	Uniform Electronic Wills Act July 2018 Meeting Draft	Nevada Nev. Rev. Stat. Ann. § 133.085 (2017).	Indiana Ind. Code Ann. § 29-1-21 (2018).	Arizona Ariz. Rev. Stat. Ann. § 14-2500 (2019).	Florida Senate Bill 1042 (NS)	New Hampshire Senate Bill 40 2017 Session (NS)	Virginia House Bill 1403 (NS)	Washington D.C. Legislative Bill 169 (NS)
Effective Date	Draft	July 1, 2017	July 1, 2018	July 1, 2019	N/A	N/A	N/A	N/A
Capacity	• Sound mind; • Over the age of 18; and • Under no constraint or undue influence. • **Electronic Wills Act § 4.**	• Sound mind; and • Over the age of 18. **Nev. Rev. Stat. Ann. § 133.085.2.**	• Sound mind; and • Over the age of 18, OR • Member of armed services **Ind. Code Ann. §29-1-5-1.**	• Sound mind; and • Over the age of 18. **Ariz. Rev. Stat. Ann. § 14-2501.**	• Sound mind; and • Over the age of 18. If the testator is considered a vulnerable adult as defined by Fla. Stat. Ann. §415.102, he may still make a will but witness attestation may not occur remotely.	• Sound mind; and • Over the age of 18 OR married if under the age of 18.	• Sound mind; and • Over the age of 18.	• Sound mind; and • Over the age of 18.
Required Execution Elements	• A writing in a record; • Signed electronically with testamentary intent; and • Either signed electronically by two witnesses in actual or electronic presence of testator OR notarized by an electronic notary public. **Electronic Wills Act § 5.**	An electronic will is a will of a testator that: • Is created and maintained in an electronic record; • Contains the date and electronic signature of the testator; • Contains an authentication characteristic of the testator; • Contains the signature and seal of notary public.	An electronic will is a will of a testator that: • Is created and maintained as an electronic record; • Contains electronic signatures of the testator and attesting witnesses; and • Date and times of all such electronic signatures **Ind. Code Ann. §29-1-21-3(10).** • The testator must also command the	An electronic will is a will of a testator that: • Is created and maintained in an electronic record; • Contains the date, electronic signature of the testator, and; • An authentication characteristic of the testator OR the electronic signature and seal of an electronic notary public. **Ariz. Rev. Stat. Ann. § 14-2518(A).**	An electronic will is a will of a testator that: • Contains the electronic signature of the testator; and • Two or more witnesses who either sign in the testator's presence of sign remotely; OR • By an electronic notary public. If witness attestation occurs remotely, the witness must be present by audio-video communication	An electronic will is a will of a testator that: • Is created in an electronic record; • Contains the electronic signature of the testator; and • Electronic signature of notary public or attestation by two or more witnesses.	An electronic will is a will of a testator that: • Is created and maintained in an electronic document; • Contains the date, electronic signature of the testator; and • The electronic signature of a notary OR two attesting witnesses in the presence of the testator.	An electronic will is a will of a testator that: • Is created and maintained as an electronic record; • Contains electronic signature of testator; • Contains date and time electronic signature, • Includes an authentication method which is attached to or logically associated with the electronic will;

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		If the electronic will is NOT notarized: • Two or more witnesses must electronically sign the will in testator's presence. **Nev. Rev. Stat. Ann. § 133.085.1(b)(1),(3).**	software application or user interface to finalize the electronically signed will as an electronic record. **Ind. Code Ann. §29-1-21-4(a)(4)-(6).**		technology at the time the testator affixes his electronic signature to the will and must hear the testator make a statement acknowledging he has signed.			• Is created and maintained in such a way that any alteration is detectable; and • Is otherwise subject to the provisions of the UETA.
Witness Presence Provisions	Actual or electronic presence. **Electronic Wills Act § 5.**	Actual presence. **Nev. Rev. Stat. Ann. § 133.085.1(b)(1),(3).**	Actual presence. **Ind. Code Ann. §29-1-21-4(a)(1)**	No witness requirements. An electronic notary public must sign in the testator's presence. **Ariz. Rev. Stat. Ann. § 14-2518(A)(3).**	Actual or electronic presence.	Actual or electronic presence.	Actual or electronic presence.	No witnessing requirements are included in the bill.
Choice of Law	An electronic will is validly executed if executed in compliance with the law of the place where: • At the time of execution, the testator is physically located; or • At the time of execution or at the time of death the testator is	An electronic will may be held valid in this state regardless of where the will is executed, so long as the authoritative copy is maintained in this state. **Nev. Rev. Stat. Ann. § 133.088.1(e).**	An electronic will is legally executed if complies with: • The law of this state; • The jurisdiction the testator is in at the time of execution; or • The domicile of the testator at the time of execution or time of death. **Ind. Code Ann. §29-1-21-7.**	Any electronic will is valid if the testator was physically present in Arizona, was domiciled in Arizona at the time of execution or the time of death, or was physically present in another state where the electronic will would be deemed to be valid.	An instrument that is signed electronically is deemed to be executed in Florida if the instrument states that testator intends to execute and understands that he is executing the will in and pursuant to the laws of Florida.	An electronic will that is executed in another state in accordance with that state's laws or the laws of New Hampshire shall be a valid will.	No such provisions are included in this bill.	No such provisions are included in this bill.

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	domiciled, resides, or is a citizen. **Electronic Wills Act § 11.**			**Ariz. Rev. Stat. Ann. § 14-2506.**				
Self-Proving Electronic Wills	An electronic will with all attesting witnesses physically present in the same location as the testator may be made self-proving by acknowledgement of the testator and affidavits of the witnesses. **Electronic Wills Act § 7.** An electronic will without all attesting witnesses physically present in the same location as the testator, may be made self-proving by acknowledgement of the testator and affidavits of the witnesses made before a notary. **Electronic Wills Act § 8.**	An electronic will is self-proving if: • Witness declarations are attached to or logically associated with the electronic will; • The will designates a qualified custodian to maintain the electronic record of the electronic will; and • The will remains under custody of a qualified custodian. **Nev. Rev. Stat. Ann. § 133.086**	A will that is self-proved must include the standard form self-proving clause provided in the statute and must be self-proved before the will is electronically finalized. *See* **Ind. Code Ann. §29-1-21-4(c).**	An electronic will must contain the following to be self-proved: • Affidavits of attesting witnesses incorporated or logistically associated with the electronic will; • Designation of a qualified custodian to maintain custody of the electronic will; and • The electronic will remains under the custody of a qualified custodian at all times. **Ariz. Rev. Stat. Ann. § 14-2519.**	An electronic will is self-proved if: • The acknowledgment of the electronic will and affidavits by witnesses are attached to or logically associated with the will pursuant to the existing probate code provisions for self-proving wills.	An electronic is self-proved if: • The signatures of the testator and witnesses are followed by a standard form sworn acknowledgement; • The electronic will designates a qualified custodian to control the electronic record; • Qualified custodian maintains control of the record and it remains under the custodian's control until probate is sought.	An electronic will is self-proved if: • At the time of will execution or any subsequent date, the testator makes an acknowledgement and the witnesses sign affidavits before a notary. • The declaration or affidavit of the witnesses and the testator is in a record incorporated with the electronic will.	The bill does not make any amendments to existing probate code provisions for self-proving wills.

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Revocation	An electronic will or part is revoked by: • A subsequent will that revokes the previous electronic will or part expressly or by inconsistency; or • Any revocatory act accomplished with revocatory intent. **Electronic Wills Act § 12.**	An electronic will may only be revoked by: • Another will, codicil, electronic will or other writing, executed as prescribed in this chapter; or • Cancelling, rendering unreadable or obliterating the will with the intention of revoking it. **Nev. Rev. Stat. Ann. § 133.120.2.**	A testator may revoke a previously executed electronic will by: • Executing a new will that explicitly revokes or supersedes all prior wills. • Contacting each custodian to the testator's best ability and instructing each custodian to delete the will. • Executing a revocation document. **Ind. Code Ann. §29-1-21-8.**	A testator may revoke a will or electronic will in whole or in part by: • Executing a subsequent will or electronic will that revokes the previous will or electronic will or part expressly or by inconsistency • Cancelling, rendering unreadable, or obliterating an electronic will with the intention of revoking it. **Ariz. Rev. Stat. Ann. § 14-2507.**	An electronic will is revoked by: • The testator; or • By someone other person in the testator's presence and at the testator's direction; • By deleting, canceling, rendering unreadable, or obliterating the electronic will for the purpose of revocation as proved by clear and convincing evidence.	An electronic will may be revoked by: • Any other valid will or codicil, electronic will or other writing; and • Divorce or annulment of the testator's marriage in the same manner it would be revoked under existing probate code provisions.	An electronic will may only be revoked by: • Another will, codicil, electronic will or other writing, executed as prescribed in this chapter; or • Cancelling, rendering unreadable or obliterating the will with the intention of revoking it.	The bill does not make any amendments to existing probate code provisions for revocation of a will.
Trust Provisions	The statute's prefatory note indicates the Act is limited to wills and does not cover trusts. **Electronic Wills Act, Prefatory Note.**	The provisions of this statute do not apply to a trust other than a trust contained in an electronic will. **Nev. Rev. Stat. Ann. § 133.085.4.**	No such provisions are included in the statute.	The provisions of this statute do not apply to a trust except for a trust contained in an electronic will. **Ariz. Rev. Stat. Ann. § 14-2518(C).**	No such provisions are included in this bill.	No such provisions are included in the bill.	No such provisions are included in the bill.	An electronic trust instrument means an instrument executed by the transferor that: • Is created and maintained in an electronic record; • Contains terms of trust including any amendments;

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								• Contains date and time of electronic signature; • Includes an authentication to identify transferor; • Created and maintained in such a way that any alteration is detectable; and • Otherwise subject to the provisions of the UETA.

= Uniform Act
= Enacted legislation
= Introduced/Pending legislation

Prepared by Katherine Peters, Research Assistant for Prof. Gerry W. Beyer. Revised October 3, 2018.

FOR APPROVAL

UNIFORM ELECTRONIC WILLS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

WITH COMMENTS FOR REVIEW

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-EIGHTH YEAR
ANCHORAGE, ALASKA
JULY 12 - JULY 18, 2019

July 30, 2019

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UNIFORM ELECTRONIC WILLS ACT

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UNIFORM ELECTRONIC WILLS ACT

Prefatory Note

Electronic Wills Under Existing Statutes. People increasingly turn to electronic tools to accomplish life's tasks, including legal tasks. They use computers to execute electronically a variety of estate planning documents, including beneficiary designations and powers of attorney. Some people assume that they will be able to execute all documents electronically, and they prefer to do so for efficiency, cost savings, or other reasons. Indeed, a few cases involving wills executed on electronic devices have already surfaced.

An early case involved a testator's electronic signature. In *Taylor v. Holt*, 134 S.W.3d 830 (Tenn. 2003), the testator affixed a computer-generated signature at the end of the electronic text of his will and then printed the will. Two witnesses watched him affix the computer-generated signature to the will and then signed the paper copy of the will. The court had no trouble concluding that the electronic signature qualified as the testator's signature. The statute defined signature to include a "symbol or methodology executed or adopted by a party with intention to authenticate a writing . . . ." TENN. CODE ANN. § 1-3-105(27) (1999). In *Taylor* the will was not attested or stored electronically, but the case indicates another situation in which the use of electronic tools can lead to litigation.

In a more recent Ohio case, *In re Estate of Javier Castro*, Case No. 2013ES00140, Court of Common Pleas Probate Division, Lorain County, Ohio (June 19, 2013), the testator dictated a will to his brother, who wrote the will with a stylus on a Samsung Galaxy Tablet. The testator then signed the will on the tablet, using the stylus, as did the two witnesses.. The probate court had to decide whether the electronic writing on the tablet met the statutory requirement that a will be "in writing." The court concluded that it did and admitted the will to probate. In *Castro*, the testator and all witnesses were in the same room and signed using a stylus rather than typing a signature. The Uniform Electronic Wills Act ("the act") gives effect to such a will and clarifies that the will meets the writing requirement. In *Castro*, the testator and witnesses had not signed an affidavit, so the will was not self-proving. Under the act, if a notary is present with the testator and witnesses, the will can be made self-proving.

A 2018 case illustrates the most common electronic will scenario: that of a will typed or recorded on an electronic device. Shortly before his death by suicide, Duane Horton (a 21-year-old man) handwrote a journal entry stating that a document titled "Last Note" was on his phone. The journal entry provided instructions for accessing the note, and he left the journal and phone in his room. The Last Note included apologies and personal comments relating to his suicide as well as directions relating to his property. Mr. Horton typed his name at the end of the document. After considering the text of the document and the circumstances surrounding Mr. Horton's death, the probate and appeals court concluded that the note was a will under Michigan's harmless error statute. *In re Estate of Horton*, 925 N.W. 2d 207 (2018).

Although existing statutes might validate wills like the ones in *Castro* and *Taylor*, litigation may be necessary to resolve the question of validity. Further, the results will be haphazard if no clear policy exists. States that have adopted harmless error could use that rule to

validate an electronic will, as the court did in *In re Horton*. However, harmless error requires a judicial decision based on clear and convincing evidence, so relying on harmless error could increase costs for parties and courts. Further, in the United States, only 11 states have enacted harmless error statutes. In a state that has not adopted a harmless error statute, a court might adopt the doctrine judicially or might use the doctrine of substantial compliance to validate a will that did not comply with the execution formalities. *See, e.g.*, *In re Will of Ranney,* 589 A.2d 1339 (N.J. 1991) (decided prior to New Jersey's adoption of a harmless error statute.) However, courts are reluctant to adopt exceptions to statutory execution formalities. *See, e.g*., *Litevich v. Probate Court, Dist. Of West Haven,* 2013 WL 2945055 (Sup. Ct. Conn. 2013); *Davis v. Davis-Henriques*, 135 A.3d 1247 (Conn. App. 2016) (rejecting arguments that the court apply harmless error). As more people turn to electronic devices to conduct personal business, statutory guidance on execution of electronic wills can streamline the process of validating those wills.

Goals of the Act. Estate planning lawyers, notaries, and software providers are among those interested in electronic wills. As of 2019, state legislatures in Arizona, California, the District of Columbia, Florida, Indiana, New Hampshire, Texas, and Virginia have considered bills authorizing electronic execution of wills. Arizona, Indiana, and Florida have adopted new electronic wills legislation, and Nevada has revised its existing electronic wills statute.

Given the flurry of activity around this issue, the Uniform Law Commission became concerned that inconsistency will follow if states modify their will execution statutes without uniformity. The mobile population in the United States makes interstate recognition of wills important, and if statutes are not uniform, that recognition will be a significant issue. The Act seeks:

- To allow a testator to execute a will electronically, while maintaining protections for the testator that wills law provides for wills executed on something tangible (usually paper);
- To create execution requirements that, if followed, will result in a valid will without a court hearing to determine validity, if no one contests the will; and
- To develop a process that would not enshrine a particular business model in the statutes.

The act invokes the four functions served by will formalities, as described in John H. Langbein, *Substantial Compliance with the Wills Act*, 88 HARV. L. REV. 489 (1975) (citing Lon Fuller, *Consideration and Form,* 41 COL. L. REV. 799 (1941), which discussed the channeling function in connection with contract law, and Ashbel G. Gulliver & Catherine J. Tilson, *Classification of Gratuitous Transfers*, 51 YALE L.J. 1, 5-13 (1941), which identified the other functions). Those four functions are:

- Evidentiary – the will provides permanent reliable evidence of the testator's intent.
- Channeling – the testator's intent is expressed in a way that is understood by those who will interpret it so that the courts and personal representatives can process the will efficiently and without litigation.
- Ritual (cautionary) – the testator has a serious intent to dispose of property in the way indicated and the document is final and not a draft.
- Protective – the testator has capacity and is protected from undue influence, fraud, delusion and coercion. The documents are not the product of forgery or perjury.

Electronic Execution of Estate Planning Documents. In bilateral commercial transactions, the Uniform Electronic Transactions Act (1999) (UETA) validates the use of electronic signatures. UETA§ 7(a). However, UETA is inapplicable to wills and testamentary trusts, making this act necessary if a legislature wants to permit electronic wills. UETA§ 3(b). Since UETA applies to other estate planning documents, such as inter vivos trusts and powers of attorney, this act does not cover them. As of 2019, all but three states have adopted UETA, with most of the enactments occurring in 2000 and 2001.

Many nonprobate documents are executed electronically, and property owners have become accustomed to being able to use electronic beneficiary designations in connection with various will substitutes. The idea of permitting an electronic designation to control the transfer of property at death is already well accepted. Many property owners expect to be able to use electronic tools to manage distributions at death.

UNIFORM ELECTRONIC WILLS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Electronic Wills Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

[(2) "Electronic presence" means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.]

(3) "Electronic will" means a will executed electronically in compliance with Section 5(a).

(4) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(5) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to affix to or logically associate with the record an electronic symbol or process.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(7) "Will" includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate

succession.

Comment

Paragraph 2. Electronic Presence. An electronic will may be executed with the testator and all of the necessary witnesses present in one physical location. In that case the state's rules concerning presence for non-electronic wills, which may require line-of-sight presence or conscious presence, will apply. *See* Section 3. The act does not provide a separate definition of physical presence, and a state's existing rules for presence will apply to determine physical presence.

An electronic will is also valid if the witnesses are in the electronic presence of the testator, *see* Section 5, and the definition provides the rules for electronic presence. Electronic presence will make it easier for testators in remote locations and testators with limited mobility to execute their wills. The witnesses and testator must be able to communicate in "real time," a term that means "the actual time during which something takes place." MERRIAM-WEBSTER DICTIONARY. The term is used in connection with electronic communication to mean that the people communicating do so without a delay in the exchange of information. For statutes using the term "real-time," see, e.g., CONN. GEN. STAT. ANN. § 16A-47b (2019) (real-time energy reports); COLO. REV. STAT. ANN. § 24-33.5-2102 (2019) ("communicate in real-time during an incident"); FLA. STAT. ANN. § 117.201(2) (2019) (in definition of "audio-visual communication technology" for online notarizations); ILL. STAT. ch. 220 § 5/16-107 (2019) (real-time pricing for utilities).

A state that wants to permit electronic wills only if executed with everyone physically present can delete the bracketed provisions that permit electronic presence.

In the definition of electronic presence, "to the same extent" includes accommodations for people who are differently-abled. The definition does not provide specific accommodations due to the concern that any attempt at specificity would be too restrictive and to keep the standards current with advances in technology.

Paragraph 5. Sign. The term "logically associated" is used in the definition of sign, without further definition. Although Indiana has defined the term in its electronic wills statute, IND. CODE § 29-1-21-3(13) (defining logically associated as meaning that documents are "electronically connected, cross referenced, or linked in a reliable manner"), most statutes do not define the term. Most notably, the Uniform Electronic Transactions Act and the Revised Uniform Law on Notarial Acts (RULONA) use the term without defining it, due to the concern that an attempt at definition would be over- or under-inclusive as technology develops. Although often used in connection with a signature, the term is used in RULONA and in this act to refer both to a document that may be logically associated with another document as well as to a signature logically associated with a document. *See also* Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 *et seq*.

Paragraph 8. Will. The act follows the Uniform Probate Code definition of will, which is not a definition but rather is an explanation that the term includes uses that do not involve the

disposition of property.

SECTION 3. LAW APPLICABLE TO ELECTRONIC WILLS; PRINCIPLES OF EQUITY. An electronic will is a will for all purposes of the law of this state. The law of this state applicable to wills and principles of equity apply to an electronic will, except as modified by this [act].

Comment

The first sentence of this Section is didactic, and emphatically ensures that an electronic will is treated as a traditional one for all purposes.

In this Section "law" means both common law and statutory law. Law other than this act continues to supply rules and guidance related to wills, unless the act modifies a state's other law related to wills.

The common law requires that a testator intend that the writing be the testator's will. The Restatement explains, "To be a will, the document must be executed by the decedent with testamentary intent, i.e., the decedent must intend the document to be a will or to become operative at the decedent's death." RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 3.1, comment (g) (1999). A number of protective doctrines attempt to ensure that a document being probated as a will reflects the intent of the testator.

Wills statutes typically include capacity requirements related to mental capacity and age. A minor cannot execute a valid will. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 8.1 (mental capacity), § 8.2 (age) (2003). Other requirements for validity may be left to the common law. A writing that appears to be a will may be challenged based on allegations of undue influence, duress, or fraud. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 8.3 (Undue Influence, Duress, or Fraud) (2003). The statutory and common law requirements that apply to wills in general also apply to electronic wills.

Laws related to qualifications to serve as a witness also apply to electronic wills. For some of those requirements *see, e.g.*, Uniform Probate Code § 2-505.

SECTION 4. CHOICE OF LAW REGARDING EXECUTION. A will executed electronically but not in compliance with Section 5 is an electronic will under this [act] if executed in compliance with the law of the jurisdiction where:

(1) the testator is physically located when the will is signed; or

(2) the testator is domiciled or resides when the will is signed or when the testator dies.

Comment

Under the common law, the execution requirements for a will depended on the situs of real property, as to the real property, and the domicile of the testator, for personal property. *See* RESTATEMENT (SECOND) OF PROPERTY: WILLS & DON. TRANS. § 33.1, comment (b) (1992). The statutes of many states now treat as valid a will that was validly executed under the law of the state where the will was executed or where the testator was domiciled. For example, Uniform Probate Code § 2-506 states that a will is validly executed if executed according to "the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national." For a non-electronic will, the testator will necessarily be in the state where the will is executed. Many state statutes also permit the law of the testator's domicile when the testator dies to apply. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 3.1, comment (e) (1999).

Some of the state statutes permitting electronic wills treat an electronic will as executed in the state and valid under the state law even if the testator is not physically in the state at the time of execution. *See, e.g.,* NEV. REV. STAT. 133.088(1)(e) (2019) (stating that "the document shall be deemed to be executed in this State" if certain requirements are met, even if the testator is not within the state). Thus, a Connecticut domiciliary could go online and execute a Nevada will without leaving Connecticut. If that happened, Connecticut should not be required to accept the will as valid, because the testator had not physically been present in the state (Nevada) that authorized the electronic will when the Connecticut domiciliary executed the will.

This Section reflects the policy that a will valid where the testator was physically located should be given effect using the law of the state where executed. This rule is consistent with current law for non-electronic wills. Otherwise, someone living in a state that authorized electronic wills might execute a will there and then move to a state that did not authorize electronic wills and be forced to make a new will or die intestate if unable or unwilling to do so. An electronic will executed in compliance with the law of the state where the testator was physically located should be given effect, even if the testator later moves to another state, just as a non-electronic will would be given effect. A rule that would invalidate a will properly executed under the law of the state where the testator was physically present at the time of execution, especially if the testator was domiciled there, could trap an unwary testator and result in intestacy.

Example: Dennis lived in Nevada for 20 years. He met with a lawyer to have a will prepared, and when the will was ready for execution his lawyer suggested executing the will from his house, using the lawyer's electronic platform. Dennis did so, with the required identification. The lawyer had no concerns about Dennis's capacity and no worries that someone was unduly influencing him. Two years later Dennis moved to Connecticut where his daughter lived. Dennis died in Connecticut, with the Nevada will as his last valid will. Connecticut should give effect to Dennis's will, regardless of whether its execution would have otherwise been valid under Connecticut law.

SECTION 5. EXECUTION OF ELECTRONIC WILL.

(a) [Except as provided in Section 6, an] [An] electronic will must be:

(1) a record that is readable as text at the time of signing under paragraph (2);

(2) signed by:

(A) the testator; or

(B) another individual in the testator's name, in the testator's physical presence, and by the testator's direction; and

(3) [either:

(A)] signed by at least two individuals[, each of whom is a resident of a state and physically located in a state at the time of signing and] who signed within a reasonable time after witnessing, in the physical [or electronic] presence of the testator:

[(A)] [(i)] the signing of the electronic will under paragraph (2); or

[(B)] [(ii)] the testator's acknowledgment of the signing of the electronic will under paragraph (2) or acknowledgement of the electronic will [or;

(B) acknowledged by the testator before and in the physical [or electronic] presence of a notary public or other individual authorized by law to notarize records electronically].

(b) Intent of a testator that the record under subsection (a)(1) be the testator's electronic will may be established by extrinsic evidence.

Legislative Note: *A state that has not adopted the Uniform Probate Code should conform Section 5 to its will execution statute.*

A state that enacts Section 6 (harmless error) should include the bracketed language at the beginning of subsection (a).

A state that wishes to permit an electronic will only when the testator and witnesses are in the same physical location should omit the bracketed words "or electronic" from subsection (a)(3) and Section 8(d) and should omit Section 8(c) entirely.

A state that has adopted or follows the rule of Uniform Probate Code Section 2-502 and validates by statute an unattested but notarized will should include subsection (a)(3)(B). Other states also may include that provision for an electronic will because an electronic notarization may provide more protection for a will than a paper notarization.

Comment

Except as otherwise provided in this act, a state's existing requirements for valid wills are followed for electronic wills. Section 5 follows the formalities required in Uniform Probate Code § 2-502. A state with different formalities should modify this Section to conform to its requirements. Under Section 5 an electronic will can be valid if executed electronically, even if the testator and witnesses are in different locations. Although the probate of any will requires proof of valid execution, most states create a presumption that a will was validly executed if the testator and witnesses execute a self-proving affidavit. Rather than create extra requirements to validate the will, the act creates extra requirements to make a will self-proving when the testator and witnesses are in different locations. *See* Section 8.

Requirement of a Writing. Statutes that apply to non-electronic wills require that a will be "in writing." The RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 3.1, comment I (1999), explains:

> *i. The writing requirement.* All the statutes, including the original and revised versions of the Uniform Probate Code, require a will to be in writing. The requirement of a writing does not require that the will be written on sheets of paper, but it does require a medium that allows the markings to be detected. A will, for example, scratched in the paint on the fender of a car would be in writing, but one "written" by waving a finger in the air would not be.

Uniform Probate Code § 2-502 requires that a will be "in writing" and a comment to that section says, "Any reasonably permanent record is sufficient." The act requires that the provisions of the will be readable as text (and not as computer code, for example) at the time the testator executed the will. The act incorporates the requirement of writing by requiring that an electronic will be a "textual record," defined as a record readable as text.

One example of a textual record is a will inscribed with a stylus on a tablet. *See In re Estate of Javier Castro*, Case No. 2013ES00140, Court of Common Pleas Probate Division, Lorain County, Ohio (June 19, 2013). An electronic will may also be a word processing document that exists on a computer or a cell phone but has not been printed. The issue for these wills is not whether a writing exists but whether the testator signed the will and the witnesses attested it.

The use of a voice activated computer program can create text that can meet the requirements of a will. For example, a testator could dictate the will to a computer using voice recognition software. If the computer converts the spoken words to text *before* the testator executes the will, the will meets that requirement that it be a textual record.

Traditionally, writing evidences seriousness of intent. Accordingly, an audio or audio-visual recording of an individual describing the individual's testamentary wishes does not, by itself, constitute a will under this act. However, an audio-visual recording of the execution of a will may provide valuable evidence concerning the validity of the will.

Electronic Signature. In *Castro*, the testator signed his name using a stylus. A signature in this form is a signature for purposes of this act. The definition of sign includes a "tangible symbol" or an "electronic symbol or process" made with the intent to authenticate the record being signed. Thus, a typed signature would be sufficient if typed with the intent that it be a signature. A signature typed in a cursive font or a pasted electronic copy of a signature would also be sufficient, if made with the intent that it be a signature. As e-signing develops, other types of symbols or processes may be used, with the important element being that the testator intended the action taken to be a signature validating the electronic will.

Requirement of Witnesses. Will substitutes—tools authorizing nonprobate transfers—typically do not require witnesses, and a testator acting without legal assistance may not realize that witnesses are necessary for an electronic will. The harmless error doctrine has been used to give effect to an electronic will executed under circumstances in which witnesses were unavailable and the intent was clear. In the electronic will context these cases have involved suicides that occurred shortly after the creation of the electronic document. *See, e.g., In re Estate of Horton*, 925 N.W. 2d 207 (2018). The act includes a witness requirement; a state concerned that electronic wills will be invalidated due to lack of witnesses should consider adopting the harmless error provision in Section 6 of the act.

The act does not include additional requirements for electronic wills executed with remote witnesses, but Section 8 imposes additional requirements before a will executed with remote witnesses can be self-proving. Wills law includes a witness requirement for several reasons: (1) evidentiary—to answer questions about the voluntariness and coherence of the testator and whether undue influence played a role in the creation and execution of the will, (2) cautionary—to signal to the testator that signing the document has serious consequences, and (3) protective—to deter coercion, fraud, duress, and undue influence.

The usefulness of witnesses who can testify about the testator's apparent state of mind if a will is challenged for lack of capacity or undue influence may be limited, because a witness may observe the testator sign the will but not have sufficient contact with the testator to have knowledge of capacity or undue influence. Nonetheless, the current legal standards and procedures address the situation adequately and remote attestation should not create significant new evidentiary burdens. The act errs on the side of not creating hurdles that result in denying probate to wills that represent the intent of their testators.

Reasonable Time. The witnesses must sign within a reasonable time after witnessing the testator sign or acknowledge the signing or the will. The Comment to Uniform Probate Code § 2-502 notes that the statute does not require that the witness sign before the testator dies, but some cases have held that signing after the testator's death is not "within a reasonable time." In *Matter of Estate of Royal*, 826 P. 2d 1236 (1992), the Supreme Court of Colorado held that attestation must occur before the testator's death, citing cases in several states that had reached the same

result. For electronic wills, a state's rules applicable to non-electronic wills should apply.

Notarized Wills. For the currently small number of states that permit notarization in lieu of witnesses, Paragraph (3)(b) follows Uniform Probate Code § 2-502(a)(3)(B) and provides that a will can be validated if the testator acknowledges the will before a notary, even if the will is not attested by two witnesses.

[SECTION 6. HARMLESS ERROR.

Alternative A

A record readable as text that is not executed in compliance with Section 5(a) is deemed to comply with Section 5(a) if the proponent of the record establishes by clear and convincing evidence that the decedent intended the record to be:

(1) the decedent's will;

(2) a partial or complete revocation of a will;

(3) an addition to or modification of a will; or

(4) a partial or complete revival of a formerly revoked will or part of a will.

Alternative B

[Section 2-503 of the Uniform Probate Code or comparable provision of state law] applies to a will executed electronically.

End of Alternatives]

Legislative Note: *A state that has enacted the harmless error rule for a non-electronic will, Uniform Probate Code Section 2-503, should enact Alternative B. A state that has not enacted a harmless error rule may not want to add one solely for an electronic will, but otherwise should enact Alternative A.*

Comment

The harmless error doctrine was added to the Uniform Probate Code in 1990. Since then 11 states have adopted the rule. The Comments to UPC § 2-507 describe the development of the doctrine in Australia, Canada, and Israel, and cite to a number of studies and articles. *See, also*, RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS § 3.3 (1999); John H. Langbein, *Absorbing South Australia's Wills Act Dispensing Power in the United States: Emulation, Resistance, Expansion 38* ADEL. L. REV. *1* (2017); John H. Langbein, *Excusing Harmless Errors*

in the Execution of Wills: A Report on Australia's Tranquil Revolution in Probate Law, 87 COLUM. L. REV. 1 (1987).

The focus of the harmless error doctrine is the testator's intent. A court can excuse a defect in the execution formalities if the proponent of the defective will can establish by clear and convincing evidence that the testator intended the writing to be the testator's will. The will formalities serve as proxies for testamentary intent, and harmless error doctrine replaces strict compliance with the formalities with direct evidence of that intent.

The harmless error doctrine may be particularly important in connection with electronic wills because a testator executing an electronic will without legal assistance may assume that an electronic will is valid even if not witnessed. The high standard of proof that the testator intended the writing to serve as will should protect against abuse.

A number of cases both in the United States and in Australia have involved electronic wills written shortly before the testator committed suicide. The circumstances surrounding the writing have led the courts in those cases to use harmless error to validate the wills, despite the lack of witnesses. *See In re Estate of Horton*, 925 N.W. 2d 207 (Mich. App. 2018); *In re Yu*, [2013] QSC 322 (Queensland Sup. Ct.) (involving a document written on an iPhone and beginning, "This is the Last Will and Testament…").

Although in these cases the wills have been given effect, a will drafted in contemplation of suicide may be subject to challenge based on concerns about capacity. Even if a state adopts the harmless error doctrine, the other requirements for a valid will, including testamentary capacity and a lack of undue influence, will apply.

SECTION 7. REVOCATION.

(a) An electronic will may revoke a previous will or part of a previous will.

(b) An electronic will or part of an electronic will is revoked by:

(1) any subsequent will that revokes the electronic will or part expressly or by inconsistency; or

(2) a physical act, if it is established by a preponderance of the evidence that the testator performed the act with the intent of revoking the will or part or that another individual performed the act in the testator's physical presence and by the testator's direction.

Comment

Revocation by physical act is permitted for non-electronic wills. The difficulty with physical revocation of an electronic will is that multiple copies of an electronic will may exist.

Although a subsequent will may revoke an electronic will, a testator may assume that a will may be deleted by using a delete or trash function on a computer, as well as by other physical means. Guided by the goal of giving effect to the intent of most testators, the act permits revocation by physical act.

Physical Act Revocation. The act does not define physical act, which could include deleting a file or smashing a flash drive with a hammer. If an electronic will is stored with a third party that provides a designated mechanism for revocation, such as a delete button, and the testator intentionally pushes the button, the testator has used a physical act. If a testator prints a copy of an electronic will, writing "revoked" on the copy would be a physical act. Typing "revoked" on an electronic copy would also constitute a physical act, if the electronic will had not been notarized in a manner that locked the document.

Sending an email that says, "I revoke my will," is not a physical act performed on the will itself because the email is separate from the will. The email could revoke the will under subsection (a)(1) as a subsequent will, if the email met the formalities required under Section 5(a) or met the burden of proof under Section 6. Of course, if there were a separate physical act, such as deleting an electronic will on an electronic device, such an email could be useful evidence in interpreting the testator's intent.

If a testator uses a physical act to revoke an electronic will, the party arguing that the testator intended to revoke the will must prove the testator's intent. Due to the lack of a certain outcome when revocation by physical act is used, revocation by subsequent will under subsection (a)(1) is the preferred, and more reliable, method of revocation.

Multiple Originals. Although multiple copies of an electronic will may exist, a physical act performed on one of them by the testator with the intent to revoke will be sufficient to revoke the will. The Restatement (Third) of Property supports this rule:

> "If the testator executed more than one copy of the same will, each duplicate is considered to be the testator's will. The will is revoked if the testator, with intent to revoke, performs a revocatory act on one of the duplicates. The testator need not perform a revocatory act on all the duplicates." RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 4.1, comment f, ¶ 2 (1999).

Intent to Revoke. Revocation by physical act requires that the testator intend to revoke the will. The act uses a preponderance of the evidence standard, which may be more likely to give effect to the intent of testators with electronic wills than would a clear and convincing evidence standard. A testator might assume that by deleting a document the testator has revoked it, and a higher evidentiary standard could give effect to wills that testators intended to revoke. The preponderance of the evidence standard is consistent with the law for non-electronic wills. RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 4.1 (1999).

Example: Alejandro executes a will electronically, using a service that provides witnesses and a notary. A year later Alejandro decides to revoke the will, but he is not ready to make a new will. He goes to the website of the company that is storing his will, enters his login information,

and gets to a page that gives him the option to revoke the will by pressing a button labeled revoke. He affirms the decision when a pop-up screen asks if he is certain he wants to revoke his will. When Alejandro dies, his sister (the beneficiary of the electronic will) produces a copy he had sent her. The company provides information indicating that he had revoked the will, following the company's protocol to revoke a will. The evidence is sufficient to establish that Alejandro intended to revoke his will. His sister will be unsuccessful in her attempt to probate the copy she has.

Example: Yvette writes a will on her electronic tablet and executes it electronically, with two neighbors serving as witnesses. She saves a copy on her home computer. The will gives her estate to her nephew. Some years later Yvette decides she would prefer for her estate to be divided by her two intestate heirs, the nephew and a niece. Yvette deletes the will file on her computer, forgetting that she had given her tablet, which still has the will on it, to her nephew. She deleted the file with the intent to revoke her will, and she tells one of the witnesses as well as her niece that she has done so. When she dies her nephew produces the tablet and asserts that the will is her valid will. Her niece and the witness can testify that Yvette intended to revoke her will and will likely be successful in arguing that she revoked the will. If the will on the computer had been deleted but the only person who could testify about Yvette's intent was the niece, a court might conclude that the niece's self-interest made her testimony less persuasive. The evidence might not meet the preponderance of the evidence standard, especially if the niece had access to Yvette's computer.

Lost Wills. An accidental deletion of an electronic will should not be considered revocation of the will. However, the common law "lost will" presumption may apply. Under the common law, if a will cannot be found at the testator's death, a presumption of revocation may apply. If the will was in the testator's possession before death and cannot be found after death, the "lost will" is presumed to have been destroyed by the testator with the intent to revoke it. RESTATEMENT (THIRD) OF PROPERTY: WILLS & DON. TRANS. § 4.1, comment j (1999). The presumption can be overcome with extrinsic evidence that provides another explanation for the will's disappearance. A house fire might have destroyed the testator's files. A testator may have misplaced or inadvertently discarded files; age or poor health may make such inadvertence more likely. A person with motive to revoke and access to the testator's files might have destroyed the will. Even if the document cannot be found, the contents of the will can be proved through a copy or testimony of the person who drafted the will.

Physical Act by Someone Other than Testator. A testator may direct someone else to perform a physical act on a will for the purpose of revoking it. The testator must be in the physical presence of the person performing the act, not merely in the person's electronic presence. The use of "physical presence" is intended to mean that the state's rules on presence in connection with wills apply—either line of sight or conscious presence. Uniform Probate Code § 2-507(a)(2) relies on conscious presence.

SECTION 8. ELECTRONIC WILL ATTESTED AND MADE SELF-PROVING AT TIME OF EXECUTION.

(a) An electronic will may be simultaneously executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses.

(b) If both the attesting witnesses are physically present in the same location as the testator at the time of signing under Section 5(a)(2), the acknowledgment and affidavits under subsection (a) must be:

(1) made before an officer authorized to administer oaths under law of the state in which execution occurs; and

(2) evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will.

(c) [If one or both the attesting witnesses are not physically present in the same location as the testator at the time of signing under Section 5(a)(2), the acknowledgment and affidavits under subsection (a) must be:

(1) made before an officer authorized under [insert citation to Revised Uniform Law on Notarial Acts Section 14A (2018) or comparable provision of state law]; and

(2) evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will.

(d)] The acknowledgment and affidavits under subsection (a) must be in substantially the following form:

I, _____, the testator, sign this instrument and, being
(name)

sworn, declare to the undersigned officer that I sign this instrument as my electronic will, I sign it willingly or willingly direct another individual to sign it for me, I execute it as my voluntary

act for the purposes expressed in this instrument, and I am [18] years of age or older, of sound mind, and under no constraint or undue influence.

_____
Testator

We, _____ and _____,
(name) (name)

witnesses, sign this instrument and, being sworn, declare to the undersigned officer that the testator signed this instrument as the testator's electronic will, that the testator signed it willingly or willingly directed another individual to sign for the testator, and that each of us, in the physical [or electronic] presence of the testator, signs this electronic will as witness to the testator's signing, and to the best of our knowledge the testator is [18] years of age or older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

State of _____

[County] of _____

Subscribed, sworn to, and acknowledged before me by _____,
(name)

the testator, and subscribed and sworn to before me by _____ and
(name)

_____, witnesses, this _____ day of _____, ___.
(name)

(Seal)

_____
(Signed)

_____
(Official capacity of officer)

[d][e] A signature physically or electronically affixed to an affidavit affixed to or logically associated with an electronic will under this [act] is deemed a signature of the electronic will for the purpose of Section 5(a).

Legislative Note: *A state that has not adopted the Uniform Probate Code should conform Section 8 to its self-proving affidavit statute. The statements that the requirements for a valid will are met and the language required for the notary's certification should conform with the requirements under state law.*

A state that has authorized webcam notarization by adopting the 2018 version of the Revised Uniform Law on Notarial Acts (RULONA) to should cite to Section 14A of the RULONA statute in subsection (c)(1). A state that has adopted a non-uniform law allowing webcam notarization should cite to the relevant section of state law in subsection (c)(1).
A state that does not permit an electronic will to be executed without all witnesses physically present should omit subsection (c) and should omit the words "or electronic" in subsection (d) and Section 5(a)(3).

Comment

If an officer authorized to administer oaths (a notary) is in a state that has adopted Section 14A of the Revised Uniform Law on Notarial Acts (RULONA) or a comparable statute, the notary need not be physically present. However, if the state has not adopted RULONA or a comparable statute, the notary must be physically present in order to administer the oath under the law of that state.

Webcam Notarization. Section 14A of RULONA provides additional protection through a notarization process referred to as "webcam notarization." In a webcam notarization, the person signing a document appears before a notary using audio-video technology. Depending on state law, the document can be paper or digital, but the signer and the notary are in two different places. Extra security measures are taken to establish the signer's identity.

The act requires additional steps to make a will with remote attestation self-proving. If everyone is in the same physical location, the will can be made self-proving using a notary who can notarize an electronic document but who is not authorized to use webcam notarization. However, if anyone necessary to the execution of the will is not in the same physical location as the testator, the will can be made self-proving only if webcam notarization is used.

Signatures on Affidavit Used to Execute Will. Subsection (e) addresses the problem that arises when a testator and witnesses sign an affidavit, mistakenly thinking they are signing the will itself. Uniform Probate Code § 2-504(c) incorporated this provision into the UPC in 1990 to counteract judicial interpretations in some states that had invalidated wills where this mistake had occurred.

Time of Affidavit. Under the UPC a will may be made self-proving at a time later than execution. The act does not permit the execution of a self-proving affidavit for an electronic will other than at the time of execution of the electronic will. An electronic will has metadata that will show the date of execution, and if an affidavit is logically associated with an electronic will at a later date, the date of the electronic will and the protection provided by the self-proving affidavit may be uncertain. If a testator fails to make an electronic will self-proving simultaneously with the will's execution, the testator can later re-execute the electronic will. The additional burden on the testator is justified given the possible confusion and loss of protection that could result from a later completion of an affidavit.

SECTION 9. CERTIFICATION OF PAPER COPY. An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of an electronic will is a complete, true, and accurate copy of the electronic will. If the electronic will was made self-proving, the certified paper copy of the will must include the self-proving affidavit.

Legislative Note: *A state may need to change its probate court rules to expand the definition of what may be filed with the court to include electronic filings.*

Court procedural rules may require that a certified paper copy be filed within a prescribed number of days of the filing of the application for probate. A state may want to include procedural rules specifically for electronic wills.

SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Comment

In 2000, Congress enacted the "Electronic Signatures in Global and National Commerce Act", 106 PUB.L.NO. 229, 114 Stat. 464, 15 U.S.C. § 7001 *et seq*. (popularly known as "E-Sign"). E-Sign largely tracks the Uniform Electronic Transactions Act (UETA). Section 102 of E-Sign, entitled "Exemption to preemption," provides in pertinent part that:

> (a) A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 101 with respect to State law only if such statute, regulation, or rule of law—
>
> > (1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999" [with certain exceptions] or
> >
> > (2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if [they meet certain criteria] and
> >
> > (B) if enacted or adopted after the date of the enactment of this Act, makes specific reference to this Act.

15 U.S.C. § 7002(a). The inclusion of this section is necessary to comply with the requirement that the act "make[] specific reference to this Act" pursuant to 15 U.S.C. § 7002(a)(2)(B) if the uniform or model act contains a provision authorizing electronic records or signatures in place of writings or written signatures.

SECTION 12. APPLICABILITY. This [act] applies to the will of a decedent who dies on or after [the effective date of this act].

Comment

An electronic will is effective if it meets the requirements of this act, even if the will was executed before the effective date of the act. This transitional provision will be helpful if a testator effectively executes an electronic will in a state that has adopted the act and then moves to another state that has not yet adopted, but later adopts, the act.

SECTION 13. EFFECTIVE DATE. This [act] takes effect . . . .

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings or actions relating to the estate is unenforceable if probable cause exists for the contest, proceedings or actions.

Cite as A.R.S. § 14-2517

History. Amended by L. 2018, ch. 102, s. 2, eff. 8/3/2018.

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§ 14-2518. [Effective Until 8/27/2019] [Effective 7/1/2019] Electronic will; requirements; interpretation.

Arizona Statutes

Title 14. Trusts, Estates and Protective Proceedings

Chapter 2. INTESTATE SUCCESSION AND WILLS

Article 5. Wills

Current through L. 2019, ch. 321

§ 14-2518. *[Effective Until 8/27/2019] [Effective 7/1/2019]* Electronic will; requirements; interpretation

A. An electronic will must meet all of the following requirements:

1. Be created and maintained in an electronic record.

2. Contain the electronic signature of the testator or the testator's electronic signature made by some other individual in the testator's conscious presence and by the testator's direction.

3. Contain the electronic signatures of at least two persons, each of whom met both of the following requirements:

   (a) Was physically present with the testator when the testator electronically signed the will, acknowledged the testator's signature or acknowledged the will.

   (b) Electronically signed the will within a reasonable time after the person witnessed the testator signing the will, acknowledging the testator's signature or acknowledging the will as described in subdivision (a) of this paragraph.

4. State the date that the testator and each of the witnesses electronically signed the

will.

5. Contain a copy of a government-issued identification card of the testator.

B. Except as provided in this section and sections 14-2519, 14-2520, 14-2521, 14-2522 and 14-2523, any question raised about the force, effect, validity and interpretation of an electronic will shall be determined in the same manner as a question regarding a paper will executed pursuant to section 14-2502.

C. this section does not apply to a trust except a testamentary trust created in an electronic will.

Cite as A.R.S. § 14-2518

History. Added by L. 2018, ch. 328, s. 5, eff. 7/1/2019.

Note: *This section is set out twice. See also A.R.S. § 14-2518, as amended by L. 2019, ch. 46, s. 5, eff. 8/27/2019.*

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§ 14-2518. [Effective 8/27/2019] [Effective 7/1/2019] Electronic will; requirements; interpretation.

Arizona Statutes

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1. Be created and maintained in an electronic record.

2. Contain the electronic signature of the testator or the testator's electronic signature made by some other individual in the testator's conscious presence and by the testator's direction.

3. Contain the electronic signatures of at least two persons, each of whom met both of the following requirements:

(a) Was physically present with the testator when the testator electronically

signed the will, acknowledged the testator's signature or acknowledged the will.

(b) Electronically signed the will within a reasonable time after the person witnessed the testator signing the will, acknowledging the testator's signature or acknowledging the will as described in subdivision (a) of this paragraph.

4. State the date that the testator and each of the witnesses electronically signed the will.

5. Contain a copy of a government-issued identification card of the testator that was current at the time of execution of the will.

B. Except as provided in this section and sections 14-2519, 14-2520, 14-2521, 14-2522 and 14-2523, any question raised about the force, effect, validity and interpretation of an electronic will shall be determined in the same manner as a question regarding a paper will executed pursuant to section 14-2502.

C. This section does not apply to a trust except a testamentary trust created in an electronic will.

Cite as A.R.S. § 14-2518

History. Amended by L. 2019, ch. 46, s. 5, eff. 8/27/2019.
Added by L. 2018, ch. 328, s. 5, eff. 7/1/2019.

Note: *This section is set out twice. See also A.R.S. § 14-2518, effective until 8/27/2019.*

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§ 14-2519. [Effective Until 8/27/2019] [Effective 7/1/2019] Self-proved electronic will.

Arizona Statutes

Title 14. Trusts, Estates and Protective Proceedings

Chapter 2. INTESTATE SUCCESSION AND WILLS

Article 5. Wills

Current through L. 2019, ch. 321

§ 14-2519. *[Effective Until 8/27/2019] [Effective 7/1/2019]* Self-proved electronic will

In addition to the requirements of section 14-2504, to be self-proved, an electronic will must meet all of the following requirements:

1. contain the electronic signature and electronic seal of a notary public placed on the will in accordance with applicable law.

2. The electronic will designates a qualified custodian to maintain custody of the electronic will.

3. Before being offered for probate or being reduced to a certified paper copy, the electronic will is under the custody of a qualified custodian at all times.

Cite as A.R.S. § 14-2519

History. Added by L. 2018, ch. 328, s. 5, eff. 7/1/2019.

Note: *This section is set out twice. See also A.R.S. § 14-2519, as amended by L. 2019, ch. 46, s. 6, eff. 8/27/2019.*

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§ 14-2519. [Effective 8/27/2019] [Effective 7/1/2019] Self-proved electronic will.

Arizona Statutes

Title 14. Trusts, Estates and Protective Proceedings

Chapter 2. INTESTATE SUCCESSION AND WILLS

Article 5. Wills

Current through L. 2019, ch. 321

§ 14-2519. *[Effective 8/27/2019] [Effective 7/1/2019]* Self-proved electronic will

In addition to the requirements of section 14-2504, to be self-proved, an electronic will must meet all of the following requirements:

1. Contain the electronic signature and electronic seal of a notary public placed on the will in accordance with applicable law.

2. designate a qualified custodian to maintain custody of the electronic will.

3. Before being offered for probate or being reduced to a certified paper original , be under the exclusive control of a qualified custodian at all times.

Cite as A.R.S. § 14-2519

History. Amended by L. 2019, ch. 46, s. 6, eff. 8/27/2019.

Added by L. 2018, ch. 328, s. 5, eff. 7/1/2019.

Note: *This section is set out twice. See also A.R.S. § 14-2519, effective until 8/27/2019.*

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§ 14-2520. [Effective 7/1/2019] Qualified custodian.

Arizona Statutes

Title 14. Trusts, Estates and Protective Proceedings

Chapter 2. INTESTATE SUCCESSION AND WILLS

Article 5. Wills

Current through L. 2019, ch. 321

§ 14-2520. *[Effective 7/1/2019]* Qualified custodian

A qualified custodian of an electronic will:

1. MAY NOT BE RELATED TO THE TESTATOR BY BLOOD, MARRIAGE OR ADOPTION.
2. MAY NOT BE A DEVISEE UNDER THE ELECTRONIC WILL OR RELATED BY BLOOD, MARRIAGE OR ADOPTION TO A DEVISEE UNDER THE ELECTRONIC WILL.
3. Shall consistently employ and store electronic records of electronic wills in a system that protects electronic records from destruction, alteration or unauthorized access and detects any change to an electronic record.
4. Shall store in the electronic record of an electronic will each of the following:
   (a) A photograph or other visual record of the testator and the attesting witnesses that was taken contemporaneously with the execution of the electronic will.
   (b) A photocopy, photograph, facsimile or other visual record of any documentation that was taken contemporaneously with the execution of the electronic will and provides satisfactory evidence of the identities of the testator and the attesting witnesses, including documentation of the methods of identification used.
   (c) An audio and video recording of the testator, attesting witnesses and notary public, as applicable, taken at the time the testator, each attesting witness and notary public, as applicable, placed the person's electronic signature on the electronic will.

5. Shall provide to any court that is hearing a MATTER INVOLVING an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualifications of the qualified custodian and the policies and practices of the qualified custodian concerning the maintenance, storage and production of electronic wills AND MAY BE CALLED BY AN INTERESTED PARTY TO SERVE AS A FACT WITNESS REGARDING THE MAINTENANCE, STORAGE AND PRODUCTION OF ELECTRONIC WILLS.

Cite as A.R.S. § 14-2520

History. Added by L. 2018, ch. 328, s. 5, eff. 7/1/2019.

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§ 14-2521. [Effective Until 8/27/2019] [Effective 7/1/2019] Qualified custodian; agreement to serve; ceasing service.

Arizona Statutes

Title 14. Trusts, Estates and Protective Proceedings

Chapter 2. INTESTATE SUCCESSION AND WILLS

Article 5. Wills

Current through L. 2019, ch. 321

§ 14-2521. *[Effective Until 8/27/2019] [Effective 7/1/2019]* Qualified custodian; agreement to serve; ceasing service

A. A person shall execute a written statement affirmatively agreeing to serve as the qualified custodian of an electronic will before the person may serve as a qualified custodian.

B. Except for a person ceasing to serve as provided in subsection C, paragraph 1 of this section, a person may not cease serving as a qualified custodian until a successor qualified custodian executes the written statement prescribed by subsection A of this section.

C. A person serving as a qualified custodian may cease serving as a qualified custodian by:

1. If the person does not designate a successor qualified custodian, providing the testator with both of the following:

(a) A thirty-day written notice that the person will cease to serve as a qualified custodian.

(b) The certified paper original of the electonic will and all records concerning

the electronic will.

2. If the person designates a successor qualified custodian, by providing all of the following:

   (a) A thirty-day written notice that the person will cease to serve as a qualified custodian to the testator and the successor qualified custodian.

   (b) To the successor qualified custodian, the electronic record of the electronic will and an affidavit that states all of the following:

      (i) That the person is eligible to act as a qualified custodian in this State and is the qualified custodian designated by the testator in the electronic will or was designated to act in that capacity by another qualified custodian pursuant to this paragraph.

      (ii) That an electronic record was created at the time the testator executed the electronic will.

      (iii) That the electronic record has been in the custody of one or more qualified custodians since the execution of the electronic will and has not been altered since the time it was created.

      (iv) The identity of all qualified custodians who have had custody of the electronic record since the execution of the electronic will.

D. For the purposes of making the affidavit prescribed by subsection C, paragraph 2, subdivision (b) of this section, the person may rely conclusively on any affidavits provided by a predecessor qualified custodian if all of these affidavits are provided to the successor qualified custodian.

E. If a testator designates a successor qualified custodian in a writing executed with the same formalities required for the execution of an electronic will and the successor qualified custodian executes the written statement prescribed by subsection A of this section, the person serving as qualified custodian shall cease serving in that capacity and shall provide the successor qualified custodian with both of the following:

   1. The electronic record.

   2. The affidavit prescribed by subsection C, paragraph 2, subdivision (b) of this section.

F. If a qualified custodian is an entity, an affidavit of a duly authorized officer or agent of the entity constitutes the affidavit of the qualified custodian.

Cite as A.R.S. § 14-2521

History. Added by L. 2018, ch. 328, s. 5, eff. 7/1/2019.

Note: *This section is set out twice. See also A.R.S. § 14-2521, as amended by L. 2019, ch. 46, s. 7, eff. 8/27/2019.*

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§ 14-2521. [Effective 8/27/2019] [Effective 7/1/2019] Qualified custodian; agreement to serve; ceasing service.

Arizona Statutes

Title 14. Trusts, Estates and Protective Proceedings

Chapter 2. INTESTATE SUCCESSION AND WILLS

Article 5. Wills

Current through L. 2019, ch. 321

§ 14-2521. *[Effective 8/27/2019] [Effective 7/1/2019]* Qualified custodian; agreement to serve; ceasing service

A. A person shall execute a written statement affirmatively agreeing to serve as the qualified custodian of an electronic will before the person may serve as a qualified custodian.

B. Except for a person ceasing to serve as provided in subsection C, paragraph 1 of this section, a person may not cease serving as a qualified custodian until a successor qualified custodian executes the written statement prescribed by subsection A of this section.

C. A person serving as a qualified custodian may cease serving as a qualified custodian:

1. If the person does not designate a successor qualified custodian, by providing the testator with both of the following:

   (a) A thirty-day written notice that the person will cease to serve as a qualified custodian.

   (b) The certified paper original of the electronic will and all records concerning the electronic will.

2. If the person designates a successor qualified custodian, by providing all of the following:

   (a) A thirty-day written notice that the person will cease to serve as a qualified custodian to the testator and the successor qualified custodian.

(b) To the successor qualified custodian, the electronic record of the electronic will and an affidavit that states all of the following:

(i) That the person is eligible to act as a qualified custodian in this state and is the qualified custodian designated by the testator in the electronic will or was designated to act in that capacity by another qualified custodian pursuant to this paragraph.

(ii) That an electronic record was created at the time the testator executed the electronic will.

(iii) That the electronic record has been in the custody of one or more qualified custodians since the execution of the electronic will and has not been altered since the time it was created.

(iv) The identity of all qualified custodians who have had custody of the electronic record since the execution of the electronic will.

D. For the purposes of making the affidavit prescribed by subsection C, paragraph 2, subdivision (b) of this section, the person may rely conclusively on any affidavits provided by a predecessor qualified custodian if all of these affidavits are provided to the successor qualified custodian.

E. If a testator designates a successor qualified custodian in a writing executed with the same formalities required for the execution of an electronic will and the successor qualified custodian executes the written statement prescribed by subsection A of this section, the person serving as qualified custodian shall cease serving in that capacity and shall provide the successor qualified custodian with both of the following:

1. The electronic record.

2. The affidavit prescribed by subsection C, paragraph 2, subdivision (b) of this section.

F. If a qualified custodian is an entity, an affidavit of a duly authorized officer or agent of the entity constitutes the affidavit of the qualified custodian.

G. A qualified custodian maintains an electronic will as a bailee, and the electronic will is the property of the testator and not the qualified custodian.

Cite as A.R.S. § 14-2521

History. Amended by L. 2019, ch. 46, s. 7, eff. 8/27/2019.

Added by L. 2018, ch. 328, s. 5, eff. 7/1/2019.

Note: *This section is set out twice. See also A.R.S. § 14-2521, effective until 8/27/2019.*

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§ 14-2522. [Effective 7/1/2019] Electronic record; access; destruction.

Arizona Statutes

Title 14. Trusts, Estates and Protective Proceedings

Chapter 2. INTESTATE SUCCESSION AND WILLS

Article 5. Wills

Current through L. 2019, ch. 321

§ 14-2522. *[Effective 7/1/2019]* Electronic record; access; destruction

A. A qualified custodian shall provide access to or information concerning the electronic will in the electronic record or the certified paper original of the electronic will only to:

1. The testator or another person as directed by the written instructions of the testator.

2. After the death of the testator, the nominated personal representative of the testator or any interested person.

B. A qualified custodian may destroy the electronic record at the earlier of:

1. one hundred years after the testator's death.

2. five years after the testator's last will is admitted to probate and all appellate opportunities have been exhausted.

C. A qualified custodian shall cancel, render unreadable or obliterate the electronic record if the testator directs the qualified custodian to do so in a writing executed with the same formalities required for the execution of an electronic will.

Cite as A.R.S. § 14-2522

History. Added by L. 2018, ch. 328, s. 5, eff. 7/1/2019.

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§ 14-2523. [Effective Until 8/27/2019] [Effective 7/1/2019] Certified paper original of electronic will; affidavits.

Arizona Statutes

Title 14. Trusts, Estates and Protective Proceedings

Chapter 2. INTESTATE SUCCESSION AND WILLS

Article 5. Wills

Current through L. 2019, ch. 321

§ 14-2523. *[Effective Until 8/27/2019] [Effective 7/1/2019]* Certified paper original of electronic will; affidavits

A. On the creation of a certified paper original of an electronic will, if the electronic will has always been in the custody of a qualified custodian, the qualified custodian shall state in an affidavit all of the following:

1. That the qualified custodian is eligible to act as a qualified custodian in this State and is the qualified custodian designated by the testator in the electronic will or was designated to act in that capacity by another qualified custodian pursuant to section 14-2521, subsection C, paragraph 2.

2. That an electronic record was created at the time the testator executed the electronic will.

3. That the electronic record has been in the custody of one or more qualified custodians since the execution of the electronic will and has not been altered since the time it was created.

4. The identity of all qualified custodians who have had custody of the electronic record since the execution of the electronic will.

5. That the certified paper original is a true, correct and complete tangible manifestation of the electronic will.

6. That the records described in section 14-2520, paragraph 4 are in the custody of the qualified custodian.

B. On the creation of a certified paper original of an electronic will, if the electronic will has not always been in the custody of a qualified custodian, the person who discovered the electronic will and the person who reduced the electronic will to the certified paper original shall each state in an affidavit all of the following to the best of each person's knowledge:

1. When the electronic will was created, if not indicated in the electronic will.

2. When, how and by whom the electronic will was discovered.

3. The identity of each person who has had access to the electronic will.

4. The method in which the electronic will was stored and the safeguards in place to prevent alterations to the electronic will.

5. Whether the electronic will has been altered since its execution.

6. That the certified paper original is a true, correct and complete tangible manifestation of the electronic will.

C. For the purposes of making the affidavit prescribed by subsection A of this section, the qualified custodian may rely conclusively on any affidavits provided by a predecessor qualified custodian.

Cite as A.R.S. § 14-2523

History. Added by L. 2018, ch. 328, s. 5, eff. 7/1/2019.

Note: *This section is set out twice. See also A.R.S. § 14-2523, as amended by L. 2019, ch. 46, s. 8, eff. 8/27/2019.*

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§ 14-2523. [Effective 8/27/2019] [Effective 7/1/2019] Certified paper original of electronic will; affidavits.

Arizona Statutes

Title 14. Trusts, Estates and Protective Proceedings

Chapter 2. INTESTATE SUCCESSION AND WILLS

Article 5. Wills

Current through L. 2019, ch. 321

§ 14-2523. *[Effective 8/27/2019] [Effective 7/1/2019]* Certified paper original of electronic will; affidavits

A. On the creation of a certified paper original of an electronic will, if the electronic will has always been in the custody of a qualified custodian, the qualified custodian shall state in an affidavit all of the following:

1. That the qualified custodian is eligible to act as a qualified custodian in this state and is the qualified custodian designated by the testator in the electronic will or was designated to act in that capacity by another qualified custodian pursuant to section 14-2521, subsection C, paragraph 2.

2. That an electronic record was created at the time the testator executed the electronic will.

3. That the electronic record has been under the exclusive control of one or more qualified custodians since the execution of the electronic will and has not been altered since the time it was created.

4. The identity of all qualified custodians who have had custody of the electronic record since the execution of the electronic will.

5. That the certified paper original is a true, correct and complete tangible manifestation of the electronic will.

6. That the records described in section 14-2520, paragraph 4 are under the exclusive control of the qualified custodian.

B. On the creation of a certified paper original of an electronic will, if the electronic will has not always been under the exclusive control of a qualified custodian, the person who discovered the electronic will and the person who reduced the electronic will to the certified paper original shall each state in an affidavit all of the following to the best of each person's knowledge:

1. When the electronic will was created, if not indicated in the electronic will.

2. When, how and by whom the electronic will was discovered.

3. The identity of each person who has had access to the electronic will.

4. The method in which the electronic will was stored and the safeguards in place to prevent alterations to the electronic will.

5. Whether the electronic will has been altered since its execution.

6. That the certified paper original is a true, correct and complete tangible manifestation of the electronic will.

C. For the purposes of making the affidavit prescribed by subsection A of this section, the qualified custodian may rely conclusively on any affidavits provided by a predecessor qualified custodian.

Cite as A.R.S. § 14-2523

History. Amended by L. 2019, ch. 46, s. 8, eff. 8/27/2019.

Added by L. 2018, ch. 328, s. 5, eff. 7/1/2019.

Note: *This section is set out twice. See also A.R.S. § 14-2523, effective until 8/27/2019.*

Burns Ind. Code Ann. Tit. 29, Art. 1, Ch. 21 Note

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

Chapter 21 Electronic Wills

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-1

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-1. Purpose.

The purpose of this chapter is to provide rules for the valid execution, attestation, self-proving, and probate of wills that are prepared and signed electronically. This chapter shall be applied fairly and flexibly so that a testator whose identity can be verified, who has testamentary capacity, and who is acting free from duress and undue influence may execute a valid electronic will consistent with the testator's intent. If an electronic will is properly and electronically signed by the testator and by the witnesses and is maintained as an electronic record or as a complete converted copy in compliance with this chapter, all the normal presumptions that apply to a traditional paper will that is validly signed and executed apply to an electronic will.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-2

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-2. Electronic wills exclusively governed by chapter — Exception.

(a) Except as provided in subsection (b), electronic wills are exclusively governed by this chapter.

(b) If this chapter does not provide an explicit definition, form, rule, or statute concerning the creation, execution, probate, interpretation, storage, or use of an electronic will, the applicable statute from this article shall apply to the electronic will.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-3

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

Notice

This section has more than one version with varying effective dates.

29-1-21-3. Definitions. [Effective July 1, 2019]

The following terms are defined for this chapter:

(1)"Actual presence" means that:

(A)a witness; or

(B)another individual who observes the execution of the electronic will;

is physically present in the same physical location as the testator. The term does not include any form of observation or interaction that is conducted by means of audio, visual, or audiovisual telecommunication or similar technological means.

(2)"Affidavit of regularity" means an affidavit executed by a custodian or other person under section 13 of this chapter with respect to the electronic record for an electronic will or a complete converted copy of an electronic will.

(3)"Complete converted copy" means a document in any format that:

(A)can be visually perceived in its entirety on a monitor or other display device;

(B)can be printed; and

(C)contains:

(i)the text of the electronic will;

(ii)the electronic signatures of the testator and the witnesses;

(iii)a readable copy of any associated document integrity evidence that may be a part of or attached to the electronic will; and

(iv)a self-proving clause concerning the electronic will, if the electronic will is self-proved.

(4)"Custodian" means a person, other than:

(A)the testator who executed the electronic will;

(B)an attorney;

(C)a person who is named in the electronic will as a personal representative of the testator's estate; or

(D)a person who is named or defined as a distributee in the electronic will;

who has authorized possession or control of the electronic will. The term may include an attorney in fact serving under a living testator's durable power of attorney who possesses general authority over records, reports, statements, electronic records, or estate planning transactions.

(5)"Custody" means the authorized possession and control of at least one (1) of the following:

(A)A complete copy of the electronic record for the electronic will, including a self-proving clause if a self-proving clause is executed.

(B)A complete converted copy of the electronic will, if the complete electronic record has been lost or destroyed or the electronic will has been revoked.

(6)"Document integrity evidence" means the part of the electronic record for the electronic will that:

(A)is created and maintained electronically;

(B)includes digital markers showing that the electronic will has not been altered after its initial execution and witnessing;

(C)is logically associated with the electronic will in a tamper evident manner so that any change made to the text of the electronic will after its execution is visibly perceptible when the electronic record is displayed or printed;

(D)will generate an error message, invalidate an electronic signature, make the electronic record unreadable, or otherwise display evidence that some alteration was made to the electronic will after its execution; and

(E)displays the following information:

(i) The city and state in which, and the date and time at which, the electronic will was executed by the testator and the attesting witnesses.

(ii) The text of the self-proving clause, if the electronic will is electronically self-proved through use of a self-proving clause executed under section 4(c) of this chapter.

(iii) The name of the testator and attesting witnesses.

(iv) The name and address of the person responsible for marking the testator's signature on the electronic will at the testator's direction and in the actual presence of the testator and attesting witnesses.

(v) Copies of or links to the electronic signatures of the testator and the attesting witnesses on the electronic will.

(vi)A general description of the type of identity verification evidence used to verify the testator's identity.

(vii) The text of the advisory instruction, if any, that is provided to the testator under section 6 of this chapter at the time of the execution of the electronic will.

(viii) The content of the cryptographic hash or unique code used to complete the electronic record and make the electronic will tamper evident if a public key infrastructure or similar secure technology was used to sign or authenticate the electronic will and if the vendor or the software for the technology makes inclusion feasible.

Document integrity evidence may, but is not required to, contain other information about the electronic will such as a unique document number, client number, or other identifier that an attorney or custodian assigns to the electronic will or a link to a secure Internet web site where a complete copy of the electronic will is accessible. The title, heading, or label, if any, that is assigned to the document integrity evidence (such as "certificate of completion", "audit trail", or audit log) is immaterial.

(7)"Electronic" has the meaning set forth in *IC 26-2-8-102*.

(8)"Electronic record" has the meaning set forth in *IC 26-2-8-102*. The term may include one (1) or both of the following:

(A) The document integrity evidence associated with the electronic will.

(B) The identity verification evidence of the testator who executed the electronic will.

(9)"Electronic signature" has the meaning set forth in *IC 26-2-8-102*.

(10)"Electronic will" means the will of a testator that:

(A)is initially created and maintained as an electronic record;

(B)contains the electronic signatures of:

(i)the testator; and

(ii)the attesting witnesses; and

(C)contains the date and times of the electronic signatures described by clause (B)(i) and (B)(ii).

The term may include a codicil that amends an electronic will or a traditional paper will if the codicil is executed in accordance with the requirements of this chapter.

(11)"Executed" means the signing of an electronic will. The term includes the use of an electronic signature.

(12)"Identity verification evidence" means either:

(A)a copy of the testator's government issued photo identification card; or

(B)any other information that verifies the identity of the testator if derived from one (1) or more of the following sources:

(i)A knowledge based authentication method.

(ii)A physical device.

(iii)A digital certificate using a public key infrastructure.

(iv)A verification or authorization code sent to or used by the testator.

(v) Biometric identification.

(vi) Any other commercially reasonable method for verifying the testator's identity using current or future technology.

(13)"Logically associated" means electronically connected, cross referenced, or linked in a reliable manner.

(14)"Sign" means valid use of a properly executed electronic signature.

(15)"Signature" means the authorized use of the testator's name to authenticate an electronic will. The term includes an electronic signature.

(16)"Tamper evident" means the feature of an electronic record, such as an electronic will or document integrity evidence for an electronic will, that will cause any alteration of or tampering with the electronic record, after it is created or signed, to be perceptible to any person viewing the electronic record when it is printed on paper or viewed on a monitor or other display device. The term applies even if the nature or specific content of the alteration is not perceptible.

(17)"Traditional paper will" means a will or codicil that is signed by the testator and the attesting witnesses:

(A)on paper; and

(B)in the manner specified in *IC 29-1-5-3* or *IC 29-1-5-3.1*.

(18)"Will" includes all wills, testaments, and codicils. The term includes:

(A)an electronic will; and

(B)any testamentary instrument that:

(i)appoints an executor; or

(ii)revives or revokes another will.

History

P.L.40-2018, § 2, effective July 1, 2018; *P.L.10-2019, § 116*, effective July 1, 2019; *P.L.231-2019, § 18*, effective July 1, 2019.

Annotations

Notes

Amendment Notes

The 2019 amendment by P.L.10-2019 rewrote (6)(E)(i), which formerly read: "The city, state, date, and time the electronic will was executed by the testator and the attesting witnesses"; substituted "clause (B)(i) and (B)(ii)" for "items (i) and (ii)" at the end of (10)(C); added "with" in (16); and made a stylistic and related change.

The 2019 amendment by P.L.231-2019 rewrote (6)(D), which formerly read: "displays any changes made to the text of the electronic will after its execution; and"; substituted "city state date and time" for "city and state in which, and the date and time at which" in (6)(E)(i); rewrote (6)(E)(viii), which formerly read: "The content of the cryptographic hash or unique code used by the testator to sign the electronic will in the event that public key infrastructure or similar secure technology was used to sign or authenticate the electronic will"; substituted "clause (B)(i) and (B)(ii)" for "items (i) and (ii)" in (10)(C); in (16), substituted "of or tampering with" for "or tampering of" in the first sentence and added the second sentence; and made stylistic changes.

End of Document

Burns Ind. Code Ann. § 29-1-21-4

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-4. Valid electronic will — Requirements.

(a) To be valid as a will under this article, an electronic will must be executed by the electronic signature of the testator and attested to by the electronic signatures of at least two (2) witnesses in the following manner:

(1) The testator and the attesting witnesses must be in each other's actual presence when the electronic signatures are made in or on the electronic will. The testator and witnesses must directly observe one another as the electronic will is being signed by the parties.

(2) The testator and attesting witnesses must comply with:

(A)the prompts, if any, issued by the software being used to perform the electronic signing; or

(B)the instructions by the person, if any, responsible for supervising the execution of the electronic will.

(3) The testator must state, in the actual presence of the attesting witnesses, that the instrument to be electronically signed is the testator's will.

(4) The testator must:

(A)electronically sign the electronic will in the actual presence of the attesting witnesses; or

(B)direct another adult individual who is not an attesting witness to sign the electronic will on the testator's behalf in the actual presence of the testator and the attesting witnesses.

(5) The attesting witnesses must electronically sign the electronic will in the actual presence of:

(A)the testator; and

(B)one another;

after the testator has electronically signed the electronic will.

(6) The:

(A)testator; or

(B)other adult individual who is:

(i)not an attesting witness; and

(ii)acting on behalf of the testator;

must command the software application or user interface to finalize the electronically signed electronic will as an electronic record.

The process described in this section may include as part of the electronic record for the electronic will any identity verification evidence pertaining to the testator or any document integrity evidence for the electronic will.

(b) An electronic will may be self-proved:

(1)at the time that it is electronically signed; and

(2)before it is electronically finalized;

by incorporating into the electronic record of the electronic will a self-proving clause described under subsection (c). An electronic will is not required to contain an attestation clause or a self-proving clause in order to be a valid electronic will.

(c)A self-proving clause under subsection (b) must substantially be in the following form:

"We, the undersigned testator and the undersigned witnesses, whose names are signed to the attached or foregoing instrument, declare:

(1) That the testator executed the instrument as the testator's will.

(2) That, in the actual and direct physical presence of both witnesses, the testator signed the will or directed another individual who is not one of the witnesses to sign for the testator in the testator's presence and in the witnesses' actual and direct physical presence;

(3) That the testator executed the will as a free and voluntary act for the purposes expressed in it;

(4) That each of the witnesses, in the actual and direct physical presence of the testator and each other, signed the will as a witness;

(5) That the testator was of sound mind when the will was executed; and

(6) That, to the best knowledge of each attesting witness, the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies.

_____

(insert date) (insert signature of testator)

_____

(insert date)(insert signature of witness)

_____

(insert date) (insert signature of witness)".

A single signature from the testator and from each attesting witness may be provided for any electronic will bearing or containing a self-proving clause.

(d) An electronic will that is executed in compliance with subsection (a) shall not be rendered invalid by the existence of any of the following attributes:

(1) An attestation clause.

(2) Additional signatures.

(3)A self-proving clause that differs in form from the exemplar provided in subsection (c).

(4) Any additional language that refers to the circumstances or manner in which the electronic will was executed.

(e) This section shall be construed in a manner that gives effect to the testator's intent to execute a valid will.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-5

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-5. Video recording as evidence.

Subject to the Indiana Rules of Evidence and the Indiana Rules of Trial Procedure, a video recording of an electronic will's execution or a video recording of a testator either before or after the execution of an electronic will may be admissible as evidence of the following:

(1) The proper execution of an electronic will in compliance with section 4 of this chapter.

(2) The intentions of the testator.

(3) The mental state or capacity of the testator.

(4) The absence of undue influence or duress with respect to the testator.

(5) Verification of the testator's identity.

(6) Evidence that a complete converted copy of an electronic will should be admitted to probate.

(7) Whether a will whose execution failed to fully comply with section 4 [*IC 29-1-21-4*] of this chapter should be admitted to probate as a valid traditional paper will.

(8) Any other matter the court considers relevant to the probate of an electronic will.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-6

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-6. Advisory instruction with electronic will.

(a) As used in this section, "form vendor" means any person who provides a testator with an electronic will form or a user interface for creating, completing, or executing an electronic will. The term includes:

(1)an attorney who prepares an electronic will for a testator; and

(2)any vendor or licensor of estate planning software of digital estate planning forms.

(b) It is consistent with best practices to provide the following advisory instruction with each electronic will:

"IMPORTANT Instructions to the Signatory of an Electronic Will

A.The procedure for proper execution (electronic signing and witnessing) of your electronic will is as follows:

(1) You (the testator) and the two (2) attesting witnesses must be actually present in the same location throughout the execution process. Indiana law does not permit attesting witnesses to observe or participate in the signing process from a location that is apart or separate from the testator's location or act as an attesting witness through use of remote audio, remote visual, or remote audiovisual software or technology.

(2) Both attesting witnesses must be adults and should not be individuals who will be gifted money or other property under the terms of your electronic will. If a witness named in the electronic will is named as a beneficiary or legatee or entitled to money or property under the terms of the electronic will, the beneficiary or legatee named in the electronic will may only receive money, property, or shares reserved for them under state intestacy laws.

(3) You, as the testator, must inform the attesting witnesses that the document you will be signing is your will.

(4) You (the testator) and the two (2) attesting witnesses may use the same computer or device or different computers and devices to make your respective electronic signatures on the electronic will.

(5) The online user interface or software application for your will may require you and the attesting witnesses to use a password, validation code, token, or other security feature in order to prevent identity theft or impersonation and permanently link each of you, as individuals, to your respective electronic signatures.

(6) You (the testator) and the two (2) attesting witnesses should follow the instructions provided by the online user interface or software application when making your respective electronic signatures on your electronic will. You (the testator) should electronically sign the electronic will first followed by each of the attesting witnesses. If you (the testator) are physically unable to type, press keys, or otherwise enter commands on the computer or device being used to electronically sign the electronic will, you may instruct another adult who is not an attesting witness to enter your electronic signature on your electronic will for you. Any individual who enters your electronic signature on your electronic will on your behalf must do so in your actual presence.

(7) The software application or online user interface may create a date and time stamp for your electronic signature and for the electronic signature of each attesting witness.

(8) The execution of your electronic will is complete after you and the attesting witnesses have completed making your electronic signatures by clicking or executing a command that saves or submits your respective electronic signatures in the software application or online interface.

(9) You are strongly encouraged to save a complete copy of your electronic will in a portable and printable format. An electronic will preserved in this manner should include all information related to the execution process of your electronic will, including information that is compiled or stored by the software application or online user interface. The related information described in this subdivision should be viewable and printable as a self-contained and permanent part of the electronic record for your electronic will.

B.If you used a software application or an online user interface to generate, finalize, and sign your electronic will, the software or user interface may also offer you the ability to securely store the electronic record of your electronic will. You may be required to create or establish a user identification, password, or other security feature in order to store the electronic record of your electronic will in this way. You should carefully safeguard your user identification, password, security questions, and personal information used to securely save or store your electronic will. The information that you are being asked to safeguard will likely be required in order to:

(1)generate;

(2)replace;

(3)retrieve; or

(4)revoke;

your electronic will at a later date.

C.The only proper and valid way for you to revoke your electronic will is to:

(1)sign a new electronic will or a traditional paper will that revokes all previous wills executed by you; or

(2)permanently and irrevocably make unreadable and nonretrievable the electronic record for your electronic will.

If you are holding the electronic record for your electronic will on your own computer or digital storage device and not making use of a third party custodian or online storage or cloud based document storage service to store or safeguard your electronic will, you may personally delete permanently or make unreadable the electronic record associated with your electronic will. Before doing so, you are encouraged to make and save a printable, permanent copy of the complete electronic record associated with your electronic will, including any related information pertaining to the execution or signing process of your electronic will, so that the contents of your revoked electronic will may be discovered later by a probate court or any other interested persons in the event of a dispute concerning the validity of any later will that you decide to make.

If you are making use of a third party custodian or online or cloud based document storage service to store or safeguard your electronic will, the valid revocation of your electronic will requires you to personally issue a written or electronic revocation document to each third party custodian who has custody of a copy of the electronic record associated with your electronic will. A valid revocation document must instruct the custodian to permanently delete or make unreadable and nonretrievable the electronic record associated with your electronic will. A valid revocation document must be signed by you and two (2) attesting witnesses while following the same procedures required for the execution of a new traditional paper will or new electronic will.".

(c)A failure to provide the text of the advisory instruction in subsection (b) does not affect the validity of the electronic will if the electronic will is otherwise properly executed in the manner set forth in this chapter.

(d)A failure to provide the advisory instruction described in subsection (b) may not be the predicate for any form of civil or other liability.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-7

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-7. Execution — Validity.

An electronic will is legally executed if the manner of its execution complies with the law of:

(1)this state;

(2)the jurisdiction that the testator is actually present in at the time of execution; or

(3)the domicile of the testator at the time of execution or at the time of the testator's death.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-8

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-8. Exclusive methods for revoking electronic will.

(a) This section describes the exclusive methods for revoking an electronic will. Before a testator completes or directs the revocation of an electronic will, the testator shall:

(1)comply with; or

(2)direct a third party custodian to comply, as applicable, with;

subsection (e).

(b)A testator may revoke and supersede a previously executed electronic will by executing a new electronic will or traditional paper will that explicitly revokes and supersedes all prior wills. However, if the revoked or superseded electronic will is held in the custody or control of more than one (1) custodian, the testator shall use the testator's best efforts to contact each custodian and to instruct each custodian to permanently delete and render nonretrievable each revoked or superseded electronic will in the manner described in subsection (d).

(c) If a testator is not using the services of a custodian to store the electronic record for an electronic will, the testator may revoke the electronic will by permanently deleting each copy of the electronic record associated with the electronic will in the testator's possession or control or by rendering the electronic record for the associated electronic will unreadable and nonretrievable.

(d) The testator may revoke the testator's electronic will by executing a revocation document that:

(1)is signed by the testator and two (2) attesting witnesses in a manner that complies with *IC 29-1-5-3(b)* or with section 4 [*IC 29-1-21-4*] of this chapter;

(2)refers to the date on which the electronic will that is being revoked was signed; and

(3)states that the testator is revoking the electronic will described in subdivision (2).

A revocation document under this subsection may be signed and witnessed with the electronic signature of the testator and two (2) attesting witnesses, or signed and witnessed with signatures on paper as described in *IC 29-1-5-6*.

(e) If a testator is using the services of an attorney or a custodian to store the electronic record associated with the testator's electronic will, the testator may revoke the electronic will by instructing the custodian or attorney to permanently delete or make unreadable and nonretrievable the electronic record associated with the electronic will. An instruction issued under this subsection must be made in writing to the custodian or attorney as applicable. A custodian or attorney who receives a written instruction described in this subsection shall:

(1)sign an affidavit of regularity under section 13 [*IC 29-1-21-13*] of this chapter with respect to the electronic will to be revoked by the testator;

(2)create a complete converted copy (as defined in section 3(3) [*IC 29-1-21-3(3)*] of this chapter) of the electronic will being revoked;

(3)make the signed affidavit of regularity a permanent attachment to or part of the complete converted copy;

(4)follow the testator's written instruction by:

(A)permanently deleting the electronic record for the revoked electronic will; or

(B)rendering the electronic record associated with the revoked electronic will unreadable and nonretrievable; and

(5)transmit or issue the complete converted copy of the revoked electronic will to the testator.

(f) If the electronic record for a particular electronic will or a complete converted copy of the electronic will cannot be found after the testator's death, the presumption that applied to a lost or missing traditional paper will shall be applied to the lost or missing electronic will.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-9

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-9. Complete converted copy of an electronic will.

(a) If:

(1)a person discovers an accurate and substantially complete copy of an electronic will that:

(A)bears the signatures of the testator and attesting witnesses; and

(B)lacks some other portion of the electronic will; or

(2)the electronic record for an electronic will becomes lost or corrupted so that the absence of unauthorized alteration or tampering cannot be assured by viewing the electronic record;

the attorney, custodian, or living testator with access to a complete nonelectronic copy of the electronic will or the person described in subdivision (1) may prepare a complete converted copy of the electronic will using all available information.

(b)A person who creates a complete converted copy of an electronic will under subsection (a) shall sign an affidavit that specifies the following:

(1) When the electronic will was created if not specified in the body of the electronic will.

(2) When the electronic will was discovered.

(3) How the electronic will was discovered.

(4) The method and format that the electronic will was stored under (if known).

(5) The methods (if any) used to:

(A)prevent alterations to the electronic record; or

(B)ensure the accuracy and authenticity of the electronic record.

(6) Whether the electronic will has been altered since its creation.

(7) Confirmation that an electronic record, including any associated document integrity evidence for the electronic will, was created at the time the testator made the electronic will.

(8) Confirmation by the person responsible for:

(A)creating the complete converted copy; and

(B)signing the affidavit;

that, to the best of the person's knowledge, the electronic record has not been altered while in the custody of the current custodian or any prior custodian.

(9) Confirmation that the complete converted copy is a complete and correct duplication of:

(A)the electronic will; and

(B)the date, place, and time of the electronic will's execution by the testator and the attesting witnesses.

(c)A complete converted copy derived from a complete and correct electronic will may be offered for and admitted to probate in the same manner as a traditional paper will.

(d)A complete converted copy derived from a complete and correct self-proved electronic will shall be presumed to be valid and, absent any objection, admitted to probate without the need for additional proof.

(e) If a complete converted copy is generated from a complete and intact electronic record associated with an electronic will at or after the time of its execution, the person who generates the complete converted copy is not required to sign the affidavit described in subsection (b).

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-10

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

Notice

This section has more than one version with varying effective dates.

29-1-21-10. Custody of electronic will and associated documents. [Effective July 1, 2019]

(a) Any person with the written authorization of the testator may maintain, receive, or transfer custody of:

(1)the electronic record associated with an electronic will;

(2)any document integrity evidence associated with an electronic record or electronic will; or

(3)a complete converted copy of the electronic will.

A testator may identify and designate an adult individual as the custodian of the testator's electronic will within the electronic record of an electronic will.

(b)A custodian of an electronic will, any accompanying self-proving clause, or any document integrity evidence logically associated with the electronic will, has the following responsibilities:

(1) To use best practices to maintain custody of the electronic record for the electronic will and any accompanying document integrity evidence.

(2) To use best practices and commercially reasonable means to:

(A)maintain the privacy and security of the electronic record associated with an electronic will; and

(B)exercise reasonable care to guard against unauthorized:

(i)disclosure of; and

(ii)alteration of or tampering with;

the electronic record.

(3) To maintain electronic and conceptual separation between different testators and their respective electronic records and electronic wills if the custodian maintains custody of two (2) or more electronic records or electronic wills.

(4) To promptly generate a complete converted copy of each electronic will and all accompanying document integrity evidence after receiving a written request to do so from a living testator, the court, or another authorized person.

(5) To promptly respond to a written instruction from the living testator or another person with written authorization originating from the living testator to transfer custody of the electronic will to a successor custodian.

(6) To transfer the entire electronic record of the electronic will to a successor custodian upon the receipt of a written instruction requesting the transfer of the entire electronic record of an electronic will to a successor custodian.

(7) To provide an executed delivery receipt to the outgoing custodian who transfers:

(A)the electronic record;

(B)the electronic will;

(C)any accompanying document integrity evidence; or

(D)information pertaining to the format in which the electronic record or electronic will is received;

if the receiving custodian agrees to assume responsibility for an electronic record or an electronic will and all associated documents from an outgoing custodian.

(8) To perform the following upon the death of the testator:

(A) To relinquish possession and control of the:

(i)electronic record associated with the testator's electronic will; or

(ii)complete converted copy of the testator's electronic will (if applicable);

to a person authorized to receive these items under section 11 of this chapter.

(B) To comply with the court order requiring the electronic filing or delivery of the electronic will and any accompanying document integrity evidence or a complete converted copy of the electronic will, as applicable, with the court.

(C) To provide an accurate copy of:

(i)an electronic record; or

(ii)a complete converted copy of the testator's electronic will;

to any interested person who requests a copy for the purpose of submitting the electronic will for probate.

(D) To furnish, for any court hearing or matter involving an electronic will currently or previously stored by the custodian, any information requested by the court pertaining to the custodian's policies, practices, or qualifications as they relate to the maintenance, production, or storage of electronic wills.

(c)A proposed successor custodian has no obligation to accept delivery of an electronic will from an outgoing custodian or to accept the responsibility of maintaining custody of an electronic record associated with an electronic will. A successor custodian's execution of a delivery receipt under subsection (b)(7) constitutes acceptance of the appointment as successor custodian.

(d) If a custodian wishes to discontinue custody of an electronic will, the custodian must send written notice to the testator or, if the testator's whereabouts are unknown, to any other person:

(1)holding written authority from the testator; or

(2)identifiable from the custodian's records.

(e)A written notice described in subsection (d) must inform the testator or other person authorized to act on the testator's behalf that the custodian will transfer custody of the electronic record associated with the electronic will to a successor custodian chosen by the current custodian unless the testator or person authorized to act on behalf of the testator provides the custodian with written direction not later than thirty (30) days after the written notice described in subsection (d) was first issued.

(f) If the testator or person authorized to act on the testator's behalf does not respond to the current custodian with a contrary written instruction before the end of the thirty (30) day period described in subsection (e), the

custodian may, in order of decreasing priority, dispose of the electronic record associated with the electronic will in one (1) of the following ways:

(1) The current custodian may transfer custody of the electronic record for the electronic will to a successor custodian previously designated by the testator.

(2) The current custodian may transfer custody of the electronic will to a successor custodian selected by the current custodian.

(3) The current custodian may transmit a complete converted copy of the electronic will and accompanying affidavit of regularity under section 13 of this chapter to the testator or other person authorized to act on behalf of the testator.

History

P.L.40-2018, § 2, effective July 1, 2018; *P.L.10-2019, § 117*, effective July 1, 2019.

Annotations

Notes

Amendment Notes

The 2019 amendment by P.L.10-2019 added "of" in (b)(2)(B)(ii).

End of Document

Burns Ind. Code Ann. § 29-1-21-11

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-11. Delivery of custody of electronic will upon testator's death.

(a) After a testator's death becomes known to a custodian or other person authorized to act on behalf of the testator, custody of the electronic record associated with the testator's will or a complete converted copy of the testator's electronic will shall be delivered to one (1) of the following individuals, in decreasing order of priority, unless the testator has left other written instructions concerning the disposition of the testator's electronic will:

(1)A person nominated in the electronic will as a personal representative of the testator's estate and having priority to seek appointment.

(2)A surviving spouse of the testator.

(3)A living adult child of the testator.

(4)A living parent of the testator.

(5)A living adult sibling of the testator.

(6)A beneficiary named or defined in the electronic will and entitled to share in the testator's residuary probate estate.

(7) The clerk of the probate court having jurisdiction over the testator's estate if the custodian or other person authorized to act on behalf of the testator has knowledge of:

(A)the testator's domicile; or

(B)the location of the testator's property at the time of the testator's death.

The custodian or other person may use any means of delivery, including electronic means, that is commercially reasonable.

(b) After the death of a testator, subsection (a) and *IC 29-1-7-3(b)* and *IC 29-1-7-3(c)* shall apply to electronic wills and permit the personal representative named in an electronic will or any other interested person to file a verified written application requesting a probate court with subject matter jurisdiction to order the delivery of the electronic will to the clerk of the probate court.

(c) If a custodian or other person has possession of both the electronic record for a deceased testator's electronic will and a complete converted copy of the electronic will:

(1)the custodian or other person shall deliver only the complete converted copy of the electronic will if delivery is made to the clerk of the probate court under subsection (a)(7); and

(2)the custodian or other person shall deliver both the electronic record and the complete converted copy of the electronic will if delivery is made to a person named in the testator's written instructions or to any other person listed in subsection (a).

(d) If the custodian or other person delivers the electronic will to the clerk of the probate court under subsection (a)(7) or subsection (b), the custodian or other person shall deliver only a complete converted copy of the electronic will to the clerk, unless the court rules or other applicable laws specifically require otherwise.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-12

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-12. Destroying electronic record associated with electronic will.

(a) As used in this section, "destroy" means any act that:

(1)permanently deletes the electronic record associated with an electronic will; or

(2)renders the electronic record associated with an electronic will unreadable and nonretrievable.

(b) Any custodian or attorney holding an electronic will may destroy the electronic record associated with the electronic will and any accompanying document integrity evidence (as applicable) at any time following the:

(1)fifth anniversary of a testator's will being admitted to probate;

(2)fifth anniversary of the date that the custodian ceases to have custody of the electronic will;

(3)tenth anniversary of the testator's death;

(4)one hundredth anniversary of an electronic will's execution; or

(5)valid revocation of an electronic will.

(c) This section does not require a custodian, attorney, or other person to destroy a complete converted copy of an electronic will.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-13

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-13. Affidavit of regularity for electronic will — Form.

A custodian or other person required or permitted to create an affidavit of regularity under this chapter may use a form that substantially complies with the following format:

"Affidavit of Regularity for Electronic Will

(1) Beginning on (insert date of first possession of the electronic will by the signatory of this affidavit) and continuing to the date and time of this affidavit, the undersigned person has had possession of (circle all that apply):

(A) the electronic record for the electronic will;

(B) a complete converted copy of the electronic will;

of (insert name of testator), which was electronically executed on (insert date of electronic signing and attestation or insert reference to time and date stamp).

(2) (Insert client number, customer number, document number, or other unique identifier if any) is the unique identifier that the undersigned person assigned to this electronic will in the undersigned person's records.

(3) The undersigned person believes that the testator (circle one (1) of the following):

(A) Is currently alive.

(B) Died on or about (insert date of testator's death)

(4) The undersigned person is (circle all of the following that apply):

(A) Transferring custody of the electronic record for the electronic will to the living testator of the electronic will.

(B) Transferring custody of the electronic record for the electronic will to (insert name and address of successor custodian).

(C) Transferring a complete converted copy of the electronic will to (insert the name and address of the authorized recipient).

(D) Submitting the electronic record for the electronic will to the (insert the name of the court) for probate.

(E) Submitting a complete converted copy for the electronic will to the (insert the name of the court) for probate

(5) If the undersigned person is transferring or submitting the electronic record for the electronic will, it is in the following format (insert description of the format)

(6) If the undersigned person is transferring or submitting the electronic record for the electronic will, the undersigned person affirms, under penalty of perjury, that the electronic record has been in the undersigned person's possession or control for the period of time stated in paragraph (1) and

that during the specified period of time the electronic record showed no indication of unauthorized alteration or tampering.

(7) The undersigned person affirms, under penalty of perjury, that (circle one (1) of the following):

(A) The undersigned has no knowledge of the testator's later execution of a will or codicil that amends, revokes, or supersedes the electronic will described in paragraph (1).

(B) The undersigned believes that the testator purportedly revoked or amended the electronic will described in paragraph (1) on (insert date, if known, or approximate time frame if date is not known), by (insert known details about the amendment or revocation).

(8) The undersigned person is (circle one (1) if applicable):

(A) The living testator who executed the electronic will.

(B) An attorney admitted to practice law in the state of Indiana.

(C) An attorney in fact or other person acting on the written authority of the testator.

(D) A personal representative nominated in the electronic will.

(E) An interested person (as defined in *IC 29-1-1-3*) with respect to the estate of the testator.

(F) A custodian currently in compliance with all applicable requirements under *IC 29-1-21-10*.

_____

(insert date and time of custodian's or other person's signature)

_____

(insert name and signature of custodian or other person signing)

_____

(insert job title or position of signatory if signatory is not an individual).".

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-14

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-14. Prima facie evidence.

(a) Regardless of the number of custodians or other persons who receive, hold, or transfer copies of an electronic record for an electronic will to other custodians, other authorized persons, or the testator:

(1)the electronic record, including any accompanying document integrity evidence (if applicable), is prima facie evidence of:

(A)the validity of the electronic will; and

(B)freedom from unauthorized alteration or tampering unless evidence of alteration or tampering is evident on the face of the electronic record;

(2)a complete converted copy of an electronic will is prima facie evidence of:

(A)the validity of the electronic will; and

(B)freedom from unauthorized alteration or tampering;

if the electronic will was executed in compliance with this chapter; and

(3)except as provided in section 16(e)(2) [*IC 29-1-21-16(e)(2)*] of this chapter, a custodian or other person is not required to make or issue an affidavit regarding the custodian's or other person's custody of the electronic record for an electronic will or custody of a complete converted copy of the electronic will. Any custodian or other person may, however, make an affidavit of regularity under section 13 [*IC 29-1-21-13*] of this chapter if any objection is asserted or any doubt is raised concerning the validity of the electronic will or about any alleged unauthorized alteration of the electronic will.

(b) The presumption of:

(1)validity; and

(2)freedom from unauthorized alteration or tampering;

described in subsection (a) may be rebutted by clear and convincing evidence or by evidence that the testator executed another electronic will or traditional paper will at a later date.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-15

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-15. Deposit of an electronic will copy with circuit court clerks.

(a) As used in this section, "electronic will copy" means a complete converted copy of an electronic will that is deposited with a circuit court clerk under *IC 29-1-7-3.1*.

(b) The following shall apply to the deposit of an electronic will copy with circuit court clerks:

(1)*IC 29-1-7-3.1(a)*.

(2)*IC 29-1-7-3.1(b)*.

(3)*IC 29-1-7-3.1(d)*.

(4)*IC 29-1-7-3.1(e)*.

(5)*IC 29-1-7-3.1(g)*.

(6)*IC 29-1-7-3.1(h)*.

(7)*IC 29-1-7-3.1(i)*.

(8)*IC 29-1-7-3.1(j)*.

(c)A person or depositor may deposit an electronic will copy with the circuit court clerk under *IC 29-1-7-3.1* by:

(1)submitting a paper copy of the complete converted copy of the electronic will copy to the clerk; or

(2)electronically filing a readable and printable copy of the completed converted copy of the electronic will copy with the clerk if permitted by court rules.

(d) If the circuit court clerk receives a paper copy of a complete converted copy, the clerk shall promptly do the following:

(1) Place the electronic will copy in an envelope.

(2) Securely seal the envelope.

(3) Give or send a confirmation receipt verifying reception of the electronic will copy to the person or depositor.

(e) If the circuit court clerk receives an electronic copy of a complete converted copy of an electronic will, the clerk shall do the following:

(1) Print the entire complete converted copy.

(2) Place the printed copy described in subdivision (1) in an envelope.

(3) Securely seal the envelope.

(4) Give or send a confirmation receipt verifying reception of the will to the person or depositor.

(f) The circuit court clerk, after sealing a complete converted copy of an electronic will in an envelope as described in subsection (e), shall do the following:

(1) Designate the:

(A)date of deposit;

(B)name of the testator; and

(C)name and address of the depositor;

on the envelope.

(2) Index the electronic will alphabetically by the name of the testator.

An envelope and electronic will copy deposited under this section or *IC 29-1-7-3.1* is confidential under IC 5-14-3.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-16

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-16. Filing of an electronic will.

(a) As used in this section and for the purpose of offering or submitting an electronic will in probate under IC 29-1-7, the "filing of an electronic will" means the electronic filing of a complete converted copy of the associated electronic will.

(b) When filing an electronic will, the filing of any accompanying document integrity evidence or identity verification is not required unless explicitly required by the court.

(c) If a person files an electronic will:

(1)for the purpose of probating the electronic will; and

(2)including accompanying:

(A)document integrity evidence;

(B)identity verification evidence; or

(C)evidence described in both clauses (A) and (B);

in the filing or in response to a court order under subsection (e)(2), the person shall file a complete and unredacted copy of the evidence described in clauses (A) and (B) as a nonpublic document under Ind. Administrative Rule 9(G). All personally identifying information pertaining to the testator or the attesting witnesses shall be redacted in the publicly filed copy.

(d) If an electronic will includes a self-proving clause that complies with section 4(c) [*IC 29-1-21-4(c)*] of this chapter, the testator's and witnesses' compliance with the execution requirements shall be presumed upon the filing of the electronic will with the court without the need for any additional testimony or an accompanying affidavit. The presumption described in this subsection may be subject to rebuttal or objection on the grounds of fraud, forgery, or impersonation.

(e) After determining that a testator is dead and that the testator's electronic will has been executed in compliance with applicable law, the court may:

(1)enter an order, without requiring the submission of additional evidence, admitting the electronic will to probate as the last will of the deceased testator unless objections are filed under *IC 29-1-7-16*; or

(2)require the petitioner to submit additional evidence regarding:

(A)the proper execution of the electronic will; or

(B)the electronic will's freedom from unauthorized alteration or tampering after its execution.

The court may require the submission of additional evidence under subdivision (2) on the court's own motion or in response to an objection filed under *IC 29-1-7-16*.

(f) The additional evidence that the court may require and rely upon under subsection (e)(2) may include one (1) or more of the following:

(1) Readable copies of the document integrity evidence or the identity verification evidence associated with the electronic will.

(2) All or part of the electronic record (if available) in a native or computer readable form.

(3)A sworn or verified affidavit from:

(A)an attorney or other person who supervised the execution of the electronic will; or

(B)one (1) or more of the attesting witnesses.

(4) An affidavit signed under section 9(b) [*IC 29-1-21-9(b)*] of this chapter by a person who created a complete converted copy of the electronic will.

(5)A sworn or verified affidavit from a qualified person that:

(A)describes the person's training and expertise;

(B)describes the results of the person's forensic examination of the electronic record associated with:

(i)the electronic will at issue; or

(ii)any other relevant evidence; and

(C)affirms that the electronic will was not altered or tampered with after its execution.

(6) Any other evidence, including other affidavits or testimony, that the court considers material or probative on the issues of proper execution or unauthorized alteration or tampering.

(g) If the court enters an order admitting an electronic will to probate after receiving additional evidence, any of the additional evidence may be disputed through a will contest that is timely filed under *IC 29-1-7-17*.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Burns Ind. Code Ann. § 29-1-21-17

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

Notice

This section has more than one version with varying effective dates.

§ 29-1-21-17. Petition requesting probate of another electronic will associated with the testator. [Effective July 1, 2019]

(a) This section shall apply to the situation created by:

(1)the rejection of a petition to probate a deceased testator's electronic or traditional paper will; or

(2)the revocation of a deceased testator's electronic will due to the timely filing of a will contest as described in *IC 29-1-7-17*.

(b) The following terms are defined for this section:

(1)"Other electronic will" means:

(A)an electronic will that the same testator purportedly executed in compliance with applicable laws on a date that preceded the date of execution seen in the rejected will; or

(B)an electronic will that the same testator purportedly executed in compliance with applicable laws on a date that followed the date of execution seen on the rejected will;

where the petitioner or proponent for the electronic will is not aware of any other paper will or electronic will executed by the testator at a date later than the date of the testator's purposed execution of the other electronic will.

(2)"Rejected will" means a will that is rejected for a reason described in subsection (a).

(c) On or before the end of the time period specified in *IC 29-1-7-15.1(g)(2)* or *IC 29-1-7-15.1(g)(3)*, any interested person may file a petition requesting probate of another electronic will associated with the testator. A complete converted copy of the other electronic will and an affidavit of regularity must accompany any petition filed under this subsection. The complete converted copy of another electronic will is prima facie evidence of:

(1)the substance of the other electronic will; and

(2)the proper execution of the other electronic will.

(d) Section 16 of this chapter shall apply to any proceeding concerning the probate of another electronic will of a deceased testator. In the absence of:

(1)clear and convincing evidence; and

(2)written evidence;

of the testator's contrary intentions, the court shall presume that the deceased testator would have preferred the probate and enforcement of the testator's other electronic will to intestacy.

History

P.L.40-2018, § 2, effective July 1, 2018; *P.L.231-2019, § 19*, effective July 1, 2019.

Annotations

Notes

Amendment Notes

The 2019 amendment by P.L.231-2019 substituted "IC 29-1-7-15.1(g)(2) or IC 29-1-7-15.1(g)(3)" for "IC 29-1-7-15.1(d)(2) or IC 29-1-7-15.1(d)(3)" in the first sentence of the introductory paragraph of (c); and substituted "Section 16" for "Section 18" in the first sentence of the introductory paragraph of (d).

End of Document

Burns Ind. Code Ann. § 29-1-21-18

Current through P.L.293-2019 from the First Regular Session of the 121st General Assembly.

Burns' Indiana Statutes Annotated > Title 29 Probate (Arts. 1 — 3.5) > Article 1 Probate Code (Chs. 1 — 22) > Chapter 21 Electronic Wills (§§ 29-1-21-1 — 29-1-21-18)

29-1-21-18. Additional definitions.

(a) For purpose of IC 29-3, IC 30-5, and IC 32-39:

(1)the electronic record for an electronic will is a "digital asset" as that term is defined in *IC 32-39-1-10*;

(2)the electronic record for an electronic will is not an "electronic communication" as defined in *18 U.S.C. 2510(12)* or *IC 32-39-1-12*;

(3)the digital or electronic transfer or transmission of the electronic record for an electronic will between any two (2) persons other than the testator and the testator's attorney is an electronic communication as defined in *18 U.S.C. 2510(12)* or *IC 32-39-1-12*;

(4)a custodian (as defined in section 3(4) [*IC 29-1-21-3(4)*] of this chapter) of an electronic will is a "custodian" as defined in *IC 32-39-1-8*; and

(5)the following individuals are "users" for purposes of IC 32-39 if the testator, attorney, or other authorized person contracts with another person to store the electronic record for the electronic will:

(A) The testator of an electronic will.

(B) The attorney representing the testator.

(C) Any other person with authorized possession of or authorized access to the electronic record for the electronic will.

(b) The execution or revocation of an electronic will is not a contract or a "transaction in or affecting interstate or foreign commerce" for purposes of the federal E-SIGN Act, *15 U.S.C. 7001*.

(c) The execution or revocation of an electronic will is not a contract or "transaction" for purposes of IC 26-2-8 and the exclusion stated in *IC 26-2-8-103(b)(1)* continues in effect with respect to electronic wills and codicils.

History

P.L.40-2018, § 2, effective July 1, 2018.

End of Document

Florida Statutes
Title XLII. ESTATES AND TRUSTS
Chapter 731. PROBATE CODE: GENERAL PROVISIONS
Part II. DEFINITIONS

Current through Chapter 189 of the 2019 Legislative Session

§ 731.201. *[Effective 1/1/2020]* General definitions

Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise chapters 736, 738, 739, and 744, the term:

(1) "Authenticated," when referring to copies of documents or judicial proceedings required to be filed with the court under this code, me according to the Federal Rules of Civil Procedure.

(2) "Beneficiary" means heir at law in an intestate estate and devisee in a testate estate. The term "beneficiary" does not apply to an heir a estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, the trustee is provided in this subsection, the beneficiary of the trust is not a beneficiary of the estate of which that trust or the trustee of that trust personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a beneficia

(3) "Child" includes a person entitled to take as a child under this code by intestate succession from the parent whose relationship is invo stepchild, a foster child, a grandchild, or a more remote descendant.

(4) "Claim" means a liability of the decedent, whether arising in contract, tort, or otherwise, and funeral expense. The term does not inclu inheritance, succession, or other death taxes.

(5) "Clerk" means the clerk or deputy clerk of the court.

(6) "Collateral heir" means an heir who is related to the decedent through a common ancestor but who is not an ancestor or descendant

(7) "Court" means the circuit court.

(8) "Curator" means a person appointed by the court to take charge of the estate of a decedent until letters are issued.

(9) "Descendant" means a person in any generational level down the applicable individual's descending line and includes children, grando "descendant" is synonymous with the terms "lineal descendant" and "issue" but excludes collateral heirs.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to d The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to charges for debts, expenses, and taxes as

(11) "Devisee" means a person designated in a will or trust to receive a devise. Except as otherwise provided in this subsection, in the cas trust or trustee of a trust described by will, the trust or trustee, rather than the beneficiaries of the trust, is the devisee. However, if estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a devisee.

(12) "Distributee" means a person who has received estate property from a personal representative or other fiduciary other than as a crec distributee only to the extent of distributed assets or increments to them remaining in the trustee's hands. A beneficiary of a testam property received from a personal representative is a distributee. For purposes of this provision, "testamentary trustee" includes a tr extent of the devised assets.

(13) "Domicile" means a person's usual place of dwelling and shall be synonymous with residence.

(14) "Estate" means the property of a decedent that is the subject of administration.

(15) "Exempt property" means the property of a decedent's estate which is described in s. 732.402.

(16) "File" means to file with the court or clerk.

(17) "Foreign personal representative" means a personal representative of another state or a foreign country.

(18) "Formal notice" means a form of notice that is described in and served by a method of service provided under rule 5.040(a) of the Fl

(19) "Grantor" means one who creates or adds to a trust and includes "settlor" or "trustor" and a testator who creates or adds to a trust.

(20) "Heirs" or "heirs at law" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succes

(21) "Incapacitated" means a judicial determination that a person lacks the capacity to manage at least some of the person's property or t health and safety requirements. A minor shall be treated as being incapacitated.

(22) "Informal notice" or "notice" means a method of service for pleadings or papers as provided under rule 5.040(b) of the Florida Proba

(23) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding i the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The meaning time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

(24) "Letters" means authority granted by the court to the personal representative to act on behalf of the estate of the decedent and refer and letters of administration. All letters shall be designated "letters of administration."

(25) "Minor" means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

(26) "Other state" means any state of the United States other than Florida and includes the District of Columbia, the Commonwealth of Pu to the legislative authority of the United States.

(27) "Parent" excludes any person who is only a stepparent, foster parent, or grandparent.

(28) "Personal representative" means the fiduciary appointed by the court to administer the estate and refers to what has been known as annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

(29) "Petition" means a written request to the court for an order.

(30) "Power of appointment" means an authority, other than as an incident of the beneficial ownership of property, to designate recipient

(31) "Probate of will" means all steps necessary to establish the validity of a will and to admit a will to probate.

(32) "Property" means both real and personal property or any interest in it and anything that may be the subject of ownership.

(33) "Protected homestead" means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owne spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned in tenancy by the entir is not protected homestead.

(34) "Residence" means a person's place of dwelling.

(35) "Residuary devise" means a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied property, fund, sum, or statutory amount. If the will contains no devise which is to be satisfied by reference to a specific property or "residuary devise" or "residue" means a devise of all assets remaining after satisfying the obligations of the estate.

(36) "Security" means a security as defined in s. 517.021.

(37) "Security interest" means a security interest as defined in s. 671.201.

(38) "Trust" means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust crea which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes re arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to ben 689.071, except to the extent provided in s. 689.071(7) ; trusts created by the form of the account or by the deposit agreement at arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensio arrangement under which a person is nominee or escrowee for another.

(39) "Trustee" includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court.

(40) "Will" means a testamentary instrument, including a codicil, executed by a person in the manner prescribed by this code, which disp death and includes an instrument which merely appoints a personal representative or guardian or revokes or revises another will. Th 732.521.

Cite as Fla. Stat. § 731.201

History. Amended by 2019 Fla. Laws, ch. 71, s 30, eff. 1/1/2020.

Amended by 2013 Fla. Laws, ch. 172, s 16, eff. 10/1/2013.

s. 1, ch. 74-106; s. 4, ch. 75-220; s. 1, ch. 77-174; s. 2, ch. 85-79; s. 66, ch. 87-226; s. 1, ch. 88-340; s. 7, ch. 93-257; s. 6, ch. 95-401 2001-226; s.106, ch. 2002-1; s.2, ch. 2003-154; s.2, ch. 2005-108; s.29, ch. 2006-217; s.3, ch. 2007-74; s.8, ch. 2007-153; s.1, ch 109.

Note:

Created from former s. 731.03.

Note: *This section is set out twice. See also Fla. Stat. s 731.201, effective until 1/1/2020.*

Florida Statutes
Title XLII. ESTATES AND TRUSTS
Chapter 732. PROBATE CODE: INTESTATE SUCCESSION AND WILLS
Part V. WILLS

Current through Chapter 189 of the 2019 Legislative Session

§ 732.506. *[Effective 1/1/2020]* Revocation by act

A will or codicil, other than an electronic will, is revoked by the testator, or some other person in the testator's presence and at the testato obliterating, or destroying it with the intent, and for the purpose, of revocation. An electronic will or codicil is revoked by the testator, or s the testator's direction, by deleting, canceling, rendering unreadable, or obliterating the electronic will or codicil, with the intent, and for th convincing evidence.

Cite as Fla. Stat. § 732.506

History. Amended by 2019 Fla. Laws, ch. 71, s 31, eff. 1/1/2020.

s. 1, ch. 74-106; s. 23, ch. 75-220; s.963, ch. 97-102.

Note:

Created from former s. 731.14.

Note: *This section is set out twice. See also Fla. Stat. s 732.506, effective until 1/1/2020.*

Florida Statutes
Title XLII. ESTATES AND TRUSTS
Chapter 732. PROBATE CODE: INTESTATE SUCCESSION AND WILLS
Part V. WILLS

Current through Chapter 189 of the 2019 Legislative Session

§ 732.521. *[Effective 1/1/2020]* Definitions

As used in ss. 732.521-732.525, the term:

(1) "Audio-video communication technology" has the same meaning as provided in s. 117.201.

(2) "Electronic record" has the same meaning as provided in s. 668.50.

(3) "Electronic signature" means an electronic mark visibly manifested in a record as a signature and executed or adopted by a person wi

(4) "Electronic will" means a testamentary instrument, including a codicil, executed with an electronic signature by a person in the manne person's property on or after his or her death and includes an instrument which merely appoints a personal representative or guardia

(5) "Online notarization" has the same meaning as provided in s. 117.201.

(6) "Online notary public" has the same meaning as provided in s. 117.201.

(7) "Qualified custodian" means a person who meets the requirements of s. 732.525(1).

(8) "Secure system" means a system that satisfies the requirements of a secure repository qualified to retain electronic journals of online any rules established under part II of chapter 117.

Cite as Fla. Stat. § 732.521

History. Added by 2019 Fla. Laws, ch. 71, s 32, eff. 1/1/2020.

Florida Statutes
Title XLII. ESTATES AND TRUSTS
Chapter 732. PROBATE CODE: INTESTATE SUCCESSION AND WILLS
Part V. WILLS

Current through Chapter 189 of the 2019 Legislative Session

§ 732.522. *[Effective 7/1/2020]* Method and place of execution

For purposes of the execution or filing of an electronic will, the acknowledgment of an electronic will by the testator and the affidavits of w
under the Florida Probate Code:

(1) Any requirement that an instrument be signed may be satisfied by an electronic signature.

(2) Any requirement that individuals sign an instrument in the presence of one another may be satisfied by witnesses being present and
communication technology that meets the requirements of part II of chapter 117 and any rules adopted thereunder, if:

(a) The individuals are supervised by a notary public in accordance with s. 117.285;

(b) The individuals are authenticated and signing as part of an online notarization session in accordance with s. 117.265;

(c) The witness hears the signer make a statement acknowledging that the signer has signed the electronic record; and

(d) The signing and witnessing of the instrument complies with the requirements of s. 117.285.

(3) Except as otherwise provided in this part, all questions as to the force, effect, validity, and interpretation of an electronic will which c
same manner as in the case of a will executed in accordance with s. 732.502.

(4) An instrument that is signed electronically is deemed to be executed in this state if the instrument states that the person creating the
that he or she is executing the instrument in, and pursuant to the laws of, this state.

Cite as Fla. Stat. § 732.522

History. Added by 2019 Fla. Laws, ch. 71, s 33, eff. 7/1/2020.

Florida Statutes
Title XLII. ESTATES AND TRUSTS
Chapter 732. PROBATE CODE: INTESTATE SUCCESSION AND WILLS
Part V. WILLS

Current through Chapter 189 of the 2019 Legislative Session

§ 732.523. *[Effective 1/1/2020]* Self-proof of electronic will

An electronic will is self-proved if:

(1) The acknowledgment of the electronic will by the testator and the affidavits of the witnesses are made in accordance with s. 732.503 electronic will, or are attached to, or are logically associated with, the electronic will;

(2) The electronic will designates a qualified custodian;

(3) The electronic record that contains the electronic will is held in the custody of a qualified custodian at all times before being offered t

(4) The qualified custodian who has custody of the electronic will at the time of the testator's death certifies under oath that, to the best record that contains the electronic will was at all times before being offered to the court in the custody of a qualified custodian in cor has not been altered in any way since the date of its execution.

Cite as Fla. Stat. § 732.523

History. Added by 2019 Fla. Laws, ch. 71, s 34, eff. 1/1/2020.

Florida Statutes
Title XLII. ESTATES AND TRUSTS
Chapter 732. PROBATE CODE: INTESTATE SUCCESSION AND WILLS
Part V. WILLS

Current through Chapter 189 of the 2019 Legislative Session

§ 732.524. *[Effective 1/1/2020]* Qualified custodians

(1) To serve as a qualified custodian of an electronic will, a person must be:
  (a) Domiciled in and a resident of this state; or
  (b) Incorporated, organized, or have its principal place of business in this state.

(2) A qualified custodian shall:
  (a) In the course of maintaining custody of electronic wills, regularly employ a secure system and store in such secure system electr
    1. Electronic wills;
    2. Records attached to or logically associated with electronic wills; and
    3. Acknowledgments of the electronic wills by testators, affidavits of the witnesses, and the records described in s. 117.245(1
  (b) Furnish for any court hearing involving an electronic will that is currently or was previously stored by the qualified custodian any the qualified custodian's qualifications, policies, and practices related to the creation, sending, communication, receipt, mainten
  (c) Provide access to or information concerning the electronic will, or the electronic record containing the electronic will, only:
    1. To the testator;
    2. To persons authorized by the testator in the electronic will or in written instructions signed by the testator with the formalit state;
    3. After the death of the testator, to the testator's nominated personal representative; or
    4. At any time, as directed by a court of competent jurisdiction.

(3) The qualified custodian of the electronic record of an electronic will may elect to destroy such record, including any of the documenta paragraph (2)(a), at any time after the earlier of the fifth anniversary of the conclusion of the administration of the estate of the testat

(4) A qualified custodian who at any time maintains custody of the electronic record of an electronic will may elect to cease serving in su
  (a) Delivering the electronic will or the electronic record containing the electronic will to the testator, if then living, or, after the dea accordance with s. 732.901 ; and
  (b) If the outgoing qualified custodian intends to designate a successor qualified custodian, by doing the following:
    1. Providing written notice to the testator of the name, address, and qualifications of the proposed successor qualified custod before the electronic record, including the electronic will, is delivered to a successor qualified custodian;
    2. Delivering the electronic record containing the electronic will to the successor qualified custodian; and
    3. Delivering to the successor qualified custodian an affidavit of the outgoing qualified custodian stating that:
      a. The outgoing qualified custodian is eligible to act as a qualified custodian in this state;
      b. The outgoing qualified custodian is the qualified custodian designated by the testator in the electronic will or appointe
      c. The electronic will has at all times been in the custody of one or more qualified custodians in compliance with this sec created, and identifying such qualified custodians; and
      d. To the best of the outgoing qualified custodian's knowledge, the electronic will has not been altered since the time it v

For purposes of making this affidavit, the outgoing qualified custodian may rely conclusively on any affidavits delivere
connection with its designation or appointment as qualified custodian; however, all such affidavits must be delivered t

(5) Upon the request of the testator which is made in writing signed with the formalities required for the execution of a will in this state,
custody of the electronic record of the testator's electronic will must cease serving in such capacity and must deliver to a successor q
testator the electronic record containing the electronic will and the affidavit required in subparagraph (4)(b)3.

(6) A qualified custodian may not succeed to office as a qualified custodian of an electronic will unless he or she agrees in writing to serv

(7) If a qualified custodian is an entity, an affidavit, or an appearance by the testator in the presence of a duly authorized officer or agent
such, shall constitute an affidavit, or an appearance by the testator in the presence of the qualified custodian.

(8) A qualified custodian must provide a paper copy of an electronic will and the electronic record containing the electronic will to the tes
request, the testator may not be charged a fee for being provided with these documents.

(9) The qualified custodian shall be liable for any damages caused by the negligent loss or destruction of the electronic record, including
the qualified custodian. A qualified custodian may not limit liability for such damages.

(10) A qualified custodian may not terminate or suspend access to, or downloads of, the electronic will by the testator, provided that a q
such access and downloads.

(11) Upon receiving information that the testator is dead, a qualified custodian must deposit the electronic will with the court in accordar
charge a fee for depositing the electronic will with the clerk, provided the affidavit is made in accordance with s. 732.503, or furnish
under paragraph (2)(b).

(12) Except as provided in this act, a qualified custodian must at all times keep information provided by the testator confidential and ma

(13) A contractual venue provision between a qualified custodian and a testator is not valid or enforceable to the extent that it requires a
relating to the probate of an estate or the contest of a will.

Cite as Fla. Stat. § 732.524

History. Added by 2019 Fla. Laws, ch. 71, s 35, eff. 1/1/2020.

Florida Statutes
Title XLII. ESTATES AND TRUSTS
Chapter 732. PROBATE CODE: INTESTATE SUCCESSION AND WILLS
Part V. WILLS

Current through Chapter 189 of the 2019 Legislative Session

§ 732.525. *[Effective 1/1/2020]* Liability coverage; receivership of qualified custodians

(1) A qualified custodian shall:

(a) Post and maintain a blanket surety bond of at least $250,000 to secure the faithful performance of all duties and obligations rec payable to the Governor and his or her successors in office for the benefit of all persons who store electronic records with a qua successors, and heirs, and be conditioned on the faithful performance of all duties and obligations under this chapter. The term the qualified custodian and each agent or employee of the qualified custodian; or

(b) Maintain a liability insurance policy that covers any losses sustained by any person who stores electronic records with a qualifiec successors, and heirs which are caused by errors or omissions by the qualified custodian and each agent or employee of the qua least $250,000 in the aggregate.

(2) The Attorney General may petition a court of competent jurisdiction for the appointment of a receiver to manage the electronic recorc safekeeping if any of the following conditions exist:

(a) The qualified custodian is ceasing operation;

(b) The qualified custodian intends to close the facility and adequate arrangements have not been made for proper delivery of the e

(c) The Attorney General determines that conditions exist which present a danger that electronic records will be lost or misappropri

(d) The qualified custodian fails to maintain and post a surety bond or maintain insurance as required in this section.

Cite as Fla. Stat. § 732.525

History. Added by 2019 Fla. Laws, ch. 71, s 36, eff. 1/1/2020.

Florida Statutes
Title XLII. ESTATES AND TRUSTS
Chapter 732. PROBATE CODE: INTESTATE SUCCESSION AND WILLS
Part V. WILLS

Current through Chapter 189 of the 2019 Legislative Session

§ 732.526. *[Effective 1/1/2020]* Probate

(1) An electronic will that is filed electronically with the clerk of the court through the Florida Courts E-Filing Portal is deemed to have be electronic will.

(2) A paper copy of an electronic will which is certified by a notary public to be a true and correct copy of the electronic will may be offer original of the electronic will.

Cite as Fla. Stat. § 732.526

History. Added by 2019 Fla. Laws, ch. 71, s 37, eff. 1/1/2020.

Florida Statutes
Title XLII. ESTATES AND TRUSTS
Chapter 733. PROBATE CODE: ADMINISTRATION OF ESTATES
Part II. COMMENCING ADMINISTRATION

Current through Chapter 189 of the 2019 Legislative Session

§ 733.201. *[Effective 1/1/2020]* Proof of wills

(1) Self-proved wills executed in accordance with this code may be admitted to probate without further proof. However, a purportedly self-proved electronic will may be admitted to probate only in the manners prescribed in subsections (2) and (3) if the execution of such electronic will, or the acknowledgment by the testator and the affidavits of the witnesses, involves an online notarization in which there was a substantial failure to comply with the procedures set forth in s. 117.265.

(2) A will may be admitted to probate upon the oath of any attesting witness taken before any circuit judge, commissioner appointed by the court, or clerk.

(3) If it appears to the court that the attesting witnesses cannot be found or that they have become incapacitated after the execution of the will or their testimony cannot be obtained within a reasonable time, a will may be admitted to probate upon the oath of the personal representative nominated by the will as provided in subsection (2), whether or not the nominated personal representative is interested in the estate, or upon the oath of any person having no interest in the estate under the will stating that the person believes the writing exhibited to be the true last will of the decedent.

Cite as Fla. Stat. § 733.201

History. Amended by 2019 Fla. Laws, ch. 71, s 38, eff. 1/1/2020.

s. 1, ch. 74-106; s. 51, ch. 75-220; s.985, ch. 97-102; s.85, ch. 2001-226; s.9, ch. 2009-115.

Note:

Created from former s. 732.24.

Note: *This section is set out twice. See also Fla. Stat. s 733.201, effective until 1/1/2020.*

§ 133.085. Electronic will.

NEVADA STATUTES

Title 12. WILLS AND ESTATES OF DECEASED PERSONS

Chapter 133. Wills

EXECUTION

Current through 80th (2019) Session Chapter 215

§ 133.085. Electronic will

1. An electronic will is a will of a testator that:
   (a) Is created and maintained in an electronic record; and
   (b) Contains the date and the electronic signature of the testator and which includes, without limitation, at least one of the following:
      (1) An authentication characteristic of the testator;
      (2) The electronic signature and electronic seal of an electronic notary public, placed thereon in the presence of the testator and in whose presence the testator placed his or her electronic signature thereon; or
      (3) The electronic signatures of two or more attesting witnesses, placed thereon in the presence of the testator and in whose presence the testator placed his or her electronic signature thereon.

2. Every person of sound mind over the age of 18 years may, by last electronic will, dispose of all of his or her estate, real and personal, but the estate is chargeable with the payment of the testator's debts.

3. Except as otherwise provided in NRS 133.085 to 133.088, inclusive, and 133.300 to 133.340, inclusive, all questions relating to the force, effect, validity and interpretation of an electronic will that complies with the provisions of NRS 133.085 to 133.088, inclusive, and 133.300 to 133.340, inclusive, must be determined in the same manner as a will executed in accordance with NRS 133.040.

4. The provisions of this section do not apply to a trust other than a trust contained in an electronic will.

5. As used in this section:
   (a) "Authentication characteristic" means a characteristic of a certain person that is

unique to that person and that is capable of measurement and recognition in an electronic record as a biological aspect of or physical act performed by that person. Such a characteristic may consist of a fingerprint, a retinal scan, voice recognition, facial recognition, video recording, a digitized signature or other commercially reasonable authentication using a unique characteristic of the person.

(b) "Digitized signature" means a graphical image of a handwritten signature that is created, generated or stored by electronic means.

(c) "Electronic seal" has the meaning ascribed to it in NRS 240.187.

Cite as NRS 133.085

Source: Added to NRS by 2001, 2340 [Ch. 458]

History. Amended by 2017, Ch. 511, §19, eff. 7/1/2017.

Added to NRS by 2001, 2340

§ 133.086. Requirements for self-proving electronic will; acceptance of declaration or affidavit.

NEVADA STATUTES

Title 12. WILLS AND ESTATES OF DECEASED PERSONS

Chapter 133. Wills

EXECUTION

Current through 80th (2019) Session Chapter 215

§ 133.086. Requirements for self-proving electronic will; acceptance of declaration or affidavit

1. An electronic will is self-proving if:
   (a) The declarations or affidavits of the attesting witnesses are incorporated as part of, attached to or logically associated with the electronic will, as described in NRS 133.050 ;
   (b) The electronic will designates a qualified custodian to maintain custody of the electronic record of the electronic will; and
   (c) Before being offered for probate or being reduced to a certified paper original that is offered for probate, the electronic will was at all times under the custody of a qualified custodian.
2. A declaration or affidavit of an attesting witness made pursuant to NRS 133.050 and an affidavit of a person made pursuant to NRS 133.340 must be accepted by a court as if made before the court.

Cite as NRS 133.086

History. Added by 2017, Ch. 511, §10, eff. 7/1/2017.

§ 133.087. Notarization of documents in proceedings related to an electronic will.

NEVADA STATUTES

Title 12. WILLS AND ESTATES OF DECEASED PERSONS

Chapter 133. Wills

EXECUTION

Current through 80th (2019) Session Chapter 215

§ 133.087. Notarization of documents in proceedings related to an electronic will

1. Notwithstanding any other provision of law, an electronic notary public or other notarial officer may, for purposes of this title, including, without limitation, all purposes relating to the execution and filing of any document with the court in any proceeding relating to an electronic will:
   (a) Notarize the signature or electronic signature of a person, as applicable, who is not in the physical presence of the electronic notary public or other notarial officer if the person is in his or her presence within the meaning of NRS 133.088; and
   (b) Notarize any document relating to a will, codicil or testamentary trust.
2. This section must be liberally construed and applied to promote the purposes of NRS 133.085 to 133.088, inclusive, and 133.300 to 133.340, inclusive.

Cite as NRS 133.087

History. Added by 2017, Ch. 511, §16, eff. 7/1/2017.

§ 133.088. Performance of certain notarial acts by electronic means.

NEVADA STATUTES

Title 12. WILLS AND ESTATES OF DECEASED PERSONS

Chapter 133. Wills

EXECUTION

Current through 80th (2019) Session Chapter 215

§ 133.088. Performance of certain notarial acts by electronic means

1. For purposes of this title, including, without limitation, any declaration or affidavit made by an attesting witness as described in NRS 133.050, for all purposes relating to the execution and filing of any document with the court in any proceeding relating to an electronic will and for purposes of executing a power of attorney pursuant to NRS 162A.220, an advance directive or any document relating to an advance directive:

   (a) A person shall be deemed to be in the presence of or appearing before another person if such persons are in:

      (1) The same physical location; or

      (2) Different physical locations but can communicate with each other by means of audio-video communication.

   (b) An electronic notary public may electronically notarize electronic documents, including, without limitation, documents constituting or relating to an electronic will, in accordance with NRS 240.181 to 240.206, inclusive.

   (c) Any requirement that a document be signed may be satisfied by an electronic signature.

   (d) If a provision of law requires a written record, an electronic record satisfies such a provision.

   (e) Except as otherwise provided in subparagraph (3), regardless of the physical location of the person executing a document or of any witness, if a document is executed electronically, the document shall be deemed to be executed in this State and will be governed by the laws of this State and subject to the jurisdiction of the courts of this State if:

      (1) The person executing the document states that he or she understands that he or she is executing, and that he or she intends to execute, the document

in and pursuant to the laws of this State;

(2) The document states that the validity and effect of its execution are governed by the laws of this State;

(3) Any attesting witnesses or an electronic notary public whose electronic signatures are contained in the document were physically located within this State at the time the document was executed in accordance with this section; or

(4) In the case of a self-proving electronic will, the electronic will designates a qualified custodian who, at the time of execution:

(I) If a natural person, is domiciled in this State; or

(II) If an entity, is organized under the laws of this State or whose principal place of business is located in this State.

2. Notwithstanding the provisions of subsection 1, the validity of a notarial act performed by an electronic notary public must be determined by applying the laws of the jurisdiction in which the electronic notary public is commissioned or appointed.

3. As used in this section:

(a) "Advance directive" has the meaning ascribed to it in NRS 449A.703.

(b) "Audio-video communication" means communication by which a person is able to see, hear and communicate with another person in real time using electronic means.

Cite as NRS 133.088

History. Added by 2017, Ch. 511, §17, eff. 7/1/2017.