

Statement on: E-Signatures and Estate Planning

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Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible and accountable to the people. We have testified to dozens of state bar associations and legislatures as well as to the American Bar Association on regulatory issues affecting users of the legal system.

As a consumer advocacy organization, we are concerned about security and reliability with respect to legal services. We are also concerned about consumers' lack of access to affordable legal help. As a balance between these two concerns, **we support extending the use of electronic signatures to estate planning documents, so long as those signatures conform to best practices for authentication of e-signatures.**

Permitting E-Signatures Would Allow More Americans To Plan Their Estates

According to a 2016 Gallup poll, 55% of Americans do not have a will.¹ Some of this unpreparedness may be explained by the cost of preparing a will or by lack of awareness of the need to do so. However, there is undoubtedly a segment of this population that is inhibited from preparing a will because of the need to have a physical signature on the document.

In an era of internet commerce, getting a physical signature on a document can seem anachronistic to a consumer who is used to completing major transactions online. Consumers can buy a \$30,000 car online, or can refinance the mortgage on a \$1,000,000 house without leaving their keyboard. It is baffling to consumers that they can't have the same convenience in their estate planning matters.

¹ "Majority in U.S. Do Not Have a Will," www.gallup.com/poll/191651/majority-not.aspx (retrieved 2/2/17).

For people in remote parts of the country, the problem is greater still. When a person's lawyer is two hours away, signing printed documents requires them to either wait days for papers to be mailed back and forth—repeated each time there is an error that needs to be corrected—or to miss a half day of work to drive to the lawyer's office to sign the documents.

Allowing e-signatures would not only make it easier for consumers to complete estate planning documents, it would make the signature process more reliable. Even the best-trained person may accidentally omit a single signature among dozens of pages. Software, on the other hand, can automate the signature process so that a user cannot finalize a document until all signatures have been completed.

Reliable Protocols Are Available to Ensure the Validity of Electronic Signatures

There are a number of ways that technology can ensure the validity of e-signatures. A number of states allow electronic notarization. For example, states can also require submission of a copy of a physical document along with a choice of technological identification (e.g., biometric, knowledge-based, physical device, digital certificate) to ensure that the signer is who she claims to be.²

By giving the consumer a choice of ways to verify her identity, lawyers and online document preparation companies will be able to offer signatures that best meet the needs of their customers. Rather than recommending a single solution for all electronic signatures, Responsive Law recommends that standards for e-signatures be strong enough to ensure the authenticity of signatures while remaining broad enough to adapt to changing technology.

² The Federal Financial Institutions Examination Council has issued guidance on authentication explaining the range of authentication options: "Authentication in an Internet Banking Economy" (2005) (https://www.ffiec.gov/pdf/authentication_guidance.pdf) and "Supplement to Authentication in an Internet Banking Economy" (2011) (http://ithandbook.ffiec.gov/media/153051/04-27-12_fdic_combined_fil-6-28-11-auth.pdf) (both retrieved 2/2/2017).