

Chapter 686

(House Bill 1261)

AN ACT concerning

Wills, Powers of Attorney, and Advance Directives – Electronic Execution

FOR the purpose of altering certain provisions of law related to the execution of wills to authorize a person to electronically execute a will under certain circumstances; requiring a certain testator, witnesses, and supervising attorney to be in certain physical or electronic presence of one another at a certain time under certain circumstances; authorizing a supervising attorney to be a certain witness to the execution of certain instruments under certain circumstances; establishing certain residency, presence, and signature requirements for a certain testator and certain witnesses under certain circumstances; requiring a supervising attorney to create a certain certified will under certain circumstances; requiring a testator to create a certain certified will under certain circumstances; providing that a certain certified will shall be deemed the original will of the testator under certain circumstances; establishing a certain date of execution for a certain certified will; altering certain provisions of law related to the proper execution of a will outside of the State; altering certain provisions of law related to the execution of a power of attorney to authorize a person to electronically execute a power of attorney if certain requirements are satisfied; requiring a certain principal, witnesses, and supervising attorney to be in certain physical or electronic presence of one another at a certain time under certain circumstances; establishing certain residency, presence, and signature requirements for a certain principal and certain witnesses under certain circumstances; requiring a supervising attorney to create a certain certified power of attorney under certain circumstances; providing that a certain certified power of attorney shall be deemed the original power of attorney of a certain principal under certain circumstances; establishing a certain date of execution for a certain certified power of attorney; altering certain provisions of law related to the execution of advance directives to authorize certain witnesses to sign an advance directive in either certain physical or electronic presence of the declarant; providing that a will, a power of attorney, a notarization of a power of attorney, or an advance directive executed in conformance with the provisions of certain executive orders shall be deemed to satisfy certain requirements under this Act; 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; altering certain definitions; defining certain terms; making certain clarifying changes; providing for the retroactive application of this Act; and generally relating to the execution of wills, powers of attorney, and advance directives.

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 1–101(w), 4–102, 4–104, 17–101, and 17–110
Annotated Code of Maryland

(2017 Replacement Volume and 2020 Supplement)

BY repealing

Article – Estates and Trusts

Section 4–101

Annotated Code of Maryland

(2017 Replacement Volume and 2020 Supplement)

BY adding to

Article – Estates and Trusts

Section 4–101

Annotated Code of Maryland

(2017 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – Health – General

Section 5–601 and 5–602(c)

Annotated Code of Maryland

(2019 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – Health – General

Section 5–602(a)

Annotated Code of Maryland

(2019 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – Real Property

Section 4–109

Annotated Code of Maryland

(2015 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Estates and Trusts

1–101.

(w) [(1)] “Will” [means a written instrument which is executed in the form prescribed by §§ 4–102 through 4–104 of this article, and has not been revoked in a manner provided by § 4–105 of this article.

(2) “Will” includes a codicil] **HAS THE MEANING STATED IN § 4–101 OF THIS ARTICLE.**

[4-101.

Any person may make a will if the person is 18 years of age or older, and legally competent to make a will.]

4-101.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “ELECTRONIC” MEANS TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(C) “ELECTRONIC PRESENCE” MEANS ~~THE RELATIONSHIP OF~~ TWO OR MORE INDIVIDUALS ~~IN DIFFERENT LOCATIONS~~ COMMUNICATING IN REAL TIME USING ELECTRONIC AUDIO-VISUAL ~~OR OTHER ELECTRONIC~~ MEANS TO THE SAME EXTENT AS IF THE INDIVIDUALS WERE ~~PHYSICALLY PRESENT IN THE SAME LOCATION~~ IN THE PHYSICAL PRESENCE OF EACH OTHER.

(D) “ELECTRONIC SIGNATURE” MEANS AN ELECTRONIC SYMBOL, SOUND, OR PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A RECORD AND EXECUTED OR ADOPTED BY AN INDIVIDUAL WITH THE INTENT TO SIGN THE RECORD.

(E) “ELECTRONIC WILL” MEANS A WILL CONTAINING ONE OR MORE ELECTRONIC SIGNATURES AND EXECUTED, ~~PREPARED, AND CERTIFIED~~ IN COMPLIANCE WITH THIS SUBTITLE.

(F) “PHYSICAL PRESENCE” MEANS BEING ~~IN THE SAME PHYSICAL LOCATION AS ANOTHER INDIVIDUAL AND~~ CLOSE ENOUGH TO SEE, HEAR, AND SPEAK WITH ~~THAT~~ ANOTHER INDIVIDUAL WITHOUT USING ELECTRONIC AUDIO-VISUAL MEANS.

(G) “RECORD” MEANS INFORMATION READABLE AS TEXT THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC MEDIUM AND RETRIEVABLE IN PERCEIVABLE ~~PAPER~~ FORM.

(H) “REMOTELY WITNESSED WILL” MEANS A WILL THAT IS:

(1) SIGNED BY THE TESTATOR UNDER CIRCUMSTANCES WHERE A WITNESS IS IN THE ELECTRONIC PRESENCE, BUT NOT THE PHYSICAL PRESENCE, OF THE TESTATOR WHEN THE WITNESS ATTESTS TO AND SIGNS THE WILL; AND

(2) EXECUTED, PREPARED, AND CERTIFIED IN COMPLIANCE WITH §

4-102 OF THIS SUBTITLE.

(I) “SIGN” MEANS ~~AFFIXING A VISIBLE ELECTRONIC OR PHYSICAL MARK ONTO A RECORD WITH THE INTENT TO EXECUTE THE RECORD~~, WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD, TO:

(1) EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

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

(J) “SUPERVISING ATTORNEY” MEANS AN INDIVIDUAL WHO HAS BEEN ADMITTED TO PRACTICE LAW BEFORE THE COURTS OF THIS STATE AND IS IN GOOD STANDING.

(K) “WILL” MEANS A RECORD THAT THE TESTATOR INTENDS TO ADOPT AS THE TESTATOR’S CODICIL OR TESTAMENTARY INSTRUMENT AND THAT:

(1) (I) APPOINTS A PERSONAL REPRESENTATIVE;

(II) REVOKES OR REVISES ANOTHER WILL;

(III) NOMINATES A GUARDIAN;

(IV) DIRECTS THE DISPOSITION OF THE TESTATOR’S PROPERTY;

OR

(V) EXPRESSLY EXCLUDES OR LIMITS THE RIGHT OF AN INDIVIDUAL OR CLASS TO SUCCEED TO PROPERTY OF A DECEDENT PASSING BY INTESTATE SUCCESSION;

(2) IS EXECUTED IN THE FORM PRESCRIBED UNDER §§ 4-102 THROUGH 4-104 OF THIS SUBTITLE; AND

(3) HAS NOT BEEN REVOKED IN A MANNER PROVIDED BY § 4-105 OF THIS SUBTITLE.

4-102.

(A) ANY PERSON MAY MAKE A WILL IF THE PERSON IS 18 YEARS OF AGE OR OLDER, AND LEGALLY COMPETENT TO MAKE A WILL.

[(a)] (B) Except as provided in §§ 4-103 and 4-104 of this subtitle AND

SUBSECTION (F) OF THIS SECTION, every will shall be:

(1) In writing;

(2) Signed by the testator, or by some other person for the testator, in the testator's **PHYSICAL** presence and by the testator's express direction; and

(3) Attested and signed by two or more credible witnesses in [the]:

(I) **THE PHYSICAL** presence of the testator; **OR**

(II) **THE ELECTRONIC PRESENCE OF THE TESTATOR, PROVIDED THAT AN ELECTRONIC WILL OR REMOTELY WITNESSED WILL SATISFIES THE REQUIREMENTS UNDER SUBSECTION (C) OR (D) OF THIS SECTION.**

[(b) For purposes of this section, a witness is not in the presence of the testator if the witness is in a different physical location than the testator regardless of whether the testator can observe the witness through electronic audio–video or other technological means.]

(C) AN ELECTRONIC WILL OR REMOTELY WITNESSED WILL EXECUTED UNDER THIS SUBSECTION SHALL SATISFY THE FOLLOWING REQUIREMENTS:

(1) **AT THE TIME THE TESTATOR AND WITNESSES SIGN THE WILL, THE TESTATOR AND ALL WITNESSES SHALL BE IN THE PHYSICAL PRESENCE OR ELECTRONIC PRESENCE OF ONE ANOTHER AND A SUPERVISING ATTORNEY, WHO MAY BE ONE OF THE WITNESSES;**

(2) **AT THE TIME THE TESTATOR SIGNS THE WILL, THE TESTATOR SHALL BE A RESIDENT OF, OR PHYSICALLY LOCATED IN, THE STATE;**

(3) **EACH WITNESS WHO IS IN THE ELECTRONIC PRESENCE OF THE TESTATOR WHEN THE WITNESS ATTESTS AND SIGNS THE WILL, OR PROVIDES AN ELECTRONIC SIGNATURE ON THE WILL, SHALL BE A RESIDENT OF THE UNITED STATES AND BE PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME THE WITNESS ATTESTS AND SIGNS THE WILL;**

(4) **THE TESTATOR AND WITNESSES SHALL SIGN THE SAME WILL OR ANY COUNTERPART THEREOF; AND**

(5) **THE SUPERVISING ATTORNEY SHALL CREATE A CERTIFIED WILL THAT SHALL INCLUDE:**

(I) A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF THE WILL INCLUDING THE ORIGINAL SIGNATURES OR ELECTRONIC SIGNATURES OF THE TESTATOR AND ALL WITNESSES; ~~AND~~

(II) A SIGNED ORIGINAL PAPER CERTIFICATION BY THE SUPERVISING ATTORNEY STATING THE DATE THAT THE SUPERVISING ATTORNEY OBSERVED THE TESTATOR AND WITNESSES SIGN THE WILL AND THAT THE SUPERVISING ATTORNEY TOOK REASONABLE STEPS TO VERIFY:

1. THAT THE CERTIFIED WILL INCLUDES A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF THE WILL;

2. THAT THE SIGNATURES CONTAINED IN THE CERTIFIED WILL ARE THE ORIGINAL SIGNATURES OF EACH PARTY SIGNING THE SAME PAPER WILL, OR ANY COUNTERPART THEREOF, AND ELECTRONIC SIGNATURES OF EACH PARTY SIGNING THE SAME ELECTRONIC WILL, OR ANY COUNTERPART THEREOF;

3. THAT THE TESTATOR AND EACH OF THE WITNESSES SIGNED THE SAME WILL OR ANY COUNTERPART THEREOF;

4. THE IDENTITY OF EACH WITNESS AND THAT EACH WITNESS WHO WAS NOT IN THE PHYSICAL PRESENCE OF THE TESTATOR WHEN THE WITNESS ATTESTED AND SIGNED THE WILL, OR PROVIDED AN ELECTRONIC SIGNATURE ON THE WILL, WAS A RESIDENT OF THE UNITED STATES AND PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME THAT THE WITNESS ATTESTED AND SIGNED THE WILL; AND

5. THE IDENTITY OF THE TESTATOR AND THAT THE TESTATOR WAS A RESIDENT OF, OR WAS PHYSICALLY LOCATED IN, THE STATE AT THE TIME THAT THE TESTATOR SIGNED THE WILL; ~~AND~~

(III) AN ACKNOWLEDGEMENT OF THE TESTATOR AND THE AFFIDAVITS OF THE ATTESTING WITNESSES BEFORE A NOTARY PUBLIC, UNDER SEAL, ATTACHED OR ANNEXED TO THE WILL, IN SUBSTANTIALLY THE FOLLOWING FORM AND CONTENT:

THE STATE OF MARYLAND.

COUNTY OF _____.

BEFORE ME, THE UNDERSIGNED AUTHORITY/ATTORNEY, ON THIS DAY PERSONALLY APPEARED _____, AND _____, KNOWN TO ME TO BE THE TESTATOR AND THE WITNESSES, RESPECTIVELY, WHOSE NAMES ARE SIGNED TO THE ATTACHED

OR FOREGOING INSTRUMENT AND, ALL OF THESE PERSONS BEING BY ME DULY SWORN, _____, THE TESTATOR, DECLARED TO ME AND TO THE WITNESSES IN MY PHYSICAL OR ELECTRONIC PRESENCE THAT THE SAID INSTRUMENT IS THE TESTATOR’S WILL, THAT THE TESTATOR IS OF SOUND MIND, AND THAT THE TESTATOR HAD WILLINGLY SIGNED OR WILLINGLY DIRECTED ANOTHER TO SIGN THE WILL UNDER NO CONSTRAINT OR UNDUE INFLUENCE, AND EXECUTED IT IN THE PHYSICAL OR REMOTE PRESENCE OF THE WITNESSES AS A FREE AND VOLUNTARY ACT FOR THE PURPOSES THEREIN EXPRESSED, AND THAT THE WITNESSES, IN THE PHYSICAL OR ELECTRONIC PRESENCE AND AT THE REQUEST OF THE TESTATOR, SIGNED THE WILL AS WITNESSES, AND THAT TO THE BEST OF THE WITNESSES’ KNOWLEDGE THE TESTATOR WAS AT LEAST 18 YEARS OLD, OF SOUND MIND, AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE.

_____ TESTATOR

_____ WITNESS

_____ WITNESS

SUBSCRIBED, SWORN AND ACKNOWLEDGED BEFORE ME BY _____, THE TESTATOR, AND SUBSCRIBED AND SWORN TO BEFORE ME BY _____ AND _____, WITNESSES, THIS _____ DAY OF _____, _____.
SEAL _____ NOTARY PUBLIC

(D) AN ELECTRONIC WILL OR REMOTELY WITNESSED WILL EXECUTED UNDER THIS SUBSECTION SHALL SATISFY THE FOLLOWING REQUIREMENTS:

(1) AT THE TIME THE TESTATOR AND WITNESSES SIGN THE WILL, THE TESTATOR AND ALL WITNESSES SHALL BE IN THE PHYSICAL PRESENCE OR ELECTRONIC PRESENCE OF ONE ANOTHER;

(2) THE REQUIREMENTS UNDER SUBSECTION (C)(2) THROUGH (4) OF THIS SECTION SHALL BE SATISFIED; AND

(3) THE TESTATOR SHALL CREATE A CERTIFIED WILL THAT SHALL INCLUDE:

(I) A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF THE WILL INCLUDING THE ORIGINAL SIGNATURES OR ELECTRONIC SIGNATURES OF THE TESTATOR AND ALL WITNESSES; AND

(II) AN ORIGINAL PAPER CERTIFICATION SIGNED AND ACKNOWLEDGED BY THE TESTATOR ~~BEFORE~~ IN THE PHYSICAL PRESENCE OR

ELECTRONIC PRESENCE OF A NOTARY PUBLIC, WHO MAY NOT BE ONE OF THE WITNESSES, STATING:

- 1. THE DATE THAT THE TESTATOR AND WITNESSES SIGNED THE WILL; AND**
- 2. THAT THE TESTATOR TOOK REASONABLE STEPS TO VERIFY THE SAME FACTS AND INFORMATION REQUIRED UNDER SUBSECTION (C)(5)(II) OF THIS SECTION.**

(E) (1) ONCE THE SUPERVISING ATTORNEY OR TESTATOR CREATES A CERTIFIED WILL AS PROVIDED IN SUBSECTION (C) OR (D) OF THIS SECTION, THE CERTIFIED WILL SHALL BE DEEMED TO BE THE ORIGINAL WILL OF THE TESTATOR FOR ALL PURPOSES UNDER THIS ARTICLE.

(2) THE DATE OF EXECUTION FOR A CERTIFIED WILL DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE THE DATE OF EXECUTION STATED IN THE CERTIFIED WILL.

(F) A WILL EXECUTED IN CONFORMANCE WITH THE PROVISIONS OF EXECUTIVE ORDER 20.04.10.01, AUTHORIZING REMOTE WITNESSING AND ELECTRONIC SIGNING OF CERTAIN DOCUMENTS, SHALL BE DEEMED TO HAVE BEEN SIGNED AND WITNESSED IN CONFORMITY WITH THIS SECTION IF THE WILL WAS SIGNED AND WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT.

4-104.

[A will executed outside this State] IF A TESTATOR IS PHYSICALLY OUTSIDE THE STATE AT THE TIME THE TESTATOR EXECUTES THE WILL, THE WILL is properly executed if it is:

- (1) In writing;**
- (2) Signed by the testator OR BY SOME OTHER PERSON ON THE TESTATOR'S BEHALF, IN THE TESTATOR'S PHYSICAL PRESENCE, AND BY THE TESTATOR'S EXPRESS DIRECTION; and**
- (3) Executed in conformity with:**
 - (i) The provisions of § 4-102 of this subtitle;**
 - (ii) The law of the domicile of the testator; or**

(iii) The law of the place where the testator is physically located at the time the testator signs the will.

17-101.

(a) In this title the following words have the meanings indicated.

(b) (1) “Agent” means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise.

(2) “Agent” includes an original agent, coagent, successor agent, and a person to which an agent’s authority is delegated.

(C) “ELECTRONIC” HAS THE MEANING STATED IN § 4-101 OF THIS ARTICLE.

(D) “ELECTRONIC POWER OF ATTORNEY” MEANS A POWER OF ATTORNEY CONTAINING ONE OR MORE ELECTRONIC SIGNATURES AND EXECUTED, ~~PREPARED,~~ ~~AND CERTIFIED~~ IN COMPLIANCE WITH THIS TITLE.

(E) “ELECTRONIC PRESENCE” HAS THE MEANING STATED IN § 4-101 OF THIS ARTICLE.

(F) “ELECTRONIC SIGNATURE” HAS THE MEANING STATED IN § 4-101 OF THIS ARTICLE.

[(c)] (G) “Incapacity” means the inability of an individual to manage property or business affairs because the individual:

(1) Meets the grounds required for the appointment of a guardian of the property of a disabled person described in § 13-201 of this article; or

(2) Is:

(i) Missing;

(ii) Detained, including incarcerated in a penal system; or

(iii) Outside the United States and unable to return.

(H) “PHYSICAL PRESENCE” HAS THE MEANING STATED IN § 4-101 OF THIS ARTICLE.

[(d)] (I) “Power of attorney” means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term “power of attorney” is used.

[(e)] (J) “Principal” means an individual who grants authority to an agent in a power of attorney.

[(f)] (K) “Property” includes both real and personal property and any right or title in real or personal property, whether held individually or jointly and whether indivisible, beneficial, contingent, or of any other nature.

(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.

~~(L)~~ **(M)** “RECORD” HAS THE MEANING STATED IN § 4-101 OF THIS ARTICLE.

~~(M)~~ **(N)** “REMOTELY WITNESSED POWER OF ATTORNEY” MEANS A POWER OF ATTORNEY SIGNED BY THE PRINCIPAL UNDER CIRCUMSTANCES WHERE ANY WITNESS IS IN THE ELECTRONIC PRESENCE, ~~BUT NOT THE PHYSICAL PRESENCE,~~ OF THE PRINCIPAL ~~WHEN THE~~ OR OTHER WITNESS WHEN THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY, AND THE POWER OF ATTORNEY IS EXECUTED, PREPARED, AND CERTIFIED IN COMPLIANCE WITH THIS TITLE.

~~(N)~~ **(O)** “SIGN” HAS THE MEANING STATED IN § 4-101 OF THIS ARTICLE.

[(g)] ~~(O)~~ (P) (1) “Statutory form power of attorney” means a power of attorney that is substantially in the same form as one of the powers of attorney set forth in Subtitle 2 of this title.

(2) “Statutory form power of attorney” does not include a power of attorney set forth in Subtitle 2 of this title in which a principal incorporates by reference one or more provisions of another writing into the section of the power of attorney entitled “Special Instructions (Optional)”.

[(h)] ~~(P)~~ (Q) (1) “Stocks and bonds” means evidence of ownership in or debt issued by a corporation, partnership, limited liability company, firm, association, or similar entity.

(2) “Stocks and bonds” includes stocks, bonds, debentures, notes, membership interests, mutual fund interests, money market account interests, voting trust certificates, equipment trust certificates, certificates of deposit, certificates of participation, certificates of beneficial interest, stock rights, stock warrants, and any other instruments evidencing rights of a similar character issued by or in connection with any corporation, partnership, limited liability company, firm, association, or similar entity.

~~(Q)~~ **(R)** "SUPERVISING ATTORNEY" HAS THE MEANING STATED IN § 4-101 OF THIS ARTICLE.

17-110.

(a) **[A] EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION,** A power of attorney executed on or after October 1, 2010, shall be:

(1) In writing;

(2) Signed by the principal or by some other person for the principal, in the **PHYSICAL** presence of the principal, and at the express direction of the principal;

(3) Acknowledged by the principal ~~before~~ **IN THE PHYSICAL OR ELECTRONIC PRESENCE OF** a notary public; and

(4) Attested and signed by two or more adult witnesses who sign in **[the]:**

(I) THE PHYSICAL presence of the principal and **[in the presence of]** each other; **OR**

(II) THE ELECTRONIC PRESENCE OF THE PRINCIPAL AND EACH OTHER, PROVIDED THAT THE ELECTRONIC POWER OF ATTORNEY OR REMOTELY WITNESSED POWER OF ATTORNEY SATISFIES THE REQUIREMENTS UNDER SUBSECTION (C) OF THIS SECTION OR ANY COMBINATION OF PHYSICAL OR ELECTRONIC PRESENCE.

(b) The notary public before whom the principal acknowledges the power of attorney may also serve as one of the two or more adult witnesses ~~unless the notary public is using~~ **AND MAY USE** communication technology under § 18-214 of the State Government Article ~~to perform the notarial act for a remotely located principal~~ **FOR THAT PURPOSE**.

(C) ~~AN~~ EXCEPT FOR AN ELECTRONIC POWER OF ATTORNEY USED IN CONNECTION WITH A REAL ESTATE TRANSACTION, AN ELECTRONIC POWER OF ATTORNEY OR A REMOTELY WITNESSED POWER OF ATTORNEY EXECUTED UNDER THIS SUBSECTION SHALL SATISFY THE FOLLOWING ADDITIONAL REQUIREMENTS:

(1) AT THE TIME THE PRINCIPAL AND WITNESSES SIGN THE POWER OF ATTORNEY, THE PRINCIPAL AND ALL WITNESSES SHALL BE IN THE PHYSICAL PRESENCE OR ELECTRONIC PRESENCE OF ONE ANOTHER AND A SUPERVISING ATTORNEY, WHO MAY BE ONE OF THE WITNESSES;

(2) AT THE TIME THE PRINCIPAL SIGNS THE POWER OF ATTORNEY,

THE PRINCIPAL SHALL BE A RESIDENT OF, OR PHYSICALLY LOCATED IN, THE STATE;

(3) EACH WITNESS WHO IS IN THE ELECTRONIC PRESENCE OF THE PRINCIPAL WHEN THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY, OR PROVIDES AN ELECTRONIC SIGNATURE ON THE POWER OF ATTORNEY, SHALL BE A RESIDENT OF THE UNITED STATES AND PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY;

(4) THE PRINCIPAL AND WITNESSES SHALL SIGN THE SAME POWER OF ATTORNEY OR ANY COUNTERPART THEREOF; AND

(5) THE SUPERVISING ATTORNEY SHALL CREATE A CERTIFIED POWER OF ATTORNEY THAT SHALL INCLUDE:

(i) A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF THE POWER OF ATTORNEY, INCLUDING THE ORIGINAL SIGNATURES AND ELECTRONIC SIGNATURES OF THE PRINCIPAL AND ALL WITNESSES; AND

(ii) A SIGNED ORIGINAL PAPER CERTIFICATION BY THE SUPERVISING ATTORNEY STATING THE DATE THAT THE SUPERVISING ATTORNEY OBSERVED THE PRINCIPAL AND WITNESSES SIGN THE POWER OF ATTORNEY AND THAT THE SUPERVISING ATTORNEY TOOK REASONABLE STEPS TO VERIFY:

1. THAT THE CERTIFIED POWER OF ATTORNEY INCLUDES A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF THE POWER OF ATTORNEY;

2. THAT THE SIGNATURES CONTAINED IN THE CERTIFIED POWER OF ATTORNEY ARE THE ORIGINAL SIGNATURES OF EACH PARTY SIGNING THE SAME PAPER POWER OF ATTORNEY, OR ANY COUNTERPART THEREOF, AND THE ELECTRONIC SIGNATURES OF EACH PARTY SIGNING THE SAME ELECTRONIC POWER OF ATTORNEY, OR ANY COUNTERPART THEREOF;

3. THAT THE PRINCIPAL AND EACH OF THE WITNESSES SIGNED THE SAME POWER OF ATTORNEY OR ANY COUNTERPARTS THEREOF;

4. THE IDENTITY OF THE PRINCIPAL, AND THAT THE PRINCIPAL WAS A RESIDENT OF, OR WAS PHYSICALLY LOCATED IN, THE STATE AT THE TIME THE PRINCIPAL SIGNED THE POWER OF ATTORNEY; AND

5. THE IDENTITY OF EACH WITNESS, AND THAT EACH WITNESS WHO WAS NOT IN THE PHYSICAL PRESENCE OF THE PRINCIPAL WHEN THE

WITNESS ATTESTED AND SIGNED THE POWER OF ATTORNEY, OR PROVIDED AN ELECTRONIC SIGNATURE ON THE POWER OF ATTORNEY, WAS A RESIDENT OF THE UNITED STATES AND PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME THE WITNESS ATTESTED AND SIGNED THE POWER OF ATTORNEY.

(D) (1) ONCE THE SUPERVISING ATTORNEY CREATES A CERTIFIED POWER OF ATTORNEY ~~AS PROVIDED IN~~ IF REQUIRED UNDER SUBSECTION (C) OF THIS SECTION, THE CERTIFIED POWER OF ATTORNEY SHALL BE DEEMED TO BE THE ORIGINAL POWER OF ATTORNEY OF THE PRINCIPAL FOR ALL PURPOSES UNDER THIS ARTICLE.

(2) THE DATE OF EXECUTION FOR THE POWER OF ATTORNEY DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE THE DATE OF EXECUTION AS STATED IN THE CERTIFIED POWER OF ATTORNEY.

(E) (1) A POWER OF ATTORNEY EXECUTED IN CONFORMANCE WITH THE PROVISIONS OF EXECUTIVE ORDER 20.04.10.01, AUTHORIZING REMOTE WITNESSING AND ELECTRONIC SIGNING OF CERTAIN DOCUMENTS, SHALL BE DEEMED TO HAVE BEEN SIGNED AND WITNESSED IN CONFORMITY WITH THIS SECTION IF THE POWER OF ATTORNEY WAS SIGNED AND WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT.

(2) THE NOTARIZATION OF A POWER OF ATTORNEY IN CONFORMANCE WITH THE PROVISIONS OF EXECUTIVE ORDER 20.03.30.04, AUTHORIZING REMOTE NOTARIZATIONS, SHALL BE DEEMED TO HAVE BEEN SIGNED AND WITNESSED IN CONFORMITY WITH THIS SECTION IF THE POWER OF ATTORNEY WAS SIGNED AND WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT AND THE NOTARY PUBLIC ACTING UNDER THE ORDER MAY HAVE SERVED AS ONE OF THE WITNESSES.

Article – Health – General

5–601.

(a) In this subtitle the following words have the meanings indicated.

(b) “Advance directive” means:

(1) A witnessed written or electronic document, voluntarily executed by the declarant in accordance with the requirements of this subtitle;

(2) A witnessed oral statement, made by the declarant in accordance with the provisions of this subtitle; or

(3) An electronic document, voluntarily executed by the declarant, in which the declarant's identity is authenticated in accordance with the guidelines described in § 5–602(c)(3) of this subtitle.

(c) “Agent” means an adult appointed by the declarant under an advance directive made in accordance with the provisions of this subtitle to make health care decisions for the declarant.

(d) “Attending physician” means the physician who has primary responsibility for the treatment and care of the patient.

(e) “Best interest” means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from that treatment, taking into account:

(1) The effect of the treatment on the physical, emotional, and cognitive functions of the individual;

(2) The degree of physical pain or discomfort caused to the individual by the treatment, or the withholding or withdrawal of the treatment;

(3) The degree to which the individual's medical condition, the treatment, or the withholding or withdrawal of treatment result in a severe and continuing impairment of the dignity of the individual by subjecting the individual to a condition of extreme humiliation and dependency;

(4) The effect of the treatment on the life expectancy of the individual;

(5) The prognosis of the individual for recovery, with and without the treatment;

(6) The risks, side effects, and benefits of the treatment or the withholding or withdrawal of the treatment; and

(7) The religious beliefs and basic values of the individual receiving treatment, to the extent these may assist the decision maker in determining best interest.

(f) “Competent individual” means a person who is at least 18 years of age or who under § 20–102(a) of this article has the same capacity as an adult to consent to medical treatment and who has not been determined to be incapable of making an informed decision.

(g) “Declarant” means a competent individual who makes an advance directive while capable of making and communicating an informed decision.

(H) “ELECTRONIC” HAS THE MEANING STATED IN § 4–101 OF THE ESTATES

AND TRUSTS ARTICLE.

(I) “ELECTRONIC PRESENCE” HAS THE MEANING STATED IN § 4–101 OF THE ESTATES AND TRUSTS ARTICLE.

[(h)] (J) “Electronic signature” has the meaning stated in [§ 21–101 of the Commercial Law Article] § 4–101 OF THE ESTATES AND TRUSTS ARTICLE.

[(i)] (K) “Emergency medical services ‘do not resuscitate order’” means a physician’s, physician assistant’s, or nurse practitioner’s written order in a form established by protocol issued by the Maryland Institute for Emergency Medical Services in conjunction with the State Board of Physicians which, in the event of a cardiac or respiratory arrest of a particular patient, authorizes certified or licensed emergency medical services personnel to withhold or withdraw cardiopulmonary resuscitation including cardiac compression, endotracheal intubation, other advanced airway management techniques, artificial ventilation, defibrillation, and other related life–sustaining procedures.

[(j)] (L) “End–stage condition” means an advanced, progressive, irreversible condition caused by injury, disease, or illness:

(1) That has caused severe and permanent deterioration indicated by incompetency and complete physical dependency; and

(2) For which, to a reasonable degree of medical certainty, treatment of the irreversible condition would be medically ineffective.

[(k)] (M) “Health care practitioner” means:

(1) An individual licensed or certified under the Health Occupations Article or § 13–516 of the Education Article to provide health care; or

(2) The administrator of a hospital or a person designated by the administrator in accordance with hospital policy.

[(l)] (N) (1) “Health care provider” means a health care practitioner or a facility that provides health care to individuals.

(2) “Health care provider” includes agents or employees of a health care practitioner or a facility that provides health care to individuals.

[(m)] (O) (1) “Incapable of making an informed decision” means the inability of an adult patient to make an informed decision about the provision, withholding, or withdrawal of a specific medical treatment or course of treatment because the patient is unable to understand the nature, extent, or probable consequences of the proposed treatment or course of treatment, is unable to make a rational evaluation of the burdens,

risks, and benefits of the treatment or course of treatment, or is unable to communicate a decision.

(2) For the purposes of this subtitle, a competent individual who is able to communicate by means other than speech may not be considered incapable of making an informed decision.

[(n)] (P) (1) “Life–sustaining procedure” means any medical procedure, treatment, or intervention that:

(i) Utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and

(ii) Is of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition, persistent vegetative state, or end–stage condition.

(2) “Life–sustaining procedure” includes artificially administered hydration and nutrition, and cardiopulmonary resuscitation.

[(o)] (Q) “Medically ineffective treatment” means that, to a reasonable degree of medical certainty, a medical procedure will not:

(1) Prevent or reduce the deterioration of the health of an individual; or

(2) Prevent the impending death of an individual.

[(p)] (R) “Nurse practitioner” means an individual licensed to practice registered nursing in the State and who is certified as a nurse practitioner by the State Board of Nursing under Title 8 of the Health Occupations Article.

[(q)] (S) “Persistent vegetative state” means a condition caused by injury, disease, or illness:

(1) In which a patient has suffered a loss of consciousness, exhibiting no behavioral evidence of self–awareness or awareness of surroundings in a learned manner other than reflex activity of muscles and nerves for low level conditioned response; and

(2) From which, after the passage of a medically appropriate period of time, it can be determined, to a reasonable degree of medical certainty, that there can be no recovery.

(T) “PHYSICAL PRESENCE” HAS THE MEANING STATED IN § 4–101 OF THE ESTATES AND TRUSTS ARTICLE.

[(r)] (U) “Physician” means a person licensed to practice medicine in the State or in the jurisdiction where the treatment is to be rendered or withheld.

[(s)] (V) “Physician assistant” means an individual who is licensed under Title 15 of the Health Occupations Article to practice medicine with physician supervision.

[(t)] (W) “Signed” means bearing a manual or electronic signature.

[(u)] (X) “Terminal condition” means an incurable condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, makes death imminent and from which, despite the application of life–sustaining procedures, there can be no recovery.

5–602.

(a) (1) Any competent individual may, at any time, make a written or electronic advance directive regarding the provision of health care to that individual, or the withholding or withdrawal of health care from that individual.

(2) Notwithstanding any other provision of law, in the absence of a validly executed or witnessed advance directive, any authentic expression made by an individual while competent of the individual’s wishes regarding health care for the individual shall be considered.

(c) (1) **(I)** Except as provided in **SUBPARAGRAPH (II) OF THIS PARAGRAPH OR** paragraph (3) of this subsection, a written or electronic advance directive shall be dated, signed by or at the express direction of the declarant, and subscribed by two witnesses **IN THE PHYSICAL PRESENCE OR ELECTRONIC PRESENCE OF THE DECLARANT.**

(II) A WRITTEN OR ELECTRONIC ADVANCE DIRECTIVE SIGNED AND WITNESSED IN CONFORMANCE WITH THE PROVISIONS OF EXECUTIVE ORDER 20.04.10.01, AUTHORIZING REMOTE WITNESSING AND ELECTRONIC SIGNING OF CERTAIN DOCUMENTS, SHALL BE DEEMED TO HAVE BEEN SIGNED AND WITNESSED IN CONFORMITY WITH THIS SUBSECTION IF THE ADVANCE DIRECTIVE WAS SIGNED AND WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT.

(2) (i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, any competent individual may serve as a witness to an advance directive, including an employee of a health care facility, nurse practitioner, physician assistant, or physician caring for the declarant if acting in good faith.

(ii) The health care agent of the declarant may not serve as a witness.

(iii) At least one of the witnesses must be an individual who is not knowingly entitled to any portion of the estate of the declarant or knowingly entitled to any financial benefit by reason of the death of the declarant.

(3) A witness is not required for an electronic advance directive if the declarant's identity has been authenticated in accordance with the National Institute of Standards and Technology Special Publication 800-63-2: Electronic Authentication Guideline or, if replaced, the replacement guideline.

(4) The State-designated health information exchange may accept as valid an unwitnessed electronic advance directive in the form of a video record or file to state the declarant's wishes regarding health care for the declarant or to appoint an agent if the video record or file:

(i) Is dated; and

(ii) Is stored in an electronic file by an electronic advance directives service recognized by the Maryland Health Care Commission.

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;

(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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect any will, power of attorney, or advance directive executed on or after March 10, 2020.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.