

Ready or Not, Electronic Wills Have Arrived!

By **Sasha A. Klein**
Ward Damon

Mention electronic wills to a lawyer and you'll get one of two reactions – "Great! It's about time estate lawyers joined the 21st century!" or "Uh oh, on-line wills are ripe for mistakes, fraud and abuse." Regardless of which camp you may be in, get ready, because the Florida Legislature has passed an Electronic Will law, effective in 2020.

History of Will Execution and 3 Key Legal Requirements

For centuries, a ceremony had to be followed for Wills to be effectively signed. These formalities trace back to a pair of statutes enacted by Parliament centuries before the invention of the light bulb. They include an in-person review of the document, an expression of lack of coercion and demonstration of capacity to understand the import of the document's terms, followed by a pen to paper signing by the testator, two witnesses (and usually a notary), all in the same room.

There are three key requirements for creating a Will: (1) it has to be written or typed, (2) signed with a physical pen (inked), and (3) witnessed by 2 people who do not benefit under the Will, in the physical presence of the testator. These Will formalities exist for good reasons. They evidence the testator's intent, caution the testator as to the significance of making a Will, and protect the testator from fraud and duress.



Sasha A. Klein

Creating an Electronic Will

To execute an electronic will, the new Florida law still requires the three basic formalities above; however, what is different is it allows all this execution process to happen in cyberspace, aka over the Internet. There are 3 major changes to the law:

1. Paper Writing. Instead of only a paper writing, the Act allows a Will to be in electronic record form, like most contracts these days.

2. Pen and Ink Signature. In addition to an actual signature with a pen, the Act allows an Electronic Will to be signed with an electronic signature. Today, this is commonplace for many contracts with widespread use of programs like DocuSign.

3. Witnesses. The Act still requires 2 witnesses who are independent from the testator, but it expands the physical presence requirement. Witness presence can be achieved remotely with simultaneous video and audio connection (think Skype or FaceTime).

Remote Presence

During the bill's movement through the Florida legislative

committees, there were concerns about the Act's authorization of witnessing via remote video webcam, in lieu of requiring physical presence. Many argued that safeguards should be put in place to thwart off-camera wrongdoing, such as someone holding a gun behind the camera pointed at the testator. These concerns were taken seriously and incorporated into the act relating to remote presence, such as:

(1) A vulnerable adult may not use the remote presence portion.

(2) The entire video session of the electronic execution ceremony must be recorded and stored by a qualified custodian for future reference in case there is a dispute. This goes beyond the requirements under

current law that rely only on witness memory and other circumstantial evidence.

Please see KLEIN,
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Sasha A. Klein, Esq. is a partner at Ward Damon, Attorneys at Law in West Palm Beach. An active member of the FBA's Trust & Wealth Management Division, Klein is Chair of the Trust Legislative Committee and also serves on the Trust Executive Committee. She also lectures nationally and is a frequent published author on a range of estate planning, wealth management and tax law topics. Klein has a Post Doctorate Degree in Tax Law (LL.M) from the University of Florida Levin College of Law, a Juris Doctorate and Law and Business Certificate from Vanderbilt Law School.



SASHA A. KLEIN, ESQ.
Partner, Estate and Tax Planning
sasha@warddamon.com



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KLEIN

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(3) The testator is required to present a valid picture ID that may be scanned in and verified using appropriate software, and may be subject to an antecedent in-person identity proofing process (i.e., “out of wallet” questions which are frequently asked during a credit check, such as which of the listed addresses has the individual not resided, etc.).

During the video session, the testator also must be asked a series

of specific questions and provide appropriate verbal answers to all these questions while being videotaped, including:

- (1) Are you under the influence of any drugs or alcohol that impairs your ability to make decisions?
- (2) Are you of sound mind?
- (3) Are you signing this document voluntarily?

Modernizing Will Execution

Traditional will formalities need to adapt to the evolving technological context where most transactions –

including massive end of life transfers under pension plans, brokerage accounts, life insurance policies – can be made electronically. The Act authorizes using Electronic Wills that are made in compliance with a similar set of formalities that are more suited for today’s electronic age.

Conclusion

It is important to note that Electronic Will laws do not eliminate current law regarding will execution or notary standards. Instead, they

simply add another tool to help facilitate estate planning locally and globally, physical presence is not always convenient or possible.

Just as our society has moved from the requirement that physical checks must be presented at a bank window, it is likely that this technology will move into the mainstream of our society and that one day creating or amending an estate planning document via the Internet will become not just possible, but indeed commonplace.

MCKENZIE

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and a gift for their children. They achieved their goal of having an action plan for coordination of care, customized to their individual needs and preferences. This is self-advocacy at its best; we are their coach and they are the team leader!

How does a Care Manager differ from Health Care Surrogate?

A Care Manager is a professional

with specific skills, who is retained by the client through a signed contract for services. Although the Care Manager can provide recommendations to assist their client and family in making medical and life care decisions, they do not make decisions for their clients. If the client were unable to make decisions then the Care Manager would consult with the family, Power of Attorney, Health Care Surrogate, or Guardian to review the recommendations and

help direct decisions based on their professional experience, insight, and expertise.

A Care Manager has been educated in various fields of human services — nursing, social work, psychology, gerontology — and trained to assess, plan, coordinate, monitor, and provide services for the elderly, individuals with disabilities, and their families. Navigating medical and life care issues is the primary function of a Care Manager. Their expertise can be

summarized into 8 core knowledge areas: Health and Disability, Financial, Residential Options, Families, Local Resources, Advocacy, Legal, Crisis Intervention.

To find a Care Manager or an ALCP go to the Aging Life Care Association® at www.aginglifecare.org. This is a nonprofit association that outlines Standards of Practice and Ethics for its members. ALCPs are required to be certified by the National Association of Certified Care Managers.

GREENE

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missed, medications have not been refilled, and the home is in disrepair. Margaret is still driving.

In a Geriatric Care Management Assessment we would create a plan that works with both Ben and Margaret. Assisting with medication management, coordinating medical appointments and caregiver schedules to maximize hours with safety needs.

Case Review 2

Susie and Irv have been married for 15 years. Second marriage for both. Through the course of time, Susie has had 3 back operations that have left her legs weak, resulting in several recent falls. Subsequently, Susie takes multiple pain medications that have altered her personality. After a particularly difficult day Susie’s behavior became erratic... she was Baker Acted. It is stated by the medical professionals that for

Susie to go home she will need 24 hour supervision and medication management.

As a Geriatric Care Manager, we would advocate for Susie throughout her hospital stay. Transition home with the right team of caregiver’s and medication management for a successful outcome.

Geriatric Care Managers improve health, functional outcomes and provide financial savings.

Without accessible and appropriate Long Term Care Services to

meet daily living needs, chronic health conditions can worsen and create a spiral of functional decline.

Why Bridge Long Term Care Planning and Geriatric Care Management? By assembling your team of professionals that include a Geriatric Care Manager, along with medical care professionals, a Financial Planner and legal counsel, you create your specialized plan that works for you and your family.

Be Proactive. Not Reactive.