**Colorado T&E Section Statutory Revisions Committee Subcommittee on the**

**Colorado Uniform Electronic Wills Act**

**By Herb E. Tucker**

**Date: August 29, 2019**

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| UEWA Section | Section 2  Paragraph (1) | |
| Section Title | Definitions – Electronic | |
| UEWA Statutory Language | “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. | |
| Uniform Law Commission Comment | None. | |
| Current Colorado Law  C.R.S. § 15-1-502 (11)  (RUFDAA)  C.R.S. § 15-23-103(7)  (CEPAEPDA) | “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.  C.R.S. § 15-23-103(7) same definition. | |
| Florida  Fla. Stat. § 732.521  Fla. Stat. § 668.50(e)  Fla. Stat. § 668.50(g) | “Electronic record” has the same meaning as provided in s. 668.50.  (e) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.  (g) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means. | |
| Indiana  Ind. Code Ann.  § 29-1-21-3(7) | “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. | |
| Colorado Subcommittee Comment | |  |
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| UEWA Section | Section 2  Paragraph (2) | |
| Section Title | Definitions – Electronic Presence | |
| UEWA Statutory Language | **[“Electronic Presence” means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.] (See Comment below.)** | |
| Uniform Law Commission Comment | **Paragraph 2 Electronic Presence**. An electronic will may be executed with the testator and all of the necessary witnesses present in one physical location. In that case the state’s rules concerning presence for non-electronic wills, which may require line-of-sight presence or conscious presence, will apply. *See* Section 3. The act does not provide a separate definition of physical presence, and a state’s existing rules for presence will apply to determine physical presence.  An electronic will is also valid if the witnesses are in the electronic presence of the testator, *see* Section 5, and the definition provides the rules for electronic presence. Electronic presence will make it easier for testators in remote locations and testators with limited mobility to execute their wills. The witnesses and testator must be able to communicate in “real time,” a term that means “the actual time during which something takes place.” MERRIAM-WEBSTER DICTIONARY. The term is used in connection with electronic communication to mean that the people communicating do so without a delay in the exchange of information. For statutes using the term “real-time,” see, e.g., CONN. GEN. STAT. ANN. § 16A-47b (2019) (real-time energy reports); COLO. REV. STAT. ANN. § 24-33.5-2102(h) (2019) (“communicate in real-time during an incident”); FLA. STAT. ANN. § 117.201(2) (2019) (in definition of “audio-visual communication technology” for online notarizations); [I](http://ILL.STAT.ch)LL. STAT. ch. 220 § 5/16-107 (2019) (real-time pricing for utilities).  A state that wants to permit electronic wills only if executed with everyone physically present can delete the bracketed provisions that permit electronic presence.  In the definition of electronic presence, “to the same extent” includes accommodations for people who are differently-abled. The definition does not provide specific accommodations due to the concern that any attempt at specificity would be too restrictive and to keep the standards current with advances in technology. | |
| Current Colorado Law  C.R.S. § 24-33.5-2102(h) | Going beyond the critical 911 call, it is important to use any available and proven technology that enables emergency services personnel and school officials to communicate in real-time during an incident; and | |
| Arizona  A.R.S. § 14-2518 | An electronic will must meet all of the following requirements:  1. Be created and maintained in an electronic record.  2. Contain 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.  3. Contain the electronic signatures of at least to persons, each of who met both the following requirements:   1. Was physically present with the testator when the testator electronically signed the will, acknowledged the testator’s signature or acknowledged the will. 2. Electronically signed the will within a reasonable time after the person witnessed the testator signing the will, acknowledging the testator’s signature or acknowledging the will as described in subdivision (a) of this paragraph. | |
| Florida  Fla. Stat. § 732.521  Fla. Stat. § 117.201 | | “Audio-video communication technology” has the same meaning as provided in s. 117.201.  “Audio-video communication technology” means technology in compliance with applicable law which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another. |
| Indiana  Ind. Code Ann.  § 29-1-21-3 | | (1) “Actual presence means that:  (A) a witness; or  (B) another individual who observes the execution of the electronic will;  Is physically present in the same physical location as the testator. The term does not include any form of observation or interaction that is conducted by means of audio, visual, or audiovisual telecommunication or similar technological means. |
| Nevada  N.R.S. § 133.088(1)(a) | | 1. A person shall be deemed to be in the presence of or appearing before another person if such persons are in: 2. The same physical location; or 3. Different physical locations but can communicate with each other by means of audio-video communication. |

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| UEWA Section | Section 2  Paragraph (3) |
| Section Title | Definitions – Electronic Will |
| UEWA Statutory Language | “Electronic will” means a will executed electronically in compliance with Section 5(a) (Execution of E-Will) |
| Uniform Law Commission Comment | None. |
| Current Colorado Law  C.R.S § 15-10-201(59)  C.R.S. § 15-1-1502(11)  (RUFADAA)  C.R.S. § 15-23-103(7)  (CEPAEPDA) | (59) “Will” includes any codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. “Will” does not include a designated beneficiary agreement that is executed pursuant to Article 22 of this title.  C.R.S. § 15-1-502 (11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.  C.R.S. § 15-23-103(7). Same definition. |
| Arizona  A.R.S. § 14-2518 | A. An electronic will must meet all of the following requirements:  1. Be created and maintained in an electronic record.  2. Contain 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.  3. Contain the electronic signatures of at least two persons, each of whom met both of the following requirements:  (a) Was physical present with the testator when the testator electronically signed the will, acknowledged the testator’s signature or acknowledged the will.  (b) Electronically signed the will within a reasonable time after the person witnessed the testator signing the will, acknowledging the testator’s signature or acknowledging the will as described in subdivision (a) of this paragraph. |

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| Arizona  A.R.S. § 14-2519 | “Self-Proved Electronic Will” In addition to the requirements of section 14-2504, to be self-proved, an electronic will must meet all of the following requirements:   1. Contain the electronic signature and electronic seal of a notary public placed on the will in accordance with applicable law. 2. The electronic will designates a qualified custodian to maintain custody of the electronic will. 3. Before being offered for probate or being reduced to a certified paper copy, the electronic will is under the custody of a qualified custodian at all times. | |
| Florida  Fla. Stat. § 732.521(4) | (4) “Electronic will” means a testamentary instrument, including a codicil, executed with an electronic signature by a person in the manner prescribed by this code which disposes of the person’s property on or after his or her death and includes an instrument which merely appoints a personal representative or guardian or revokes or revises another will. | |
| Indiana  Ind. Code Ann.  § 29-1-21-3(10) | | (10) Electronic will” means the will of a testator that:  (A) is initially created and maintained as an electronic record;  (B) contains the electronic signatures of:  (i) the testator; and  (ii) the attesting witnesses and  (C) contains the date and times of the electronic signatures described by clause (B)(i) and (B)(ii).  The term may include a codicil that amends an electronic will or a traditional paper will if the codicil is executed in accordance with the requirements of this chapter. |

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| Nevada  N.R.S. § 133.085 | 1. An electronic will is a will of a testator that:  (a) Is created and maintained in an electronic record; and  (b) Contains the date and the electronic signature of the testator and which includes, without limitation, at least one of the following:  (1) An authentication characteristic of the testator;  (2) The electronic 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) The 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. |
| Colorado Subcommittee Comment |  |
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| UEWA Section | Section 2  Paragraph (4) | |
| Section Title | Definitions – Record | |
| UEWA Statutory Language | “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. | |
| Uniform Law Commission Comment | None | |
| Current Colorado Law  C.R.S. § 15-10-201(44.5)  C.R.S. § 15-1-1502 (22)  (RUFADAA)  C.R.S. § 15-23-103(17)  (CEPAEPDA) | “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.  C.R.S. § 15-1-1502 (22). Same definition.  C.R.S. § 15-23-103(17). Same definition. | |
| Florida  Fla. Stat. § 732.521(2) | “Electronic Record” has same meaning as provided in Section 668.50 above. (Same as Colorado law above) | |
| Indiana  Ind. Code Ann.  § 29-1-21-3(8) | | “Electronic record” has the meaning set forth in IC 26-2-8-102. The term may include one (1) or both of the following:   1. The document integrity evidence associated with the electronic will. 2. The identity verification evidence of the testator who executed the electronic will. |
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| UEWA Section | Section 2  Paragraph (5) | |
| Section Title | Definitions – Sign | |
| UEWA Statutory Language | “Sign means, with present intent to authenticate or adopt a record:   1. to execute or adopt a tangible symbol; or 2. to affix to or logically associate with the record an electronic symbol or process. | |
| Uniform Law Commission Comment | **Paragraph 5. Sign**. The term “logically associated” is used in the definition of sign, without further definition. Although Indiana has defined the term in its electronic wills statute, IND. CODE § 29-1-21-3(13) (defining logically associated as meaning that documents are “electronically connected, cross referenced, or linked in a reliable manner”), most statutes do not define the term. Most notably, the Uniform Electronic Transactions Act and the Revised Uniform Law on Notarial Acts (RULONA) use the term without defining it, due to the concern that an attempt at definition would be over- or under-inclusive as technology develops. Although often used in connection with a signature, the term is used in RULONA and in this act to refer both to a document that may be logically associated with another document as well as to a signature logically associated with a document. *See also* Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 *et seq*. | |
| Current Colorado Law  C.R.S. § 15-10-201(47.5) | (47.5) “Sign” means, with present intent to authenticate or adopt a record other than a will:  (a) to execute or adopt a tangible symbol; or  (b) to attached to or logically associate with the record an electronic symbol, sound or process.  RULONA. Same definition. | |
| Indiana  Ind. Code Ann.  § 29-1-21-3(13)  § 29-1-21-3(14)  § 29-1-21-3(15) | | (13) “Logically associated” means electronically connected, cross referenced, or linked in a reliable manner.  (14) “Sign” means valid use of a properly executed electronic signature.  (15) “Signature” means the authorized use of the testator’s name to authenticate an electronic will. The term includes an electronic signature. |
| Nevada  N.R.S. § 133.085 | | 1. An electronic will is a will of a testator that:  (a) Is created and maintained in an electronic record; and  (b) Contains the date and the electronic signature of the testator and which includes, without limitation, at least one of the following:  (1) An authentication characteristic of the testator;  (2) The electronic 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) The 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. |
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| UEWA Section | Section 2  Paragraph (6) | |
| Section Title | Definitions – State | |
| UEWA Statutory Language | “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe. | |
| Uniform Law Commission Comment | None. | |
| Current Colorado Law  C.R.S. § 15-10-201(49) | “State” means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, and territory or insular possession subject to the jurisdiction of the United States. | |
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| UEWA Section | Section 2  Paragraph (7) | |
| Section Title | Definitions – Will | |
| UEWA Statutory Language | “Will” includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. | |
| Uniform Law Commission Comment | **Paragraph 8 (sic) Will.** The act follows the Uniform Probate Code definition of will, which is not a definition but rather is an explanation that the term includes uses that do not involve the disposition of property. | |
| Current Colorado Law  C.R.S. § 15-10-201(59)  C.R.S. § 15-1-1502(27)  (RUFADAA) | (59) “Will” includes any codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. “Will” does not include a designated beneficiary agreement that is executed pursuant to article 22 of this title.  (27) “Will includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument. | |
| Arizona  A.R.S. § 14.2518 | | A. An electronic will must meet all of the following requirements:  1. Be created and maintained in an electronic record.  2. Contain 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.  3. Contain the electronic signatures of at least two persons, each of whom met both of the following requirements:  (a) Was physical present with the testator when the testator electronically signed the will, acknowledged the testator’s signature or acknowledged the will.  (b) Electronically signed the will within a reasonable time after the person witnessed the testator signing the will, acknowledging the testator’s signature or acknowledging the will as described in subdivision (a) of this paragraph. |

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| Arizona  A.R.S. § 14-2519 | “Self-Proved Electronic Will” In addition to the requirements of section 14-2504, to be self-proved, an electronic will must meet all of the following requirements:   1. Contain the electronic signature and electronic seal of a notary public placed on the will in accordance with applicable law. 2. The electronic will designates a qualified custodian to maintain custody of the electronic will. 3. Before being offered for probate or being reduced to a certified paper copy, the electronic will is under the custody of a qualified custodian at all times. |
| Indiana  Ind. Code Ann.  § 29-1-21-3(18) | (18) “Will” includes all wills, testaments, and codicils. The term includes:  (A) an electronic will; and  (B) any testamentary instrument that:  (i) appoints an executor; or  (ii) revives or revokes another will. |
| Nevada  N.R.S. § 133.085 | 1. An electronic will is a will of a testator that:  (a) Is created and maintained in an electronic record; and  (b) Contains the date and the electronic signature of the testator and which includes, without limitation, at least one of the following:  (1) An authentication characteristic of the testator;  (2) The electronic 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) The 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. |
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