



Real Property Section

To: Members of the Senate Judicial Proceedings Committee

From: William A. O'Connell, Chair, Legislative Committee, Real Property Section

Date: March 5, 2021

Subject: **SB 820** – Wills, Powers of Attorney, and Advance Directives – Electronic Execution

Position: **Support with Amendments**

The Maryland State Bar Association (MSBA) Real Property Section **supports, with amendments attached hereto, Senate Bill 820** Wills, Powers of Attorney, and Advance Directives – Electronic Execution. The bill seeks to allow wills and powers of attorney to be witnessed and executed remotely using communication technology.

The law as it exists today allows for the execution of a power of attorney electronically but requires the two witnesses to be in the physical presence of the principal and each other. Under existing law, when the power of attorney is executed remotely before a notary using communication technology, the notary may not be one of the witnesses. The bill would allow the witnesses, principal, and notary to all be in different locations when the power of attorney is executed. This will be helpful to everyone.

A power of attorney is a useful tool in purchasing and selling of real property and/or obtaining a loan secured by real property. Often, the need for a power of attorney arises unexpectedly and with settlement a short time away. Other times the parties seek to plan for any contingencies and execute a power of attorney for that purpose. In addition, it would be unreasonable to require a consumer to expend the time and expense required to hire an attorney to participate in creating and executing a power of attorney that may be needed in connection with a real estate transaction. One of the goals of enacting the Uniform Power of Attorney Act in 2010 and the statutory forms that went with it was to allow individuals to prepare and execute a power of attorney without involving an attorney.

As such, the attached amendments are needed to allow an electronic power of attorney used in connection with a real estate transaction to be executed without having to involve an attorney. And because of the complexity of executing an electronic power of attorney in other contexts that may one day be used in connection with a real estate transaction, it is necessary to amend Real Property Article §4-109 (commonly known as "the curative statute") to add to it "(7) A lack of or defective witness attestation to a power of attorney."

For these reasons, the MSBA Real Property Section **supports with amendments SB 820** and asks for a **favorable report**. Thank you for your consideration. Please do not hesitate to contact me at (443) 741-4536 or waoconnell@firstam.com.

SENATE BILL 820

N2, J1

11r2215
CF HB 1261

By: **Senator West**

Introduced and read first time: February 9, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of altering certain provisions of law related to the execution of wills to
4 authorize a person to electronically execute a will under certain circumstances;
5 requiring a certain testator, witnesses, and supervising attorney to be in certain
6 physical or electronic presence of one another at a certain time under certain
7 circumstances; authorizing a supervising attorney to be a certain witness to the
8 execution of certain instruments under certain circumstances; establishing certain
9 residency, presence, and signature requirements for a certain testator and certain
10 witnesses under certain circumstances; requiring a supervising attorney to create a
11 certain certified will under certain circumstances; requiring a testator to create a
12 certain certified will under certain circumstances; providing that a certain certified
13 will shall be deemed the original will of the testator under certain circumstances;
14 establishing a certain date of execution for a certain certified will; altering certain
15 provisions of law related to the proper execution of a will outside of the State; altering
16 certain provisions of law related to the execution of a power of attorney to authorize
17 a person to electronically execute a power of attorney if certain requirements are
18 satisfied; requiring a certain principal, witnesses, and supervising attorney to be in
19 certain physical or electronic presence of one another at a certain time under certain
20 circumstances; establishing certain residency, presence, and signature requirements
21 for a certain principal and certain witnesses under certain circumstances; requiring
22 a supervising attorney to create a certain certified power of attorney under certain
23 circumstances; providing that a certain certified power of attorney shall be deemed
24 the original power of attorney of a certain principal under certain circumstances;
25 establishing a certain date of execution for a certain certified power of attorney;
26 altering certain provisions of law related to the execution of advance directives to
27 authorize certain witnesses to sign an advance directive in either certain physical or
28 electronic presence of the declarant; providing that a will, a power of attorney, a
29 notarization of a power of attorney, or an advance directive executed in conformance
30 with the provisions of certain executive orders shall be deemed to satisfy certain
31 requirements under this Act; altering certain definitions; defining certain terms;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

1 making certain clarifying changes; providing for the retroactive application of this
2 Act; and generally relating to the execution of wills, powers of attorney, and advance
3 directives.

4 BY repealing and reenacting, with amendments,
5 Article – Estates and Trusts
6 Section 1–101(w), 4–102, 4–104, 17–101, and 17–110
7 Annotated Code of Maryland
8 (2017 Replacement Volume and 2020 Supplement)

9 BY repealing
10 Article – Estates and Trusts
11 Section 4–101
12 Annotated Code of Maryland
13 (2017 Replacement Volume and 2020 Supplement)

14 BY adding to
15 Article – Estates and Trusts
16 Section 4–101
17 Annotated Code of Maryland
18 (2017 Replacement Volume and 2020 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Health – General
21 Section 5–601 and 5–602(c)
22 Annotated Code of Maryland
23 (2019 Replacement Volume and 2020 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article – Health – General
26 Section 5–602(a)
27 Annotated Code of Maryland
28 (2019 Replacement Volume and 2020 Supplement)

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

31 **Article – Estates and Trusts**

32 1–101.

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

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

1 [4-101.

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

4 **4-101.**

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

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

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

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

13 (E) “ELECTRONIC WILL” MEANS A WILL CONTAINING ONE OR MORE
14 ELECTRONIC SIGNATURES AND EXECUTED IN COMPLIANCE WITH THIS
SUBTITLE.

15 (F) “PHYSICAL PRESENCE” MEANS BEING CLOSE ENOUGH TO SEE, HEAR, AND
SPEAK WITH ANOTHER INDIVIDUAL WITHOUT USING ELECTRONIC AUDIO-VISUAL
MEANS.

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

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

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

23 (2) EXECUTED, PREPARED, AND CERTIFIED IN COMPLIANCE WITH §
24 4-102 OF THIS SUBTITLE.

- (I) “SIGN” MEANS, 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.

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

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

8 (1) (I) APPOINTS A PERSONAL REPRESENTATIVE;

9 (II) REVOKES OR REVISES ANOTHER WILL;

10 (III) NOMINATES A GUARDIAN;

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

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

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

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

20 4–102.

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

23 [(a)] (B) Except as provided in §§ 4–103 and 4–104 of this subtitle AND
24 SUBSECTION (F) OF THIS SECTION, every will shall be:

25 (1) In writing;

26 (2) Signed by the testator, or by some other person for the testator, in the
27 testator’s presence and by the testator’s express direction; and

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

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

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

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

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

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

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

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

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

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

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

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

33 **1. THAT THE CERTIFIED WILL INCLUDES A TRUE,**

1 COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF THE WILL;

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

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

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

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

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

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

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

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

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

30 (II) AN ORIGINAL PAPER CERTIFICATION SIGNED AND
31 ACKNOWLEDGED BY THE TESTATOR IN THE PHYSICAL OR ELECTRONIC
PRESENCE OF A NOTARY PUBLIC, WHO MAY NOT BE ONE OF THE WITNESSES,
STATING:

1 1. **THE DATE THAT THE TESTATOR AND WITNESSES**
2 **SIGNED THE WILL; AND**

3 2. **THAT THE TESTATOR TOOK REASONABLE STEPS TO**
4 **VERIFY THE SAME FACTS AND INFORMATION REQUIRED UNDER SUBSECTION**
5 **(C)(5)(II) OF THIS SECTION.**

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

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

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

19 4–104.

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

23 (1) In writing;

24 (2) Signed by the testator **OR BY SOME OTHER PERSON ON THE**
25 **TESTATOR’S BEHALF, IN THE TESTATOR’S PHYSICAL PRESENCE, AND BY THE**
26 **TESTATOR’S EXPRESS DIRECTION; and**

27 (3) Executed in conformity with:

28 (i) The provisions of § 4–102 of this subtitle;

29 (ii) The law of the domicile of the testator; or

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

32 17–101.

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

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

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

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

7 (D) **“ELECTRONIC POWER OF ATTORNEY” MEANS A POWER OF ATTORNEY**
8 **CONTAINING ONE OR MORE ELECTRONIC SIGNATURES AND EXECUTED IN**
9 **COMPLIANCE WITH THIS TITLE.**

9 (E) **“ELECTRONIC PRESENCE” HAS THE MEANING STATED IN § 4–101 OF**
10 **THIS ARTICLE.**

11 (F) **“ELECTRONIC SIGNATURE” HAS THE MEANING STATED IN § 4–101 OF**
12 **THIS ARTICLE.**

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

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

18 (2) Is:

19 (i) Missing;

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

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

22 (H) **“PHYSICAL PRESENCE” HAS THE MEANING STATED IN § 4–101 OF THIS**
23 **ARTICLE.**

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

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

29 [(f)] (K) “Property” includes both real and personal property and any right or

1 title in real or personal property, whether held individually or jointly and whether
2 indivisible, beneficial, contingent, or of any other nature.

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

4

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6 **(M) “RECORD” HAS THE MEANING STATED IN § 4–101 OF THIS ARTICLE.**

7 **(N) “REMOTELY WITNESSED POWER OF ATTORNEY” MEANS A POWER OF**
8 **ATTORNEY SIGNED BY THE PRINCIPAL UNDER CIRCUMSTANCES WHERE ANY**
9 **WITNESS IS IN THE ELECTRONIC PRESENCE OF THE PRINCIPAL OR OTHER WITNESS**
10 **WHEN THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY.**

10 **(O) “SIGN” HAS THE MEANING STATED IN § 4–101 OF THIS ARTICLE.**

11 **[(g)] (P) (1) “Statutory form power of attorney” means a power of attorney**
12 **that is substantially in the same form as one of the powers of attorney set forth in Subtitle**
13 **2 of this title.**

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

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

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

27 **(S) “SUPERVISING ATTORNEY” HAS THE MEANING STATED IN § 4–101 OF**
28 **THIS ARTICLE.**

29 17–110.

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

32 (1) In writing;

33 (2) Signed by the principal or by some other person for the principal, in the

34 presence of the principal, and at the express direction of the principal;

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

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

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

5 (II) **THE ELECTRONIC PRESENCE OF THE PRINCIPAL AND EACH
6 OTHER OR ANY COMBINATION OF PHYSICAL OR ELECTRONIC PRESENCE.**

7 (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 **AND MAY USE** communication technology under § 18–214 of the State Government Article **FOR THAT PURPOSE.**

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

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

13 (2) **AT THE TIME THE PRINCIPAL SIGNS THE POWER OF ATTORNEY,
14 THE PRINCIPAL SHALL BE A RESIDENT OF, OR PHYSICALLY LOCATED IN, THE STATE;**

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

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

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

24 (I) **A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF
25 ALL PAGES OF THE POWER OF ATTORNEY, INCLUDING THE ORIGINAL SIGNATURES**

1 AND ELECTRONIC SIGNATURES OF THE PRINCIPAL AND ALL WITNESSES; AND

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

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

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

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

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

19 5. THE IDENTITY OF EACH WITNESS, AND THAT EACH
20 WITNESS WHO WAS NOT IN THE PHYSICAL PRESENCE OF THE PRINCIPAL WHEN THE
21 WITNESS ATTESTED AND SIGNED THE POWER OF ATTORNEY, OR PROVIDED AN
22 ELECTRONIC SIGNATURE ON THE POWER OF ATTORNEY, WAS A RESIDENT OF THE
23 UNITED STATES AND PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME
24 THE WITNESS ATTESTED AND SIGNED THE POWER OF ATTORNEY.

25 (D) (1) ONCE THE SUPERVISING ATTORNEY CREATES A CERTIFIED
26 POWER OF ATTORNEY IF REQUIRED IN 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.

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

30 (E) (1) A POWER OF ATTORNEY EXECUTED IN CONFORMANCE WITH THE
31 PROVISIONS OF EXECUTIVE ORDER 20.04.10.01, AUTHORIZING REMOTE
32 WITNESSING AND ELECTRONIC SIGNING OF CERTAIN DOCUMENTS, SHALL BE

1 DEEMED TO HAVE BEEN SIGNED AND WITNESSED IN CONFORMITY WITH THIS
2 SECTION IF THE POWER OF ATTORNEY WAS SIGNED AND WITNESSED DURING THE
3 TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT.

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

11 **Article – Health – General**

12 5–601.

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

14 (b) “Advance directive” means:

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

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

19 (3) An electronic document, voluntarily executed by the declarant, in which
20 the declarant’s identity is authenticated in accordance with the guidelines described in §
21 5–602(c)(3) of this subtitle.

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

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

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

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

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

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

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

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

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

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

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

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

18 **(H) “ELECTRONIC” HAS THE MEANING STATED IN § 4–101 OF THE ESTATES**
19 **AND TRUSTS ARTICLE.**

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

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

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

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

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

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

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

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

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

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

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

14 **[(m)] (O)** (1) “Incapable of making an informed decision” means the inability
15 of an adult patient to make an informed decision about the provision, withholding, or
16 withdrawal of a specific medical treatment or course of treatment because the patient is
17 unable to understand the nature, extent, or probable consequences of the proposed
18 treatment or course of treatment, is unable to make a rational evaluation of the burdens,
19 risks, and benefits of the treatment or course of treatment, or is unable to communicate a
20 decision.

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

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

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

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

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

33 **[(o)] (Q)** “Medically ineffective treatment” means that, to a reasonable degree of

1 medical certainty, a medical procedure will not:

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

3 (2) Prevent the impending death of an individual.

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

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

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

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

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

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

19 **[(s)] (V)** “Physician assistant” means an individual who is licensed under Title
20 15 of the Health Occupations Article to practice medicine with physician supervision.

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

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

26 5–602.

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

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

1 considered.

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

7 **(II) A WRITTEN OR ELECTRONIC ADVANCE DIRECTIVE SIGNED**
8 **AND WITNESSED IN CONFORMANCE WITH THE PROVISIONS OF EXECUTIVE ORDER**
9 **20.04.10.01, AUTHORIZING REMOTE WITNESSING AND ELECTRONIC SIGNING OF**
10 **CERTAIN DOCUMENTS, SHALL BE DEEMED TO HAVE BEEN SIGNED AND WITNESSED**
11 **IN CONFORMITY WITH THIS SUBSECTION IF THE ADVANCE DIRECTIVE WAS SIGNED**
12 **AND WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT.**

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

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

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

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

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

30 (i) Is dated; and

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

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

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

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

Maryland Code Real Property Article §4-109

(a) Defective grants recorded before January 1, 1973. -- 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) Defective grants recorded on or after January 1, 1973. -- 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) Failures in formal requisites of an instrument. -- 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.