

**SB0820/428774/1**

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 820  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 18, after “satisfied” insert “, subject to a certain exception”; and 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, in line 2, after “Act” insert “in certain circumstances”; and 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 “**EXECUTED, PREPARED, AND CERTIFIED**” and substitute “**EXECUTED**”; in lines 19 and 20, strike beginning with “**IN**” in line 19 down through the first “**AND**” in line 20; in line 21, strike “**THAT INDIVIDUAL.**” and substitute “**ANOTHER INDIVIDUAL WITHOUT USING ELECTRONIC AUDIO-VISUAL MEANS.**”; and in line 24, strike “**PAPER**”.

(Over)

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On page 4, strike beginning with “MEANS” in line 1 down through “RECORD.” in line 2 and substitute “HAS THE MEANING STATED IN § 18–201 OF THE STATE GOVERNMENT ARTICLE.”.

On page 5, in line 28, strike the second “AND”.

On page 6, in line 17, strike the period and substitute “; 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”;

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

On page 8, strike beginning with “EXECUTED,” in line 8 down through “CERTIFIED” in line 9 and substitute “EXECUTED”.

On page 9, after line 2, insert:

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

On page 9, in line 3, strike “(L)” and substitute “(M)”; in line 4, strike “(M)” and substitute “(N)”; in line 10, strike “(N)” and substitute “(O)”; in line 11, strike “(O)” and substitute “(P)”; in line 18, strike “(P)” and substitute “(Q)”; and in line 27, strike “(Q)” and substitute “(R)”.

(Over)

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On page 10, in line 1, strike “before” and substitute “IN THE PHYSICAL OR ELECTRONIC PRESENCE OF”; strike beginning with “OTHER,” in line 6 down through “SECTION” in line 8 and substitute “OTHER OR ANY COMBINATION OF PHYSICAL AND ELECTRONIC PRESENCE”; in line 10, after “witnesses” insert “AND MAY USE COMMUNICATION TECHNOLOGY UNDER § 18–214 OF THE STATE GOVERNMENT ARTICLE 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, strike beginning with “ONCE” in line 25 down through “ATTORNEY” in line 27 and substitute “A CERTIFIED POWER OF ATTORNEY THAT SATISFIES THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION”.

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.

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(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.**

On page 16, in line 33, after "That" insert ", except as provided in Section 3 of this Act."; and strike beginning with "will," in line 34 down through "2020" in line 35 and substitute "instrument on record or recorded on or after October 1, 2021".

On page 17, before line 1, insert:

"SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be construed to apply to any case pending in a court to enforce or construe an instrument as of October 1, 2021.";

and in line 1, strike "3." and substitute "4.".