¹⁶ The legal formalities around will drafting have been described as necessary to carry out the intentions of the testator. Specifically, they argue that will formalities serve four functions. Will formalities

“serve an evidentiary function by furnishing reliable evidence of what the testator intended ...[,] a cautionary or “ritual” function by helping to ensure that the will reflects a considered, final decision . . . [and] a protective function by reducing the possibility that wrongdoers might interfere with the process of execution.”¹⁷

Lastly, will formalities serve a “channeling function ... [which] provide a legal framework into which the party may fit his actions, or, to change the figure, [they] offer[] channels for the legally effective expression of intention.”¹⁸

III. Will Drafting and the Impact of New Technology

Before the widespread adoption of technology, disputes regarding compliance with will formalities would be relatively straightforward to address. Anyone who wanted to draft a will, whether they were aware of the legal requirements or not, would physically write or type one out¹⁹. There may be disputes regarding the testator’s signature or whether the proper witnesses signed the will. However, these are relatively easy disputes for courts to address; there were either witnesses to the will who signed the document, or there were no witnesses. While witness testimony may be unreliable, witnesses are generally required to attest at the time the testator is signing the will that it was, the testator, that signed the will, and that all the legal formalities were complied with.²⁰ As computers, smartphones, and tablets became ubiquitous, people looked

¹⁶ Unif. Probate Code § 2-502(a) (amended 2019).

¹⁷ Emily Sherwin, *Clear And Convincing Evidence Of Testamentary Intent: The Search For A Compromise Between Formality And Adjudicative Justice*, 34 Conn. L. Rev. 453 (2002).

¹⁸ *Id.* (internal quotations and citations omitted). See also Anne-Marie Rhodes, *Notarized Wills*, 27 QPROBLJ 419 (2014).

¹⁹ See *In re Estate of Carmedy*, 642 N.E.2d 1170, 1171 (Ohio Ct. App. 1994) (quoting Ohio law that “[e]xcept oral wills, every last will and testament shall be in writing, but may be handwritten or typewritten.”)

²⁰ See the eWills and the conflict with current will legal formalities section *infra*. Additionally, extrinsic evidence can be introduced under the UPC should there be a dispute regarding a testator’s will. Unif. Probate Code § 2-502(c) (amended 2019).

to them as a way of drafting their last will and testament. This is especially true when people are hospitalized or are otherwise physically unable to formally draft a will. As a result, wills drafted by testators via these new technologies would come into conflict with the traditional requirements for a legally valid will. One highly publicized case in Ohio concerned an individual who, fearing death at a hospital, had a relative draft their will on a tablet before signing it.²¹ While this individual's will did not comply with the physical writing requirement, it was ultimately admitted to probate. Another case where a will's validity was questioned revolved around a handwritten note as to how to access a will on a cell phone.²² As the American Bar Association noted "with increasing frequency, courts have been asked to validate electronic wills without the statutory language to deal with them."²³ Leaving courts to determine on an ad-hoc basis whether wills written via an electronic medium are valid costs a significant amount of time and resources; this is why states need statutory language to determine whether wills drafted via new technological mediums are valid or not.

IV. Introduction to eWills

As technology continued to develop, and the laws around will formalities failed to change and formally allow people to utilize technology for will drafting, companies began to advertise complete online will drafting solutions. "eWill" companies advertised websites where users could create an account, enter their personal information, and with a few clicks they would have a fully executed will²⁴. As the founder of one eWill company put it, the process involves

²¹ *In re Estate of Castro*, No. 2013ES00140 (Ohio Ct. Common Pleas, Prob. Div., Lorain County, June 19, 2013).

²² *In re Estate of Horton*, 925 N.W. 2d 207 (Mich. Ct. App. 2018).

²³ *Technology—Probate: Ready or Not, Here They Come: Electronic Wills Are Coming to a Probate Court Near You*, American Bar Association, https://www.americanbar.org/groups/real_property_trust_estate/publications/probate-property-magazine/2019/september-october/ready-or-not-here-they-come-electronic-wills-are-coming-a-probate-court-near-you/.

²⁴ While unrelated to eWills, there have been discussions around Blockchain Wills as blockchain technology becomes more mainstream. See Bridget J. Crawford, *Blockchain Wills*, 95 Ind. L.J. 735 (2020).

“minimal human interaction [and is] completely virtual.” These companies advertised themselves as a more efficient, and easier, way of drafting a will. Beyond that, they also advertised a key benefit: not having to worry about whether their will would be valid and admitted to probate. However, the founders of these companies were also cognizant of the fact that in certain states, their services did not comply with the legal formalities for drafting a valid will. eWill companies began lobbying state legislatures across the country to update their will statutes and ensure the validity of wills fully drafted online.

V. eWills and the Conflict With Existing Will Formalities

Aside from states that have passed laws explicitly permitting eWills, most states’ will statutes and the UPC complicate the digitization of will making. Given that most state statutes have the same requirements and formalities for will validity as the UPC, we will analyze how eWills conflict with these laws. For a will to be valid under the UPC, it must comply with the formalities and requirements outlined in section 2-502.

[A] will must be: (1) in writing; (2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and (3) either: (A) signed by at least two individuals, each of whom signed within a reasonable time after the individual witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgement of the will; or (B) acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgements.²⁵

The UPC also allows for handwritten (also known as holographic) wills, wills that are signed by the testator and entirely in their handwriting; however, holographic wills do not comply with the witness requirements.²⁶ Holographic wills are valid under the UPC “whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.”²⁷

²⁵ Unif. Probate Code § 2-502(a) (amended 2019).

²⁶ Unif. Probate Code § 2-502(b) (amended 2019).

²⁷ *Id.*

First, eWills are fully drafted and executed on a computer which conflicts with the UPC requirement that wills be written on a physical document. With eWills, there is no need to print out the will for signatures or notarization since this is all done electronically. For example, leading eWill company Willing notes that wills created on their website are “instantly created at the click of a button.”²⁸ Traditionally, anyone who wanted to draft a will would meet with an attorney to physically draft one for them. However, eWill companies draft the documents on a computer for the testator after a few questions and clicks. This directly conflicts with the UPC requirement that wills be written on a physical document.²⁹

While the UPC allows for handwritten (also known as holographic wills), eWills do not qualify as handwritten to be considered valid. In a New Jersey probate case, the court noted that under New Jersey law (which “adopted the holographic will standard contained in the UPC”) the only requirement for a holographic will is that “the signature and the material provisions of the will be in the testator's handwriting.”³⁰ The handwriting requirement was seen as necessary to ensure the will was genuine.³¹

eWill companies allow testators to electronically sign their wills only if their states allow for electronic signatures of wills. eWill companies note that while they intended to create solutions that allowed for wills to be fully drafted on a computer, they will instruct users to print

²⁸ *How to make your own will*, Willing Learn, <https://willing.com/learn/do-it-yourself-will.html>.

²⁹ Unif. Probate Code § 2-502(a)(1) (amended 2019). *See also In re Estate of Carmedy*, 642 N.E.2d 1170, 1171 (Ohio Ct. App. 1994) (quoting Ohio law that “[e]xcept oral wills, every last will and testament shall be in writing, but may be handwritten or typewritten.”)

³⁰ *In re Will of Ferree*, 848 A.2d 81, 87-88 (N.J. Super. Ct. Ch. Div. 2003).

³¹ *Id.* at 84 (quotations and citations omitted).

and physically sign a will if they are legally required to.³² This disclosure provides users with comfort that eWill companies are offering legally compliant solutions. Not only does the UPC require testators to physically sign their wills, but some states have interpreted it as requiring the testator to sign at the very end of the will.³³ The physical signature requirement also extends to the two witnesses' signatures and a testator's attestation.³⁴ Since eWill companies offer fully electronic will drafting solutions that generally do not involve physical wills, two witnesses cannot physically sign a will. In addition, a testator does not have a physical document (unless instructed to) they can sign to attest that they are signing a will.

While the UPC has relaxed the requirements for witnessing a testator sign a will, comments to the UPC as well as case law are silent on remote witnessing. eWill companies offer solutions that allow witnesses to remotely witness a will's signing, as well as solutions that allow the witnesses or a notary themselves to remotely sign a will; however, there is legal uncertainty as to whether this witnessing is valid.

The ability to execute an eWill allows testators to execute a will in another state, even if they do not live there. Under the UPC, a will is valid "where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national."³⁵ The comments to this section note the purpose of this is to

³² It is important to note here that eWill companies differ from online legal service websites such as Freewill, Nolo, and Legal Zoom. While these websites also allow users to draft wills online, they market themselves more as alternatives to hiring an attorney for will drafting. Freewill and Legal Zoom explicitly note that the only service they are providing is the drafting of a will, not the execution. Once users have drafted their wills, the companies instruct users to print the will and execute it in accordance with their state's requirements. In other words, their work ends once the will has been drafted. In contrast, eWill companies distinguish themselves by offering a full solution: will drafting, electronic signature, and execution via witness or notary electronic signatures.

³³ See, e.g., *Matter of Estate of Baker*, 386 P.3d 1228, 1232 (Alaska 2016) ("a handful of other jurisdictions ... have determined ... a signature will be valid only if located at the end of the document.")

³⁴ See, e.g., *In re Will of Ferree*, 848 A.2d at 141-142; *In re Estate of Alfaro*, 703 N.E.2d 620, 622 (Ill. App. Ct. 2d Dist. 1998).

³⁵ Unif. Probate Code § 2-506 (amended 2019).

“provide a wide opportunity for validation of expectations of testators.”³⁶ Under the UPC a testator could, in theory, visit a state that allows eWills and execute a valid will in that state. Under the UPC, that eWill would also be valid in the testator’s home state. With eWills becoming slightly more mainstream, states that do not recognize eWills have become concerned that their residents would virtually execute eWills valid in other states; under the UPC, these validly executed wills would be valid in a testator’s home state. As a result of these concerns, states like Indiana do not recognize eWills executed in other states unless the testator was physically present in, or a resident of, the other state.³⁷ Indiana also does not permit out of state residents to take advantage of their eWill statutes.³⁸ However, some states such as Nevada will probate the will of anyone who executes it in accordance with Nevada law, whether or not they have a connection to Nevada³⁹. *Id.*

VI. States Where Laws Allow for eWills

Before examining which states have reformed their laws to allow for eWills, it is important to outline a brief history as to how the law has evolved. In 1999, the Uniform Law Commission published the Uniform Electronic Transactions Act (hereinafter “UETA.”) The UETA allows for electronic signatures and notarizations in commercial transactions. However, it does not apply to wills and trusts. “This Act does not apply to a transaction to the extent it is governed by a law governing the creation and execution of wills.”⁴⁰

In 2001 however, Nevada decided to extend the UETA to wills and trusts. Although legislation permitted the drafting and execution of eWills in Nevada, they never came to fruition

³⁶ *Id.*

³⁷ Ind. Code Ann. § 29-1 21-7 (West 2022).

³⁸ Gerry W. Beyer, Esq., *Electronic wills– What estate planners need to know*, Ti-Trust (Oct. 2019), <https://www.ti-trust.com/wp-content/uploads/2021/01/PT-Newsletter-October-2019.pdf>.

³⁹ *Id.* See Nevada *infra* for a discussion on Nevada’s will statute and execution of wills by nonresidents

⁴⁰ Uniform Electronic Transactions Act § 3.

for several reasons. First, “the technology necessary to create an electronic will in compliance with the law was not yet in existence. Technology had advanced enough to provide biometric authentication abilities, but the statute required the existence of only one authoritative copy of the will for which biometric authentication was entirely unhelpful.”⁴¹ Also, eWills never came to fruition in Nevada because the law “did not provide for attestation of witnesses or a process by which an electronic will could be notarized.”⁴² As a result, the law remained unused. Sixteen years later however, in response to technological developments and lobbying by eWill companies, Nevada passed a law explicitly allowing for the validity of eWills. Soon after, other states began to follow.

A. Nevada

In 2017, Nevada passed a law that explicitly recognized the validity of electronic wills and trusts. This law was passed after intense lobbying by Willing, a company offering eWill services. Nevada’s law explicitly amended some of the will formalities that prevented eWills from being valid. The Nevada law allows for wills executed with an electronic signature of a testator and either (1) the signature is “characteristic of the testator,” (2) with the “signature and electronic seal of an electronic notary public, placed thereon in the presence of the testator and in whose presence the testator placed his or her electronic signature thereon,” or (3) “[t]he electronic signatures of two or more attesting witnesses, placed thereon in the presence of the testator and in whose presence the testator placed his or her electronic signature thereon.”⁴³

Characteristic of the testator is defined as “a characteristic of a certain person that is unique to that person and that is capable of measurement and recognition in an electronic record as a

⁴¹ Gerry W. Beyer, Esq., *Electronic wills– What estate planners need to know*, Ti-Trust (Oct. 2019), <https://www.ti-trust.com/wp-content/uploads/2021/01/PT-Newsletter-October-2019.pdf>.

⁴² *Id.*

⁴³ Nev. Rev. Stat. Ann. § 133.085 (West 2017).

biological aspect of or physical act performed by that person.”⁴⁴ Not only can the entire drafting and execution of a will be done electronically by a testator, but notarization or attestation by a witness can be done remotely as well.

One aspect of Nevada’s eWills legislation that has stirred debate is their willingness to both permit nonresidents to execute eWills, and Nevada’s willingness to recognize the validity of electronic wills from other states, even if those wills would not be valid in the testator’s home state. Nevada’s law states that “regardless of the physical location of the person executing a document or of any witness, if a document is executed electronically, the document shall be deemed to be executed in [Nevada] and will be governed by the laws of [Nevada] and subject to the jurisdiction of [Nevada.]”⁴⁵ For this to apply, a testator has to meet only one condition outlined in the statute: “stating [in the will] that he or she understands that he or she is executing, and that he or she intends to execute, the document in and pursuant to the laws of [Nevada,]” or the individual “states that the validity and effect of its execution are governed by the laws of [Nevada.]”⁴⁶ If the testator complies with the requirements of the statute, then Nevada can claim original “probate jurisdiction [over a will] . . . regardless of whether the decedent testator had any nexus at all to Nevada.”⁴⁷

B. Indiana

Indiana was the second state to formally pass legislation authorizing eWills. Legislation was initially proposed in 2017, but there was opposition from the Indiana State Bar Association. As a result, the Indiana legislature formed a task force along with the State Bar Association to

⁴⁴ *Id.*

⁴⁵ Nev. Rev. Stat. Ann. § 133.088 (West 2017).

⁴⁶ *Id.*

⁴⁷ Kyle B. Gee, Esq., *The “Electronic Wills” Revolution: An Overview of Nevada’s New Statute, The Uniform Law Commission’s Work, and Other Recent Developments*, 28 No. 4 Ohio Prob. L.J. NL 2 (2018).

come up with legislation that would be acceptable to all parties. Like the Nevada legislation, Indiana’s legislation also amended some of the will formalities that prevented eWills from being valid. The legislation permits electronic wills which are defined as wills “initially created and maintained as an electronic record.”⁴⁸ The Indiana legislation states that for an electronic will to be valid, it must “be executed by the electronic signature of the testator and attested to by the electronic signatures of at least two (2) witnesses.”⁴⁹ The legislation then provides several manners in which the witnesses can attest to the testator’s signature.⁵⁰ However, the witnesses and the testator “must be in each other’s presence when the electronic signatures are made in or on the electronic will.”⁵¹ The Indiana legislation defines presence as when “the testator and the witnesses (i) are directly present with each other in the same physical space; or (ii) are able to interact with each other in real time through the use of audiovisual technology now known or later developed.”⁵² If the “testator and the witnesses use audiovisual technology to satisfy the presence requirement ... an attorney or a directed paralegal must supervise the signing and the witnessing of the electronic will.”⁵³

The most notable difference between Indiana’s and Nevada’s law relates to individuals who seek to take advantage of the eWill laws of a state without living in that state. The Indiana law states that electronic wills are valid in the state if “its execution complies with the law of (1) this state; (2) the jurisdiction that the testator is actually present in at the time of execution; or (3) the domicile of the testator at the time of execution or at the time of the testator’s death.”⁵⁴ While the Nevada law allows individuals from outside the state to create valid eWills without having

⁴⁸ Ind. Code Ann. § 29-1 21-3 (West 2022).

⁴⁹ Ind. Code Ann. § 29-1 21-4 (West 2022).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Ind. Code Ann. § 29-1 21-3 (West 2022).

⁵³ Ind. Code Ann. § 29-1 21-4 (West 2022).

⁵⁴ Ind. Code Ann. § 29-1 21-7 (West 2022).

any connection to the state, Indiana law only recognizes eWills executed by individuals actually living in that state. Additionally, Indiana allows remote witnessing or attestation of a will but only with an attorney or paralegal supervising. They can ensure the testator is executing their will freely and not being pressured or manipulated in any way.

C. Arizona

Arizona passed legislation in 2018 authorizing eWills. Arizona's statute lists five conditions that must be met for an electronic will to be valid.⁵⁵ First, "it must be created and maintained in an electronic record."⁵⁶ Second, it must be signed with "the electronic signature of the testator or the testator's electronic signature made by some other individual in the testator's conscious presence and by the testator's direction."⁵⁷ Third, the will must be signed electronically by two witnesses, and they either were physically present with the testator, or "signed the will within a reasonable time after the person witnessed the testator signing the will."⁵⁸ The last two requirements are that the testator present valid government identification, and the date when the testator and witnesses signed the will be recorded. The statute defines an electronic signature as one "executed or adopted by a person with the intent to sign the electronic record" and one that "[u]ses a security procedure that allows a determination that the electronic signature was all of the following: (i) [u]nique to the person using it[,] (ii) [c]apable of verification [and] (iii) [u]nder the sole control of the person making the electronic signature."⁵⁹

While the Arizona law is similar to the Indiana law in the requirements it imposes on signatures and witness presence, it does not allow a witness to remotely witness a will signing.

⁵⁵ Ariz. Rev. Stat. Ann. § 14-2518 (2019).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Ariz. Rev. Stat. Ann. § 14-1201 (2019).

While a testator can execute an electronic will in Arizona, their witnesses must physically be present with them when doing so. Also, the Arizona law is different in that it imposes additional requirements for security. Not only does the testator need to present identification, but it requires an additional security procedure to verify the testator's signature. Lastly, the Arizona law does not permit individuals to electronically self-acknowledge that they have signed their will.

D. Florida

In 2019, Florida became the latest state to pass legislation authorizing electronic wills. Before 2019, the eWill company Willing had lobbied the Florida state legislature to amend their will statute and allow for eWills. However, legislation was vetoed by Florida's governor over various concerns.⁶⁰ The governor raised concerns with remote witnessing and other opponents of the legislation claimed they were acting to protect "Florida's vulnerable citizens where there wasn't someone in the room."⁶¹ In 2019, after a new governor was sworn in, this legislation resurfaced and quickly passed.⁶² The new legislation allows testators to execute electronic wills which are defined as "testamentary instrument[s], including a codicil, executed with an electronic signature by a person in the manner prescribed by this code."⁶³ For the purpose of witnessing the testator's signature, either by a witness or a notary, the law permits it if the parties are "(a) supervised by a notary public ... (b) [t]he individuals are authenticated and signing as part of an online notarization session ... (c) the witness hears the signer make a statement acknowledging that the signer has signed the electronic record; and (d) signing and witnessing of the instrument complies with [the legislation's provision on notaries supervising the execution of

⁶⁰ See Gary Blankenship, *Is The Age of E-Wills Nearly Upon Us?*, 44 FLBN 15 (2017).

⁶¹ *Id.*

⁶² John M. Challis, *Electronic Wills in Missouri: The Future Is Now*, 75 JMOB 278 (2019).

⁶³ Fla. Stat. Ann. § 732.521 (West 2021).

electronic records.]”⁶⁴ These conditions allow the testator to meet the statute’s requirement of witnesses “sign[ing] the will in the presence of the testator and in the presence of each other.”⁶⁵

Florida’s law reforms some of the UPC’s requirements for executing a valid will. A physical document is not needed for signature purposes since the testator can electronically sign their will. An electronic signature is defined under the law as an “electronic mark visibly manifested in a record as a signature and executed or adopted by a person with the intent to sign the record.”⁶⁶ Florida’s eWill statute slightly differs from other states’ in that it imposes additional security requirements for remote signing, either by the testator or by witnesses, such as remote notary participation and identity authentication. Under Florida’s law, remote notaries must ask testators and witnesses a set of questions to assess their mental capacity and whether they are qualified to sign or witness a signing.⁶⁷ The testator or witness must verbally answer the questions and their answers “may be offered as evidence regarding the validity of the instrument, but an incorrect answer may not serve as the sole basis to invalidate an instrument.”⁶⁸

One interesting component of Florida’s law is that it prohibits “vulnerable adults” from remotely executing wills.⁶⁹ This prohibition was included after lobbying from the Florida Bar’s Elder Law section.⁷⁰ A vulnerable adult is defined as someone eighteen years or older “whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.”⁷¹ Given Florida’s large

⁶⁴ *Id.*

⁶⁵ Fla. Stat. Ann. § 732.502 (West 2021).

⁶⁶ Fla. Stat. Ann. § 732.521 (West 2021).

⁶⁷ Fla. Stat. Ann. § 117.285 (West 2021).

⁶⁸ *Id.*

⁶⁹ Fla. Stat. Ann. § 117.285 (West 2021).

⁷⁰ See Nicole Krueger, *Life, Death, and Revival of Electronic Wills Legislation In 2016 Through 2019*, 67 Drake L. Rev. 983 (2019).

⁷¹ Fla. Stat. Ann. § 415.102 (West 2021).

population of senior citizens, this restriction seems appropriate to prevent anyone from taking advantage of them in their old age. However, the lack of case law and other guidance still makes the term vulnerable adults somewhat subjective.

VII. Attorney Lobbying Against eWill Legislation

While these four states have made great progress in updating their laws to allow for eWills, it has not been without opposition from bar associations and other interest groups. In 2017, the Florida Bar Association played a key role in influencing Florida's governor to veto eWill legislation.⁷² Another state, Ohio, introduced legislation in 2021 that would allow for eWills. Similar to Florida, the Ohio Bar Association has mobilized against the legislation. It is important to understand why lawyers and the legal industry, those historically involved in drafting wills and helping clients with estate planning, have mobilized against eWills.

In 2017, then Florida Governor Rick Scott vetoed legislation that already passed the state legislature that would have permitted eWills. After the legislation passed, the Real Property, Probate and Trust Law Section of The Florida Bar published a white paper outlining several areas where they believed the legislation needed improvement.⁷³ First, the Florida Bar believed the legislation lacked "adequate safeguards to prevent fraud and exploitation of Florida's most vulnerable citizens and to ensure the identity of the witnesses and the testator and the security and integrity of the electronic wills."⁷⁴ Furthermore, the Florida Bar argued that this legislation would attract businesses to Florida looking to commercialize eWills. While not providing much

⁷² See *White Paper on Proposed Enactment of the Florida Electronic Wills Act*, Real Property, Probate and Trust Law Section of The Florida Bar, <https://perma.cc/CZ75-85WR>.

⁷³ *Id.*

⁷⁴ *Id.*

detail, they expressed concern that these companies would not be properly regulated, and that ordinary citizens would end up suffering.⁷⁵

Ohio House Bill 339 was introduced in the Ohio state legislature during the 2021-2022 legislative session. In October 2021, five members of Council of the Estate Planning, Trust and Probate Law Section testified before the Ohio state legislature in opposition to this proposed legislation. One of the attorneys that testified, Kyle Gee, is a prominent probate attorney whose works has been cited by eWill companies; he has helped draft legislation on will drafting in several states. Additionally, he was involved in the drafting of the Electronic Wills Act⁷⁶.

First, Mr. Gee noted that Ohio's legislation would permit remote witnessing of a will execution. He then testified that the majority of states permitting eWills require witnesses to be physically present when the testator is executing their will.⁷⁷ In Mr. Gee's opinion, permitting remote witnessing of a will's execution would harm Ohio's "unsophisticated, vulnerable, and susceptible" testators.⁷⁸ The four other attorneys that testified also raised concerns about remote witnessing of wills; specifically, they expressed concern that they could not detect fraud or duress of the part of the testator. One attorney noted that he "heard of a testator kidnapped by an adult child who tried to make it redraft a will to remove a rightful beneficiary. Remote witnesses would not be able to determine this fact."⁷⁹ In Mr. Cobey's opinion, permitting remote witnessing would open "[t]he flood gates of fraud."⁸⁰ Mr. Cobey's alluded to other types of fraud such as a will's terms being changed after it was executed online.

⁷⁵ *Id.*

⁷⁶ See The Uniform Law Commission's Electronic Wills Act *infra*

⁷⁷ House Bill 339: Hearing Before the Ohio House Civil Justice Comm., Ohio 134 General Assemb. (2021) (Statement of Kyle Gee, Esq.)

⁷⁸ *Id.*

⁷⁹ House Bill 339: Hearing Before the Ohio House Civil Justice Comm., Ohio 134 General Assemb. (2021) (Statement of John G. Cobey, Esq.)

⁸⁰ *Id.*

Several attorneys cited elder abuse as a major concern, especially since older adults are more likely to execute wills. The attorneys were concerned that allowing eWills would “foster access to estate planning by our elder population [and, therefore] make the elder population more vulnerable [to fraud] because of lack of understanding how to use technology.”⁸¹ Mr. Fried cited a study done by Metlife on elder abuse; however, the study spoke generally about elders’ susceptibility to financial crimes, not specifically crimes related to will drafting. While Ohio’s legislation does not allow vulnerable adults to execute wills remotely like Florida, the attorneys were concerned that a vulnerable adult could not be detected over technology.⁸² Not only that, but anyone could challenge the validity of a will by saying it was executed by a vulnerable adult “without having a shred of evidence that the will was the product of undue influence or anything but the intent of the testator.”⁸³

One important point that came up during the Ohio hearings was the risk of professional sanctions and malpractice suits for attorneys. Mr. Gee noted that Ohio’s proposed legislation did not “impose any consequences on an online company that markets, enables, and facilitates the poor preparation and faulty execution of a will, but the statute allows recovery from an attorney in such situation.”⁸⁴ Not only would attorneys have to worry about recovery under the Ohio statute, but they could face sanctions by state bar associations.

VIII. The Uniform Law Commission’s Electronic Wills Act

In response to legislation permitting electronic wills and increased lobbying, the Uniform Law Commission passed the Electronic Wills Act (hereinafter “EWA”) in 2019. The Uniform

⁸¹ House Bill 339: Hearing Before the Ohio House Civil Justice Comm., Ohio 134 General Assemb. (2021) (Statement of Adam M. Fried, Esq.)

⁸² *Id.*

⁸³ *Id.*

⁸⁴ House Bill 339: Hearing Before the Ohio House Civil Justice Comm., Ohio 134 General Assemb. (2021) (Statement of Kyle Gee, Esq.)

Law Commission is an organization that “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.”⁸⁵ By passing the EWA, the ULC hoped to “bring estate planning into the digital age by allowing the online execution of wills while preserving the legal safeguards to ensure a will’s authenticity.”⁸⁶ The ULC “became concerned that inconsistency would follow if states modified their will execution statutes without uniformity. The mobile population in the United States makes interstate recognition of wills important, and if state law on this question is not uniform, that recognition will be a significant issue.”⁸⁷

The EWA permits electronic signatures when a testator is signing a will, allows for self-acknowledgement of wills by testators before a notary, or remote witnessing of the testator signing a will.⁸⁸ With respect to remote witnessing, the comments to section 5 note there are no “specific accommodations due to the concern that any attempt at specificity would be too restrictive and to allow the standards to keep current with future advances in technology.”⁸⁹ The EWA is similar to Indiana’s eWill legislation in that eWills are valid only if they are “executed in compliance with the law of the jurisdiction where the testator is: (1) physically located when the will is signed; or (2) domiciled or resides when the will is signed or when the testator dies.”⁹⁰ The comments to this section explicitly call out, and disapprove of, Nevada’s eWill legislation and how it allows nonresidents to execute valid eWills.

The EWA was drafted so that it could be quickly codified into law by state legislatures; there are legislative notes throughout the EWA that provide guidance to states considering the

⁸⁵ *About Us*, Uniform Law Commission (2022), <https://www.uniformlaws.org/aboutulc/overview>.

⁸⁶ Electronic Wills Act.

⁸⁷ *Id.*

⁸⁸ Electronic Wills Act § 5.

⁸⁹ *Id.*

⁹⁰ Electronic Wills Act § 4.

act. As of 2022, only four state legislatures have enacted the EWA; the states that have enacted the EWA are Utah, Colorado, Washington, and North Dakota. Colorado's governor had authorized remote execution of wills at the start of the pandemic via executive order; the executive order expired in December 2020, and the Colorado Uniform Electronic Wills Act was passed by the state legislature and signed into law in January 2021. The EWA is under consideration by state legislatures in Georgia, the District of Columbia, and Massachusetts.

IX. eWills and the UPC's Harmless Error Rule

While the UPC and state laws impose strict requirements, they also recognize a "harmless error rule." This rule recognizes that while testators may not comply with the legal formalities when drafting a will, it could be unintentional and should not defeat the validity of a will. A will that did not comply with the statutory formalities will nonetheless be admitted to probate if the proponent "by clear and convincing evidence [proves] that: (1) the decedent actually reviewed the document in question; and (2) thereafter gave his or her final assent to it."⁹¹ This rule exists to "ascertain and give effect to the probable intention of the testator."⁹²

While no case has come before a court where a proponent attempted to admit an eWill to probate under the harmless error rule, the rule would likely not apply. In the legislative notes to the EWA, the ULC specifically mentioned the need for states to either adopt the harmless error rule in the EWA, or to modify their existing harmless error rule to apply to electronic wills. In addition, the harmless error rule has only been adopted by eleven states.⁹³ If a testator's heirs wanted an eWill to be valid under the harmless error rule, they need to be in a state that recognizes the rule.

⁹¹ *In re Estate of Ehrlich*, 47 A.3d 12, 16 (N.J. Super. Ct. App. Div. 2012) (citations omitted).

⁹² *Id.* at 17. (quoting *Fidelity Union Trust v. Robert*, 178 A.2d 185 (N.J. 1962)).

⁹³ Electronic Wills Act § 6.

X. COVID Executive Orders and eWills

At the onset of the COVID-19 pandemic, attorney and other “non-essential” offices where wills might be signed and formalized were ordered to close. As a result, governors across the country issued executive orders allowing for remote notarization of wills.⁹⁴ While the New York executive order has expired, their state legislature passed legislation permanently allowing remote notarization starting in June 2022.⁹⁵ However, this legislation only concerns remote notarization and does not explicitly mention wills. There is legislation pending before the Georgia state legislature regarding remote notarization and electronic wills.⁹⁶ While New Jersey also passed legislation at the onset of the pandemic allowing remote notarization, it explicitly prohibited remote notarization for wills.⁹⁷

XI. Companies Offering eWill Services

There are three prominent companies offering eWill services: Willing, Trust & Will, and Willio. This section examines what services they offer, their marketing efforts, and what lobbying they have done or are currently engaged in. In addition to these eWill companies, lawyers themselves have started taking advantage of the law and offering eWill services.⁹⁸

A. Willing

Willing is one of the most prominent companies in the eWill industry. Willing launched in 2015 to provide “an online service that makes it easy and affordable to create a quality estate

⁹⁴ See, e.g., Office of Governor Andrew Cuomo, Executive Order No. 202.7 (Mar. 7, 2020), http://www.op.nysed.gov/COVID-19_Expired_EO.html; Office of Governor Brian Kemp, Executive Order No. 04.09.20.01 (Mar. 14, 2020), <https://gov.georgia.gov/document/2020-executive-order/04092001>.

⁹⁵ New York State Senate Bill S1780C, 2021-2022 Legislative Session (2021).

⁹⁶ See The Uniform Law Commission’s Electronic Wills Act *supra*.

⁹⁷ Remote Notarial Acts during Public Health Emergency, Pub. L. No. 2020, Ch. 26 (2020).

⁹⁸ See, e.g., *Coronavirus: Reno attorney harnesses obscure law to offer electronic wills* (2020), <https://www.rgj.com/story/news/2020/03/26/coronavirus-cases-reno-law-offer-online-electronic-will-lawyer/5082995002/>.

plan in as little as 15 minutes.”⁹⁹ As the company grew, they received funding from several prominent investors such as Peter Thiel and Ashton Kutcher. Ultimately in 2019 Willing was acquired by MetLife for an undisclosed sum.¹⁰⁰ At the time of its acquisition, Willing had provided more than half a million families with estate planning including the drafting of electronic wills.

Willing advertises a complete estate planning package that comes with the creation of a will. This includes a will, a power of attorney, a revocable living trust, and a transfer on death deed. However, it does not advertise the cost for this package. A user must begin creating their will on the website to discover how much it will cost.

Willing has lobbied state legislatures, specifically the Florida and Nevada state legislatures, to pass legislation permitting eWills. In 2017 Willing helped draft legislation that would have permitted electronic wills in Florida; however, the legislation did not pass due to opposition from Florida’s governor at the time.¹⁰¹ In 2019, after Florida elected a new governor, Willing returned to help the Florida legislature draft new legislation permitting eWills.¹⁰² The legislation introduced in Florida was “substantially similar legislation [to Nevada’s.]”¹⁰³

B. Trust & Will

Trust & Will launched in 2017 and advertises themselves as the company that executed the “nation’s first end to end digital will.”¹⁰⁴ They advertise online solutions “built by attorneys, customized by you.” Trust & Will has helped over 300,000 users to date with the services they

⁹⁹ 2019 Press Release, Metlife, Metlife To Acquire Digital Estate Planning Capabilities (Nov. 20, 2019).

¹⁰⁰ *Id.*

¹⁰¹ John M. Challis, *Electronic Wills in Missouri: The Future Is Now*, 75 JMOB 278 (2019).

¹⁰² *Id.*

¹⁰³ Kyle B. Gee, Bruce Stone, Robert Brucken, John Cobey, *Electronic Wills: Recent Developments, State Legislation, the New Uniform Electronic Wills Act, & More*, TSBB17 ALI-CLE 51 (2020).

¹⁰⁴ Press Release, Business Wire, Trust & Will, Notarize Partner to Deliver Nation’s First End-to-End Digital Will (Jan 24, 2019).

provide, including will drafting. They have raised \$23 million dollars in financing to this date, and have several major partners such as the AARP, Fifth Third Bank, Northwestern Mutual, and many more. Their website is much more substantial than Willing and Willio with detailed product offerings, instructional videos, and guidelines around different state requirements for wills. Trust & Will offers different services such as a nomination of a guardian, creating a will, or creating a trust. These services start at \$39, \$159, and \$599 respectively; wills for couples cost \$259. For users unsure of what they need, the website also offers an interactive quiz to help them narrow down their request. After a will is made, Trust & Will allows users to revise it for up to one year. After that, it costs an additional \$19 per year for unlimited will changes. Trust & Will offers individuals an additional one year of attorney support for \$200; with this attorney support, users are free to review and analyze their will and its potential consequences. There is one important disclaimer for the attorney support which is the support is not available in all states. Currently, Trust & Will offers its services in all states.

In 2019, Trust & Will partnered with an online notary company, Notarize, to draft and execute the “nation’s first end to end digital will” in Nevada.¹⁰⁵ In 2020, Trust & Will and Notarize executed the first “end to end digital will” in the state of Florida.¹⁰⁶

Trust & Will positions itself more as a technology company helping individuals plan for their future. Trust & Will is “the official estate planning benefit provider for AARP members and is a proud partner of several leading financial institutions, including Northwestern Mutual and Haven Life.”¹⁰⁷ They were recently named in the top 250 fintech companies in a study conducted

¹⁰⁵ Press Release, Business Wire, Trust & Will, Notarize Partner to Deliver Nation’s First End-to-End Digital Will (Jan. 24 2019).

¹⁰⁶ Press Release, PR Newswire, Trust & Will Partners With Notarize To Launch First Electronic Will (eWill) In Florida (Aug. 25 2020).

¹⁰⁷ Press Release, Trust & Will, Trust & Will Releases Findings From Second Annual Estate Planning Study of 20,000 Millennials (Feb. 22 2022).

by CB Insights for 2021.¹⁰⁸ Trust & Will is also actively targeting the millennial demographic, a demographic that typically is not focused on drafting wills given their current age. Trust & Will recently released their second annual millennial estate planning study.¹⁰⁹

C. Willio

Willio created their platform in 2019 but only launched nationwide in 2021. Willio offers their services for a flat fee: \$149 for individuals and \$225 for couples. Because they are a newer company, they do not offer any additional services beyond will drafting. However, each will comes with a year of access to Willio's online vault; they can store their will and other important documents there securely. Willio also offers their services in all states.

XII. Policy Implications of eWills

While eWill companies make the execution of wills easier for the entire population, they can have a significant impact on specific segments of the population that never considered executing a will such as millennials and historically disadvantaged minority communities. While millennials are currently the largest generation, a recent study found that sixty-eight (68) percent of millennials do not have a will in place.¹¹⁰ However, of the millennials that did have a will in place, seventy-two (72) percent either created or updated them within the previous year.¹¹¹ Millennials gave various reasons for creating or updating wills, with the top three being the pandemic, having a child, and the death of a loved one.¹¹² Moreover, almost forty (40) percent of the respondents had an income of \$125,000 or less.¹¹³ While estate planning historically has been seen as reserved for those with significant assets, it is no less important to those with more

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ 2021 Press Release, 1Password, The COVID-19 Wake-Up Call (Nov. 10, 2021).

¹¹¹ *Id.*

¹¹² Press Release, Trust & Will, Trust & Will Releases Findings From Second Annual Estate Planning Study of 20,000 Millennials (Feb. 22 2022).

¹¹³ *Id.*

modest incomes. Given the increased importance of wills to millennials, especially after the pandemic, states should adopt laws that give millennials, and others who normally would not think of wills, more flexibility and allow them to execute eWills.

While wills are usually the most thought of method of estate planning, other non-probate methods such as trusts have become popular. As opposed to writing a will and having it go through the probate process in court, a process that “can be lengthy and create[s] a public record,” trust and other will substitutes “transfer property outside of the probate process.”¹¹⁴ By avoiding probate, individuals are certain that their assets will pass to their intended beneficiaries. They do not have to worry about courts being involved and, in certain situations, about mistakes that render their wills and their bequests invalid. States should update their laws to not allow for eWills, but electronic versions of trusts as well. It would ensure that individuals who choose to conduct their estate planning online will have all options at their disposal.

XIII. Conclusion

There is no question that the laws around will formalities are in need of updating; updating these laws would give testators more flexibility in drafting wills and being able to freely dispose of their assets. As we have seen with the COVID-19 pandemic, someone who previously gave no thought to creating a will is suddenly in need of one. While laws have gradually changed to reflect technological advancements in various fields, will formalities have largely stayed the same. There is a strong argument to be made that the evidentiary, channeling, and cautionary functions of wills would be better served if will statutes and laws were updated. The evidentiary function “provide[s] [a] court and the beneficiaries with evidence of the

¹¹⁴ Emily S. Taylor Poppe, *Surprised by the Inevitable: A National Survey of Estate Planning Utilization*, 53 UCLA L. Rev. 2511 (2020).

testator's intent and wishes.”¹¹⁵ The channeling function “force[s] testators to formally set forth their wishes in a somewhat standardized format.”¹¹⁶ eWill companies allow testators to document their intents and wishes in a formal manner. Not only that, but there is nothing to indicate that wills produced by eWill companies are less sophisticated and detailed than wills drafted by attorneys. The cautionary function of wills “maintain[s] a seriousness to formal will execution and probate, [allowing] the testator's true and final intentions [to be] realized.”¹¹⁷ By navigating to an eWill website and starting the process of creating a will, a testator has already indicated they are serious about their final intentions. Not only that, but the process of creating a will on an eWill website is long and involves serious thought; it is not a simple process or as basic as other online transactions like shopping on Amazon.

Those opposed to eWills have argued that they are easily susceptible to fraud. First, if someone were to find a way to change the terms of a will executed online, there would almost certainly be a record of it. However, while it is theoretically possible, it is unlikely; there has been no case to date of an eWill having its terms fraudulently changed, and eWill companies advertise the latest security and data protections. States could assuage this fear by requiring eWill companies to submit any eWills executed to probate courts in the testator’s home state. Probate courts could keep physical records of these wills on file. The EWA has a section on certified paper copies of eWills and notes that “state[s] may need to change [their] probate court rules to expand the definition of what may be filed with the court to include electronic filings.”¹¹⁸

¹¹⁵ John M. Challis, *Electronic Wills in Missouri: The Future Is Now*, 75 JMOB 278 (2019).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Electronic Wills Act § 9.

Opponents of eWills point to the protective function of wills and how the current process is appropriate to “discourage improper influence, as well as forgeries and perjury.”¹¹⁹ There is no question that online transactions are susceptible to fraud, and any fraud committed in the drafting of a will would have serious implications. However, eWill companies and states that have allowed for eWills have shown that they will not compromise on security in exchange for ease of use. States such as Florida and Arizona have incorporated strong security checks for remote signing or witnessing of wills such as identity checks and mandating answers to a set of questions. Indiana requires an attorney present for remote witnessing. However, there is an argument to be made that laws in states like Nevada may be too permissive, and that remote witnessing might not uncover fraud, a testator that is being manipulated or one that does not have the necessary mental capacity. eWill companies that operate in states that allow remote witnessing should insist on conducting interviews with both the testator and the witnesses before any wills are executed. They can understand the relationship between them, ask them questions similar to the ones asked in Florida, and ultimately clear them to proceed with creating an eWill. On the other hand, companies may be reluctant to do so as it may expose them to liability in the event of a dispute. Another option would be to require attorneys present like Indiana does.

Attorneys have an interest in opposing eWills, both because it takes away potential business, and because eWill companies do not offer the same personalized experience when drafting wills. They also raise a valid point about attorneys being subject to professional sanctions while eWill companies, as one Ohio attorney put it, “are [unregulated] potential fly-by-night internet vendors.” While eWill companies can be subject to liability, the consequences are likely greater for attorneys. States amending their laws should consider this and impose similar

¹¹⁹ John M. Challis, *Electronic Wills in Missouri: The Future Is Now*, 75 JMOB 278 (2019).

liability, or greater, for eWill companies that either mislead a testator or helped them draft an invalid will. If the eWill industry grows, states can, and likely will, impose additional regulations. The Ohio attorneys also raised a good point about attorneys working with testators to understand their needs and properly draft a will (however this largely depends on how much a testator is paying for an attorney's services.) While there is nothing to indicate that eWill companies offer testators less than attorneys, they may be able to better incorporate services from live attorneys. eWill companies can operate similar to online tax services such as TurboTax where users draft a will after a few clicks; however, the eWill companies should mandate that testators have a brief consultation with an attorney before using their services. Online tax services offer users the ability to speak with a live CPA at any time while filing their taxes. Tax returns can be amended once an individual knows they have made a mistake. While wills too can be amended, sometimes it may be too late.

Whether it is attending classes remotely, being able to shop from the comfort of our own homes, or something as simple as seeing loved ones, technology facilitates almost all aspects of our daily lives. Given the importance of letting people plan on how they would like to dispose of their assets after they pass, it is imperative that laws across the United States are updated to allow the public to use eWill companies to draft wills. Incorporating technology into the will drafting process will not compromise the seriousness of the process, and it will allow millions of Americans to create wills properly and legally from the comfort of their own homes. Without laws that grant eWills formal validity, Americans are prohibited from being able to properly plan and make sure their loved ones are taken care of after they pass.