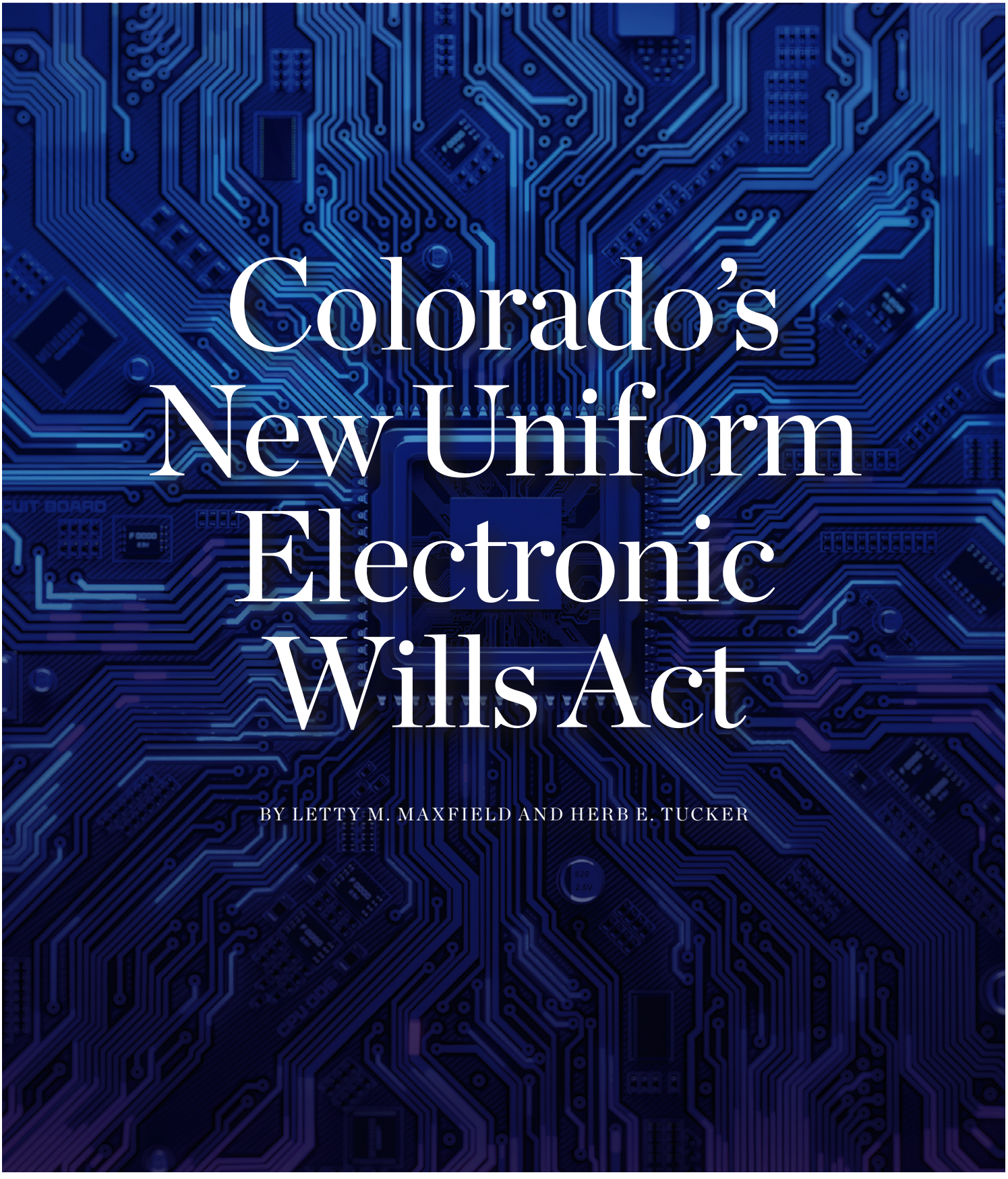

Colorado's New Uniform Electronic Wills Act

BY LETTY M. MAXFIELD AND HERB E. TUCKER

This article provides an overview of the enactment of e-wills and remote online notarization in Colorado. It covers the authority governing both paper and e-wills and identifies e-will issues that Colorado courts will likely consider. It also includes practice tips for handling e-wills and remote online notarization.

Starting in around 2015, internet-based technology companies began lobbying Colorado and other states for new legislative schemes that would replace traditional in-person transactions, such as real estate closings and will executions, with virtual transactions using proprietary online platforms. This article discusses the recent enactment of Colorado legislation allowing for electronic wills (e-wills) and remote online notarization (RON). It covers the authority governing both paper and e-wills and identifies e-will issues that Colorado courts will likely consider as matters of first impression. It also includes practice tips for handling e-wills and RON.

The Legislative History of E-Wills and RON

In November 2019, the Uniform Law Commission released the final draft with comments of the Uniform Electronic Wills Act (UEWA). On January 21, 2021, Governor Polis signed the Colorado Uniform Electronic Wills Act (CUEWA), which became effective immediately. The CUEWA, located at CRS §§ 15-11-1301 et seq., provides the statutory framework for creating and executing e-wills. Its provisions are largely analogous to those in Part 5, Article 11 of the Colorado Probate Code governing the execution and validity of traditional paper wills. But unlike paper wills, e-wills are eligible for RON, which allows a remotely located individual to "personally appear" before a notary using real-time audio-video communication.

The push for RON began before the COVID-19 pandemic, but pandemic restrictions drove it home. Colorado SB 20-96, which amended the Revised Uniform Law on Notarial Acts (RULONA), CRS §§ 24-21-501 et seq., to allow for RON, had been introduced pre-pandemic with broad support. However, when states began enacting COVID-19 closures and restrictions, most, like Colorado, had not yet enacted laws permitting the use of audio-video technology to witness, notarize, and/or execute estate planning documents or for other transactions.

As result, in the pandemic's early months, most states, including Colorado, issued emergency orders, directives, rules, and/or regulations to facilitate the preparation and execution of wills and other related estate planning instruments remotely *but not electronically*.[1] The executive and judicial branches were willing to use their authority to make some accommodations to allow remote witnessing of the execution of paper documents and remote notarization of paper documents, but neither branch could override existing legislative requirements to allow a "will," as defined by CRS § 15-10-201(59), to be created and executed electronically. Nevertheless, amendments to the Colorado Rules of Probate Procedure (CRPP) and notarial requirements facilitated the execution of estate planning documents during the pandemic.

CRPP 91 and 92 were adopted on April 24, 2020, and enable the remote signing of estate planning documents that must be witnessed during any period in which the Colorado governor, by executive order, has formally declared the existence of a public health crisis that, by the terms of such order, requires social or physical distancing throughout Colorado. CRPP 91 allows for remote witnessing of certain non-testamentary instruments, such as anatomical gifts. CRPP 92 allows the testator to sign a paper will with the witnesses and estate planning attorney observing the testator's execution via real-time audio-video technology. However, the original paper will bearing the testator's wet signature must then be delivered to the estate planning attorney who observed the execution and then be presented to the witnesses for their certification. A will executed under CRPP 92 cannot be made self-proving and is ineligible for informal probate.

The Colorado Secretary of State amended 8 CCR 1505-11 on March 30, 2020, to include new temporary Rule 5, which allowed for remote ink notarization, known as RIN, via real-time audio-video communication. For a will to be treated as validly executed under CRS § 15-11-502(1)(c)(II), Rule 5 required that the original paper will signed by the testator be delivered to the notary within three calendar days of its execution. Rule 5 expired on December 31, 2020. A will executed under Rule 5 before January 1, 2021, is not self-proving but is eligible for informal probate if the pages bearing the wet signatures of the testator and the notary and the notary's seal are all lodged with the court as the original will.

As of January 1, 2021, a Colorado notary can no longer perform remote ink notarizations; the notarization of a paper document requires that the signer be in the notary's physical presence when the notarial act is performed. But under CRS § 24-21-506, an electronic record or document may be notarized either (1) in the notary's physical presence, with the notary using an electronic seal; or (2) remotely, in the electronic presence of the notary using real-time audio-video communications. Under CRS § 24-21-506(2), a RON may only be completed using a remote notarization provider platform approved by the Colorado Secretary of State (Secretary). Notably, Colorado notaries cannot use Zoom, Facetime, Teams, or WebEx to perform RONs.[2] The Secretary's website has FAQs, summaries, rules, approved notary and web-based communications providers, training information, applications, and tutorials.[3]

The link between e-wills and RON is built into the CUEWA's statutory scheme. Specifically, the CUEWA requires that a notarial act performed on a Colorado e-will be done by an individual who is authorized to notarize records in Colorado and is physically located in Colorado at the time the notarial act is performed.[4] Thus, a notarial act performed on a Colorado e-will must strictly comply with Colorado's RON requirements for the will to be validly executed under the CUEWA. For example, Colorado RON requires that the performance of a notarial act be captured on an audio-visual recording, the recording be stored for 10 years, and the electronic record or document be made tamper-evident upon completion of the notarial act. A RON performed on an e-will using ZOOM will not meet these technical conditions and will therefore not meet the CUEWA's requirements.

CUEWA Basics

The impractical requirements for remote execution of paper wills implemented in 2020 engendered the political will in Colorado (and several other states) to enact legislation providing for the remote execution of wills. The CUEWA passed in both the Colorado Senate and House with unanimous support. It applies to e-wills of decedents who die on or after January 21, 2021.[5]

Defining E-Wills

The CUEWA defines "electronic will" at CRS § 15-11-1302(3) as a will executed electronically in compliance with its provisions. An e-will is a will stored in an electronic or other medium that is retrievable in perceivable form and is in a readable text at the time of signing.[6] Once an e-will is executed in accordance with the CUEWA, a duplicate original of the e-will could be stored electronically in a multitude of locations, including in the cloud, on a desktop, or as an attachment to an email in an inbox or sent folder, under CRS § 15-11-1302(4).

The Uniform Law Commission recognized that the physical revocation of an e-will is confounded by the duplicate original environment. The UEWA's official comments state that testators will likely have multiple duplicate originals of an e-will stored on numerous digital devices, thus making revocation difficult to ascertain.

> "The link between e-wills and RON is built into the CUEWA's statutory scheme. Specifically, the CUEWA requires that a notarial act performed on a Colorado e-will be done by an individual who is authorized to notarize records in Colorado and is physically located in Colorado at the time the notarial act is performed."

This revocation issue typically does not arise with traditional paper wills, which are inscribed in a tangible medium (typically paper).[7] While the original paper will (i.e., paper with ink signatures) may be photocopied or electronically scanned, if the original will was known to be last seen in the testator's possession before death but cannot be located after death, it is presumed to be revoked under the "lost will doctrine."[8]

Many estate planners are also concerned that an e-will that is remotely witnessed and/or notarized using real-time audio-video technology will create a second class of wills that will not be given the same deference by a judicial officer or jury in a will contest, because the circumstances surrounding the e-will's execution may be less reliable.[9] For example, a paper will executed in the physical presence of counsel, witnesses, and a notary affords a better opportunity to observe the testator's demeanor, capacity, and appearance, and to ensure that the testator's execution of the document is free of undue influence.

Testator's Presence

Colorado treats will execution like most states in that a will signed by the testator in the presence of two witnesses, each of whom also signs, is valid. But Colorado is one of just three states that allows a will to be acknowledged before a notary in lieu of witnesses.[10] To witness the execution of a paper will, the witnesses must be in the "conscious presence" of the testator when the testator affixes his or her signature to the paper will. "Conscious presence" under the Colorado Probate Code requires witnesses to be in the physical proximity of the testator, but not necessarily within the testator's line of sight.[11] Thus, the conscious presence requirement does not work for remote executions of e-wills, where the witnesses and testator are not physically in the same room. The CUEWA addresses this by allowing "electronic presence" to suffice, which is defined as "the relationship of two or more individuals in different locations communicating in real time to the same extent as if [they] were physically present in the same location."[12] Electronic presence thus requires that the witnesses be able to observe the testator sign the will and hear the testator acknowledge that the document is his or her last will through real-time audio-video technology.[13]

Signing

The CUEWA's signing requirements are unique to Colorado. CRS § 15-11-1302(5)(a) requires the testator (1) to have the intent to authenticate or

“

The electronic symbol affixed to the will must be an electronic image of the testator’s or witness’s signature in that person’s handwriting. This important nuance in Colorado’s version of the UEWA means that neither the testator nor the witnesses can use an ‘e-signature’ or typed signature to sign an e-will.

”

adopt a record, and (2) to execute or adopt a tangible symbol or affix to or logically associate with the record an electronic symbol or process. The electronic symbol affixed to the will *must* be an electronic image of the testator’s or witness’s signature in that person’s handwriting.[14] This important nuance in Colorado’s version of the UEWA means that neither the testator nor the witnesses can use an “e-signature” or typed signature to sign an e-will. Rather, the testator and each witness must upload an electronic image of their actual handwritten signature, and those signatures must be affixed to the e-will upon its execution in the presence of the witnesses and/or the notary. An electronic record with the testator’s name typed on the signature line is not a “signed” e-will under the CUEWA. Further, the notary’s electronic signature must be a digitized signature that exactly matches the notary’s official signature on record with the Colorado Secretary of State.

The CUEWA signature requirements guard against the inadvertent creation of a document that may be an expression of testamentary intent but is not intended to be an e-will. For example, consider this email from a father to his teenage son: “Joey, I love you, but please don’t drive my 1959 Chevy again without my permission. I promise it’s all yours when I’m dead, but until then it’s mine. Leave it in the garage. Love, Dad.” Without the CUEWA signature requirements, the email could arguably be a “writing intended as a will” and as such admissible to probate as a valid e-will under CRS § 15-11-503 (Colorado’s harmless error statute).

Legal Standards

The CUEWA incorporates by reference Colorado’s statutes, common law, and equitable doctrines applicable to traditional wills, except as specifically modified by the CUEWA. Therefore, Colorado’s existing doctrines and principles applicable to paper wills, including rules of construction, testamentary intent, scrivener errors, reformation, capacity, undue influence, fraud, and forgery, are also applicable to e-wills.[15]

Further, the same evidentiary standards, legal presumptions, and burdens of proof that are applicable to paper wills apply to e-wills. However, it remains to be seen whether judges and juries who are asked to rule on questions related to testamentary intent or a claim of undue influence will be compelled to find practical, factual distinctions between the reliability of e-wills and paper wills.

Choice of Law Issues

Practitioners must be cognizant of the choice of law issues at play with both e-wills and RON.

E-Wills

Consistent with the Colorado Probate Code, the CUEWA recognizes an e-will as validly executed if the execution complied with the law of the jurisdiction where the testator was (1) physically located when the will was signed, or (2) domiciled or resided when the will was signed or when the testator died.[16]

The UEWA offers hypotheticals to illustrate application of choice-of-law to e-wills.[17] Consider a testator who lives in Connecticut and is domiciled there. During a trip to Colorado, the testator executes an e-will following the CUEWA. The e-will is valid in Colorado and Connecticut because the testator was physically present in a state that authorizes e-wills when he or she executed the will.

However, if the testator remains in Connecticut and goes online there to execute an e-will electronically under the CUEWA, the will would not be valid in Colorado or Connecticut unless Connecticut were to allow e-wills or the testator is domiciled or residing in Colorado at the time of his death.

However, some states, like Nevada, treat an e-will as executed in the state and valid under its law *even if* the testator was not physically located in the state at the time of execution and is not domiciled there when the will was signed or at death. Thus, if the Connecticut testator in the above hypothetical had executed an e-will electronically while physically present in Colorado but under Nevada law, it would be valid in Nevada and Colorado but not Connecticut, unless, again, Connecticut were to adopt an e-wills act.

RONs

The validity of a RON performed by a Colorado notary is governed by Colorado law.[18] If the testator's signature is notarized by a Colorado notary, the notary must identify the venue for the notarial act as the jurisdiction within Colorado where the notary is physically located while performing the act.[19]

A Colorado notary performing a RON is not required to record or document the signer's location at the time the notarial act is performed. However, all Colorado RONs require evidence of the signer's domicile at the time of execution, which is typically evidenced by government-issued photo identification.[20] The notary is also required to include the signer's address in the notary journal and to electronically store the audio-video recording of the notarial act for at least 10 years.[21] This ensures that the notary's journal and audio-video recording of the execution can be subpoenaed through the notary's registered agent in Colorado for service of process.[22]

Cautions about the Electronic Environment

The new e-will/RON environment implicates a number of potential legal issues, particularly in the context of e-will execution, application of the harmless error doctrine, proving revocation, and self-proving wills.

Execution Requirements

As stated above, the CUEWA is consistent with the Colorado Probate Code's provisions governing witnessed paper wills and notarized paper wills, except that for notarized e-wills the CUEWA allows the testator to acknowledge the will in the physical or electronic presence of a notary. Practitioners should note the following cautions regarding the execution process:

- Estate planners and their clients must be diligent about confirming that the notary performing the RON during an e-will execution complies with the CUEWA's requirements. As noted above, the CUEWA expressly requires that the RON of an e-will executed under Colorado law be performed by a Colorado-authorized notary who is physically located in Colorado when the notarial act is performed.[23] However, the testator and the witnesses can be located in other states as long as they are in each other's electronic presence.[24] The witnesses must be residents of "a state" as defined by CRS § 15-11-1302(6) but need not be Colorado residents.
- Practitioners are cautioned that RON platform providers staff their platforms with notaries that hold commissions in multiple states and may not automatically staff an e-will execution with a Colorado-commissioned notary. Colorado residents should not use a notary commissioned under another state's authority to perform a RON for an e-will unless they expressly intend for the e-will to be executed in compliance with the laws of that other state.[25]
- A e-will that is witnessed in the electronic presence of two witnesses but not notarized is valid. However, it will not be as reliable as an e-will that is notarized because it will not necessarily adhere to Colorado's RON requirements. Specifically, Colorado RON requirements dictate that a notarized e-will must be tamper-evident, its execution must be recorded, and the identity of the testator and any witnesses has to be authenticated. An e-will that is only witnessed is factually less reliable than a notarized or self-proved e-will and likely more subject to challenge.
- The CUEWA does not provide for an electronic holographic will. Whether an electronic writing in the testator's handwriting and signed by the testator using a stylus on a tablet or similar device is a valid holographic will admissible under CRS §§ 15-11-502 or -503 will likely be a matter of first impression in Colorado.

Harmless Error Doctrine

The CUEWA expressly provides that the harmless error doctrine codified in CRS § 15-11-503 applies to defective e-wills. A defective e-will is a document or writing intended to be a will that is stored in electronic or other medium and retrievable in perceivable form but that was not executed in compliance with the CUEWA's formalities. The harmless error doctrine permits the court to probate defective wills where the proponent meets the clear and convincing burden of proof that the document was intended as a will.[26]

The Uniform Law Commissioners took the position that the clear and convincing standard of proof for the testator's intent should protect against abuse, and its official comments encourage states that have already codified the harmless error doctrine, like Colorado, to adopt this UEWA section.[27] After much debate, the CBA E-Wills Subcommittee (subcommittee) voted to recommend that the harmless error doctrine be applicable to e-wills despite concerns by some that this could open the floodgates to litigation involving defective e-wills stored on cell phones, tablets, and laptops.

The subcommittee also weighed concerns that performing the necessary due diligence to determine whether a decedent died with an e-will, revoked an e-will, or intended an electronic document or writing to be an e-will may cause some estates to incur extraordinary expenses for forensic experts retained to examine a decedent's digital devices and electronic documents. However, in 1995 similar concerns were raised when the CBA recommended an amendment to the Colorado Probate Code codifying the harmless error doctrine. Since 1995, Colorado has developed a robust body of case law setting forth the minimum requirements for the admission of defective paper wills, and this case law also applies to defective e-wills.[28] Consistent with the current Probate Code, the validity of a defective e-will under the harmless error doctrine is not a matter for a jury but is determined by the court as a matter of law.[29]

Most pre-UEWA cases from Australia,[30] Canada,[31] and the United States[32] applied the harmless error doctrine to validate the testator's intent as to wills stored on a variety of electronic devices. While most of these cases involved suicide and were uncontested, they offer a glimpse of the issues that Colorado courts will need to address when applying the harmless error doctrine in the age of e-wills.

Lastly, the harmless error doctrine may be particularly relevant in connection with e-wills because testators may be more likely to execute them without legal assistance, witnesses, or a notary.

Revocation

As with paper wills, testators may revoke e-wills by a subsequent will that revokes the former will or by a physical act.[33] The CUEWA is consistent with the revocation rules governing paper wills, except for the evidentiary standard to establish intent to revoke an e-will by a physical act, which under the CUEWA is clear and convincing evidence. This heightened burden is based on concerns about the ease with which a testator could delete a duplicate original e-will by mistake rather than by an intentional revocatory act. Conversely, litigants can be expected to present courts with multiple copies of e-wills stored on different digital devices. To address such concerns, the Uniform Law Commissioners recommended that states consider a clear and convincing rather than a preponderance of the evidence standard, and Colorado adopted this requirement.[34]

While the UEWA does not define "physical act," the Comments to UEWA § 7 state that a physical act of revocation could occur where the testator intentionally pushes the delete button, smashes a thumb drive, or prints a copy of the e-will and writes "revoked" on it. However, a testator's email stating "I revoke my e-will" is not a physical act of revocation because the email is separate from the e-will.[35]

The testator may also direct someone else to perform a physical act on an e-will for purposes of revoking it. However, the testator must be in the physical presence, rather than the electronic presence, of the person who is directed to revoke the e-will.[36]

To establish the testator's intent, forensic experts may be needed to extract metadata from the decedent's electronic devices and identify deletions, revisions, and other evidence indicating whether the e-will was revoked or tampered with after the testator's death. Given the expense of forensic analysis, litigants and probate courts will have to pay attention to the CRCP proportionality rules that are incorporated by reference in CRPP 40.

Self-Proving E-Wills

E-wills may be self-proving. Similar to self-proving requirements for paper wills, the CUEWA requires the testator's execution and acknowledgement in the physical or electronic presence of two attesting witnesses "and" a notary.[37] But unlike a paper will, an e-will cannot be self-proven by the testator's acknowledgment and attesting witnesses' affidavits *after its execution*. To be self-proved, an e-will must be notarized. To notarize an e-will, a Colorado notary must either perform an electronic notarization or a RON on the e-will. Both electronic notarization and RON in Colorado require the use of tamper-evident technology so that subsequent changes or alterations to the notarized electronic record are easily detected.

> "The CUEWA is consistent with the revocation rules governing paper wills, except for the evidentiary standard to establish intent to revoke an e-will by a physical act, which under the CUEWA is clear and convincing evidence."

By requiring that an e-will be made self-proving upon execution and therefore, tamper-evident, the CUEWA minimizes the possibility that a self-proved e-will is a product of fraud or is otherwise altered post-execution.

Storing and Certifying E-Wills

The CUEWA does not include e-will storage requirements. However, if an e-will has been notarized using RON, it is required to be stored as a part of the audio-visual recording of the notarial act, for a period of 10 years. Some states, including Arizona, Florida, Indiana, and Nevada, enacted e-will legislation before the UEWA, and some of these states require that a "qualified custodian," who is a state-approved online service provider, maintain custody of an authoritative copy of the e-will if it is to be treated as self-proving.[38] Initially, qualified custodians hoped not only to charge a monthly storage fee but also to use the customer information for additional profit. But most states requiring qualified custodians restrict them from selling customer information under existing consumer protection laws. As a result, it has become harder to find online service providers willing to serve as qualified custodians, and states are amending their e-will statutes to eliminate the qualified custodian requirement for valid self-proved e-wills.

Indiana created a central registry within its state court administrator's office to store e-wills in a retrievable database. This e-storage platform is very similar to the platform contemplated under the Colorado Electronic Preservation of Abandoned Estate Planning Documents Act,[39] which was approved by the Colorado legislature in 2020, but won't be effective until January 2023 due to fiscal constraints caused by the pandemic.[40] This Act does not currently provide for the storage of e-wills. Hopefully, in the coming years, Colorado will enact legislation that provides for a central registry for digital storage and certification of e-wills similar to the registry for abandoned paper wills.

The CUEWA provides for certification of a paper copy of an e-will by affirmation under

penalty of perjury that the printed paper copy of the e-will is a complete, true, and accurate copy of the digital e-will, and if the e-will is made self-proving, the certified paper copy of the will must include the self-proving affidavits.[41] The Colorado Supreme Court recently adopted CRPP 57, which sets forth the procedure for certifying and lodging e-wills with state courts.[42]

Litigating E-Wills

Probate litigators anticipate litigation surrounding the validity of e-wills. Three areas are particularly ripe for contests: discovery regarding digital assets, the admissibility of audio-video recordings, and the testator's intent.

Digital Assets

Litigation regarding e-wills is likely to open the door to expansive discovery concerning digital devices, including computers and cell phones. The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADA) applies to personal representatives, conservators, agents, and trustees[43] and governs a fiduciary's right to access digital assets of a decedent, settlor, or principal.[44] A "digital asset" is an electronic record in which an individual has a right or interest. Because of the difficulty in determining the authenticity of e-wills stored on digital devices and the potential for multiple duplicate originals, e-wills are expected to invite discovery of the decedent's digital devices in search of electronic records.[45] Forensic examination of digital assets is expensive, so litigators will be forced to carefully consider the nature and scope of discovery requests. For example, in an e-will contest based on lack of capacity, discovery of digital devices may include an analysis of the decedent's digital assets related to the decedent's health and wellness over a period of months or years.

CRPP 40 incorporates CRCP 26(b) through (g), which includes limitations on discovery based on proportionality factors. These factors include consideration of the importance of issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Litigants with deep pockets may request extensive examination of the decedent's digital assets, but digital fishing expeditions could deplete estate assets and delay estate administration.[46] Probate judges can be expected to strictly enforce the proportionality rules in e-will contests, given the time and expense involved in forensic analysis.

> "The RON requirements have created a new issue regarding testator capacity. E-wills have spurred a new market through which RON companies promote the use of notaries to supervise e-will execution and assume responsibility for determining the testator's capacity and susceptibility to undue influence during the execution."

Audio-Visual Recordings

CRS § 24-21-514.5(9)(a) of RULNOA sets forth the requirements for what specific information must be included on the audio-visual recording of a RON. However, any other information included on the recording is not admissible in any court of law, legal proceeding, or administrative hearing for any purpose, nor is the information admissible in any proceeding in any other court of law, legal proceeding, or administrative hearing if Colorado law applies with respect to remote notarization.[47] Given RULONA's requirements, Colorado's probate courts will have to determine what portions of audio-video recordings are admissible in a will contest or similar dispute.[48]

RULONA requires the notary to make a "good-faith" attempt to create an audio-video recording without extraneous information or statements during the performance of the notarial act, and extraneous information may be inadmissible.[49] Nonetheless, this information may be highly relevant and probative as to testamentary capacity and intent and/or susceptibility to undue influence. Thus, probate judges handling discovery disputes regarding the admissibility of audio-video recordings of the e-will execution will likely have to preview the audio-video recording in camera and determine the portions, if any, that are relevant or admissible.[50] Further, the expanded role of notaries will likely necessitate their testimony in e-will litigation because strict compliance with RULONA will be a primary consideration in determining the validity of e-wills.[51]

Parsing the Testator's Intent

Undoubtedly, Colorado courts will receive defective e-wills that were created without lawyer supervision, witnesses, or notaries. Courts will apply the harmless error doctrine to facilitate implementation of the decedent's testamentary intent as expressed in the defective e-will.[52]

The high standard of clear and convincing evidence will apply to defective e-wills to afford adequate protection against abuse. Similarly, the CUEWA requires an electronic image of the testator's signature, which is consistent with Colorado case law holding the absence

of the testator's signature fatal to the validity of defective paper wills.[53]

The RON requirements have created a new issue regarding testator capacity. E-wills have spurred a new market through which RON companies promote the use of notaries to supervise e-will execution and assume responsibility for determining the testator's capacity and susceptibility to undue influence during the execution. This role has historically been the responsibility of estate planning attorneys, so the effects of this change remain unclear.

Conclusion

The CUEWA brings Colorado probate practice into the digital age while preserving existing legal safeguards for maintaining the authenticity of wills. In tandem with RULONA's standards for RONs, the CUEWA allows e-wills to be securely executed. Nevertheless, litigation regarding the validity of e-wills is anticipated, so practitioners should adhere to the best practices outlined above and monitor developments in this evolving area. CL


Letty M. Maxfield is a founding member of Trust & Estate Advocates, LLP in Denver. She represents clients in trust, estate, probate, gift and estate tax, and elder law matters—(303) 353-8354, letty@tealaw.com. **Herb E. Tucker** is a shareholder with Wade Ash Woods Hill & Farley, P.C. in Denver. He has over 35 years of experience specializing in estate and trust litigation—(303) 322-8943, htucker@wadeash.com.

Coordinating Editors: David W. Kirch, dkirch@dwkpc.net; Emily Bowman, ebowman@dwkpc.net

NOTES

1. *See, e.g.*, Colo. Exec. Order D 2020-019 (temporarily suspending the requirement to appear personally before notarial officers to perform notarizations and authorizing the Secretary of State to promulgate and issue temporary emergency rules to permit notarial officers to perform remote notarizations).
2. CRPP 92.
3. http://leg.colorado.gov.
4. CRS §§ 15-11-1305(1)(c)(II) and -1308(2).
5. HB 21-1004; CRS §§ 15-11-1301 et seq.
6. CRS § 15-11-1302(3).
7. CRS § 15-11-1302(4).
8. CRS § 15-11-507(1)(b).
9. CRS § 24-21-514.5(9)(b).
10. CRS § 15-11-502(1)(c)(II).
11. CRS § 15-11-502(4).
12. CRS § 15-11-1302(2).
13. CRS § 15-11-1302(1)–(2).
14. CRS § 15-11-1302(5)(b).
15. CRS § 15-11-1303.
16. CRS § 15-11-1304.
17. UEWA § 4, cmt. on examples.
18. CRS § 24-21-504(1).
19. CRS § 15-11-1305 and CRS § 24-21-514.5(4)(e).
20. CRS § 24-21-505.
21. CRS § 24-21-519.
22. CRS § 24-21-514.5(11)(b).
23. CRS § 15-11-1305(c)(II).
24. CRS § 15-11-1302(6) (defining "State" as a "state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe."). An insular possession is a military base.
25. CRS § 15-11-1304.
26. CRS § 15-11-503.
27. CRS § 15-11-1306.
28. CRS § 15-11-1303.
29. CRS § 15-11-503(3).
30. *Re Yu*, [2013] QSCR 322 (Austl.); *Mellino v. Wnuk & Ors.*, [2013] QSCR 336 (Austl.); *Re Nichol*, [2017] QSCR 220 (Austl.).
31. *Rioux v. Coulombe* (1996), 19 E.T.R. (2d) 201 (Quebec Sup.Ct.) (Canada).
32. *Taylor v. Holt*, 134 S.W.3d 830 (Tenn.App. 2004); *Litevich v. Probate Court, Dist. of W. Haven* (Conn.Super.Ct. 2013), 2013 WL 2945055; *In re Estate of Castro*, 2013ES00140 (Ohio Ct. Com. Pl. June 19, 2013); *In re Estate of Horton,* 925 N.W. 2d 207 (Mich.App. 2018).
33. CRS § 15-11-507.
34. UEWA § 7, cmt. on "lost wills"; CRS § 15-11-507(3).
35. UEWA § 7, cmt. on "physical act revocation."
36. *Id.* at cmt. on "physical act by someone other than testator."
37. CRS § 15-11-1308.
38. *E.g.*, Fla. Stat. § 732.524 (qualified custodians).
39. CRS §§ 15-23-101 et seq.
40. CRS § 15-23-103.
41. CRS § 15-11-1309.
42. CRPP 57.
43. CRS §§ 15-1-502(14) and -1503(1).
44. CRS §§ 15-1-1501 et seq.
45. *Id.*
46. CRCP 26(b)(1).
47. CRS § 24-21-514.5(9)(b).
48. *Id.*
49. *Id.*
50. *See* Tucker, "Lights, Camera, Action—Video Will Executions," 42 *Colo. Law.* 45 (Jan. 2013).
51. CRS § 24-21-508.
52. CRS § 15-11-1306.
53. *See* Tucker et al., "Holographic and Nonconforming Wills: Dispensing with Formalities—Part I," 31 *Colo. Law.* 57 (Dec. 2002) and "Part II," 32 *Colo. Law.* 53 (Jan. 2003).