

Chapter 177

(Senate Bill 36)

AN ACT concerning

Wills and Trust Instruments – Electronic Execution

FOR the purpose of authorizing a person to execute an electronic will or remotely witnessed will without a notary public if the supervising attorney creates a certified will that contains a certain form attached or annexed to the will; prohibiting a supervising attorney from being a witness to an electronic will or remotely witnessed will if the will is executed without a notary public; authorizing a notary public located in the State to perform a notarial act using communication technology for a remotely located individual for a trust instrument; and generally relating to electronically executed wills and trust instruments.

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 4–102
Annotated Code of Maryland
(2017 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 18–214(a)
Annotated Code of Maryland
(2021 Replacement Volume)

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

Article – Estates and Trusts

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.

(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:

(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.

(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 **UNLESS THE WILL IS SIGNED, ACKNOWLEDGED, AND SWORN TO BEFORE THE SUPERVISING ATTORNEY AS DESCRIBED IN ITEM (5)(III)2 OF THIS SUBSECTION;**

(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;

(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]:

1. 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] **NOTARY PUBLIC**, 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] **ELECTRONIC** 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; **OR**

2. THE SUPERVISING ATTORNEY, ATTACHED OR ANNEXED TO THE WILL, IN SUBSTANTIALLY THE FOLLOWING FORM AND CONTENT:

BEFORE ME, THE UNDERSIGNED SUPERVISING 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 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 ELECTRONIC 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 _____, _____.
_____ **SUPERVISING ATTORNEY.****

(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 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.

Article – State Government

18–214.

(a) [Except for a notarial act being performed with respect to a will, as defined in § 1–101 of the Estates and Trusts Article, or a trust instrument, as defined in § 14.5–103 of the Estates and Trusts Article, a] **A** notary public located in this State may perform a notarial act using communication technology for a remotely located individual if:

(1) the notary public:

(i) has personal knowledge under § 18–206(a) of this subtitle of the identity of the remotely located individual;

(ii) has satisfactory evidence of the identity of the remotely located individual by verification on oath or affirmation from a credible witness appearing before and identified by the notary public under § 18–206(b) of this subtitle or as a remotely located individual under this section; or

(iii) has obtained satisfactory evidence of the identity of the remotely located individual by:

1. remote presentation of an identification credential described in § 18–206(b) of this subtitle;

2. credential analysis of the identification credential; and

3. identity proofing of the individual;

(2) the notary public is reasonably able to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

(3) the notary public, or person acting on behalf and at the direction of the notary public, creates an audio–visual recording of the performance of the notarial act; and

(4) for a remotely located individual located outside the United States:

(i) the record:

1. is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

2. involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

(ii) the notary public has no actual knowledge that the act of making the statement or signing the record is prohibited by the foreign state in which the remotely located individual is located.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, April 21, 2022.