

HB1261/422515/1

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 1261
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 31, after “Act;” insert “providing that a lack of or defective witness attestation to a power of attorney does not have any effect on the instrument unless a certain challenge is made within a certain period of time;”.

On page 2, after line 28, insert:

“BY repealing and reenacting, with amendments,

Article - Real Property

Section 4-109

Annotated Code of Maryland

(2015 Replacement Volume and 2020 Supplement)”.

AMENDMENT NO. 2

On page 3, in line 9, strike “**THE RELATIONSHIP OF**”; in line 10, strike “**IN DIFFERENT LOCATIONS**”; in line 11, strike “**OR OTHER ELECTRONIC**”; in line 12, strike “**PHYSICALLY PRESENT IN THE SAME LOCATION**” and substitute “**IN THE PHYSICAL PRESENCE OF EACH OTHER**”; in line 17, strike “**, PREPARED, AND CERTIFIED**”; in lines 19 and 20, strike “**IN THE SAME PHYSICAL LOCATION AS ANOTHER INDIVIDUAL AND**”; in line 21, strike “**THAT**” and substitute “**ANOTHER**”; in the same line, after “**INDIVIDUAL**”, insert “**WITHOUT USING ELECTRONIC AUDIO-VISUAL MEANS**”; and in line 24, strike “**PAPER**”.

On page 4, strike beginning with “**AFFIXING**” in line 1 down through the second “**RECORD**” in line 2 and substitute “**, WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD, TO:**”

(Over)

(1) EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

(2) ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SYMBOL, SOUND, OR PROCESS”;

and in line 27, after the first “testator’s” insert “PHYSICAL”.

On page 6, in line 31, strike “BEFORE” and substitute “IN THE PHYSICAL PRESENCE OR ELECTRONIC PRESENCE OF”.

On page 8, in lines 8 and 9, strike “, PREPARED, AND CERTIFIED”.

On page 9, after line 2, insert:

“(L) “REAL ESTATE TRANSACTION” MEANS ANY ACTIVITY INVOLVING THE TRANSFER OR CREATION OF AN ESTATE, INTEREST, LIEN, OR ENCUMBRANCE IN REAL PROPERTY, INCLUDING RIGHTS OR INTERESTS APPURTENANT TO, AND THE DISPOSITION OF PROCEEDS DERIVED FROM, THE PROPERTY.”;

in lines 3, 4, 10, 11, 18, and 27, strike “(L)”, “(M)”, “(N)”, “(O)”, “(P)”, and “(Q)”, respectively, and substitute “(M)”, “(N)”, “(O)”, “(P)”, “(Q)”, and “(R)”, respectively; in line 6, strike “, BUT NOT THE PHYSICAL PRESENCE,”; in line 7, strike “WHEN THE” and substitute “OR OTHER”; in the same line, after “WITNESS” insert “WHEN THE WITNESS”; strike beginning with the comma in line 7 down through “TITLE” in line 9; and in line 33, after the third “the” insert “PHYSICAL”.

On page 10, in line 1, strike “before” and substitute “IN THE PHYSICAL OR ELECTRONIC PRESENCE OF”; strike beginning with the comma in line 6 down through “SECTION” in line 8 and substitute “OR ANY COMBINATION OF PHYSICAL OR

ELECTRONIC PRESENCE"; in lines 10 and 12, in each instance, strike the bracket; in lines 10 and 11, strike "unless the notary public is using" and substitute "AND MAY USE"; strike beginning with "to" in line 11 down through "principal" in line 12 and substitute "FOR THAT PURPOSE"; in line 13, strike "AN" and substitute "EXCEPT FOR AN ELECTRONIC POWER OF ATTORNEY USED IN CONNECTION WITH A REAL ESTATE TRANSACTION, AN"; and in line 15, after "FOLLOWING" insert "ADDITIONAL".

On page 11, in line 26, strike "AS PROVIDED IN" and substitute "IF REQUIRED UNDER".

On page 16, after line 32, insert:

"Article – Real Property

4–109.

(a) If an instrument was recorded before January 1, 1973, any failure of the instrument to comply with the formal requisites listed in this section has no effect, unless the defect was challenged in a judicial proceeding commenced by July 1, 1973.

(b) If an instrument is recorded on or after January 1, 1973, whether or not the instrument is executed on or after that date, any failure to comply with the formal requisites listed in this section has no effect unless it is challenged in a judicial proceeding commenced within six months after it is recorded.

(c) For the purposes of this section, the failures in the formal requisites of an instrument are:

- (1) A defective acknowledgment;
- (2) A failure to attach any clerk's certificate;

(Over)

HB1261/422515/1 House Judiciary Committee
Amendments to HB 1261
Page 4 of 4

(3) An omission of a notary seal or other seal;

(4) A lack of or improper acknowledgment or affidavit of consideration, agency, or disbursement;

(5) An omission of an attestation; [or]

(6) A failure to name any trustee in a deed of trust; OR

(7) **A LACK OF OR DEFECTIVE WITNESS ATTESTATION TO A POWER OF ATTORNEY.”.**