



ALTERATION AND REVOCATION OF ELECTRONIC WILLS

Recommendations Summary

ALTERING AN ELECTRONIC WILL

What are we recommending?

The *Wills and Succession Act* should provide that the existing alteration rules found in section 22 should apply to electronic wills.

This means that changes made directly to a formal electronic will should be made in electronic text, and be electronically signed by the person making the electronic will in front of two witnesses who also electronically sign.

Under section 22, a formal electronic will could also be altered by making a new will or by making a court application to validate non-compliant alterations.

We consulted with members of the general public in Alberta and with various professionals who work with wills and estates in the province. Eighty percent of our public survey respondents, when presented with specific options, indicated that they would consider making changes directly to their electronic will.

After reviewing these results, professionals agreed that alterations made in the electronic will should be permitted, as this would better support the intentions of people wanting to change their estate plan.

REVOKING AN ELECTRONIC WILL

What are we recommending?

A person who wants to revoke an electronic will should be able to do so by creating of a new will or by writing a declaration of revocation. We also recommend that people should be able to revoke their electronic will by action.

Revocation by action

Revocation by action seems most suited to those situations where time is of the essence, or where there is some need for a quick but uncomplicated method of cancelling an existing estate plan. With respect to revocation by action, a witness can provide at least some evidence and protection for people making wills.

Written declaration

Revocation by written declaration serves all of the purposes of wills formalities. It has a high level of support from our consultation efforts, both with the general public and the profession.

Creation of a new will

Revocation by creation of a new will provides a strong evidentiary record, serves the four traditional purposes of wills formalities, and follows this project's guiding principle of incremental change.

Ease



Security

If a testator wants to *alter* an electronic will

They may make changes directly in the electronic will by following the same rules used to create the electronic will. The testator must electronically sign the change in front of two witnesses, who also sign electronically.

They may create a new paper will or a new electronic will.

If a testator wants to *revoke* an electronic will

They may revoke an electronic will by making a new will in accordance with the formalities for making any will or electronic will permitted by the *Wills and Succession Act*.

They can make a writing that declares an intention to revoke the will and that is made in accordance with the formalities for making any will or electronic will permitted by the *Wills and Succession Act*.

They may revoke it through action by burning, tearing or otherwise destroying a paper copy of the will in the presence of a witness, and with the intention of revoking the electronic will.

They may revoke an electronic will by deleting one or more copies of the electronic will, or by rendering one or more copies of the electronic will unreadable or irretrievable, in the presence of a witness, and with the intention of revoking the electronic will.

They may revoke an electronic will by having another individual delete one or more copies of the electronic will, or render one or more copies of the electronic will unreadable or irretrievable, in the presence of the testator and a witness, at the direction of the testator, given with the intention of revoking the electronic will.

They may revoke an electronic will by having another individual burn, tear or otherwise destroy a paper copy of the electronic will in the presence of the testator and a witness, at the direction of the testator, given with the intention of revoking the electronic will.

OUR RECOMMENDATIONS

RECOMMENDATION 1

The Wills and Succession Act should provide that the existing alteration rules found in section 22 should apply to electronic wills.

RECOMMENDATION 2

The Wills and Succession Act should provide that a testator may revoke an electronic will by making a new will in any form permitted by the Act.

RECOMMENDATION 3

The Wills and Succession Act should provide that a testator may revoke an electronic will by making a writing that declares an intention to revoke the will and that is made in accordance with the formalities for making any will or electronic will permitted by the Act.

RECOMMENDATION 4

The Wills and Succession Act should provide that a testator may revoke an electronic will by burning, tearing or otherwise destroying a paper copy of the will in the presence of a witness, and with the intention of revoking the electronic will.

RECOMMENDATION 5

The Wills and Succession Act should provide that a testator may revoke an electronic will by having another individual burn, tear or otherwise destroy a paper copy of the electronic will in the presence of the testator and a witness, at the direction of the testator, given with the intention of revoking the electronic will.

RECOMMENDATION 6

The Wills and Succession Act should provide that a testator may revoke an electronic will by deleting one or more copies of the electronic will, or by rendering one or more copies of the electronic will unreadable or irretrievable, in the presence of a witness, and with the intention of revoking the electronic will.

RECOMMENDATION 7

The Wills and Succession Act should provide that a testator may revoke an electronic will by having another individual delete one or more copies of the electronic will, or render one or more copies of the electronic will unreadable or irretrievable, in the presence of the testator and a witness, at the direction of the testator, given with the intention of revoking the electronic will.

RECOMMENDATION 8

The Wills and Succession Act provisions that void beneficial dispositions to a witness to a testator's signature, or to the witness's spouse or adult interdependent partner, should not be expanded to include a witness to an act to revoke an electronic will.

RECOMMENDATION 9

The Wills and Succession Act should not permit a testator to revoke only part of an electronic will. If a testator wishes to revoke only part their electronic will, then they should follow the formalities for alteration of electronic wills.

RECOMMENDATION 10

The Wills and Succession Act should provide that section 38 applies to electronic wills.

RECOMMENDATION 11

The Wills and Succession Act should continue to confine the dispensing power to reliable methods of recording testamentary intent, and should not include revocation by action.

contact us

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We encourage you to contact us. The Contact page on our website was designed to let you provide comments on the current projects we are working on. You can also use this option to suggest an area for review that we are not currently addressing.

You can also follow us on Twitter at @ablawreform for the latest on our projects and developments in Alberta law.

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