

CHAPTER 3

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 21-1004

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AN ACT**CONCERNING THE "COLORADO UNIFORM ELECTRONIC WILLS ACT".***Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. In Colorado Revised Statutes, **add** part 15 to article 12 of title 15 as follows:

PART 15
COLORADO UNIFORM ELECTRONIC WILLS ACT

15-12-1501. Short title. THIS PART 15 MAY BE CITED AS THE "COLORADO UNIFORM ELECTRONIC WILLS ACT".

15-12-1502. Definitions. IN THIS PART 15:

(1) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(2) "ELECTRONIC PRESENCE" MEANS THE RELATIONSHIP OF TWO OR MORE INDIVIDUALS IN DIFFERENT LOCATIONS COMMUNICATING IN REAL TIME TO THE SAME EXTENT AS IF THE INDIVIDUALS WERE PHYSICALLY PRESENT IN THE SAME LOCATION.

(3) "ELECTRONIC WILL" MEANS A WILL EXECUTED ELECTRONICALLY IN COMPLIANCE WITH SECTION 15-12-1505 (1).

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(4) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(5) (a) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD, AND SUBJECT TO SUBSECTION (5)(b) OF THIS SECTION, TO EXECUTE OR ADOPT A TANGIBLE SYMBOL OR TO AFFIX TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SYMBOL OR PROCESS.

(b) AN ELECTRONIC SYMBOL OF A TESTATOR OR WITNESS MUST BE AN ELECTRONIC IMAGE OF THE TESTATOR'S OR WITNESS'S SIGNATURE IN THE TESTATOR'S OR WITNESS'S HANDWRITING AFFIXED TO THE ELECTRONIC WILL.

(6) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES. THE TERM INCLUDES A FEDERALLY RECOGNIZED INDIAN TRIBE.

(7) "WILL" HAS THE MEANING SET FORTH IN SECTION 15-10-201 (59).

15-12-1503. Law applicable to electronic wills - principles of equity. AN ELECTRONIC WILL IS A WILL FOR ALL PURPOSES OF THE LAW OF THIS STATE. THE LAW OF THIS STATE APPLICABLE TO WILLS AND PRINCIPLES OF EQUITY APPLY TO AN ELECTRONIC WILL, EXCEPT AS MODIFIED BY THIS PART 15.

15-12-1504. Choice of law regarding execution. (1) A WILL EXECUTED ELECTRONICALLY BUT NOT IN COMPLIANCE WITH SECTION 15-12-1505 (1) IS AN ELECTRONIC WILL UNDER THIS PART 15 IF EXECUTED IN COMPLIANCE WITH THE LAW OF THE JURISDICTION WHERE THE TESTATOR IS:

(a) PHYSICALLY LOCATED WHEN THE WILL IS SIGNED; OR

(b) DOMICILED OR RESIDES WHEN THE WILL IS SIGNED OR WHEN THE TESTATOR DIES.

15-12-1505. Execution of electronic will. (1) SUBJECT TO SECTION 15-12-1508 (4), AND EXCEPT AS PROVIDED IN SECTION 15-12-1506, AN ELECTRONIC WILL MUST BE:

(a) A RECORD THAT IS READABLE AS TEXT AT THE TIME OF SIGNING UNDER SUBSECTION (1)(b) OF THIS SECTION;

(b) SIGNED BY:

(I) THE TESTATOR; OR

(II) ANOTHER INDIVIDUAL IN THE TESTATOR'S NAME, IN THE TESTATOR'S PHYSICAL PRESENCE, AND BY THE TESTATOR'S DIRECTION; AND

(c) EITHER:

(I) SIGNED IN THE PHYSICAL OR ELECTRONIC PRESENCE OF THE TESTATOR BY AT LEAST TWO INDIVIDUALS, EACH OF WHOM IS A RESIDENT OF A STATE AND PHYSICALLY LOCATED IN A STATE AT THE TIME OF SIGNING AND WITHIN A REASONABLE TIME AFTER WITNESSING:

(A) THE SIGNING OF THE WILL UNDER SUBSECTION (1)(b) OF THIS SECTION; OR

(B) THE TESTATOR'S ACKNOWLEDGMENT OF THE SIGNING OF THE WILL UNDER SUBSECTION (1)(b) OF THIS SECTION OR ACKNOWLEDGMENT OF THE WILL; OR

(II) ACKNOWLEDGED BY THE TESTATOR BEFORE AND IN THE PHYSICAL OR ELECTRONIC PRESENCE OF A NOTARY PUBLIC OR OTHER INDIVIDUAL WHO IS AUTHORIZED BY COLORADO LAW TO NOTARIZE RECORDS, AND WHO IS LOCATED IN COLORADO AT THE TIME THE NOTARIAL ACT IS PERFORMED.

(2) INTENT OF A TESTATOR THAT THE RECORD UNDER SUBSECTION (1)(a) OF THIS SECTION BE THE TESTATOR'S ELECTRONIC WILL MAY BE ESTABLISHED BY EXTRINSIC EVIDENCE.

15-12-1506. Harmless error. SECTION 15-11-503 APPLIES TO A WILL EXECUTED ELECTRONICALLY.

15-12-1507. Revocation. (1) AN ELECTRONIC WILL MAY REVOKE ALL OR PART OF A PREVIOUS WILL.

(2) ALL OR PART OF AN ELECTRONIC WILL IS REVOKED BY:

(a) A SUBSEQUENT WILL THAT REVOKES ALL OR PART OF THE ELECTRONIC WILL EXPRESSLY OR BY INCONSISTENCY; OR

(b) A PHYSICAL ACT, IF IT IS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT THE TESTATOR, WITH THE INTENT OF REVOKING ALL OR PART OF THE WILL, PERFORMED THE ACT OR DIRECTED ANOTHER INDIVIDUAL WHO PERFORMED THE ACT IN THE TESTATOR'S PHYSICAL PRESENCE.

15-12-1508. Electronic will attested and made self-proving at time of execution. (1) AN ELECTRONIC WILL MAY BE SIMULTANEOUSLY EXECUTED, ATTESTED, AND MADE SELF-PROVING BY ACKNOWLEDGMENT OF THE TESTATOR AND AFFIDAVITS OF THE WITNESSES.

(2) THE ACKNOWLEDGMENT AND AFFIDAVITS UNDER SUBSECTION (1) OF THIS SECTION MUST BE:

(a) MADE IN THE PHYSICAL PRESENCE OF AN OFFICER AUTHORIZED TO ADMINISTER OATHS UNDER LAW OF THE STATE IN WHICH THE TESTATOR SIGNS PURSUANT TO SECTION 15-12-1505 (1)(b) OR, IF FEWER THAN TWO ATTESTING WITNESSES ARE PHYSICALLY PRESENT IN THE SAME LOCATION AS THE TESTATOR AT THE TIME OF SIGNING PURSUANT TO SECTION 15-12-1505 (1)(b), IN THE PHYSICAL OR ELECTRONIC PRESENCE OF A NOTARY PUBLIC OR OTHER INDIVIDUAL WHO IS AUTHORIZED BY COLORADO LAW TO NOTARIZE RECORDS, AND WHO IS LOCATED IN COLORADO AT THE TIME THE NOTARIAL ACT IS PERFORMED; AND

(b) EVIDENCED BY THE OFFICER'S CERTIFICATE UNDER OFFICIAL SEAL AFFIXED TO OR LOGICALLY ASSOCIATED WITH THE ELECTRONIC WILL.

(3) THE ACKNOWLEDGMENT AND AFFIDAVITS UNDER SUBSECTION (1) OF THIS SECTION MUST BE IN SUBSTANTIALLY THE FOLLOWING FORM:

I, _____, THE TESTATOR, AND, BEING SWORN, DECLARE TO THE UNDERSIGNED OFFICER THAT I SIGN THIS INSTRUMENT AS MY ELECTRONIC WILL, I WILLINGLY SIGN IT OR WILLINGLY DIRECT ANOTHER TO SIGN FOR ME, I EXECUTE IT AS MY VOLUNTARY ACT FOR THE PURPOSES EXPRESSED IN THIS INSTRUMENT, AND I AM EIGHTEEN YEARS OF AGE OR OLDER, OF SOUND MIND, AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE.

TESTATOR

WE, _____, AND _____, WITNESSES, BEING SWORN, DECLARE TO THE UNDERSIGNED OFFICER THAT THE TESTATOR SIGNED THIS INSTRUMENT AS THE TESTATOR'S ELECTRONIC WILL, THAT THE TESTATOR WILLINGLY SIGNED IT OR WILLINGLY DIRECTED ANOTHER INDIVIDUAL TO SIGN FOR THE TESTATOR, AND THAT EACH OF US, IN THE PHYSICAL OR ELECTRONIC PRESENCE OF THE TESTATOR, SIGNS THIS INSTRUMENT AS WITNESS TO THE TESTATOR'S SIGNING, AND TO THE BEST OF OUR KNOWLEDGE THE TESTATOR IS EIGHTEEN YEARS OF AGE OR OLDER, OF SOUND MIND, AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE.

WITNESS

WITNESS

CERTIFICATE OF OFFICER:

STATE OF _____

COUNTY OF _____

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

(SEAL)

(SIGNED)

(OFFICIAL CAPACITY OF OFFICER)

(4) A SIGNATURE PHYSICALLY OR ELECTRONICALLY AFFIXED TO AN AFFIDAVIT THAT IS AFFIXED TO OR LOGICALLY ASSOCIATED WITH AN ELECTRONIC WILL UNDER THIS ACT IS DEEMED A SIGNATURE OF THE ELECTRONIC WILL UNDER SECTION 15-12-1505 (1).

15-12-1509. Certification of paper copy. AN INDIVIDUAL MAY CREATE A CERTIFIED PAPER COPY OF AN ELECTRONIC WILL BY AFFIRMING UNDER PENALTY OF PERJURY THAT A PAPER COPY OF THE ELECTRONIC WILL IS A COMPLETE, TRUE, AND ACCURATE COPY OF THE ELECTRONIC WILL. IF THE ELECTRONIC WILL IS MADE SELF-PROVING, THE CERTIFIED PAPER COPY OF THE WILL MUST INCLUDE THE SELF-PROVING AFFIDAVITS.

15-12-1510. Uniformity of application and construction. IN APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

15-12-1511. Application of part. THIS PART 15 APPLIES TO THE WILL OF A DECEDENT WHO DIES ON OR AFTER THE EFFECTIVE DATE OF THIS PART 15.

SECTION 2. In Colorado Revised Statutes, 24-21-514.5, **amend** (2)(b)(II) as follows:

24-21-514.5. Audio-video communication - definitions. (2)(b) A notary public shall not use a remote notarization system to notarize:

(II) EXCEPT AS PROVIDED IN THE "COLORADO UNIFORM ELECTRONIC WILLS ACT", PART 15 OF ARTICLE 12 OF TITLE 15, a will, codicil, document purporting to be a will or codicil, or any acknowledgment required under section 15-11-502 or 15-11-504.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: January 21, 2021