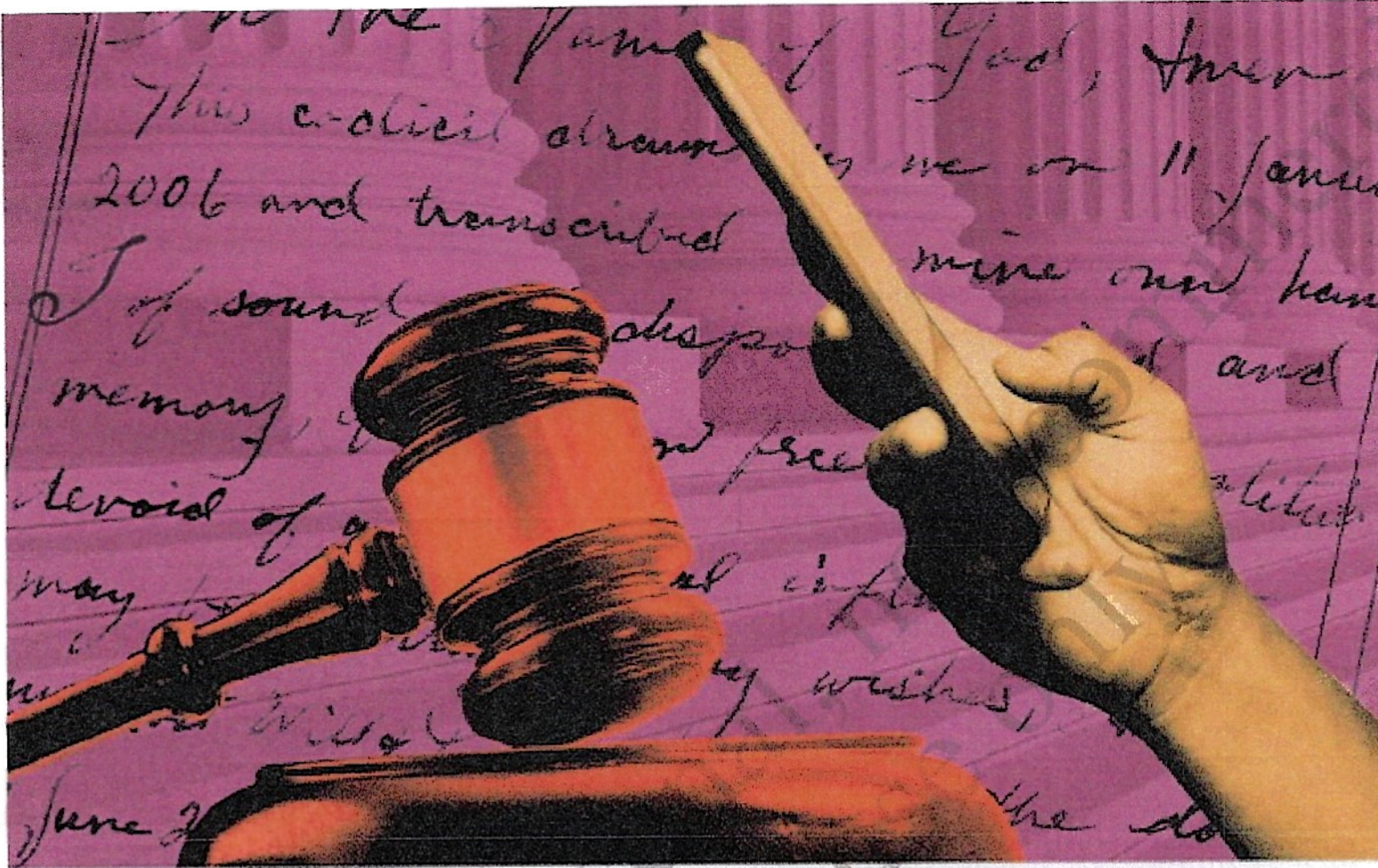


## WSJ Print Edition



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Jesse Beck's video message didn't count as a will, the Montana Supreme Court ruled.

### When It Comes to Your Will, Pen and Paper Works Best

**Those who try to phone in or record their estate plans don't realize video and audio don't qualify**

BY ASHLEA EBELING

Jesse Beck had no will except for a selfie video he recorded four days before getting struck by a car and killed. "If anything happens to me whatsoever, I give all of my possessions—everything—to Jason Beck, my brother," the 45-year-old heavy-machine operator said on the camera.

The recording didn't hold up in court. The Montana Supreme Court ruled in October that the video, "while undoubtedly expressing testamentary intent," didn't count as a will.

While most of the business of life has gone digital, estate law remains rooted to ink on paper. Americans who try to phone in or record their estate plans don't realize that video and audio recordings don't qualify.



The lack of understanding is often leaving heirs in legal disputes, estate lawyers say. In the case of Beck, if the video counted as a will, his brother would be his heir. If not, his daughter inherits his estate. A wrongful death claim of up to \$750,000 is at stake.

"If Jesse had written it on a napkin that would have been good enough. That's crazy to me that that beats him actually saying it," Beck's brother said.

Aside from audio and video, some states will allow an electronic will. But a paper will, drafted by a lawyer, and signed by you with a "wet signature," witnessed and notarized, is still the gold standard. \*

"It's a fool's errand to tenaciously claim that everything has to be on paper. This isn't the time of Charles Dickens," said Chuck Borek, general counsel at Free-Will, an online will provider.

### Writing on the will

What counts as a will depends on state laws and how the rules have been interpreted by the courts.

Many states recognize wills written out and signed by hand without witnesses— the legal term is a holographic will. This could be a note scrawled with a Sharpie on a scrap of paper and found between couch cushions. In 2018, a New Jersey appellate court honored an amendment to a will, naming a new executor and beneficiary, written in blood.

Online estate planning services say electronic wills are the future and some states have begun to accept them. The legal standing of digital documents is evolving.

You can change the beneficiary on a \$1 million retirement account online in most cases. Ancillary estate-planning documents, like financial powers of attorney, generally need to be on paper. ] \*

### Heir drop

About a dozen states recognize electronic wills, and legislation is pending in several others. E-wills can be created, signed and stored digitally. They still need to be text, not audio or video.

Roughly half of Americans don't currently have a will. E-wills could make it easier for more people to make estate plans, said Suzanne Brown Walsh, an estate lawyer in Hartford, Conn., who helped write a model law for states to adopt.

There are heightened risks of fraud and coercion compared with paper wills, say some estate lawyers. The prevalence of artificial intelligence and deepfakes might set the adoption of e-wills back, Walsh said.

### Straight to video

In the case of Jesse Beck's video, the court looked at its "writings intended as wills" law to say that the video didn't pass muster because it is not a document or writing.

Beck died after he crashed his Harley and a first responder struck and killed both Jesse and a good Samaritan bystander.

Under intestacy laws, which apply when someone dies without a will, Jesse's daughter Alexia Beck, whom he didn't mention in the video, is his sole heir. In the video, Jesse said he wanted nothing to go to Christina Fontenot, his exgirlfriend. She couldn't be reached for comment.

Jason said that Jesse had named him as his agent under a financial power of attorney he signed before a notary at a bank a few months before he died.

"In his mind and mine, we're not lawyers, we thought if anything would happen to him, I would take care of everything," Jason said. A financial power of attorney is valid while the person is living, not after death.

The wrongful death claim is pending. Alexia Beck declined to comment.



Jason said he doesn't need the money, but would use it to bring justice to his late brother.

## Text messages

Unlike video, a digital note or text can count as a will in some states, said Gerry W. Beyer, an estate-law professor at Texas Tech University School of Law.

In a 2019 appellate case in Michigan, the court accepted a digital will in the form of a note in the Evernote app on the deceased's phone. The message included a suicide note and instructions regarding the disposition of his guns, a car and trust fund.

Another recent Montana case rejected a text message as a will.

Darcy Brockbank, a Canadian software developer and sword collector, was visiting Kyiv in January 2022 and experiencing severe health problems.

He used the Wire text messaging app to send a secure text message to three friends saying that his sword company was to go to them. A screenshot of one of the texts said that Brockbank, who died at 52 shortly after, was "touching up [his] will and that the sword business was "going to go" to the friends.

At stake: Brockbank's Japanese sword collection valued at \$400,000, which was kept in Montana.

Montana doesn't have an e-will law, but writing may be treated as a valid will if there is clear and convincing evidence that the decedent intended it to be one. The Montana Supreme Court in September determined that the text message didn't meet that standard.

Brockbank's mother stood to get everything if there was no will. A will has since surfaced in Canada that the family is contesting.

Brockbank's brother Stuart said he's in the process of updating his own will.

"I'll be doing it with a lawyer, and I won't be doing it electronically," he said.

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