

General Questions

- 1) I have fears of a fraudulently created Word document with an s/ signature of the testator that is submitted to the court with the witnesses available to fraudulently testify that they witnessed the signing. What part of the act would prevent that?
- 2) I have fears of a Word document that is properly executed but later altered. What part of the act prevents that?
- 3) It seems that the safeguards for allowing remote signing and witnessing are critical to preventing fraud. If we allow an improperly executed electronic will to be admitted under the harmless error provision, doesn't that completely undermine the protections?
- 4) I don't see anything that dictates how the electronic will is preserved, or how any recording of the remote signing is preserved. Is there?
- 5) Why isn't there a provision that requires use of software that ensures that the signed document is not subsequently altered? E.g., Docusign.
- 6) What is the "original" electronic will? Under current law, and with a very narrow exception, the original (or an authenticated copy of the will probate in another jurisdiction) must accompany the petition. The original is signed by the testator and two witnesses. It's generally understood to be the "wet" ink signatures by testator and witnesses. The court has physical possession of the original paper will. I guess I can't envision what the "original" electronic will looks like. Is it a specific file type? Does it have some kind of verification data?
- 7) Section 5(c) says "Either (A) signed in the physical or electronic presence of the testator by at least two individuals after witnessing the signing of the will" OR "(B) acknowledged by the testator before a notary public." Does this make a different standard for electronic wills in which two witnesses are not required? Like, if you have a notary, you don't need a witness? The legislative note maybe implies that option would be removed.
- 8) Some of the same concerns apply to Section 8 of the draft.

- 9) ORS 113.055 currently covers the affidavit of attesting witnesses, which is the evidentiary “proof” that establishes the paper original as admissible. I’ve had too many conversations with attorneys about validity vs. admissibility, and what the different parts of the execution and attestation apply to. How does a witness attest that the electronic will is the one they witnessed the testator execute? What I’m trying to get at here, is the evidentiary, I don’t know, “chain of custody” type question. Maybe this is related to the first question above, about what actually makes an original electronic will. There’s sort of a big question, from the court’s perspective, that whatever the electronic will was is still what the electronic will is when the court “takes possession.” Like, how would anyone who wasn’t a witness to the electronic will, or functionally “store” the electronic will until probate, know whether changes to it had been made? It feels like to establish the purported eWill is the “original” eWill, you’d need to have evidence that the contents are identical or evidence that the electronic will “file” is the same?
- 10) Does the testator get a copy of the electronic will file?
- 11) What, if any, requirements do the custodians have to meet in those states that allow or require them? How are they supervised?
- 12) What happens if the electronic will file is lost or destroyed? May a “paper” copy be submitted to probate in lieu?
- 13) Logistically, How do those needing to submit the electronic will to probate go about it if a “custodian” is involved?
- 14) For the Trust and Wills folks, what safeguards, if any, do they have in place to deal with concerns about incapacity or undue influence?