Don’t Let Death be Your Deadline Get a Will Before It’s Too Late: Expand Holographic-Wills Law to Incentivize Will-Making

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Procrastination is the number one reason for Americans’ lack of will-making. Many fail to get this important task completed before death despite acknowledging its importance. No one thing will remedy the lack of will-making in America. This Article suggests one way to address the problem is to more aggressively educate people on why a will is necessary, especially when blended families and children are part of the intestate’s family. The education efforts should target young adults in their senior year of high school and be further employed at universities, coupled with broader efforts to reach adults. Law students, in line with ABA303(a)(3), are uniquely situated to provide education to their communities and local area. Additionally, attorney-supervised law students could engage in will-making while simultaneously creating experiential learning opportunities.

Secondly, Americans need a self-help option that is readily available when needed. This minimizes concerns of the holographic will by expanding holographic-will law to include a one-page fill-in the blank statutory form. Although a professionally prepared will is ideal, there need to be other options to encourage will-making. Americans are self-sufficient and making a holographic form available when people have medical issues or travel could incentivize some to prepare a holographic form as a stepping stone towards a more complex estate plan, and serve as a placeholder to avoid intestacy in the event of the inevitable.

Introduction

According to a recent national opinion survey,[[2]](#footnote-3) most Americans do not have any estate planning documents in place (e.g., wills).[[3]](#footnote-4) Several prominent predeceased political figures and famous celebrities failed to prepare a will before death.[[4]](#footnote-5) Surprisingly, the COVID-19 pandemic did not have much of an impact on Americans’ reluctance to get their affairs in order.[[5]](#footnote-6) A 2022 survey by Caring.com (herein “2022 Survey”) revealed that the threat of COVID-19 motivated younger adults (18-34) to prepare wills,[[6]](#footnote-7) but the overall number of Americans without a will remains high, at sixty-seven percent (67%).[[7]](#footnote-8) The 2022 Survey confirmed that most Americans do not have a will.[[8]](#footnote-9) Although most people acknowledge the need for a will, they fail to put one in place.[[9]](#footnote-10) The 2022 Survey consistently reported procrastination as Americans’ primary reason for not having a will.[[10]](#footnote-11) Americans’ second highest justification was not having enough assets to need estate planning.[[11]](#footnote-12)

This Article begins by examining national surveys as to why people do not have wills.[[12]](#footnote-13) This Article makes two recommendations on how to incentivize will-making: (1) educate Americans as to the essential nature of wills,[[13]](#footnote-14) and (2) urge jurisdictions to expand holographic-will legislation.[[14]](#footnote-15)

First, Americans should be educated as to why a will is essential for every adult.[[15]](#footnote-16) The education must include the consequences of not having a will and its significant disadvantages, especially those impacting blended families and children.[[16]](#footnote-17) Multiple marriages and stepchildren were not contemplated in the intestacy laws and are detrimentally impacted by outdated statutes.[[17]](#footnote-18) Further, the default statutes do not protect children who need guardians and a management mechanism for their inheritance, which can easily be accomplished with a Uniform Transfers to Minors Act (UTMA) provision in a simple will.[[18]](#footnote-19) An introduction to the need for a will should begin when a person attains legal capacity, typically during his or her senior year in high school.[[19]](#footnote-20) The education efforts should be part of the needed financial literacy programs for young adults in high school and college.[[20]](#footnote-21) Educational programs and discounted service opportunities must also be made available. These efforts require volunteers—which is where law schools and their students could create experiential learning opportunities by educating their communities and providing legal services in a supervised environment.[[21]](#footnote-22)

Second, Americans need to be provided with a “quick-fix” to their lack of will-making. This Article recommends that jurisdictions expand holographic-will legislation to add a holographic form,[[22]](#footnote-23) which would allow people to take matters more easily into their own hands. A holographic will is in the testator’s handwriting and is unwitnessed.[[23]](#footnote-24) In 2021, television host Larry King disposed of his $50,000,000 estate with his handwritten will that said, “I want 100% of my estate divided equally among my children.”[[24]](#footnote-25) Currently, forty-four (44) states permit holographic wills,[[25]](#footnote-26) but this Article suggests that holographic-will law be further expanded to more easily provide Americans with a self-help option.[[26]](#footnote-27) The legislation should adopt the UPC’s “material portion” requirement and add a simple one-page holographic form requiring the form to be completed in the testator’s handwriting.[[27]](#footnote-28) Additionally, to incentivize will-making, the holographic form must be accessible and available at locations where people might contemplate death and where they are more likely to implement the form.[[28]](#footnote-29) Although a holographic will has its disadvantages,[[29]](#footnote-30) it could serve as a stepping stone for those willing to explore more comprehensive estate planning and would be sufficient to avoid intestacy in the event of the inevitable.[[30]](#footnote-31)

I. The Caring.com Surveys

From 2017 to the present, Caring.com has conducted national surveys of 2,500-2,600 Americans, collecting data on whether those surveyed had a will.[[31]](#footnote-32) These will surveys were intended to raise awareness of the importance of estate planning, especially among people that may not feel that they had the resources or tools needed to create a will. The surveys consistently found that most did not have a will.[[32]](#footnote-33) The 2022 Survey identifies a list of common reasons why people have not prepared a will.[[33]](#footnote-34) According to the survey, the number one reason why people have not prepared a will is procrastination.[[34]](#footnote-35) The second most common response was that they did not have enough wealth.[[35]](#footnote-36) Fewer responded that they did not know how to create a will or that it would be too expensive.[[36]](#footnote-37) This data showed that despite not having a will, a majority of people believe estate planning documents are very important.[[37]](#footnote-38) The Caring.com surveys are not alone in recognizing such trends.[[38]](#footnote-39) Nearly two-thirds of Americans acknowledge they do not have a will.[[39]](#footnote-40) This well-known dilemma needs to be addressed, yet incentivizing will-making has proven to be difficult.[[40]](#footnote-41) One would think that the COVID-19 pandemic would have incentivized will-making, but it did not.[[41]](#footnote-42) More aggressive efforts need to be made toward educating younger people as to why a will is necessary and providing them with a self-help option to resolve the dilemma.

II. Educate Americans on Why a Will is Necessary and the Consequences of Dying Intestate

Educating adults early and often on the disadvantages of intestacy helps people appreciate why everyone needs a will.[[42]](#footnote-43) Education should begin when the person gains legal capacity.[[43]](#footnote-44) Education efforts could be a part of the much-needed drive to add financial literacy programs in high schools as a starting point.[[44]](#footnote-45) Although each jurisdiction has intestate succession statutes that determine a person’s heirs[[45]](#footnote-46) if the person dies without a will, education efforts should focus on the consequences of dying intestate.[[46]](#footnote-47) Intestacy statutes are based on what lawmakers objectively believe most people would want, without any consideration as to the specific family relations, and provide one-size-fits-all default statutes.[[47]](#footnote-48) Many intestate succession statutes were also enacted more than half a century ago with few changes to reflect modern times.[[48]](#footnote-49) Unfortunately, because these laws address the unrepresented, they do not receive much attention from lawmakers until someone is harmed, who then takes the impact to lawmakers.[[49]](#footnote-50) For example, in 2019, Maryland’s General Assembly modified its intestacy laws as to the intestate’s spouse,[[50]](#footnote-51) when a spouse of twenty-eight years was required to share her deceased spouse’s probate estate with his parents.[[51]](#footnote-52) The spouse testified before legislators for two consecutive years to modify Maryland law to no benefit of her own.[[52]](#footnote-53) However, the entire intestacy regime is outdated and needs to be updated.[[53]](#footnote-54) There are many disadvantages to having intestacy control the disposition of probate wealth at death.[[54]](#footnote-55) This Article’s focus is on significant problems impacting blended families and children.

A. Disregard of Blended Families

Intestacy laws were enacted when blended families were less prevalent than they are today.[[55]](#footnote-56) The outdated intestacy provisions do not appropriately account for stepchildren in determining the intestate’s heirs.[[56]](#footnote-57) Under the current intestacy regime, a stepchild, who lacks the blood connection to the intestate, is the last to inherit,[[57]](#footnote-58) before the property escheats.[[58]](#footnote-59) Therefore, distant blood relatives, such as aunts and uncles (descendants of grandparents), inherit to the exclusion of stepchildren.[[59]](#footnote-60)

1. Stepchild Problem

The stepchild’s lack of blood connection to the intestate should not be determinative. If lawmakers were to re-examine the objective intent of testators considering the twenty-first century family, stepchildren would be included. Like adopted children, stepchildren should inherit sooner than distant blood relatives despite the lack of blood connection to the intestate.[[60]](#footnote-61) Under current law, stepparent adoption has additional disadvantages for the stepchild because it artificially removes the stepchild from the biological parent’s family tree.[[61]](#footnote-62) In 2017, the Uniform Parentage Act was promulgated by the Uniform Law Commission (ULC), and modified the definition of family.[[62]](#footnote-63) In 2019, the ULC proposed an amendment (hereinafter “2019 Amendment”) to the Uniform Parentage Act’s treatment of intestate succession.[[63]](#footnote-64) The 2019 Amendment creates *de facto* parenthood,[[64]](#footnote-65) allowing a stepchild to have more than two lines of family.[[65]](#footnote-66) If adopted by the states, the expanded definition of family treats a stepchild as a child of both the biological parents and stepparent, and resolves the stepchild problem for those adopted.[[66]](#footnote-67) The adopted stepchild is treated as an adopted child and thus moves up in the family tree without removing himself/herself from the biological parent’s (parent not married to stepparent) family tree.[[67]](#footnote-68) This allows the adopted stepchild to inherit as a descendant under both the biological parents and adopting parent.[[68]](#footnote-69) Nevertheless, adoption of the stepchild requires the consent of the biological parent and may not always be an option.[[69]](#footnote-70) Despite the progress made with the yet-to-be-adopted 2019 Amendment,[[70]](#footnote-71) the stepchild problem remains for those unadopted, which is why a will is essential when a stepchild is part of the intestate’s family.[[71]](#footnote-72)

2. Executor Conflicts

Another problem stemming from intestacy’s disregard of blended families is the appointment of an executor or personal representative (collectively “executor”) primarily in multiple marriages.[[72]](#footnote-73) When someone dies without a will, the intestate succession statutes provide a statutory priority as to who is granted letters of administration.[[73]](#footnote-74) The first in line for the appointment are the spouse and the intestate’s adult children.[[74]](#footnote-75) Having the spouse and adult children from a prior marriage equally entitled to serve as executor presents obvious conflicts.[[75]](#footnote-76) Additionally, the statutory priorities provide that all adult children are equally entitled to letters, which could cause sibling rivalry and destroy family bonds.[[76]](#footnote-77)

B. Failure to Protect Children

In addition to the disregard of blended families, the intestate succession statutes fail to protect children who are left without a guardian or any management mechanism for their inheritance.[[77]](#footnote-78)

1. Guardian

A child under the age of 18 (minor) needs a guardian upon the death of his or her parents.[[78]](#footnote-79) Minors cannot own property and thus require a guardian of the person and a guardian of the property (unless otherwise indicated, collectively, “guardian”).[[79]](#footnote-80) The guardian must be an adult legally responsible to supervise a child and administer the minor’s property.[[80]](#footnote-81) Without a will, appointing a guardian for a minor is costly and time-consuming, and creates much uncertainty and chaos for the minor.[[81]](#footnote-82) The court process begins with a court appointment based on a petition.[[82]](#footnote-83) The petition must be filed by “a person interested in the welfare of the minor.”[[83]](#footnote-84) The potential petitioners include the minor’s heirs and any government agency that is paying benefits to the minor.[[84]](#footnote-85) Yet, a will is an easy way to make such a guardianship appointment.[[85]](#footnote-86) Therefore, regardless of wealth, parents with minor children need a will to appoint a guardian should both parents die.[[86]](#footnote-87) The testamentary appointment of a guardian named in the will eliminates the need for court intervention.[[87]](#footnote-88) Petitioners with few limitations[[88]](#footnote-89) present additional problems for stepchildren.[[89]](#footnote-90) A will could have named one guardian for biological children and stepchildren.[[90]](#footnote-91) In addition to the lengthy and expensive court process of appointing a guardian, minors may need to have separate legal representation,[[91]](#footnote-92) and each guardian of the property will be required to submit annual accountings to the court.[[92]](#footnote-93)

2. Inheritance Management

Intestacy also fails to provide for any inheritance management for minors.[[93]](#footnote-94) A simple will could include a minor’s provision indicating that any payment made to a beneficiary who has not attained the age of majority shall be distributed to a custodian under the Uniform Transfers to Minors Act (UTMA) until the child reaches age twenty-one.[[94]](#footnote-95) Without a will providing for property managed under the UTMA, the property of a minor must be held in a Federal Deposit Insurance Corporation (FDIC) account,[[95]](#footnote-96) with petitions required of the guardian for withdrawals.[[96]](#footnote-97)

The consequences of allowing intestacy to have the final word, and its failure to appoint an executor or guardian for minor children, need to be broadcasted among Americans.[[97]](#footnote-98) For those with minor children, there is no excuse to not prioritize will-making, which is essential regardless of the level of wealth, and this information must find its way to procrastinators.

C. Educate Americans Early and Often

Education efforts should begin as high school graduates go off to college, trade schools, join the military or enter the workforce. Early intervention should be the norm, impressing upon young people the significance of becoming an adult.[[98]](#footnote-99) Early introduction as to the need for a will and the consequences of dying intestate provides a greater chance of buy-in.[[99]](#footnote-100) If young adults are given opportunities to get their affairs in order, it could inspire their parents to lead by example and to do the same.[[100]](#footnote-101) Changing the culture about wills and beginning the conversation sooner are keys to resolving the widespread lack of will-making dilemma.[[101]](#footnote-102) Since no one knows the exact moment of his or her death, the sooner people are educated as to the importance of will-making, the better chance he or she prepares a will, allowing it to serve as a placeholder for its subsequent update.[[102]](#footnote-103)

Colleges and universities should communicate to their students the need for a will in pre-law, accounting, economics, and finance courses.[[103]](#footnote-104) Academic institutions should incorporate the importance of a will through broader incentives to promote financial literacy among their students.[[104]](#footnote-105) Institutions, as educators and employers, should encourage will-making by providing their students and employees with an optional legal-benefits plan[[105]](#footnote-106) (similar to how those institutions offer health insurance).[[106]](#footnote-107)

Reaching adults after the accumulation of wealth, marriage, and/or children can be more difficult because, unlike in high schools and universities, there is no captive audience. However, efforts to encourage will-making could be accomplished with employer-provided legal-benefits plans,[[107]](#footnote-108) newspaper articles,[[108]](#footnote-109) programs offered at schools,[[109]](#footnote-110) community centers,[[110]](#footnote-111) financial institutions,[[111]](#footnote-112) assisted living locations,[[112]](#footnote-113) churches,[[113]](#footnote-114) libraries,[[114]](#footnote-115) television,[[115]](#footnote-116) and social media.[[116]](#footnote-117) These programs need to be coupled with low-cost opportunities to complete the task.[[117]](#footnote-118)

Educating people early and often at different stages in life by using opportunities where a captive audience exists is one way to spread the message, thus creating the conversation sooner in hopes that the dialogue will motivate some to act. This could be done at high schools by partnering with attorney-parents, attorney-alumni, and local state bar associations. Those lawyers could assist with the will-preparation for students at discounted fees or satisfy state pro bono mandates.[[118]](#footnote-119) Additionally, for parents of students, a list of referrals could be provided with lawyers willing to provide services at discounted fees. This initiative encourages legal volunteers to educate the community and service potential demands.

Law schools could play a vital role as community educators and providers of will-making services. Law students are often educated on the need for a will and the consequences of intestacy in trusts and estates, estate planning, and other related courses.[[119]](#footnote-120) Those educated law students can then become messengers for their law schools and the broader community. Supervised law students are uniquely situated to deliver the education and needed access to will preparation.[[120]](#footnote-121) In 2014, the American Bar Association Standard 303(a)(3) imposed a six (6) experiential credit requirement on law school students to satisfy with a law clinic or externship experience.[[121]](#footnote-122) Clinics are a popular way of satisfying these experiential credits, but there are too few estate planning clinics[[122]](#footnote-123) despite everyone needing a will regardless of wealth.[[123]](#footnote-124) Law schools could create experiential opportunities for their students by having supervised law students educate their communities and provide the needed will-making services. Will preparation is in line with ABA Standard 303(a)(3) and enhances learning.[[124]](#footnote-125) Law professors could partner with legal aid organizations, law school alumni, and the probate courts to educate and provide limited services to their communities in furtherance of the ABA’s experiential mandate.[[125]](#footnote-126)

Education efforts cannot reach all Americans,[[126]](#footnote-127) so it is also necessary to provide Americans with an easy self-help option to prepare their own will when they are inclined to do so. One way to incentive will-making is to expand holographic-will law and provide a template (holographic form) for Americans to complete in their own handwriting.

PART III: Expand Holographic-will Legislation to Incentivize Will-Making

One takeaway from the pandemic is that it empowered people to take matters into their own hands by finding alternatives to the gym, doctor visits, and classroom instruction.[[127]](#footnote-128) Because an individual can also prepare his or her own will without an attorney, this Article recommends that jurisdictions expand holographic-will legislation to make it easier for Americans to take matters into their own hands.[[128]](#footnote-129) A holographic will is an unwitnessed will that is in the testator’s handwriting,[[129]](#footnote-130) which does not comply with the jurisdiction’s attested-will statutes.[[130]](#footnote-131)

A. Attested Wills

An attested will is recognized in every state for persons with legal and testamentary capacity.[[131]](#footnote-132) Jurisdictions vary on attested-will requirements, but most states require an attested will be written, signed by the testator, and attested to by two witnesses.[[132]](#footnote-133) The witness requirement evolved from the Wills Act,[[133]](#footnote-134) and its purpose is to protect against fraud and perjury.[[134]](#footnote-135) Some jurisdictions require the witnesses to be of a certain age,[[135]](#footnote-136) some require the witnesses to be credible,[[136]](#footnote-137) and others require witnesses to be disinterested.[[137]](#footnote-138) The presence requirement also varies among jurisdictions.[[138]](#footnote-139) If the attested will fails to strictly comply with the statutory formalities of the jurisdiction of domicile at death, then *de facto* wills could be recognized using a savings statute or harmless error.[[139]](#footnote-140)

1. *De Facto* Attested Wills

Every state has a savings statute allowing the attested will to be valid in the jurisdiction of domicile if it would be valid in the jurisdiction where the will was executed.[[140]](#footnote-141) These savings statutes, otherwise known as choice of law statutes, recognize a document that does not comply with the domicile jurisdiction’s attested-formalities to be admitted to probate if the will complies with the laws of the jurisdiction where it was executed.[[141]](#footnote-142) Therefore, if a will is not in compliance with the laws of the jurisdiction of domicile, it will be treated as valid in the domicile jurisdiction if prepared per the attested will statute of the jurisdiction in which it was executed.[[142]](#footnote-143)

Additionally, if an attested will fails to satisfy the attested-will requirements of the jurisdiction of domicile at death, some jurisdictions, by statute or common law, will treat the will as valid if the formality flaw amounts to a “harmless error.”[[143]](#footnote-144) The harmless error rule permits a document to be considered valid even though it did not strictly comply with the jurisdiction’s formal will requirements.[[144]](#footnote-145) The proponent of the document must show by clear and convincing evidence that the document was intended to be the decedent’s will.[[145]](#footnote-146) This doctrine will permit a document with minor errors to be probated.[[146]](#footnote-147) However, a document that entirely lacks compliance will not be admitted to probate.[[147]](#footnote-148) Some jurisdictions have even adopted a “partial” harmless error doctrine where certain errors involving lack of compliance are forgiven, but other errors are not.[[148]](#footnote-149)

Distinguished from the attested will, most states also statutorily recognize holographic wills, which must include some handwritten insertion by the testator.[[149]](#footnote-150) Thirty-one states recognize holographic wills by a holographic-will statute.[[150]](#footnote-151) An additional eleven states allow *de facto* holographs through a separate savings statute[[151]](#footnote-152) and two more recognize holographic wills using harmless error.[[152]](#footnote-153) Currently, Americans can prepare a holographic will in forty-four jurisdictions with only six states—Florida, Georgia, Illinois, Missouri, New Hampshire, Ohio, and the District of Columbia—prohibiting holographic wills.[[153]](#footnote-154)

B. Holographic-will legislation

Under common law, holographic wills had to be entirely in the handwriting of the testator, signed at the physical end, and dated.[[154]](#footnote-155) The thirty-one states recognizing holographic wills by statute all require the document to be signed by the testator (as opposed to proxy),[[155]](#footnote-156) but vary as to the other statutory requirements.[[156]](#footnote-157) For purposes of discussion, this Article has categorized the statutory requirements by those that (1) allow holographic wills only for persons in the military, (2) vary as to the extent of the testator’s handwritten insertion, (3) must be dated, (4) require witness testimony, (5) mirror the attested wills, and (6) allow *de facto* holographs.

1. Military Holographs

Holographic wills were initially reserved for those in the armed forces where legal advice and witnesses were not readily available.[[157]](#footnote-158) Initially intended only for those deployed for war, military holograph states now recognize holographs during a declared or undeclared war and other armed conflict.[[158]](#footnote-159) Maryland, New York, Rhode Island, and Vermont are the only states with military holographs.[[159]](#footnote-160) Military holographs must be wholly in the handwriting of the testator and signed while in the armed forces outside the United States.[[160]](#footnote-161) A further limitation is that military holographs remain valid for a year after discharge from the armed forces unless the testator lacks testamentary capacity, in which case, they remain valid until death.[[161]](#footnote-162)

2. Extent of Testator’s Handwritten Insertion

Holographic-will statutes require the testator’s signature and at least a “material portion” be in the testator’s handwriting.[[162]](#footnote-163) The ULC promulgated three generations of holographic will requirements. The first generation, like military holographs, must be entirely handwritten. The second generation requires “material provisions” to be in the testator’s handwriting. The third generation requires a “material portion” be in the testator’s handwriting.[[163]](#footnote-164) The testator’s “penmanship serves as concrete evidence of authenticity.”[[164]](#footnote-165) Today, jurisdictions vary as to the extent of the testator’s handwriting required.[[165]](#footnote-166) Rather than codifying common law requirements, states borrowed and modified those requirements.[[166]](#footnote-167) The requirement that the document be entirely in the testator’s handwriting has been said to “clothe the document with indicia of authenticity.”[[167]](#footnote-168) Five states allow holographs for any purpose (not limited to military) provided that the will is written entirely in the handwriting of the testator.[[168]](#footnote-169) This “entirely handwritten” requirement has resulted in the invalidation of holographic wills that were clearly intended to serve as testamentary transfers.[[169]](#footnote-170) In 2021, North Carolina modified its holographic law requiring the holograph to be entirely handwritten with a codification that printed information would not invalidate the wills as long as the handwritten aspect was sufficient to constitute a holographic will.[[170]](#footnote-171) Requiring the document be entirely in the handwriting of the testator increases the likelihood that the holographic will would be invalid, partially dispose of assets, and potentially neglect to include the appointment of the executor or guardian.[[171]](#footnote-172)

In 1969, the ULC promulgated holographic-will law that validated a handwritten will as long as the “material provisions” of the document were in the handwriting of the testator.[[172]](#footnote-173) However, the ULC in 1990 modified its holographic-will law requiring only the “material portion” of the document to be in the testator’s handwriting.[[173]](#footnote-174) Nevertheless, Arizona, California, and Idaho retained the “material provisions” language.[[174]](#footnote-175) Nine jurisdictions currently require a “material portion” of the will to be in the testator’s handwriting.[[175]](#footnote-176) A “material portion” of the document requires the dispositive provisions, including words identifying the property and devise, to be in the testator’s handwriting.[[176]](#footnote-177) The “material portion” requirement allows for the testator to complete a pre-printed or computerized form.[[177]](#footnote-178)

3. Date Required

A date is rarely required of an attested will,[[178]](#footnote-179) yet holographic-will statutes in five jurisdictions require the holograph to be dated.[[179]](#footnote-180) These five jurisdictions vary as to the extent of the handwritten insertion, but statutorily require the document to be dated.[[180]](#footnote-181) Among the five states, Louisiana is the only state that has such a requirement for an attested will.[[181]](#footnote-182) For a holographic will, the date requirement is advisable due to the absence of a witness, making it challenging to know whether or not the holograph revoked other wills located at the testator’s death.[[182]](#footnote-183) If the holographic will is not dated, and no other wills are located, the holographic will could be found valid using harmless error or a savings statute.[[183]](#footnote-184) The date is an easy insertion, an important retention from common law, and clarifies any uncertainty as to whether the holograph implicitly revokes an earlier will.[[184]](#footnote-185)

4. Witness Testimony

Although there is no witness requirement for a holographic will, three states (Arkansas, Tennessee, and Virginia) mandate witness testimony to support that the handwritten document belongs to the testator.[[185]](#footnote-186) Although understandable, this requirement discourages holographs.[[186]](#footnote-187) In these jurisdictions, the probate of each and every holograph will require court intervention and would more likely deter holograph will-making due to the cost and time involved in having the will probated.

5. Holographs Mirror Attested Wills

Pennsylvania is the only state that does not distinguish between attested and holographic wills, requiring the will to be in writing (not handwritten) and signed at the end.[[187]](#footnote-188)

6. *De Fact*o Holographs

Like attested wills, some jurisdictions permit *de facto* holographs using a choice of law or harmless error principles.[[188]](#footnote-189) Eleven states have no holographic-will statute yet recognize holographic wills using another state’s law through a savings statute.[[189]](#footnote-190) Additionally, Minnesota and Oregon allow holographic wills under the harmless error doctrine.[[190]](#footnote-191) In total, thirteen states recognize *de facto* holographic wills.[[191]](#footnote-192)

C. Expand Holographic-Will Law to include Holographic Form

An expanded self-help option could inspire Americans to more easily address their procrastination toward making a will. UPC § 2-502(b) should be adopted and expanded to include a fill-in-the-blank form (holographic form) to be completed in the testator’s handwriting, and signed by the testator.[[192]](#footnote-193) Ideally, any legal document should be accompanied by the advice of legal counsel; however, surveys have consistently reported that this is not occurring among most people.[[193]](#footnote-194) The addition of a holographic form with instructions and warnings in laypersons’ terms is designed to minimize the holographic concerns while avoiding intestacy.[[194]](#footnote-195)

1. Expand Holographic-Will Law

UPC § 2-502(b) provides that “a will that does not comply with subsection (a) [attested will requirements] is a valid holographic will, whether or not witnessed if the signature and material portions of the document are in the testator’s handwriting.” **(1)** **a document in the form set below in section (c) may be used to create a valid holographic will. (2) an electronically transmitted copy of the holographic form is valid and binding as the original.**

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2. Holographic Form

This Article proposes that holographic-will law be expanded to include a statutory form that must be completed only in the handwriting of the testator, thus meeting the “material portion” requirement already adopted by nine jurisdictions.[[195]](#footnote-196) The “material portion” adoption provides for the testator’s insertion requirement to be minimized.[[196]](#footnote-197) Although consistent with the UPC’s approach, requiring the holograph form to be completed in the testator’s handwriting removes any uncertainty as to what constitutes a “material portion.”[[197]](#footnote-198) The one-page fill-in-the-blank form includes important information and warning[[198]](#footnote-199) followed by three sections: Part I Fiduciaries; Part II Disposition of Assets; and Part III Minors Money Management, and is then signed and dated by the testator.

a. Important Information and Warning

As with any form, the holographic form should include instruction on its completion to increase the likelihood that the document is completed correctly.[[199]](#footnote-200) Like the statutory Power of Attorney, the holographic forms will attempt to warn the testator as to the risks associated with the self-help option.[[200]](#footnote-201) The warning emphasizes the holographic form as a legal document and its effect on prior wills. The form includes an express revocation of earlier wills in an attempt to avoid having multiple wills construed together.[[201]](#footnote-202) The suggestion that the form’s location be communicated to the named executor is necessary due to the nature of the holograph and the risks associated with no one being aware the testator prepared a will if it is not discovered upon death.[[202]](#footnote-203)

b. Fiduciaries

Naming an executor avoids the embedded conflicts problem.[[203]](#footnote-204) The appointment of a guardian addresses the single most important reason for testators with children to have a will.[[204]](#footnote-205) The appointment of both guardians of person and property is important because, in the case of the stepparent leaving property to the stepchild, the biological parent would automatically become the guardian of the person, but the stepparent may name a guardian of the property for the stepchild. These appointments are intentionally listed in Part I and designed to force the testator to identify this selection first, because oftentimes, these are difficult decisions which should be addressed before deciding how assets should be distributed.[[205]](#footnote-206)

c. Disposition of Estate

The dispositive provisions require the testator to indicate the condition of survivorship otherwise the anti-lapse statutes will apply. Every state has an anti-lapse statute that aids in the construction of a will when the named beneficiary has predeceased the testator.[[206]](#footnote-207) Laypersons do not understand the nuances of anti-lapse. However, while a discussion on whether the holographic form should draft around the default rules is beyond the scope of this Article, the instructions instruct the preparer to indicate survivorship if consistent with testamentary wishes. The self-help option is designed to be a straightforward, simple, and layperson-friendly way to make a complete disposition of the testator’s property to avoid intestacy.

d. Property Management for Minors

The UTMA, as part of the holographic form, provides some management mechanism for a minor’s inheritance to be managed until reaching the age of twenty-one. Although the scope of management will not be to the same extent as a trust,[[207]](#footnote-208) the UTMA is better than the alternative.[[208]](#footnote-209) Regardless of whether the testator names a guardian of the person, the UTMA provision allows the testator to name a guardian of the property to manage the inheritance for any minor.[[209]](#footnote-210)

3. Access

The one-page fill-in-the-blank holographic form is designed to encourage people to take advantage of the self-help option. Accessibility to consumers at schools, libraries, community centers, probate courts and a variety of government websites is important to encourage its use.[[210]](#footnote-211) Will-making can be incentivized by making forms readily available when one ponders his or her own demise, like when the testator is in need of medical attention or while traveling.

a. Health Incentive

The holographic form should be readily available for patients at hospitals, surgery centers, rehabilitation centers, and nursing homes when the testator needs medical attention. Upon admission, in a non-emergency situation, a patient has an opportunity to think about his/her demise and may be more inclined to prepare a will.[[211]](#footnote-212) A holographic will could be offered to patients along with an advance medical directive upon admission to medical facilities. These forms should also be available through patient advocate services or to be downloaded from the state’s website.[[212]](#footnote-213)

b. Travel Incentive

Holographic-will forms should also be readily available at places of travel like airports, train stations, and ports, where people may think about the possibility of death, offering Americans an immediate opportunity to make a will.[[213]](#footnote-214) Holographic forms could be available upon request at customer service counters throughout places of travel. For those traveling alone or without children, who neglected to have a lawyer-prepared will before travel, the holographic will form could be the needed opportunity to memorialize testamentary wishes. With places of travel, there is a safekeeping dilemma in the event of death during travel, but, unlike the military holograph, when a passenger safely returns from travel the will remains valid.[[214]](#footnote-215) The expanded law recognizes this concern and suggests an electronically transmitted copy be valid.[[215]](#footnote-216) Passengers could take photos on their phone and email or upload to the Cloud for safekeeping in the event of death.

Consistent with early intervention in the education of young adults, the first step is the hardest. Once a holographic form exists, it may encourage people to prioritize a legal review or update with a more comprehensive estate plan. Ideally wills should be prepared by lawyers, but the problem of Americans not preparing wills outweighs the ideal situation. Offering individuals the holographic form by making them readily available when people contemplate death could encourage more people exercise testamentary freedom before it is too late.

D. Benefits and Concerns of the Holographic Form

Critics of holographic wills have several concerns. First, the holograph could be the product of fraud or forgery due to the lack of a witness or family members attempting “to probate handwritten documents that were never intended as wills.”[[216]](#footnote-217) Fraud or forgery is an obvious concern of an unwitnessed will that is effective upon the death of the preparer.[[217]](#footnote-218) However, there is no meaningful evidence that supports such concern.[[218]](#footnote-219) The holographic form is a low-cost will that avoids intestacy and its consequences. The use of the statutory form encouraged by the expanded holographic laws makes it less likely for family members to probate documents that were not intended as wills.[[219]](#footnote-220) The holographic form unlike other statutory forms is short, straightforward, and does not try to make a lawyer out of a layperson. The ability of one to engage in self-help eliminates the problems caused by satisfying the witness presence requirement.[[220]](#footnote-221)

Secondly, critics contend there is the potential for the testator’s intent to be frustrated due to the use of ambiguous language in a holograph.[[221]](#footnote-222) The holographic form’s completion in the testator’s handwriting creates a presumption of validity, is consistent with the UPC’s “material portion” requirement, removes doubt as to the meaning of “material” and is a major improvement to those states requiring the document be entirely handwritten.[[222]](#footnote-223)

Thirdly, critics argue that holographs are known to increase litigation.[[223]](#footnote-224) Estate planners will see the expanded legislation with statutory form as a threat. However, Professor Horton’s examination of holographs does not support that “amateur will-making breeds litigation.”[[224]](#footnote-225) For example, the litigation surrounding Larry King’s holographic will is more about King’s soon-to-be ex-wife fighting with his children from a previous marriage, as is common regardless of the statutory will requirements.[[225]](#footnote-226)

Holographs are not just for the military anymore. States should adopt the expanded holographic-will law providing a form that is designed to minimize perceived risks of holographs.[[226]](#footnote-227) Although the holographic form could result in some litigation[[227]](#footnote-228), more importantly, it could resolve the problem of letting intestacy have the final word. Undoubtedly, the do-it-yourself will option sets forth its own set of problems, but for blended families, and those with minor children, it is better than dying intestate.

CONCLUSION

The number of Americans without a will is surprisingly high and is not a new problem. The COVID-19 pandemic did not move the needle in the right direction; furthermore, it proved how difficult it is to motivate people to do something they are not naturally inclined to do themselves. What can be done to encourage people to make wills?

Americans must be provided with education as to the consequences of dying intestate. For blended families, a reminder is needed that a will is necessary to avoid the disinheritance of a stepchild and lessen the likelihood of embedded conflicts in the appointment of an executor. For those with children, dying without a will makes the costly guardianship proceeding necessary. Finally, the lack of inheritance management for children should alert parents to the importance of preparing a will. These education efforts need to be broadcasted early and often. Law students should play a part and help provide the needed education to their local community and beyond. Additionally, supervised law students can engage in the will-making service which provides experiential learning as required by the ABA.

Education needs to be coupled with availability and access. This Article suggests that holographic legislation should be expanded to adopt the UPC’s “material portion” language and codify a one-page statutory form that is readily available to Americans especially when death is contemplated. The use of the statutory form will create a presumption of validity for those wanting to exercise self-help. Although a holograph is not as good as a legally prepared attested will, it is better than the alternative and is a step in the right direction. The holographic form must be available when the testator’s health is at issue and at places of travel where people are most likely to use it (e.g., when death is contemplated). Preparing a holographic form allows the testator to take a step in the right direction, making its review and update a smaller step so that procrastination does not inhibit will-making before it’s too late.

1. Angela Vallario is a Professor of Law at the University of Baltimore School of Law. Thanks to Antonio Clay, Rebecca Odelius and Alina Pargamanik for their excellent research assistance. [↑](#footnote-ref-2)
2. . *See* Daniel Cobb, *2022 Wills and Estate Planning Survey*, Caring.com [hereinafter *2022 Survey*], https://www.caring.com/caregivers/estate-planning/wills-survey/ (last visited Mar. 5, 2023) [↑](#footnote-ref-3)
3. . *See id.* At death, probate wealth is transferred by will and non-probate wealth is transferred by inter vivos trusts, contracts, and by operation of law. [↑](#footnote-ref-4)
4. . *See 28 Celebrities Who Died Without a Will*, Ranker (Sept. 23, 2021), https://www.ranker.com/list/celebrities-no-will/celebrity-lists (stating that famous politicians and celebrities who did not have a will include Abraham Lincoln, Martin Luther King, Jr., Howard Hughes, Jimi Hendrix, Bob Marley, Sonny Bono, Prince, and Aretha Franklin); Flaster Greenberg PC, *Having a Will Is Important—Just Ask Chadwick Boseman’s Family*, JD Supra (Nov. 13, 2020), https://www.jdsupra.com/legalnews/having-a-will-is-important-just-ask-72515/ (noting that Chadwick Boseman also died without a will, but his estate was primarily in non-probate asset benefitting his spouse and leaving one million to be controlled by intestacy); Gregory Yee, *Judge Denies Anne Heche’s Ex-Boyfriend Control of Estate as Court Battle Continues*, L.A. Times (Oct. 11, 2022) https://www.latimes.com/california/story/2022-10-11/
anne-heche-ex-boyfriend-son-control-of-estate-court-battle (stating that Anne Heche’s email was not sufficient to name an executor). [↑](#footnote-ref-5)
5. . *See* *2022 Survey*,note 1 (showing a statistical increase in those without wills despite COVID-19). [↑](#footnote-ref-6)
6. . *See id.* (finding, for the first time,that younger adults (18-34) are more likely to have a will than middle-aged adults). [↑](#footnote-ref-7)
7. . *See id.* [↑](#footnote-ref-8)
8. . *See id.*; *See also* Daniel Cobb, *2021 Wills and Estate Planning Study*, Caring.com [hereinafter *2021 Survey*], https://www.caring.com/caregivers/estate-planning/wills-survey/2021-survey/ (last visited Mar. 5, 2023) (finding 67.1% of those surveyed did not have a will); Daniel Cobb, *2020 Estate Planning and Wills Study*, Caring.com [hereinafter *2020 Survey*], https://www.caring.com/caregivers/estate-planning/wills-survey/2020-survey/ (last visited Mar. 5, 2023) (showing 67.9 % of those surveyed did not have a will); Daniel Cobb, *2019 Survey Finds That Most People Believe Having a Will is Important, but Less than Half Have One*, Caring.com [hereinafter *2019 Survey*], https://www.caring.com/caregivers/estate-planning/wills-survey/2019-survey/ (last visited Mar. 5, 2023) (reporting 60% of those surveyed do not have a will; *More Than Half of American Adults Don’t Have a Will, 2017 Survey Shows*, Caring.com [hereinafter *2017 Survey*], https://www.caring.com/caregivers/estate-planning/wills-survey/2017-survey/ (last visited Mar. 5, 2023) (reporting 58% of those surveyed did not have a will). [↑](#footnote-ref-9)
9. . *See* *2022 Survey*, *supra* note 1 (indicating that 56% of people believe estate planning is important, but only 1 and 3 people actually have a will). [↑](#footnote-ref-10)
10. . *Id.*  [↑](#footnote-ref-11)
11. . *Id.*  [↑](#footnote-ref-12)
12. . *See infra* Part I. [↑](#footnote-ref-13)
13. . *See infra* Part II. [↑](#footnote-ref-14)
14. . *See infra* Part III. [↑](#footnote-ref-15)
15. . *See* *infra* Part II. [↑](#footnote-ref-16)
16. . *See* *infra* Section II.A. [↑](#footnote-ref-17)
17. . *See infra* Section II.A.1. [↑](#footnote-ref-18)
18. . *See infra* Section II.B. [↑](#footnote-ref-19)
19. . *See* *infra* Section II.C. [↑](#footnote-ref-20)
20. . *See* *infra* Section II.C*.* [↑](#footnote-ref-21)
21. . *See* *infra* Section II.C. [↑](#footnote-ref-22)
22. . *See* *infra* Section III.C. [↑](#footnote-ref-23)
23. . Restatement (Third) of Prop.: Wills and Other Donative Transfers § 3.2 (Am. L. Inst. 1994). [↑](#footnote-ref-24)
24. . *See* Gene Maddaus, *Larry King’s Widow Disputes Handwritten Will*, Variety (Feb. 16, 2021, 6:26 PM), https://variety.com/2021/tv/news/larry-king-shawn-king-handwritten-will-1234909022/; *see also* Nicole Rego, *Larry King's Estate: Does His Almost Ex-Wife Get It All?*, Monteforte Law, P.C., https://www.montefortelaw.com/
blog/larry-kings-estate-does-his-almost-ex-wife-get-it-all-.cfm#:~:text=At%20the%
20time%20of%20his%20passing%2C%20Larry%20King's%20net%20worth,is%20
getting%20all%20of%20that (last visited Mar. 5, 2023). [↑](#footnote-ref-25)
25. . *See infra* note 149 (31 states have holographic will statutes); *see infra* note 188 (11 jurisdictions recognize a holographic will using their savings statutes); *see infra* note 189 (2 states may recognize a holographic will using the harmless error doctrine). [↑](#footnote-ref-26)
26. . *See* *infra* Section III.C.1. [↑](#footnote-ref-27)
27. . *See* *infra* Section III.C.1. [↑](#footnote-ref-28)
28. . *See* *infra* Section III.C.3. [↑](#footnote-ref-29)
29. . David Horton, *Do-It-Yourself Wills*, 53 U.C. Davis L. Rev. 2357, 2371–72 (2020) (discussing the critics’ claims that testators will botch the extent of handwriting required; that holographs will encourage fraud, duress, forgery, and undue influence; that holographs question testamentary intent and are ambiguous). [↑](#footnote-ref-30)
30. . *See* discussion *infra* Sections II.A, II.B (discussing the consequences of dying without a will). [↑](#footnote-ref-31)
31. . *2022 Survey*, *supra* note 1; *see* *2017 Survey*, *supra* note 7; *2019 Survey*, *supra* note 7; *2020 Survey*, *supra* note 7; *2021 Survey*, *supra* note 7. [↑](#footnote-ref-32)
32. . *2017 Survey*, *supra* note 7 (finding that 58% of people did not have a will in 2017); *2019 Survey*, *supra* note 7 (finding that 60% of people did not have a will in 2019); *2020 Survey*, *supra* note 7 (finding that 67.9% of people did not have a will in 2020); *2021 Survey*, *supra* note 7 (finding that 67.1% of people did not have a will in 2021); *2022 Survey*, *supra* note 1 (finding that 67% of people did not have a will in 2022). [↑](#footnote-ref-33)
33. . *See 2022 Survey*, *supra* note 1. [↑](#footnote-ref-34)
34. . *Id.* (showing results of a 2022 survey with 40% of people citing procrastination as the reason they do not have a will). [↑](#footnote-ref-35)
35. . *Id.* (showing results of a 2022 survey with 33% of people citing a perceived lack of assets as the reason they do not have a will). [↑](#footnote-ref-36)
36. . *Id.* (stating 12% of those who don’t have a will, do not know how to get one, and 13% believe it is too expensive to obtain). [↑](#footnote-ref-37)
37. . *Id.* (stating 56% of Americans surveyed think having a will is very important). [↑](#footnote-ref-38)
38. . *See generally* Reid Kress Weisbord & David Horton, *68% of Americans Do Not Have a Will*, The Conversation (May 19, 2020, 8:13 AM), https://theconversation.com/68-of-americans-do-not-have-a-will-137686; Jeffrey M. Jones, *How Many Americans Have a Will?,* Gallup (June 23, 2021), https://news.gallup.com/poll/
351500/how-many-americans-have-will.aspx; 1Password, *The COVID-19 Wake-Up Call: Survey finds 72% of American Millennials with wills created or updated them in the past year*, Cision PR Newswire (Nov. 10, 2021, 9:00AM), https://www.prnewswire.com/news-releases/the-covid-19-wake-up-call-survey-finds-72-of-american-millennials-with-wills-created-or-updated-them-in-the-past-year-301421028.html. [↑](#footnote-ref-39)
39. . Weisbord & Horton, *supra* note 37 (concluding that the law in many states is not prepared to address the sudden demand for self-made wills, such as the demand during the COVID-19 pandemic); *see also* Katelyn Barker, *Mitigating the Lack of Wills One Brochure at a Time*, 14 Est. Plan. & Cmty. Prop. L. J. 257, 268 (2021) (stating numerous studies have found that more than half of Americans lack a will); *see also* Danaya C. Wright, *The Demographics of Intergenerational Transmission of Wealth: An Empirical Study of Testacy and Intestacy on Family Property*, 88 UMKC L. Rev. 665, 666 (2020) (explaining that many people die having not created a will). [↑](#footnote-ref-40)
40. . Margaret Ryznar, *Incentivizing Wills Through Tax*, 47 ACTEC L. J. 101, 104 (2021) (favoring a tax incentive for wills in the form of a tax credit); *see also* Reid Kress Weisboard, *Wills for Everyone: Helping Individuals Opt Out of Intestacy*, 53 B.C. L. Rev. 877, 903 (2012). [↑](#footnote-ref-41)
41. . *See 2022 Survey*, *supra* note 1 (finding that 1 in 3 in the age range 35–54 have yet to start the conversation about estate planning, and 41% of millennials (ages 18–34) have not started talking about the estate planning process). [↑](#footnote-ref-42)
42. . *See* *infra* Section II.C. [↑](#footnote-ref-43)
43. . Unif. Prob. Code § 2-501 (Unif. L. Comm’n 2019) (requiring an individual to be at least 18 years old and of sound mind to make a will); Md. Code Ann., Est. & Trusts § 4-102(a) (West 2022) (requiring an individual to be at least 18 years of age and legally competent to make a will); N.Y. Est. Powers & Trusts Law § 3-1.1 (McKinney 1966) (requiring an individual to be at least 18 years of age and of sound mind and memory to execute a will). *But see* La. Civ. Code Ann. art. 1476 (1991) (“A minor *under the age of sixteen years* does not have capacity to make a donation either inter vivos or mortis causa, except in favor of his spouse or children.”) (emphasis added). [↑](#footnote-ref-44)
44. . *See* Beverly Harzog, *Financial Literacy for College Students*, US News (Apr. 15, 2020, 3:32 PM), https://www.usnews.com/education/financial-literacy-college-students; *see al*so, Michelle Fox, *To combat financial illiteracy, education needs to start early in the classroom, advocates say*, CNBC (April 5, 2021, 8:50 AM), https://
www.cnbc.com/2021/04/05/state-of-personal-finance-education-in-the-us.html (explaininghow important it is to teach kids financial literacy in high school). [↑](#footnote-ref-45)
45. . *See* Julie Garber, *The Basics of Intestate Heir Law*, The Balance (Jan. 14, 2022), https://www.thebalance.com/intestate-heir-3505563 (defining “heir” and listing the order in which heirs typically inherit through intestacy law); *see also* Unif. Prob. Code § 2-103 (Unif. L. Comm’n (2019); N.Y. Est. Powers & Trusts Law § 4-1.1(a)(7) (McKinney 2019); Md. Code Ann., Est. & Trusts. § 3-104(d)–(e) (West 2017) (passing property to great-grandparents and their descendants before stepchildren). [↑](#footnote-ref-46)
46. 45. *The Problems of Dying Intestate -Why You Need a Valid Will*, The Genesis Law Group, http://www.genesislawgroup.ca/article/the-problems-of-dying-intestate-why-you-need-a-valid-will (last visited Mar. 5, 2023). [↑](#footnote-ref-47)
47. . *See generally* Jeffrey A. Cooper, *In Defense of* Friedman*: A Reply to Professor Guzman*, 42 ACTEC L. J. 227, 228–30 (2016) (discussing the legislative intent behind the UPC versus state intestacy statutes). [↑](#footnote-ref-48)
48. . *See, e.g.*, Kan. Stat. Ann. § 59-514 (1963); Md. Code Ann., Est. & Trusts. § 3-101 (West 1974) (amended in 2001 and 2019). *But see* N.Y. Est. Powers & Trusts Law § 4-1.1 (McKinney 1966) (amended in 1969, 1971, 1974, 1978, 1992, and 2019). [↑](#footnote-ref-49)
49. . *See* *e.g.*, S.B. 317, 439th Gen. Assemb., Reg. Sess. (Md. 2019). [↑](#footnote-ref-50)
50. . *Id.* [↑](#footnote-ref-51)
51. . *See* Md. Code Ann., Est. & Trusts § 3-102(d) (West 2019) (providing if there is no surviving issue but a surviving parent, the share of the spouse is $15,000 plus one-half of the residue). [↑](#footnote-ref-52)
52. . *Compare* Md. Code Ann., Est. & Trusts § 3-102(d) (West 2017), *with* Md. Code Ann.,Est. & Trusts § 3-102(d) (West 2019) (adding a subsection to give surviving spouses the entire estate when the decedent has “no surviving issue but surviving parent” if the marriage lasted five years or more); *see* S.B. 317, 439th Gen. Assemb., Reg. Sess. (Md. 2019) (“[T]his Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any estate of a decedent who died before the effective date of this Act.”). [↑](#footnote-ref-53)
53. . *See* H.B. 1250, 440th Gen. Assemb. Reg. Sess. (Md. 2022),LegiScan, https://legiscan.com/MD/bill/HB1250/2021 (last visited Mar. 5, 2023) (showing the attempted revision process of intestacy law in Maryland). [↑](#footnote-ref-54)
54. . *See* Weisboard, *supra* note 39, at 892(discussing the problems of intestacy, noting how real estate interests may need to be split among heirs making its subsequent transferability difficult and costly, and when real property is located in different states, the administration will span over multiple jurisdictions and could require duplicative representation). [↑](#footnote-ref-55)
55. . *See* Dalia Auerbach, *What is a Blended Family?*, Parentology (July 23, 2019), https://web.archive.org/web/20211022035549/https://parentology.com/what-is-a-blended-family/; *see also* Unif. Parentage Act (Nat’l Conf. of Cmm’rs on Unif. State L. 2017). [↑](#footnote-ref-56)
56. . *See* Unif. Parentage Act, *supra* note 54. [↑](#footnote-ref-57)
57. . *See* Unif. Prob. Code § 2-103(j)105 (2019); Md. Code Ann., Est. & Trusts § 3-104(e105) (West 2017); N.Y. Est. Powers & Trusts Law § 4-1.1 (McKinney 2019). [↑](#footnote-ref-58)
58. . *Escheat*, Black’s Law Dictionary (11th ed. 2019) (“Reversion of property (esp. real property) to the state upon the death of an owner who has neither a will nor any legal heirs.”); *see* Unif. Prob. Code § 3-914 (2019); Md. Code Ann., Est. & Trusts § 3-105 (West 2017). [↑](#footnote-ref-59)
59. . *See* Unif. Prob. Code § 2-103(h)–(i) (2019); Md. Code Ann., Est. & Trusts § 3-104(d) (West 2017) (T1) (T6); N.Y. Est. Powers & Trusts Law § 4-1.1 (McKinney 2019) (allowing descendants of great-grandparents to be heirs). [↑](#footnote-ref-60)
60. . *See* Unif. Prob. Code § 2-119(b)(2)(A) (2019); Md. Code Ann., Est. & Trusts § 3-104(e)(1) (West 2017); N.Y. Est. Powers & Trusts Law § 2-1.3 (McKinney 2008) (including adopted children who are treated the same as biological children for purposes of determining the intestate’s heirs). [↑](#footnote-ref-61)
61. . *See, e.g.*, *In re Donnely’s* *Estates*, 81 Wash. 2d. 430, 439 (1972) (en banc) (holding that stepchild adopted by stepfather could not inherit from natural paternal grandparents). [↑](#footnote-ref-62)
62. . Unif. Parentage Act § 609(d) (Nat’l Conf. of Cmm’r on Unif. State L. 2017) (“[T]he court shall adjudicate the individual who claims to be a de facto parent to be a parent of the child if the individual demonstrates by clear-and-convincing evidence [the requirements set forth in Section 609]”). [↑](#footnote-ref-63)
63. . *See id.* (showing the Uniform Law Commissioners last modified the intestacy laws in 2019, but no states have enacted the amended version yet); *see generally* Unif. Prob. Code § 1-201 (2019); *see* Mary Louise Fellow & Thomas P. Gallanis, *The Uniform Probate Code’s New Intestacy and Class Gift Provisions*, 46 ACTEC L.J. 127, 131 (2021). [↑](#footnote-ref-64)
64. . Unif. Prob. Code § 2-115(3) (2019) (“‘[D]e facto parent’ means an individual who is adjudicated on the basis of de facto parentage under [cite to Uniform Parentage Act (2017)] . . . to be a parent of a child.”) (alteration in original). [↑](#footnote-ref-65)
65. . Unif. Parentage Act (Nat’l Conf. of Cmm’rs on Unif. State L. 2017); *see also* Fellow & Gallanis, *supra* note 62, at 130 (discussing intestacy changes to blended families). [↑](#footnote-ref-66)
66. . Auerbach, *supra* note 54; *see also* Unif. Parentage Act (Nat’l Conf. of Cmm’rs on Unif. State L. 2017). [↑](#footnote-ref-67)
67. . *See* *generally* Unif. Parentage Act § 613 (Nat’l Conf. of Cmm’r on Unif. State L. 2017). [↑](#footnote-ref-68)
68. . *Id.* at 11. [↑](#footnote-ref-69)
69. . *See* Irene D. Johnson, *A Suggested Solution to the Problem of Intestate Succession Nontraditional Family Arrangements: Taking the* “*Adoption*” *(and the Inequity) Out of the Doctrine of* “*Equitable Adoption*, 54 St. Louis Univ. L. J. 271, 283 (2009). [↑](#footnote-ref-70)
70. . *See generally* Unif. Prob. Code (2019). [↑](#footnote-ref-71)
71. . *See The Problems of Dying Intestate–Why You Need a Valid Will*, Genesis L. Grp., http://www.genesislawgroup.ca/article/the-problems-of-dying-intestate-why
-you-need-a-valid-will (last visited Mar. 5, 2023) (stating that possible consequences include default distribution to heirs, no management mechanism for minors, no appointment of guardian, and embedded conflicts in the statutory list as to who can serve as executor). [↑](#footnote-ref-72)
72. . *See* Unif. Prob. Code § 2-804(b) (2019); Md. Code Ann., Est. & Trusts § 5-105 (West 2017); N.Y. Est. Powers & Trusts Law § 1-2.13 (McKinney 1967); *see* Julia Kagan, *Personal Representative*, Investopedia (July 13, 2022), https://www.investopedia.com/terms/p/personal-representative.asp (explaining that an executor (personal representative) is a fiduciary appointed in a will and is in charge of winding up the decedent’s affairs). [↑](#footnote-ref-73)
73. . Unif. Prob. Code § 3-102 (2019); Md. Code Ann., Est. & Trusts § 5-104 (West 2005); N.Y. Surr. Ct. Proc. Act § 1418 (McKinney 2019). [↑](#footnote-ref-74)
74. . *See* Unif. Prob. Code § 3-102 (2019); Md. Code Ann., Est. & Trusts § 5-104(3) (West 2005); N.Y. Surr. Ct. Proc. Act § 1418 (McKinney 2019). [↑](#footnote-ref-75)
75. . *See* Maddaus, *supra* note 23 (explaining how Larry King’s spouse fought with his adult children as to the appointment of executor when Larry King died with a holographic will which failed to designate King’s appointment of an executor); *see also* *Common Second Marriage Inheritance Issues You May Not Know About*, Rhodes L. Firm PC: Blog, https://www.rhodeslawfirmpc.com/common-second-marriage-inheritance-issues-you-may-not-know-about/ (last visited Mar. 5, 2023); Joann T. Palumbo, *Dying Intestate After Divorce*, L.J. Newsl. (Apr. 2014), https://
www.tarterkrinsky.com/uploads/1197/doc/Dying\_Intestate\_After\_Divorce.pdf; *The American Family Today*, Pew Rsch. Ctr. (Dec. 17, 2015), https://www.pewresearch.org/social-trends/2015/12/17/1-the-american-family-today/ (explaining that blended families have become more prevalent in the United States). *But see* Virginia Pelley, *What is the Divorce Rate in America?*, Fatherly (July 4, 2022, 11:51 AM), https://www.fatherly.com/love-money/what-is-divorce-rate-america/ (explaining a 2019 study which found that the divorce rate was the lowest it has been in 50 years, with 14.9 marriages ending in divorce out of every 1,000 marriages); Wendy Wang, *The U.S. Divorce Rate Has Hit a 50-Year Low*, Inst. for Fam. Studs. (Nov. 10, 2020), https://ifstudies.org/blog/the-us-divorce-rate-has-hit-a-50-year-low. [↑](#footnote-ref-76)
76. . *See* Mark L. Russakow, Probate and Trust Litigation During the Largest Transition of Wealth in the History of the World 33 (Aspatore Special Rep. 2016). [↑](#footnote-ref-77)
77. . *Frequently Asked Questions About Wills*, Peoples L. Libr. Md., [hereinafter People’s Law], https://www.peoples-law.org/frequently-asked-questions-about-wills (last updated Jan. 17, 2022, 7:14 AM) (“Intestate succession laws do not deal with the question of who will take care of minor children if both parents die or if the surviving parent is unavailable, leaving it up to the courts and social service agencies to appoint a guardian.”). [↑](#footnote-ref-78)
78. . *See id.* (explaining that if one parent dies, the surviving parent is generally the guardian, but on the death of the surviving parent or if the parents die together, a guardian is needed for minor children); Unif. Prob. Code § 5-201 (2019);Md. Code Ann. Est. & Trusts § 13-701(a) (West 2019); N.Y. Dom. Rel. § 81 (McKinney 1974). [↑](#footnote-ref-79)
79. . *See* George B. Fraser, *Guardianship of the Person*, 45 Iowa L. Rev. 239, 239 (1960). [↑](#footnote-ref-80)
80. . *See Guardianships*, Justia, https://www.justia.com/family/guardianships/ (last visited Mar. 5, 2023). [↑](#footnote-ref-81)
81. . *See generally* Meryl Schwartz, *Reinventing Guardianship: Subsidized Guardianship, Foster Care, and Child Welfare*, 22 N.Y.U. Rev. L. & Soc. Change 441, 476 (1997). [↑](#footnote-ref-82)
82. . *See* Unif. Prob. Code § 5-202(b) (2019); Md. R. Guard. & Fid. Ann. 10-111(3) (West 2020) (requiring separate petitions be filed for each minor unless they are siblings); N.Y. Surr. Ct. Proc. Act. § 1703 (McKinney 2008). [↑](#footnote-ref-83)
83. . Unif. Prob. Code § 5-204(a) (2019); Md. Code Ann. Est. & Trusts § 13-702(a)(1) (West 2014); N.Y. Surr. Ct. Proc. Act. § 1703 (McKinney 2022). [↑](#footnote-ref-84)
84. . Md. Code Ann. Est. & Trusts § 13-101(k)(1) (West 2019); N.Y. Surr. Ct. Proc. Act. § 1703 (McKinney 2008). [↑](#footnote-ref-85)
85. . People’s Law, *supra* note 76(“The determination of who is a ‘minor’ is a matter of state law. Maryland declares that anyone under the age of 18 is a minor.”) (“A will is the only way to let the court know who you want to raise and educate your children.”). [↑](#footnote-ref-86)
86. . *Id.* (“…you need to name a property guardian for your minor children. Usually this is the same person who has been named as the personal guardian of the children.”). [↑](#footnote-ref-87)
87. . *See* Alyssa A. DiRusso & S. Kristen Peters, *Parental Testamentary Appointments of Guardians for Children*, 25 Quinnipiac Prob. L.J. 369, 379102, (2012). [↑](#footnote-ref-88)
88. . Md. Code Ann. Est. & Trusts § 11-114 (West 2014) (stating that a petitioner cannot be someone who was convicted of a “felony … crime of violence … assault in the second degree; or a sexual offense in the third or fourth degree or attempted rape or sexual offense in the third or fourth degree.” Neither may a person who has committed a crime that negatively reflects on that person’s “honesty, trustworthiness, or fitness” to carry out the duties of a guardian. These crimes include “fraud, extortion, embezzlement, forgery, perjury, and theft.”). [↑](#footnote-ref-89)
89. . *See id.;* DiRusso, *supra* note 86, at 388. (describing that, with the death of parents, stepchildren and biological children have different heirs, resulting in petitioners who are not likely to know each other and potentially resulting in children of the home being broken up). [↑](#footnote-ref-90)
90. . *See id.* at 115 n.109; *see generally* DiRusso, *supra* note 86, at 102. (stating that, in the event of stepchildren, the surviving biological parent will have the right to serve as guardian of the person, but a guardian of the property may be named regardless of whether or not there is a surviving biological parent). [↑](#footnote-ref-91)
91. . *See* Unif. Prob. Code § 5-104(a)(4) (2019); Md. R. Guard. & Fid. 10-106(a)(1) (West 2020) (“Upon the filing of a petition for guardianship of the person, the property, or both, of a minor who is not represented by an attorney, the court may appoint an attorney for the minor.”); N.Y. Fam. Ct. Art. 2 Pt. 4 § 242 (McKinney 2010). [↑](#footnote-ref-92)
92. . Unif. Prob. Code § 5-207(5) (2019); Md. R. Guard. & Fid. 10-706(b) (West 1997); N.Y. Dom. Rel. § 83 (McKinney 1944). [↑](#footnote-ref-93)
93. . *See What You Need to Know about Minors Inheriting in Maryland*, Stouffer L. (Mar. 5, 2020), https://www.stoufferlegal.com/blog/what-you-need-to-know-about-minors-inheriting-in-maryland; *Frequently Asked Questions About Orphans’ Courts*, Md. Cts., https://mdcourts.gov/orphanscourt/faqs (last visited Mar. 5, 2023) (“If property passes to a minor. . . the Orphans’ Court may appoint someone to serve as Guardian for the property of the minor.”). [↑](#footnote-ref-94)
94. . *See generally* Uniform Transfers to Minors Act, Unif. Prob. Code § 5-101–5-434 (2019) (also referred to as the “Uniform Guardianship and Protective Proceedings Act”); Md. Code Ann., Est. & Trusts §§ 13-301–13-324 (West 2018); N.Y. Est. Powers & Trusts Law § 7-6.2 (McKinney 1996). [↑](#footnote-ref-95)
95. . *See FDIC Insurance: Understanding the Different Account Categories*, FDIC, https://www.fdic.gov/consumers/consumer/news/cnwin1213/insurancecoverage.
html (last updated July 3, 2014) (“A common way to transfer funds to a minor is to set up an account under the Uniform Transfers to Minors Act or “UTMA,” as adopted by the state in which the deposit will be established. Under UTMA, the minor child is considered the legal owner of the funds.”). [↑](#footnote-ref-96)
96. . Unif. Prob. Code § 5-104(a)(4) (2019); Md. Code Ann., Est. & Trusts § 13-501(b)(2) (West 2019) (“The minor may not withdraw any funds without an order of court … “); Md. Code Ann., Est. & Trusts § 13-501(a)(2) (West 2019) (“If there is no guardian, or if he is unknown, payment or delivery in amounts or values not exceeding $5,000 per annum may be made to the parent or grandparent of the minor with whom the minor resides...”); Md. Code Ann., Est. & Trusts§ 13-306(a)(3) (“If there is no guardian, parent, or grandparent with whom the minor resides, payment or delivery in amounts or values not exceeding $5,000 per annum may be made to a parent or other person standing in loco parentis with the minor or deposited in a financial institution described in § 13-301(h).”). Md. Code Ann., Est. & Trusts§ 13-306(c) (West 2019) (“A transfer under subsection (a) or (b) of this section may be made only if: . . . (3) The transfer is authorized by the court if it exceeds $10,000 in value.”); N.Y. Surr. Ct. Proc. Act. § 1708 (McKinney 2008). [↑](#footnote-ref-97)
97. . *See* People’s Law, *supra* note 76 (“Intestate succession laws do not deal with the question of who will take care of minor children if both parents die or if the surviving parent is unavailable, leaving it up to the courts and social service agencies to appoint a guardian.”). *See* *supra* Sections II.A.2 and II.B.1. [↑](#footnote-ref-98)
98. . *See* *2022 Survey*, *supra* note 1. [↑](#footnote-ref-99)
99. . *See* *id.*  [↑](#footnote-ref-100)
100. . *See Deployment Tips: Getting Family Affairs in Order*, Military.com, https://
www.military.com/deployment/getting-your-affairs-in-order-for-military-families-part-1.html (last visited Mar. 5, 2023) (explaining how to get affairs in order when joining the military). [↑](#footnote-ref-101)
101. . *See supra* Part I. [↑](#footnote-ref-102)
102. . *See* Cheryl Tilse, Jill Wilson, Ben White, Linda Rosenman, Rachel Feeny, & Tanya Strub, *Making and Changing Wills: Prevalence, Predictors, and Triggers*, Sage Pub. 1, 3 (2016). [↑](#footnote-ref-103)
103. . *See generally* Melissa Ezarik, *Where the Weaknesses are in Student Financial Wellness*, Inside Higher Ed (Feb. 25, 2022), https://www.insidehighered.com/news/
2022/02/25/survey-college-students-need-help-financial-literacy. [↑](#footnote-ref-104)
104. . *See generally* Barbara O’Neill, *The Purpose and Importance of Wills*, Rutgers: N.J. Agric. Experiment Station (Jun. 2017), https://njaes.rutgers.edu/money/
pdfs/lesson-plans/DoE-Lesson-Plan-14-The-Purpose-and-Importance-of-Wills.pdf. *See* Harzog*, supra* note 43. [↑](#footnote-ref-105)
105. . *See, e.g.*, *Personal Plan: Plan Details*, LegalShield, https://www.legalshield.
com/personal-plan/plan-details/ (last visited Mar. 5, 2023) (presenting an example of how employers should promote will preparation by offering legal benefits plans as well that include will-making as part of the benefits package). [↑](#footnote-ref-106)
106. . *See, e.g.*, *Health Coverage for Higher Education Faculty and Staff*, United Healthcare, https://www.uhc.com/employer/large-organizations/public-sector/
higher-education (last visited Mar. 5, 2023). [↑](#footnote-ref-107)
107. . *See* LegalShield, *supra* note 104. [↑](#footnote-ref-108)
108. . *See* Douglas Lamdin & Angela Vallario, *You Know You Should Have a Will*, *But Do You Know Why?*, Balt. Sun (Dec. 27, 2021, 6:07 AM) https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-227-why-you-need-a-will-20211227-zi6jkff
c6zagnlsmycr2voo7n4-story.html. [↑](#footnote-ref-109)
109. . *See generally* *Helping Your School, Helping Your Community*, United Way, https://www.yourunitedway.org/back-to-school/helping/ (last visited Oct. 4, 2022). [↑](#footnote-ref-110)
110. . *See Estate Planning 101 Webinar with Rose Elder Law*, Wilsonville Parks and Recreation, https://www.wilsonvilleparksandrec.com/parksrec/page/estate-planning-101-webinar-rose-elder-law-6 (last visited Mar. 5, 2023). [↑](#footnote-ref-111)
111. . *See Wills, Advance Directives and More: Document Your Wishes*, Merrill Edge, https://www.merrilledge.com/guidance/building-wealth/family-estate-planning (last visited Mar. 5, 2023). [↑](#footnote-ref-112)
112. . *See* Michelle Mendoza, *Bridging Long-Term Care with Estate Planning: The Basics*, Amada Senior Care, https://www.amadaseniorcare.com/2020/03/bridging-long-term-care-with-estate-planning-the-basics/ (last visited Mar. 5, 2023). [↑](#footnote-ref-113)
113. . *See Estate Planning*, Gateway Church, https://gatewaypeople.com/giving/asset-based/estate-planning (last visited Mar. 5, 2023). [↑](#footnote-ref-114)
114. . *See* *Estate & Will Planning*, Cecil Cnty. Pub. Libr., https://www.cecilcountylibrary.org/event/estate-will-planning (last visited Mar. 5, 2023). [↑](#footnote-ref-115)
115. . *See* iSpot.tv, *Trust & Will–Based Estate Plan TV Spot, ‘Meet Trust & Will’*, iSpot.tv: Trust & Will (Feb. 9, 2022), https://www.ispot.tv/ad/tiw0/trust-and-will-right-now-89. [↑](#footnote-ref-116)
116. . *See* Register of Wills for Baltimore City, *Register of Wills 2019 New Years PSA*, Facebook (Feb. 13, 2019, 8:46 AM),https://www.facebook.com/rowbaltimorecity/videos/1164194030406556 (showing Register of Wills encouraging Marylanders to get a will with “where there’s a will there’s a way” slogan); *see generally* Alexis Burrell-Rohde Register of Wills for Baltimore County, Facebook, https://www.facebook.com/BmoreRegister (highlighting posts encouraging will-making and education programs). [↑](#footnote-ref-117)
117. . *See* Susan N. Gary, *Wills for the Undeserved: Pro Bono Mentorship for Law Students*, ABA: Student Law (July 22, 2021), https://abaforlawstudents.com/2021/07/
22/wills-for-the-underserved-pro-bono-mentorship-for-law-schools/ (suggesting supervised law students take a more active role in providing will-making services for free). [↑](#footnote-ref-118)
118. . *See, e.g.,* Md. Code Regs. 19-503 (2019); N.Y. Comp. Codes R. & Regs. tit. 22 § 118.1(e)(14) (2015). [↑](#footnote-ref-119)
119. . *See, e.g.*, *Trusts and Estates*, Geo. L., https://curriculum.law.georgetown.
edu/jd/trusts-estates/ (last visited Mar. 5, 2023). [↑](#footnote-ref-120)
120. . *See* Gary, *supra* note 116. [↑](#footnote-ref-121)
121. . *See generally* ABA, *Standards and Rules of Procedure for Approval of Law Schools: 2021-2022*, ABA 1 (2021), https://www.americanbar.org/content/dam/aba/
administrative/legal\_education\_and\_admissions\_to\_the\_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure.pdf. [↑](#footnote-ref-122)
122. . *See, e.g.*, *Trusts and Estates Clinic*, Willamette Univ., https://willamette.
edu/law/programs/aao/clp/trusts-estates.html (last visited Mar. 5, 2023). [↑](#footnote-ref-123)
123. . Deborah Nason, *Think You’re Not Rich Enough to Have a Will? Think Again*, CNBC (Oct. 24, 2017, 2:12 PM), https://www.cnbc.com/amp/2017/10/24/think-youre-not-rich-enough-to-need-a-will-think-again.html. [↑](#footnote-ref-124)
124. . *See* ABA *supra* note 120; *see also* Emily Traylor Vande Lune, *Settling for Six: Should the American Bar Association Have Done More to Promote Experiential Learning in Law Schools?*, 39 J. Legal Pro. 305, 308–09 (2015). [↑](#footnote-ref-125)
125. . *See Legal Planning Workshop Provides Free Help to Young Adults and Family*, Kennedy Krieger Inst., https://www.kennedykrieger.org/community/maryland-center-developmental-disabilities/newsletter/2018-issue-two/legal-planning-workshop-provides-free-help-young-adults-families (last visited Mar. 5, 2023). [↑](#footnote-ref-126)
126. . Maggie Germano, *Despite Their Priorities, Nearly Half of Americans over 55 Still Don’t Have a Will*, Forbes (Feb. 15, 2019, 10:45 AM), https://www.forbes.
com/sites/maggiegermano/2019/02/15/despite-their-priorities-nearly-half-of-americans-over-55-still-dont-have-a-will/?sh=61cd2b75238f. [↑](#footnote-ref-127)
127. . *See* Shannon Collins, *Home Workout and Fitness Tips: Exercising Without a Gym*, HelpGuide, https://www.helpguide.org/articles/healthy-living/exercise-during-coronavirus.htm (last visited Mar. 5, 2023); Oleg Bestsennyy, Greg Gilbert, Alex Harris, & Jennifer Rost, *Telehealth: A-Quarter-Trillion-Dollar Post-COVID-19 Reality?*, McKinsey (July 9, 2021), https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/telehealth-a-quarter-trillion-dollar-post-covid-19-reality; *COVID-19 Resources for Schools, Students, and Families,* U.S. Dep’t of Educ., https://www.ed.gov/coronavirus (last visited Mar. 5, 2023). [↑](#footnote-ref-128)
128. . *See infra* Section III.C. [↑](#footnote-ref-129)
129. . *See infra* Section III.B. [↑](#footnote-ref-130)
130. . Horton, *supra* note 28, at 2367–70 (noting that attested wills were derived from the 1677 and 1837 Wills Act requiring a ritual performance requiring legal assistance and discouraging those from engaging in self-help). [↑](#footnote-ref-131)
131. . *See, e.g.*, Unif. Prob. Code § 2-501 (2019); Md. Code Ann., Est. & Trusts § 4-102 (West 2022); N.Y. Est. Powers & Trusts Law § 3-2.1 (McKinney 1974). [↑](#footnote-ref-132)
132. . *See, e.g.*, Unif. Prob. Code § 2-501 (2019). *But see* Ind. Code Ann. § 29-1-5-4 (West 1953); Miss. Code Ann. § 91-5-15 (West 1917); Mo. Ann. Stat. § 474.340 (West 1955); N.H. Rev. Stat. Ann. § 551:15 (1848); N.Y. Est. Powers & Trusts Law § 3-2.2 (McKinney 1967); N.C. Gen. Stat. Ann. § 31-3.5 (West 1953); Ohio Rev. Code Ann. § 2107.60 (West 2011); Okla. Stat. tit. 84 § 51 (1910); 33 R.I. Gen. Laws § 33-5-6 (West 1956); Tenn. Code Ann. § 32-1-106 (West 1950); Vt. Stat. Ann. tit. 14 § 7(a) (West 2018); Wash. Rev. Code Ann. § 11.12.025 (West 1965); W. Va. Code Ann. § 41-1-5 (West 1923) (demonstrating that some jurisdictions recognize oral wills (nuncupative) in limited situations).   [↑](#footnote-ref-133)
133. . Horton, *supra* note 28, at 2367 (explaining how the 1837 Wills Act extended the 1677 Statute of Frauds to all testamentary instruments and required the witnesses’ presence when the testator signed). [↑](#footnote-ref-134)
134. . *Id.* (explaining the state requirements of the “Wills Act,” an English statute from 1677, meant to prevent frauds and perjuries). [↑](#footnote-ref-135)
135. . *See, e.g.*,Tex. Est. Code Ann. § 251.051(3) (West 2017) (requiring the witness be at least 14 years of age). [↑](#footnote-ref-136)
136. . *See, e.g.*,Md. Code Ann., Est. & Trusts § 4-102(b)(3) (West 2022) (requiring the witness be credible). [↑](#footnote-ref-137)
137. . *See, e.g.*, N.Y. Est. Powers & Trusts Law § 3-3.2(a)(3) (McKinney 1967) (voiding a disposition to beneficiary witness in excess of the beneficiary’s intestate share). [↑](#footnote-ref-138)
138. . *See, e.g.*,Unif. Prob. Code § 2-502(a) (amended 2019) (stating that witnesses must sign within reasonable time of testator’s signing or acknowledgement); MD. Code Ann., Est. & Trusts § 4-102 (West 2022) (stating that witnesses must be in the presence of the testator); N.Y. Est. Powers & Trusts Law § 3-2.1(a)(4) (McKinney 1974) (stating that witnesses must “both attest the testator’s signature, as affixed or acknowledged in their presence, and at the request of the testator, sign their names and affix their residence addresses at the end of the will.”). [↑](#footnote-ref-139)
139. . *See infra* Part III.A.1. [↑](#footnote-ref-140)
140. . *See, e.g.*,Unif. Prob. Code § 2-506 (2019); Md. Code Ann., Est. & Trusts § 4-104 (West 2021); N.Y. Est. Powers & Trusts Law § 3-5.1(c)(2) (McKinney 1966). [↑](#footnote-ref-141)
141. . *See, e.g.*,Unif. Prob. Code § 2-506 (2019); Md. Code Ann., Est. & Trusts § 4-104 (West 2021); N.Y. Est. Powers & Trusts Law § 3-5.1(c)(2) (McKinney 1966). [↑](#footnote-ref-142)
142. . *See* Adam J. Hirsch, *Technology Adrift: In Search of a Role for Electronic Wills*, 61 B.C. L. Rev. 827, 840 (2020). [↑](#footnote-ref-143)
143. . Unif. Prob. Code § 2-503 (2019); *see also* Sean P. Milligan, *The Effect of a Harmless Error in Executing a Will: Why Texas Should Adopt Section 2-503 of the Uniform Probate Code*, 36 St. Mary’s L.J. 787, 801–802 (2005). [↑](#footnote-ref-144)
144. . Milligan, *supra* note 142, at 801–02. [↑](#footnote-ref-145)
145. . *Id.* at 801. [↑](#footnote-ref-146)
146. . *Id.* at 804. [↑](#footnote-ref-147)
147. . *See* David Horton, *Partial Harmless Error for Wills Evidence from California*, 103 Iowa L. Rev. 2027, 2032–33 (2018) (explaining that typical errors that are forgiven involve the witness requirement whereas courts are less likely to forgive errors involving the testator’s signature.). [↑](#footnote-ref-148)
148. . *See id.* at 2031. [↑](#footnote-ref-149)
149. . Horton, *supra* note 146, at 2015. *But see infra* Part III.B.5 (stating that the Pennsylvania attested will and holographic will requirements mirror each other not imposing a handwriting insertion). [↑](#footnote-ref-150)
150. . Alaska Stat. Ann. § 13.12.502(b) (West 1998); Ariz. Rev. Stat. § 14-2503 (LexisNexis 1994); Ark. Code Ann. § 28-25-104 (West 1949); Cal. Prob. Probate Code § 6111 (West 1991); Colo. Rev. Stat. Ann. § 15-11-502(2) (West 2010); Haw. Rev. Stat. Ann. § 560:2-502(b) (West 1996); Idaho Code Ann. § 15-2-503 (West 1971); Ky. Rev. Stat. Ann. § 394.040 (West 1978); La. Civ. Code Ann. Art. 1575 (West 2001); Me. Rev. Stat. Ann. tit. 18-C, §2-502(2) (2019); Md. Code Ann. Est. & Trusts § 4-103 (West 1974); Mich. Comp. Laws Ann. § 700.2502(2) (West 2020); Miss. Code Ann. § 91-5-1 (West 1973); Mont. Code Ann. § 72-2-522(2) (West 1993); Neb. Rev. Stat. Ann. § 30-2328 (West 1980); Nev. Rev. Stat. Ann. § 133.090 (West 1999); N.J. Stat. Ann. § 3B:3-2(b) (West 2005); N.Y. Est. Powers & Trusts Law § 3-2.2(b) (McKinney 1967); N.C. Gen. Stat. Ann. § 31-3.4 (West 2011); N.D. Cent. Code § 30.1-08-02(2) (West 2009); Okla. Stat. Ann. tit. 84, § 54 (West 2011); 20 Pa. Stat. and Cons. Stat. Ann. § 2502 (West 1994); 33 R.I. Gen. Laws § 33-5-6 (1956); S.D. Codified Laws § 29A-2-502(a) (1995); Tenn. Code Ann. § 32-1-105 (West 1950); Tex. Est. Code Ann. § 251.052 (West 2014); Utah Code Ann. § 75-2-502(2) (West 1998); Vt. Stat. Ann. tit. 14, § 7(a) (2018); Va. Code Ann. § 64.2-403(B) (West 2012); W.Va. Code Ann. § 41-1-3 (West 1923); Wyo. Stat. Ann. § 2-6-113 (West 1980). [↑](#footnote-ref-151)
151. . *See* sources cited *infra* note 188. [↑](#footnote-ref-152)
152. . *See* sources cited *infra* note 189. [↑](#footnote-ref-153)
153. . *See* *Are Handwritten or “Holographic” Wills Valid?*, AllLaw, https://www.
alllaw.com/articles/nolo/wills-trusts/are-handwritten-holographic-wills-valid.html (last visited Mar. 5, 2023). [↑](#footnote-ref-154)
154. . Horton, *supra* note 28, at 2369 (quoting Richard. H. Helmholz, *The Origin of Holographic Wills in English Law*, 15 J. Legal Hist. 97, 102 (1944) (emphasizing that holographic wills emerged in Rome for soldiers and sailors, noting that under common law, there was a sense that Roman soldiers at war should be able to make wills less formally than civilians and these standards were unspoken, and exemplifying how if a soldier wrote anything in bloody letters upon his shield, or in the dust of the field with his sword, it was held a good military testament). [↑](#footnote-ref-155)
155. . *See* sources cited *supra* note 149. [↑](#footnote-ref-156)
156. . *See* Horton, *supra* note 28, at 2369 (citing Kevin R. Natale, Note, *A Survey, Analysis, and Evaluation of Holographic Will Statutes*, 17 Hofstra L. Rev. 159, 162–69 (1988) (detailing the statutory variations among holograph legislation). [↑](#footnote-ref-157)
157. . *See* Stephen Clowney, *In Their Own Hand: An Analysis of Holographic Wills and Homemade Willmaking*, 43 Real Prop. Tr. & Est. L.J. 27, 32 (2008) (discussing holographs used by Roman soldiers). [↑](#footnote-ref-158)
158. . Margaret V. Turano, Practice Commentary, McKinney’s L. N.Y., N.Y. Est. Powers & Trusts Law § 3-2.2 (West, 2011) (“Under common law, there was a sense that soldiers at war should be able to make wills less formally than civilians, but the standards were unspoken.”). [↑](#footnote-ref-159)
159. . Md. Code Ann. Est. & Trusts § 4-103 (West 1974); N.Y. Est. Powers & Trusts Law § 3-2.2(a)(2) (McKinney 1967); 33 R.I. Gen. Laws § 33-5-6 (West 1956); Vt. Stat. Ann. tit. 14, § 7(a) (West 2018). [↑](#footnote-ref-160)
160. . Md. Code Ann., Est. & Trusts § 4-103 (West 1974); N.Y. Est. Powers & Trusts Law § 3-2.2(a)(2) (McKinney 1967); 33 R.I. Gen. Laws Ann. § 33-5-6 (West 1956); Vt. Stat. Ann. tit. 14, § 7(a) (West 2018). [↑](#footnote-ref-161)
161. . *See, e.g.*,Md. Code Ann., Est. & Trusts § 4-103 (West 1974). [↑](#footnote-ref-162)
162. . *See* Unif. Prob. Code § 2-502(b) (2019); 20 Pa. Stat. and Cons. Stat. Ann. § 2502 (West 1972); *see also, e.g.*,In re Hengen’s Estate, 12 A.2d 119, 120 (Pa. 1940) (holding that, as long as the document is written, and the testator signs the end of the document, the document should be considered a valid will). *But see infra* Part III(B)(5) (noting that Pennsylvania’s holographic will statute does not differentiate between a handwritten will and a typed will and also stating that there are three additional rules/exceptions concerning words following the signature, signature by mark, and signature by proxy). [↑](#footnote-ref-163)
163. . Horton, *supra* note 28, at 2370; *see also* Susan N. Gary, Jerome Borison, Naomi R. Kahn, & Paula A. Monopoli, Contemporary Trusts and Estates 210 (Aspen Publ’g, 4th ed. 2022). [↑](#footnote-ref-164)
164. . Horton, *supra* note 28, at 2369. [↑](#footnote-ref-165)
165. . *See* sources cited *supra* note 149. [↑](#footnote-ref-166)
166. . Horton, *supra* note 28, at 2369 n.45 (citing Kevin R. Natale, Note, *A Survey, Analysis, and Evaluation of Holographic Will Statutes*, 17 Hofstra L. Rev. 159, 162–69 (1988) (detailing the statutory variations among holograph legislation). [↑](#footnote-ref-167)
167. . *Id.* at 2369 n.42; Matter of Estate of Dobson, 708 P.2d 422, 426 (1985) (denying the probate of a holographic will that had several insertions penciled on the will by someone other than the testator with the testator’s consent). [↑](#footnote-ref-168)
168. . Ky. Rev. Stat. Ann. § 394.040 (West 1978); Miss. Code Ann. § 91-5-1 (West 1973); Tex. Est. Code Ann. § 251.052 (West 2014); W.Va. Code Ann. § 41-1-3 (West 1923); Wyo. Stat. Ann. § 2-6-113 (West 1980). [↑](#footnote-ref-169)
169. . Horton, *supra* note 28, at 2371 n.54 (citing Richard Lewis Brown, *The Holograph Problem-the Case Against Holographic Wills*, 74 Tenn. L. Rev. 93, 100 (2006)). [↑](#footnote-ref-170)
170. . N.C. Gen. Stat. Ann. § 31-3.4 (West 2021) (eliminating the location requirement in North Carolina); *see* Kevin Bennardo & Mark Glover, *The Location of Holographic Wills*, 97 N.C. L. Rev. 1625, 1625 (2019) (arguing for North Carolina to abolish its location requirement). [↑](#footnote-ref-171)
171. . *See e.g.*, Maddaus, *supra* note 23 (stating that Larry King’s holographic will failed to name an executor.) [↑](#footnote-ref-172)
172. . Unif. Prob. Code § 2-503 (1969). [↑](#footnote-ref-173)
173. . *See* Unif. Prob. Code § 2-502(b) (2019) (“A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator’s handwriting*.”*); *see also* Horton, *supra* note 28, at 2370 (citing Restatement (Third) of Prop.: Wills and Donative Transfers § 3.2 cmt. b (Am. L. Inst. 1999)). [↑](#footnote-ref-174)
174. . Ariz. Rev. Stat. Ann. § 14-2503 (1994); Cal. Prob. Code § 6111 (West 1991); Idaho Code Ann. § 15-2-503 (West 1971). [↑](#footnote-ref-175)
175. . Alaska Stat. Ann. § 13.12.502(b) (West 1998); Colo. Rev. Stat. Ann. § 15-11-502(2) (West 2010); Haw. Rev. Stat. Ann. § 560:2-502(b) (West 1996); Me. Rev. Stat. Ann. tit. 18-C, § 2-502(2) (2019); Mont. Code Ann. § 72-2-522(2) (West 1993); N.J. Stat. Ann. § 3B:3-2(b) (West 2005); N.D. Cent. Code Ann. § 30.1-08-02(2) (West 2009); S.D. Codified Laws § 29A-2-502(a) (1995); Utah Code Ann. § 75-2-502(2) (West 1998). [↑](#footnote-ref-176)
176. . Horton, *supra* note 28, at 2370 (citing Restatement (Third) of Prop.: Wills and Donative Transfers § 3.2 cmt. b (Am. L. Inst. 1999)); *see* Simonelli v. Chiarolanza, 355 A.2d 604, 608 (N.J. Super. Ct. App. Div. 2002) (defining “material provisions” as “those provisions which would be important to the disposition intended to be made by the will, including, significantly, a description of the property to be devised and those who are to receive it.”); *see also* In re Estate of Muder, 765 P.2d 997, 1000 (Ariz. 1988) (holding that if a testator uses a preprinted form he must handwrite the portions devising his property and selecting his beneficiaries in order for the material provisions to be in the testator’s handwriting and, thus, creating a valid holographic will). [↑](#footnote-ref-177)
177. . *See supra* Section III.B.2; *see also* Gary et al., *supra* note 162, at 210 (noting that the UPC modified its statute from material provisions to material portion leaving no doubt about the validity of the will in which immaterial parts of dispositive provision not in the handwriting of the testator would not invalidate an otherwise valid holographic will). [↑](#footnote-ref-178)
178. . Unif. Prob. Code § 2-502(a) (2019); Md. Code Ann., Est. & Trusts § 4-102 (West 2022); N.Y. Est. Powers & Trusts Law § 3-2.1 (McKinney 1974). [↑](#footnote-ref-179)
179. . La. Civ. Code Ann. art. 1575 (2001); Mich. Comp. Laws Ann. § 700.2502(2) (West 2020); Neb. Rev. Stat. Ann. § 30-2328 (West 1980); Nev. Rev. Stat. Ann. § 133.090 (West 1999); Okla. Stat. Ann. tit. 84, § 54 (West 2011). [↑](#footnote-ref-180)
180. . Louisiana and Oklahoma require the holographic will be entirely written, dated and signed. *See* La. Civ. Code Ann. art. 1575 (2001); Okla. Stat. Ann. tit. 84, § 54 (West 2011). Michigan, Nebraska and Nevada require “material portions” to be in the testators’ handwriting along with a date and signature. *See* Mich. Comp. Laws Serv. § 700.2502(2) (West 2020); Neb. Rev. Stat. Ann. § 30-2328 (West 1980); Nev. Rev. Ann. Ann. § 133.090 (West 1999). [↑](#footnote-ref-181)
181. . La. Civ. Code Ann. art. 1575 (2001). [↑](#footnote-ref-182)
182. . Neb. Rev. Stat. Ann. § 30-2328 (West 1980) (stating that in Nebraska, the holograph is invalid unless no other inconsistent document or date can be otherwise determined by contents of document or by extrinsic evidence.). [↑](#footnote-ref-183)
183. . *See supra* Section III.A.6. [↑](#footnote-ref-184)
184. . *See infra* Section III.C.2 (suggesting holographic form be dated). [↑](#footnote-ref-185)
185. . Ark. Code Ann. § 28-25-104 (West 1949) (requiring “evidence of at least three credible disinterested witnesses to the handwriting and signature of the testator. . .”); Tenn. Code Ann. § 32-1-105 (West 1950) (requiring that the material provisions and signature be in the Testator’s handwriting and that the Testator’s handwriting be proven by two witnesses); Va. Code Ann. § 64.2-403(B) (West 2012) (requiring that a holographic will not only be entirely written in the Testator’s handwriting, but also requires that the fact that the document is entirely written and signed in the Testator’s handwriting be proven “by at least two disinterested witnesses”). [↑](#footnote-ref-186)
186. . *See* Gary et. al., *supra* note 162, at 210 (noting a significant goal of probate reform efforts has been to simply the process and enhance the ability of people to make their own wills). [↑](#footnote-ref-187)
187. . 20 Pa. Stat. and Cons. Stat. Ann. § 2502 (West 1972) (codifying that the testator’s signature must be at the physical end of the will though attested will statutes rarely require the location of the signature). [↑](#footnote-ref-188)
188. . See *supra* Section III.A.1. [↑](#footnote-ref-189)
189. . Ala. Code § 43-8-135 (1982); Conn. Gen. Stat. Ann. § 45a-251 (West 1980); Del. Code Ann. tit. 12, § 1306 (2015); Ind. Code Ann. § 29-1-5-5 (West 2018); Iowa Code Ann. § 633.283 (West 1963); Kan. Stat. Ann. § 59-609 (West 1939); Mass. Gen. Laws Ann. ch. 190B, § 2-506 (West 2008); N.M. Stat. Ann. § 45-2-506 (LexisNexis 2016); S.C. Code Ann. § 62-2-505 (2014); Wash. Rev. Code Ann. § 11.12.020 (West 1990); Wis. Stat. Ann. § 853.05 (West 1998). [↑](#footnote-ref-190)
190. . Minn. Stat. Ann. § 524.2-503(a)(1) (West 2020); Or. Rev. Stat. Ann. § 112.238(1) (West 2020). [↑](#footnote-ref-191)
191. . Ala. Code § 43-8-135 (West 1982); Conn. Gen. Stat. Ann. § 45a-251 (West 1980); Del. Code Ann. tit. 12, § 1306 (2015); Ind. Code Ann. § 29-1-5-5 (West 2018); Iowa Code Ann. § 633.283 (West 1963); Kan. Stat. Ann. § 59-609 (West 1939); Mass. Gen. Laws Ann. ch. 190B, § 2-506 (West 2008); Minn. Stat. Ann. § 524.2-503(a)(1) (West 2020); N.M. Stat. Ann. § 45-2-506 (LexisNexis 2016); Or. Rev. Stat. Ann. § 112.238(1) (West 2020); S.C. Code Ann. § 62-2-505 (2014); Wash. Rev. Code Ann. § 11.12.020 (West 1990); Wis. Stat. Ann. § 853.05 (West 1998). [↑](#footnote-ref-192)
192. . *See infra* Section III.C.2. [↑](#footnote-ref-193)
193. . *See* discussion *supra* Part I. [↑](#footnote-ref-194)
194. . *See* discussion *infra* Section III.D; *see also* Horton, *supra* note 28, at 2371–72 (discussing the critiques of holographs). [↑](#footnote-ref-195)
195. . *See supra* Section III.B.2. [↑](#footnote-ref-196)
196. . *See* Gary et. al., *supra* note 162, at 210. [↑](#footnote-ref-197)
197. . *See* *id.* (The holographic form eliminates laypersons from having to distinguish between material and immaterial.). [↑](#footnote-ref-198)
198. . *See* Angela M. Vallario, *The Uniform Power of Attorney Act: Not a One-Size-Fits-All Solution*, U. Balt. L. Rev. 85, 95 (2014) (“The Statutory Form begins with a warning to the principal labeled ‘Important Information.’”). [↑](#footnote-ref-199)
199. . *But see* Horton*,* *supra* note 28 (citing responses to survey that 30% were able to complete form and 25% incomplete). [↑](#footnote-ref-200)
200. . *See* Unif. Prob. Code §5B-301 (2019); Md. Code Ann., Est. & Trusts § 17-202 (West 2020); N.Y. Gen. Oblig. Law § 5-1513(a) (McKinney 2021). [↑](#footnote-ref-201)
201. . This Article suggests a holograph codicil would be a separate document and its proposal is beyond the scope of this Article. The holographic form is designed for those not having a will and not as a codicil. [↑](#footnote-ref-202)
202. . *See* Bennardo & Glover, *supra* note 169, at 1626–27. [↑](#footnote-ref-203)
203. . *See* discussion *supra* Section II.A.2. [↑](#footnote-ref-204)
204. . *See supra* Section II.B.1. [↑](#footnote-ref-205)
205. . *See* John J. Lombard & Ronald E. Gother, *Choosing Your Executor and Trustee*, 8 Prob. Notes 246, 246 (1983). [↑](#footnote-ref-206)
206. . *See, e.g.*,Unif. Prob. Code § 2-603(b) (West 2019); Md. Code Ann., Est. & Trusts § 4-403(a) (West 1983); N.Y. Est. Powers & Trusts Law § 3-3.3 (McKinney 2013). [↑](#footnote-ref-207)
207. . *See* Joshua Kennon, *UTMAs v. Trust Funds*, The Balance (June 18, 2021), https://www.thebalancemoneythebalance.com/trust-funds-vs-utmas-4147446.R.
18.2#:~:text=UTMAs%20involve%20lower%20costs%20and,a%20better%20way%
20to%20go. [↑](#footnote-ref-208)
208. . *See supra* Section II.B.2. [↑](#footnote-ref-209)
209. . *See id.*  [↑](#footnote-ref-210)
210. . *See, e.g.*, *Advance Directives,* Md. Att’y Gen.,https://www.marylandattorneygeneral.gov/Pages/HealthPolicy/AdvanceDirectives.aspx (last visited Mar. 5, 2023) (providing a sample advance medical directive form with guidelines and video instructions). [↑](#footnote-ref-211)
211. . *See* Horton, *supra* note 28, at 2372 (discussing Stephen Clowney’s survey and findings including the use of do-it-yourself wills as emergency room wills). [↑](#footnote-ref-212)
212. . *See* *Advance Directives*, *supra* note 209. [↑](#footnote-ref-213)
213. . *See* Gillian Edevane, *‘Am I Going Down?’ App Tries to Help Anxious Flyers by Telling Them Odds of Plane Crash*, Newsweek (Apr. 18, 2018, 5:13 PM), https://www.
newsweek.com/what-are-odds-dying-plane-crash-app-892008. [↑](#footnote-ref-214)
214. . *See supra* Section III.B.1. [↑](#footnote-ref-215)
215. . *See* *supra* Section III.C.1. [↑](#footnote-ref-216)
216. . Clowney, *supra* note 156, at 36. [↑](#footnote-ref-217)
217. . *See* Horton, *supra* note 28, at 2367 (discussing the 1837 Wills Act). [↑](#footnote-ref-218)
218. . *See* Clowney, *supra* note 156, at 59 (concluding that concerns regarding holographs are largely misplaced); *but see* Horton, *supra* note 28, at 2373 (concluding that holographic wills “encourage fraud, duress, forgery, and undue influence.”). [↑](#footnote-ref-219)
219. . Clowney, *supra* note 156, at 59. [↑](#footnote-ref-220)
220. . Horton, *supra* note 28, at 2368 n.36–38; *see also* Md. Code Ann., Est. & Trusts § 4-102(c)(5)(iii) (West 2022) (requiring witnesses attest in the presence of testator); N.Y. Est. Powers & Trusts Law § 3-2.1(4) (McKinney 1974); *see also* Morris v. West Morris, 643 S.W.2d 204 (1982) (invalidating a lawyer-prepared will where the witnesses were not in the presence of the testator when witnessing the will). [↑](#footnote-ref-221)
221. . *See* Aubrey G. Smith, *Analyzing Holographic Wills in the Digital Age: Should Florida*’*s Antagonistic Stance be Liberalized in Light of Other Jurisdictions*’*Leniency?*, 28 U. Fla. J.L. & Pub. Pol’y 541, 541–42 (2017); *see also* Clowney, *supra* note 156, at 38; Richard Lewis Brown, *The Holograph Problem-The Case Against Holographic Wills*, 74 Tenn. L. Rev. 93, 100 (2006). [↑](#footnote-ref-222)
222. . *See supra* Section III.B.2; *see also* Gary et. al., *supra* note 162, at 210. [↑](#footnote-ref-223)
223. . Clowney, *supra* note 156, at 59. [↑](#footnote-ref-224)
224. . Horton, *supra* note 28, at 2363. [↑](#footnote-ref-225)
225. . *See* Maddaus, *supra* note 23; *see e.g.,* Paterakis v. Paterakis, No. 03-C-18-001742, 2020 WL 4882475 at \*1–2 (Md. Ct. Spec. App. 2020). [↑](#footnote-ref-226)
226. . *See* Smith, *supra* note 220, at 554, 561. [↑](#footnote-ref-227)
227. . Clowney, *supra* note 156, at 59. [↑](#footnote-ref-228)