

Real Property, Probate and Trust Law Section

EXECUTIVE COUNCIL MEETING

SUPPLEMENTAL AGENDA

March 16, 2019

I. Probate and Trust Division:

a. Action Item: Electronic Wills

1. Motion to waive Article VIII Section 4(A) of the Section Bylaws, which requires that proposed legislative positions be placed on the agenda and supporting documentation distributed to the Executive Council at least one week prior to the Executive Council meeting, to permit the Section to consider the revised Section position stated below.

2. Motion to:

(A) amend the current position of RPPTL Section relating to electronic wills to read as follows:

Opposes legislation, including 2019 Florida Senate Bill 548 and House Bill 409, that would permit remote notarization or remote witnessing of all estate and incapacity planning instruments and related spousal waivers (including electronic wills, powers of attorney, living wills, advance directives, and trust instruments having testamentary aspects), unless such legislation is amended:

(a) to safeguard the citizens of Florida from fraud and exploitation;

(b) to include protections to ensure the integrity, security, and authenticity of a remotely notarized or remotely witnessed instrument; and

(c) to require witnesses be physically present with the testator when such documents are executed or other procedures to protect the citizens of Florida, particularly vulnerable adults and the elderly who may have diminished mental capacity or be susceptible to fraud, undue influence, coercion, or duress.

(B) find that such legislative position is within the purview of the RPPTL Section; and

(C) expend Section funds in support of the proposed legislative position.

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Perez offered the following:

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5 Remove everything after the enacting clause and insert:

6 Section. 1 The Division of Law Revision is directed to:

7 (1) Create part I of chapter 117, Florida Statutes,
 8 consisting of ss. 117.01-117.108, Florida Statutes, to be
 9 entitled "General Provisions."

10 (2) Create part II of chapter 117, Florida Statutes,
 11 consisting of ss. 117.201-117.305, Florida Statutes, to be
 12 entitled "Online Notarizations."

13 Section 2. Subsection (1) of section 117.01, Florida
 14 Statutes, is amended to read:

15 117.01 Appointment, application, suspension, revocation,
 16 application fee, bond, and oath.-

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17 (1) The Governor may appoint as many notaries public as he
18 or she deems necessary, each of whom must ~~shall~~ be at least 18
19 years of age and a legal resident of this ~~the~~ state. A permanent
20 resident alien may apply and be appointed and shall file with
21 his or her application a recorded Declaration of Domicile. The
22 residence required for appointment must be maintained throughout
23 the term of appointment. A notary public ~~Notaries public~~ shall
24 be appointed for 4 years and may only ~~shall~~ use and exercise the
25 office of notary public if he or she is within the boundaries of
26 this state. An applicant must be able to read, write, and
27 understand the English language.

28 Section 3. Subsections (4) and (5) of section 117.021,
29 Florida Statutes, are renumbered as subsections (5) and (6),
30 respectively, subsection (2) of that section is amended, and new
31 subsections (4) and (7) are added to that section, to read:

32 117.021 Electronic notarization.—

33 (2) In performing an electronic notarial act, a notary
34 public shall use an electronic signature that is:

35 (a) Unique to the notary public;

36 (b) Capable of independent verification;

37 (c) Retained under the notary public's sole control and
38 includes access protection through the use of passwords or codes
39 under control of the notary public; and

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40 (d) Attached to or logically associated with the
41 electronic document in a manner that any subsequent alteration
42 to the electronic document displays evidence of the alteration.

43 (4) A person may not require a notary public to perform a
44 notarial act with respect to an electronic record with a form of
45 technology that the notary public has not selected to use.

46 (7) The Department of State, in collaboration with the
47 Agency for State Technology, shall adopt rules establishing
48 standards for tamper-evident technologies that will indicate any
49 alteration or change to an electronic record after completion of
50 an electronic notarial act. All electronic notarizations
51 performed on or after January 1, 2020, must comply with the
52 adopted standards.

53 Section 4. Subsection (1), paragraph (a) of subsection
54 (2), subsections (4) and (5), paragraph (a) of subsection (12),
55 and subsections (13) and (14) of section 117.05, Florida
56 Statutes, are amended, and paragraph (c) is added to subsection
57 (12) of that section, to read:

58 117.05 Use of notary commission; unlawful use; notary fee;
59 seal; duties; employer liability; name change; advertising;
60 photocopies; penalties.—

61 (1) A ~~No~~ person may not ~~shall~~ obtain or use a notary
62 public commission in other than his or her legal name, and it is
63 unlawful for a notary public to notarize his or her own
64 signature. Any person applying for a notary public commission

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65 must submit proof of identity to the Department of State ~~if so~~
66 ~~requested~~. Any person who violates ~~the provisions of this~~
67 subsection commits ~~is guilty of~~ a felony of the third degree,
68 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

69 (2) (a) The fee of a notary public may not exceed \$10 for
70 any one notarial act, except as provided in s. 117.045 or s.
71 117.275.

72 (4) When notarizing a signature, a notary public shall
73 complete a jurat or notarial certificate in substantially the
74 same form as those found in subsection (13). The jurat or
75 certificate of acknowledgment shall contain the following
76 elements:

77 (a) The venue stating the location of the notary public at
78 the time of the notarization in the format, "State of Florida,
79 County of"

80 (b) The type of notarial act performed, an oath or an
81 acknowledgment, evidenced by the words "sworn" or
82 "acknowledged."

83 (c) Whether That the signer personally appeared before the
84 notary public at the time of the notarization by physical
85 presence or by means of audio-video communication technology as
86 authorized under part II of this chapter.

87 (d) The exact date of the notarial act.

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88 (e) The name of the person whose signature is being
89 notarized. It is presumed, absent such specific notation by the
90 notary public, that notarization is to all signatures.

91 (f) The specific type of identification the notary public
92 is relying upon in identifying the signer, either based on
93 personal knowledge or satisfactory evidence specified in
94 subsection (5).

95 (g) The notary public's notary's official signature.

96 (h) The notary public's notary's name, which must be
97 typed, printed, or stamped below the signature.

98 (i) The notary public's notary's official seal affixed
99 below or to either side of the notary public's ~~notary's~~
100 signature.

101 (5) A notary public may not notarize a signature on a
102 document unless he or she personally knows, or has satisfactory
103 evidence, that the person whose signature is to be notarized is
104 the individual who is described in and who is executing the
105 instrument. A notary public shall certify in the certificate of
106 acknowledgment or jurat the type of identification, either based
107 on personal knowledge or other form of identification, upon
108 which the notary public is relying. In the case of an online
109 notarization, the online notary public shall comply with the
110 requirements set forth in part II of this chapter.

111 (a) For purposes of this subsection, the term "personally
112 knows" means having an acquaintance, derived from association

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113 with the individual, which establishes the individual's identity
114 with at least a reasonable certainty.

115 (b) For the purposes of this subsection, the term
116 "satisfactory evidence" means the absence of any information,
117 evidence, or other circumstances which would lead a reasonable
118 person to believe that the person whose signature is to be
119 notarized is not the person he or she claims to be and any one
120 of the following:

121 1. The sworn written statement of one credible witness
122 personally known to the notary public or the sworn written
123 statement of two credible witnesses whose identities are proven
124 to the notary public upon the presentation of satisfactory
125 evidence that each of the following is true:

126 a. That the person whose signature is to be notarized is
127 the person named in the document;

128 b. That the person whose signature is to be notarized is
129 personally known to the witnesses;

130 c. That it is the reasonable belief of the witnesses that
131 the circumstances of the person whose signature is to be
132 notarized are such that it would be very difficult or impossible
133 for that person to obtain another acceptable form of
134 identification;

135 d. That it is the reasonable belief of the witnesses that
136 the person whose signature is to be notarized does not possess

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137 any of the identification documents specified in subparagraph
138 2.; and
139 e. That the witnesses do not have a financial interest in
140 nor are parties to the underlying transaction; or
141 2. Reasonable reliance on the presentation to the notary
142 public of any one of the following forms of identification, if
143 the document is current or has been issued within the past 5
144 years and bears a serial or other identifying number:
145 a. A Florida identification card or driver license issued
146 by the public agency authorized to issue driver licenses;
147 b. A passport issued by the Department of State of the
148 United States;
149 c. A passport issued by a foreign government if the
150 document is stamped by the United States Bureau of Citizenship
151 and Immigration Services;
152 d. A driver license or an identification card issued by a
153 public agency authorized to issue driver licenses in a state
154 other than Florida or in, a territory of the United States, or
155 Canada or Mexico;
156 e. An identification card issued by any branch of the
157 armed forces of the United States;
158 f. A veteran health identification card issued by the
159 United States Department of Veterans Affairs;

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160 g. An inmate identification card issued on or after
161 January 1, 1991, by the Florida Department of Corrections for an
162 inmate who is in the custody of the department;

163 h. An inmate identification card issued by the United
164 States Department of Justice, Bureau of Prisons, for an inmate
165 who is in the custody of the department;

166 i. A sworn, written statement from a sworn law enforcement
167 officer that the forms of identification for an inmate in an
168 institution of confinement were confiscated upon confinement and
169 that the person named in the document is the person whose
170 signature is to be notarized; or

171 j. An identification card issued by the United States
172 Bureau of Citizenship and Immigration Services.

173 (12) (a) A notary public may supervise the making of a copy
174 of a tangible or an electronic record or the printing of an
175 electronic record, ~~photocopy of an original document~~ and attest
176 to the trueness of the copy or of the printout, provided the
177 document is neither a vital record in this state, another state,
178 a territory of the United States, or another country, nor a
179 public record, if a copy can be made by the custodian of the
180 public record.

181 (c) A notary public must use a certificate in
182 substantially the following form in notarizing a copy of a
183 tangible or an electronic record or a printout of an electronic
184 record:

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STATE OF FLORIDA
COUNTY OF

On this day of, ... (year) ..., I attest that the preceding or attached document is a true, exact, complete, and unaltered ... (copy of a tangible or an electronic record presented to me by the document's custodian) ... or a ... (printout made by me from such record) If a printout, I further attest that at the time of printing, no security features, if any, present on the electronic record, indicated that the record had been altered since execution.

... (Signature of Notary Public - State of Florida) ...
... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

(13) The following notarial certificates are sufficient for the purposes indicated, if completed with the information required by this chapter. The specification of forms under this subsection does not preclude the use of other forms.

(a) For an oath or affirmation:

STATE OF FLORIDA
COUNTY OF

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210 Sworn to (or affirmed) and subscribed before me by means of
 211 [] physical presence or [] online notarization, this day of
 212, ... (year) ..., by ... (name of person making
 213 statement)....

214
 215 ... (Signature of Notary Public - State of Florida) ...
 216 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 217 Personally Known OR Produced Identification
 218
 219 Type of Identification Produced.....

221 (b) For an acknowledgment in an individual capacity:

222
 223 STATE OF FLORIDA
 224 COUNTY OF

225
 226 The foregoing instrument was acknowledged before me by means of
 227 [] physical presence or [] online notarization, this day of
 228, ... (year) ..., by ... (name of person acknowledging)....

229
 230 ... (Signature of Notary Public - State of Florida) ...
 231 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 232 Personally Known OR Produced Identification
 233
 234 Type of Identification Produced.....

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(c) For an acknowledgment in a representative capacity:

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me by means of
 [] physical presence or [] online notarization, this day of
....., ...(year)..., by ...(name of person)... as ...(type of
authority, . . . e.g. officer, trustee, attorney in fact)...
for ...(name of party on behalf of whom instrument was
executed)....

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known OR Produced Identification
.....
Type of Identification Produced

(14) A notary public must make reasonable accommodations
to provide notarial services to persons with disabilities.

(a) A notary public may notarize the signature of a person
who is blind after the notary public has read the entire
instrument to that person.

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259 (b) A notary public may notarize the signature of a person
260 who signs with a mark if:

261 1. The document signing is witnessed by two disinterested
262 persons;

263 2. The notary public prints the person's first name at the
264 beginning of the designated signature line and the person's last
265 name at the end of the designated signature line; and

266 3. The notary public prints the words "his (or her) mark"
267 below the person's signature mark.

268 (c) The following notarial certificates are sufficient for
269 the purpose of notarizing for a person who signs with a mark:

270 1. For an oath or affirmation:

271
272 ... (First Name) ... (Last Name) ...
273 ... His (or Her) Mark ...

274 STATE OF FLORIDA

275 COUNTY OF

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277 Sworn to and subscribed before me by means of [] physical
278 presence or [] online notarization, this day of,
279 ...(year)..., by ...(name of person making statement)..., who
280 signed with a mark in the presence of these witnesses:

281

282 ... (Signature of Notary Public - State of Florida) ...

283 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

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284 Personally Known OR Produced Identification
 285
 286 Type of Identification Produced.....
 287

288 2. For an acknowledgment in an individual capacity:

289
 290(First Name)... ...(Last Name)...
 291His (or Her) Mark...
 292

293 STATE OF FLORIDA
 294 COUNTY OF
 295

296 The foregoing instrument was acknowledged before me by means of
 297 [] physical presence or [] online notarization, this day of
 298, ...(year)..., by ...(name of person acknowledging)...,
 299 who signed with a mark in the presence of these witnesses:

300
 301(Signature of Notary Public - State of Florida)...
 302(Print, Type, or Stamp Commissioned Name of Notary Public)...

303 Personally Known OR Produced Identification
 304
 305 Type of Identification Produced.....
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307 (d) A notary public may sign the name of a person whose
 308 signature is to be notarized when that person is physically

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309 unable to sign or make a signature mark on a document if:
310 1. The person with a disability directs the notary public
311 to sign in his or her presence by verbal, written, or other
312 means;
313 2. The document signing is witnessed by two disinterested
314 persons; and
315 3. The notary public writes below the signature the
316 following statement: "Signature affixed by notary, pursuant to
317 s. 117.05(14), Florida Statutes," and states the circumstances
318 and the means by which the notary public was directed to sign ~~of~~
319 ~~the signing in~~ the notarial certificate.

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321 The notary public must maintain the proof of direction and
322 authorization to sign on behalf of the person with a disability
323 for 10 years from the date of the notarial act.

324 (e) The following notarial certificates are sufficient for
325 the purpose of notarizing for a person with a disability who
326 directs the notary public to sign his or her name:

327 1. For an oath or affirmation:

328
329 STATE OF FLORIDA
330 COUNTY OF

331
332 Sworn to (or affirmed) before me by means of [] physical
333 presence or [] online notarization, this day of,

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334 ... (year) ..., by ... (name of person making statement) ..., and
335 subscribed by ... (name of notary) ... at the direction of ~~and in~~
336 ~~the presence of~~ ... (name of person making statement) ... by
337 ... (written, verbal, or other means) ..., and in the presence of
338 these witnesses:

339
340 ... (Signature of Notary Public - State of Florida) ...
341 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
342 Personally Known OR Produced Identification
343
344 Type of Identification Produced.....

346 2. For an acknowledgment in an individual capacity:

348 STATE OF FLORIDA
349 COUNTY OF

351 The foregoing instrument was acknowledged before me by means of
352 [] physical presence or [] online notarization, this day of
353, ... (year) ..., by ... (name of person acknowledging) ...
354 and subscribed by ... (name of notary) ... at the direction of ~~and~~
355 ~~in the presence of~~ ... (name of person acknowledging) ..., and in
356 the presence of these witnesses:

358 ... (Signature of Notary Public - State of Florida) ...

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359 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...
360 Personally Known OR Produced Identification
361

362 Type of Identification Produced.....

363 Section 5. Subsections (2) and (9) of section 117.107,
364 Florida Statutes, are amended to read:

365 117.107 Prohibited acts.—

366 (2) A notary public may not sign notarial certificates
367 using a facsimile signature stamp unless the notary public has a
368 physical disability that limits or prohibits his or her ability
369 to make a written signature and unless the notary public has
370 first submitted written notice to the Department of State with
371 an exemplar of the facsimile signature stamp. This subsection
372 does not apply to or prohibit the use of an electronic signature
373 and seal by a notary public who is registered as an online
374 notary public to perform an electronic or online notarization in
375 accordance with this chapter.

376 (9) A notary public may not notarize a signature on a
377 document if the person whose signature is being notarized does
378 not appear before the notary public either by means of physical
379 presence or by means of audio-video communication technology as
380 authorized under part II of this chapter is not in the presence
381 of the notary public at the time the signature is notarized. Any
382 notary public who violates this subsection is guilty of a civil
383 infraction, punishable by penalty not exceeding \$5,000, and such

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384 violation constitutes malfeasance and misfeasance in the conduct
385 of official duties. It is no defense to the civil infraction
386 specified in this subsection that the notary public acted
387 without intent to defraud. A notary public who violates this
388 subsection with the intent to defraud is guilty of violating s.
389 117.105.

390 Section 6. Section 117.201, Florida Statutes, is created
391 to read:

392 117.201 Definitions.—As used in this part, the term:

393 (1) "Appear before," "before," or "in the presence of"
394 mean:

395 (a) In the physical presence of another person; or

396 (b) Outside of the physical presence of another person,
397 but able to see, hear, and communicate with the person by means
398 of audio-video communication technology.

399 (2) "Audio-video communication technology" means
400 technology in compliance with applicable law which enables real-
401 time, two-way communication using electronic means in which
402 participants are able to see, hear, and communicate with one
403 another.

404 (3) "Credential analysis" means a process or service, in
405 compliance with applicable law, in which a third party aids a
406 public notary in affirming the validity of a government-issued
407 identification credential and data thereon through review of
408 public or proprietary data sources.

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409 (4) "Electronic," "electronic record," or "electronic
410 signature" has the same meaning as provided in s. 668.50.

411 (5) "Errors and omissions insurance" means a type of
412 insurance that provides coverage for potential errors or
413 omissions in or relating to the notarial act and is maintained,
414 as applicable, by the online notary public or his or her
415 employer, or a Remote Online Notarization service provider.

416 (6) "Government-issued identification credential" means
417 any approved credential for verifying identity under s.
418 117.05(5)(b)2.

419 (7) "Identity proofing" means a process or service in
420 compliance with applicable law in which a third party affirms
421 the identity of an individual through use of public or
422 proprietary data sources, which may include by means of
423 knowledge-based authentication or biometric verification.

424 (8) "Knowledge-based authentication" means a form of
425 identity proofing based on a set of questions which pertain to
426 an individual and are formulated from public or proprietary data
427 sources.

428 (9) "Online notarization" means the performance of a
429 notarial act using electronic means in which the principal
430 appears before the notary public by means of audio-video
431 communication technology.

432 (10) "Online notary public" means a notary public
433 commissioned under part I of this chapter, a civil-law notary

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434 appointed under chapter 118, or a commissioner of deeds
435 appointed under part IV of chapter 721, who has registered with
436 the Department of State to perform online notarizations under
437 this part.

438 (11) "Physical presence" means being in the same physical
439 location as another person and close enough to see, hear,
440 communicate with, and exchange credentials with that person.

441 (12) "Principal" means an individual whose electronic
442 signature is acknowledged, witnessed, or attested to in an
443 online notarization or who takes an oath or affirmation
444 administered by the online notary public.

445 (13) "Record" means information that is inscribed on a
446 tangible medium or that is stored in an electronic or other
447 medium and is retrievable in perceivable form, including public
448 records as defined in s. 119.011.

449 (14) "Remote Online Notarization service provider" or "RON
450 service provider" means a person that provides audio-video
451 communication technology and related processes, services,
452 software, data storage, or other services to online notaries
453 public for the purpose of directly facilitating their
454 performance of online notarizations in compliance with this
455 chapter and any rules adopted by the Department of State
456 pursuant to s. 117.295.

457 (15) "Remote presentation" means transmission of an image
458 of a government-issued identification credential that is of

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459 sufficient quality to enable the online notary public to
460 identify the individual seeking the notary's services and to
461 perform credential analysis through audio-video communication
462 technology.

463 Section 7. Section 117.209, Florida Statutes, is created
464 to read:

465 117.209 Authority to perform online notarizations.—

466 (1) An online notary public may perform any of the
467 functions authorized under part I of this chapter as an online
468 notarization by complying with the requirements of this part and
469 any rules adopted by the Department of State pursuant to s.
470 117.295, excluding solemnizing the rites of matrimony.

471 (2) If a notarial act requires a principal to appear
472 before or in the presence of the online notary public, the
473 principal may appear before the online notary public by means of
474 audio-video communication technology that meets the requirements
475 of this part and any rules adopted by the Department of State
476 pursuant to s. 117.295.

477 (3) An online notary public physically located in this
478 state may perform an online notarization as authorized under
479 this part, regardless of whether the principal or any witnesses
480 are physically located in this state at the time of the online
481 notarization. A commissioner of deeds registered as an online
482 notary public may perform an online notarization while
483 physically located within or outside the state in accordance

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484 with the territorial limits of its jurisdiction and other
485 limitations and requirements otherwise applicable to notarial
486 acts by commissioners of deeds.

487 (4) The validity of an online notarization performed by an
488 online notary public registered in this state shall be
489 determined by applicable laws of this state regardless of the
490 physical location of the principal or any witnesses at the time
491 of the notarial act.

492 Section 8. Section 117.215, Florida Statutes, is created
493 to read:

494 117.215 Relation to other laws.-

495 (1) If a provision of law requires a notary public or
496 other authorized official of this state to notarize a signature
497 or a statement, to take an acknowledgement of an instrument, or
498 to administer an oath or affirmation so that a document may be
499 sworn, affirmed, made under oath, or subject to penalty of
500 perjury, an online notarization performed in accordance with the
501 provisions of this part and any rules adopted hereunder
502 satisfies such requirement.

503 (2) If a provision of law requires a signature or an act
504 to be witnessed, compliance with the online electronic
505 witnessing standards prescribed in s. 117.285 and any rules
506 adopted thereunder satisfies that requirement.

507 Section 9. Section 117.225, Florida Statutes, is created
508 to read:

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509 117.225 Registration; qualifications.—A notary public, a
510 civil-law notary appointed under chapter 118, or a commissioner
511 of deeds appointed under part IV of chapter 721 may complete
512 registration as an online notary public with the Department of
513 State by:

514 (1) Holding a current commission as a notary public under
515 part I of this chapter, an appointment as a civil-law notary
516 under chapter 118, or an appointment as a commissioner of deeds
517 under part IV of chapter 721, and submitting a copy of such
518 commission or proof of such appointment with his or her
519 registration.

520 (2) Certifying that the notary public, civil-law notary,
521 or commissioner of deeds registering as an online notary public
522 has completed a classroom or online course covering the duties,
523 obligations, and technology requirements for serving as an
524 online notary public.

525 (3) Paying a notary public registration fee as required by
526 s. 113.01.

527 (4) Submitting a registration as an online notary public
528 to the Department of State, signed and sworn to by the
529 registrant.

530 (5) Identifying the RON service provider whose audio-video
531 communication technology and processes for credential analysis
532 and identity proofing technologies the registrant intends to use
533 for online notarizations, and confirming that such technology

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534 and processes satisfy the requirements of this chapter and any
535 rules adopted by the Department of State pursuant to s. 117.295.

536 (6) Providing evidence satisfactory to the Department of
537 State that the registrant has obtained a bond in the amount of
538 \$25,000, payable to any individual harmed as a result of a
539 breach of duty by the registrant acting in his or her official
540 capacity as an online notary public, conditioned for the due
541 discharge of the office, and on such terms as are specified in
542 rule by the Department of State as reasonably necessary to
543 protect the public. The bond shall be approved and filed with
544 the Department of State and executed by a surety company duly
545 authorized to transact business in this state. Compliance by an
546 online notary public with this requirement shall satisfy the
547 requirement of obtaining a bond under s. 117.01(7).

548 (7) Providing evidence satisfactory to the Department of
549 State that the registrant acting in his or her capacity as an
550 online notary public is covered by an errors and omissions
551 insurance policy from an insurer authorized to transact business
552 in this state, in the minimum amount of \$25,000 and on such
553 terms as are specified by rule by the Department of State as
554 reasonably necessary to protect the public.

555 Section 10. Section 117.235, Florida Statutes, is created
556 to read:

557 117.235 Performance of notarial acts.-

558 (1) An online notary public is subject to part I of this

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559 chapter to the same extent as a notary public appointed and
560 commissioned only under that part, including the provisions of
561 s. 117.021 relating to electronic notarizations.

562 (2) An online notary public may perform notarial acts as
563 provided by part I of this chapter in addition to performing
564 online notarizations as authorized and pursuant to the
565 provisions of this part.

566 Section 11. Section 117.245, Florida Statutes, is created
567 to read:

568 117.245 Electronic journal of online notarizations.-

569 (1) An online notary public shall keep one or more secure
570 electronic journals of online notarizations performed by the
571 online notary public. For each online notarization, the
572 electronic journal entry must contain all of the following:

573 (a) The date and time of the notarization.

574 (b) The type of notarial act.

575 (c) The type, the title, or a description of the
576 electronic record or proceeding.

577 (d) The name and address of each principal involved in the
578 transaction or proceeding.

579 (e) Evidence of identity of each principal involved in the
580 transaction or proceeding in any of the following forms:

581 1. A statement that the person is personally known to the
582 online notary public.

583 2. A notation of the type of government-issued

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584 identification credential provided to the online notary public.
585 (f) An indication that the principal satisfactorily passed
586 the identity proofing.
587 (g) An indication that the government-issued
588 identification credential satisfied the credential analysis.
589 (h) The fee, if any, charged for the notarization.
590 (2) The online notary public shall retain a copy of the
591 recording of the audio-video communication, which recording
592 shall be an uninterrupted and unedited recording of the notarial
593 act, in which the principal and any witness appeared before the
594 notary public.
595 (3) The online notary public shall take reasonable steps
596 to:
597 (a) Ensure the integrity, security, and authenticity of
598 online notarizations.
599 (b) Maintain a backup record of the electronic journal
600 required by subsection (1).
601 (c) Protect the electronic journal, the backup record, and
602 any other records received by the online notary public from
603 unauthorized access or use.
604 (4) The electronic journal required under subsection (1)
605 and the recordings of audio-video communications required under
606 subsection (2) shall be maintained for at least 10 years after
607 the date of the notarial act. However, a full copy of the audio-
608 video recording required under subsection (2) relating to an

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609 online notarization session that involves the signing of an
610 electronic will must be maintained by a qualified custodian in
611 accordance with chapters 731 and 732. The Department of State
612 maintains jurisdiction over the electronic journal and audio-
613 video communication recordings to investigate notarial
614 misconduct for a period of 10 years after the date of the
615 notarial act. The online notary public, a guardian of an
616 incapacitated online notary public, or the personal
617 representative of a deceased online notary public may, by
618 contract with a secure repository in accordance with any rules
619 established under this chapter, delegate to the repository the
620 online notary public's duty to retain the electronic journal and
621 the required recordings of audio-video communications, provided
622 that the Department of State is notified of such delegation of
623 retention duties to the repository within 30 days thereafter,
624 including the address and contact information for the
625 repository. If an online notary public delegates to a secure
626 repository under this section, the online notary public shall
627 make an entry in his or her journal identifying such repository,
628 and provide notice to the Department of State as required.

629 (5) An omitted or incomplete entry in the electronic
630 journal does not impair the validity of the notarial act or of
631 the electronic record which was notarized, but may be introduced
632 as evidence to establish violations of this chapter; as evidence
633 of possible fraud, forgery, impersonation, duress, incapacity,

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634 undue influence, minority, illegality, unconscionability; or for
635 other evidentiary purposes. However, if the audio-video
636 communication recording required under subsection (2) relating
637 to the online notarization of the execution of an electronic
638 will cannot be produced by the notary or the qualified
639 custodian, then the electronic will shall be treated as a lost
640 or destroyed will subject to s. 733.207.

641 Section 12. Section 117.255, Florida Statutes, is created
642 to read:

643 117.255 Use of electronic journal, signature, and seal.—An
644 online notary public shall:

645 (1) Take reasonable steps to ensure that any registered
646 device used to create an electronic seal is current and has not
647 been revoked or terminated by the issuing or registering
648 authority of the device.

649 (2) Keep the electronic journal and electronic seal secure
650 and under his or her sole control, which includes access
651 protection using passwords or codes under control of the online
652 notary public. The online notary public may not allow another
653 person to use the online notary public's electronic journal,
654 electronic signature, or electronic seal, other than a RON
655 service provider or other authorized person providing services
656 to an online notary public to facilitate performance of online
657 notarizations.

658 (3) Attach or logically associate the electronic signature

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659 and seal to the electronic notarial certificate of an electronic
660 record in a manner that is capable of independent verification
661 using tamper-evident technology that renders any subsequent
662 change or modification to the electronic record evident.

663 (4) Notify an appropriate law enforcement agency and the
664 Department of State of any unauthorized use of or compromise to
665 the security of the electronic journal, official electronic
666 signature, or electronic seal within 7 days after discovery of
667 such unauthorized use or compromise to security.

668 (5) Make electronic copies, upon request, of the pertinent
669 entries in the electronic journal and provide access to the
670 related audio-video communication recordings to the following
671 persons:

672 (a) The parties to an electronic record notarized by the
673 online notary public;

674 (b) A qualified custodian of an electronic will executed
675 in accordance with s. 731.201;

676 (c) The title agent, settlement agent, or title insurer
677 who insured the electronic record or engaged the online notary
678 public with regard to a real estate transaction;

679 (d) The online notary public's RON service provider whose
680 services were used by the online notary public to notarize the
681 electronic record;

682 (e) Any person who is asked to accept a power of attorney
683 that was notarized by the online notary public; and

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684 (f) The Department of State pursuant to a notary
685 misconduct investigation.

686 (6) The online notary public may charge a fee not to
687 exceed \$20 per transaction record for making and delivering
688 electronic copies of a given series of related electronic
689 records, except if requested by:

690 (a) A party to the electronic record;

691 (b) In a real estate transaction, the title agent,
692 settlement agent, or title insurer who insured the electronic
693 record or engaged the online notary public with regard to such
694 transaction; or

695 (c) The Department of State pursuant to an investigation
696 relating to the official misconduct of an online notary public.

697
698 If the online notary public does charge a fee, the online notary
699 public shall disclose the amount of such fee to the requester
700 before making the electronic copies.

701 Section 13. Section 117.265, Florida Statutes, is created
702 to read:

703 117.265 Online notarization procedures.—

704 (1) An online notary public physically located in this
705 state may perform an online notarization that meets the
706 requirements of this part regardless of whether the principal or
707 any witnesses are physically located in this state at the time
708 of the online notarization. A commissioner of deeds registered

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709 as an online notary public may perform an online notarization
710 while physically located within or outside of this state in
711 accordance with the territorial limits of its jurisdiction and
712 other limitations and requirements otherwise applicable to
713 notarial acts by commissioners of deeds. An online notarization
714 performed in accordance with this chapter is deemed to have been
715 performed within this state and is governed by the applicable
716 laws of this state.

717 (2) In performing an online notarization, an online notary
718 public shall confirm the identity of a principal and any witness
719 appearing online, at the time that the signature is taken, by
720 using audio-video communication technology and processes that
721 meet the requirements of this part and of any rules adopted
722 hereunder and record the two-way audio-video conference session
723 between the notary public and the principal and any witnesses. A
724 principal may not act in the capacity of a witness for his or
725 her own signature in an online notarization.

726 (3) In performing an online notarization of a principal
727 not located within this state, an online notary public must
728 confirm, either verbally or through the principal's written
729 consent, that the principal desires for the notarial act to be
730 performed by a Florida notary public and under the general law
731 of this state.

732 (4) An online notary public shall confirm the identity of
733 the principal or any witness by:

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734 (a) Personal knowledge of each such individual; or

735 (b) All of the following, as such criteria may be modified
736 or supplemented in rules adopted by the Department of State
737 pursuant to s. 117.295:

738 1. Remote presentation of a government-issued
739 identification credential by each individual.

740 2. Credential analysis of each government-issued
741 identification credential.

742 3. Identity proofing of each individual in the form of
743 knowledge-based authentication or another method of identity
744 proofing that conforms to the standards of this chapter.

745
746 If the online notary public is unable to satisfy subparagraphs
747 (b)1.-3., or if the databases consulted for identity proofing do
748 not contain sufficient information to permit authentication, the
749 online notary public may not perform the online notarization.

750 (5) An online notary public may change her or his RON
751 service provider or providers from time to time, but shall
752 notify the Department of State of such change within 30 days
753 thereafter.

754 (6) The online notary public or his or her RON service
755 provider shall take reasonable steps to ensure that the audio-
756 video communication technology used in an online notarization is
757 secure from unauthorized interception.

758 (7) The electronic notarial certificate for an online

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759 notarization must include a notation that the notarization is an
760 online notarization which may be satisfied by placing the term
761 "online notary" in or adjacent to the online notary public's
762 seal.

763 (8) Except where otherwise expressly provided in this
764 part, the provisions of part I of this chapter apply to an
765 online notarization and an online notary public.

766 (9) Any failure to comply with the online notarization
767 procedures set forth in this section does not impair the
768 validity of the notarial act or the electronic record that was
769 notarized, but may be introduced as evidence to establish
770 violations of this chapter or as an indication of possible
771 fraud, forgery, impersonation, duress, incapacity, undue
772 influence, minority, illegality, unconscionability, or for other
773 evidentiary purposes. This subsection may not be construed to
774 alter the duty of an online notary public to comply with this
775 chapter and any rules adopted hereunder.

776 Section 14. Section 117.275, Florida Statutes, is created
777 to read:

778 117.275 Fees for online notarization.—An online notary
779 public or the employer of such online notary public may charge a
780 fee, not to exceed \$25, for performing an online notarization
781 under this part. Fees for services other than notarial acts are
782 not governed by this section.

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783 Section 15. Section 117.285, Florida Statutes, is created
784 to read:

785 117.285 Supervising the witnessing of electronic records.-

786 An online notary public may supervise the witnessing of
787 electronic records by the same audio-video communication
788 technology used for online notarization, as follows:

789 (1) The identity of the witness must be verified in the
790 same manner as the identity of the principal.

791 (2) The witness may be in the physical presence of the
792 principal or remote from the principal provided the witness and
793 principal are using audio-video communication technology.

794 (3) The act of witnessing an electronic signature means
795 the witness is either in the physical presence of the principal
796 or present through audio-video communication technology at the
797 time the principal affixes the electronic signature and the
798 witness hears the principal make a statement to the effect that
799 the principal has signed the electronic record.

800 (4) The law of this state governs the validity of an act
801 of witnessing supervised by an online notary public pursuant to
802 this section, regardless of the physical location of the witness
803 at the time of witnessing.

804 Section 16. Effective upon becoming a law, section
805 117.295, Florida Statutes, is created to read:

806 117.295 Standards for electronic and online notarization;
807 rulemaking authority.-

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808 (1) For purposes of this part, the Department of State may
809 adopt rules necessary to implement the requirements of this
810 chapter and to set standards for online notarization which
811 include, but are not limited to:

812 (a) Improvements in technology and methods of assuring the
813 identity of principals and the security of an electronic record,
814 including tamper-evident technologies in compliance with the
815 standards adopted pursuant to s. 117.021 which apply to online
816 notarizations.

817 (b) Education requirements for online notaries public and
818 the required terms of bonds and errors and omissions insurance,
819 but not including the amounts of such bonds and insurance
820 policies.

821 (c) Identity proofing, credential analysis, unauthorized
822 interception, remote presentation, audio-video communication
823 technology, and retention of electronic journals and copies of
824 audio-video communications recordings in a secure repository.

825 (2) By January 1, 2020, the Department of State shall
826 adopt forms, processes, and interim or emergency rules necessary
827 to accept applications from and register online notaries public
828 pursuant to s. 117.225.

829 (3) Until such time as the Department of State adopts
830 rules setting standards that are equally or more protective, the
831 following minimum standards shall apply to any online

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832 notarization performed by an online notary public of this state
833 or her or his RON service provider:

834 (a) Use of identity proofing by means of knowledge-based
835 authentication which must have, at a minimum, the following
836 security characteristics:

837 1. The principal must be presented with five or more
838 questions with a minimum of five possible answer choices per
839 question.

840 2. Each question must be drawn from a third-party provider
841 of public and proprietary data sources and be identifiable to
842 the principal's social security number or other identification
843 information, or the principal's identity and historical events
844 records.

845 3. Responses to all questions must be made within a 2-
846 minute time constraint.

847 4. The principal must answer a minimum of 80 percent of
848 the questions correctly.

849 5. The principal may be offered one additional attempt in
850 the event of a failed attempt.

851 6. During the second attempt, the principal may not be
852 presented with more than three questions from the prior attempt.

853 (b) Use of credential analysis using one or more
854 commercially available automated software or hardware processes
855 that are consistent with sound commercial practices; that aid
856 the notary public in verifying the authenticity of the

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857 credential by analyzing the integrity of visual, physical, or
858 cryptographic security features to indicate that the credential
859 is not fraudulent or inappropriately modified; and that use
860 information held or published by the issuing source or
861 authoritative source, as available, to confirm the validity of
862 credential details. The output of the credential analysis
863 process must be provided to the online notary public performing
864 the notarial act.

865 (c) Use of audio-video communication technology in
866 completing online notarizations that must meet the following
867 requirements:

868 1. The signal transmission must be reasonably secure from
869 interception, access, or viewing by anyone other than the
870 participants communicating.

871 2. The technology must provide sufficient audio clarity
872 and video resolution to enable the notary to communicate with
873 the principal and any witness, and to confirm the identity of
874 the principal and any witness, as required, using the
875 identification methods described in s. 117.265.

876 (4) A RON service provider is deemed to have satisfied
877 tamper-evident technology requirements by use of technology that
878 renders any subsequent change or modification to the electronic
879 record evident.

880 (5) In addition to any coverage it elects to provide for
881 individual online notaries public, maintenance of errors and

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882 omissions insurance coverage by a RON service provider in a
883 total amount of at least \$250,000 in the annual aggregate with
884 respect to potential errors or omissions in or relating to the
885 technology or processes provided by the RON service provider. An
886 online notary public is not responsible for the security of the
887 systems used by the principal or others to access the online
888 notarization session.

889 (6) A 2-hour in-person or online course addressing the
890 duties, obligations, and technology requirements for serving as
891 an online notary public offered by the Florida Land Title
892 Association; the Real Property, Probate and Trust Law Section of
893 The Florida Bar, the Department of State; or a vendor approved
894 by the Department of State shall satisfy the education
895 requirements of s. 117.225(2). Each provider shall make the in-
896 person or online course generally available to all applicants,
897 regardless of membership in the provider's organization.

898 (7) The rulemaking required under this section is exempt
899 from s. 120.541(3).

900 Section 17. Section 117.305, Florida Statutes, is created
901 to read:

902 117.305 Relation to federal law.—This part supersedes the
903 Electronic Signatures in Global and National Commerce Act as
904 authorized under 15 U.S.C. s. 7001 et seq., but does not modify,
905 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),

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906 or authorize the electronic delivery of the notices described in
907 15 U.S.C. s. 7003(b).

908 Section 18. Present paragraph (h) of subsection (3) of
909 section 28.222, Florida Statutes, is redesignated as paragraph
910 (i), and a new paragraph (h) is added to that subsection to
911 read:

912 28.222 Clerk to be county recorder.—

913 (3) The clerk of the circuit court shall record the
914 following kinds of instruments presented to him or her for
915 recording, upon payment of the service charges prescribed by
916 law:

917 (h) Copies of any instruments originally created and
918 executed using an electronic signature, as defined in s. 695.27,
919 and certified to be a true and correct paper printout by a
920 notary public in accordance with chapter 117, if the county
921 recorder is not prepared to accept electronic documents for
922 recording electronically.

923 Section 19. Subsection (25) is added to section 90.803,
924 Florida Statutes, to read:

925 90.803 Hearsay exceptions; availability of declarant
926 immaterial.—The provision of s. 90.802 to the contrary
927 notwithstanding, the following are not inadmissible as evidence,
928 even though the declarant is available as a witness:

929 (25) ELECTRONIC RECORDS OF QUALIFIED CUSTODIANS.—The
930 electronic records, including, but not limited to, electronic

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931 wills and the audio-video recordings of the execution of such
932 wills, which are created and stored by a qualified custodian in
933 the course of the qualified custodian's regularly conducted
934 business activity as certified or declared by the qualified
935 custodian in accordance with s. 90.902(11).

936 Section 20. Subsections (1) and (2) of section 92.50,
937 Florida Statutes, are amended to read:

938 92.50 Oaths, affidavits, and acknowledgments; who may take
939 or administer; requirements.—

940 (1) IN THIS STATE.—Oaths, affidavits, and acknowledgments
941 required or authorized under the laws of this state (except
942 oaths to jurors and witnesses in court and such other oaths,
943 affidavits and acknowledgments as are required by law to be
944 taken or administered by or before particular officers) may be
945 taken or administered by or before any judge, clerk, or deputy
946 clerk of any court of record within this state, including
947 federal courts, or by or before any United States commissioner
948 or any notary public within this state. The jurat, or
949 certificate of proof or acknowledgment, shall be authenticated
950 by the signature and official seal of such officer or person
951 taking or administering the same; however, when taken or
952 administered by or before any judge, clerk, or deputy clerk of a
953 court of record, the seal of such court may be affixed as the
954 seal of such officer or person.

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955 (2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE
956 UNITED STATES.—Oaths, affidavits, and acknowledgments required
957 or authorized under the laws of this state, may be taken or
958 administered in any other state, territory, or district of the
959 United States, by or before any judge, clerk or deputy clerk of
960 any court of record, within such state, territory, or district,
961 having a seal, or by or before any notary public or justice of
962 the peace, having a seal, in such state, territory, or district;
963 provided, however, such officer or person is authorized under
964 the laws of such state, territory, or district to take or
965 administer oaths, affidavits and acknowledgments. The jurat, or
966 certificate of proof or acknowledgment, shall be authenticated
967 by the signature and official seal of such officer or person
968 taking or administering the same; provided, however, when taken
969 or administered by or before any judge, clerk, or deputy clerk
970 of a court of record, the seal of such court may be affixed as
971 the seal of such officer or person.

972 Section 21. Subsection (1) of section 95.231, Florida
973 Statutes, is amended to read:

974 95.231 Limitations where deed or will on record.—

975 (1) Five years after the recording of an instrument
976 required to be executed in accordance with s. 689.01; 5 years
977 after the recording of a power of attorney accompanying and used
978 for an instrument required to be executed in accordance with s.
979 689.01; or 5 years after the probate of a will purporting to

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980 convey real property, from which it appears that the person
981 owning the property attempted to convey, affect, or devise it,
982 the instrument, power of attorney, or will shall be held to have
983 its purported effect to convey, affect, or devise, the title to
984 the real property of the person signing the instrument, as if
985 there had been no lack of seal or seals, witness or witnesses,
986 defect in, failure of, or absence of acknowledgment or
987 relinquishment of dower, in the absence of fraud, adverse
988 possession, or pending litigation. The instrument is admissible
989 in evidence. A power of attorney validated under this subsection
990 shall be valid only for the purpose of effectuating the
991 instrument with which it was recorded.

992 Section 22. Section 689.01, Florida Statutes, is amended
993 to read:

994 689.01 How real estate conveyed.—

995 (1) No estate or interest of freehold, or for a term of
996 more than 1 year, or any uncertain interest of, in or out of any
997 messuages, lands, tenements or hereditaments shall be created,
998 made, granted, transferred or released in any other manner than
999 by instrument in writing, signed in the presence of two
1000 subscribing witnesses by the party creating, making, granting,
1001 conveying, transferring or releasing such estate, interest, or
1002 term of more than 1 year, or by the party's lawfully authorized
1003 agent, unless by will and testament, or other testamentary
1004 appointment, duly made according to law; and no estate or

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1005 interest, either of freehold, or of term of more than 1 year, or
1006 any uncertain interest of, in, to, or out of any messuages,
1007 lands, tenements or hereditaments, shall be assigned or
1008 surrendered unless it be by instrument signed in the presence of
1009 two subscribing witnesses by the party so assigning or
1010 surrendering, or by the party's lawfully authorized agent, or by
1011 the act and operation of law. No seal shall be necessary to give
1012 validity to any instrument executed in conformity with this
1013 section. Corporations may execute any and all conveyances in
1014 accordance with the provisions of this section or ss. 692.01 and
1015 692.02.

1016 (2) For purposes of this chapter:

1017 (a) Any requirement that an instrument be signed in the
1018 presence of two subscribing witnesses may be satisfied by
1019 witnesses being present and electronically signing by means of
1020 audio-video communication technology, as defined in s. 117.201.

1021 (b) The act of witnessing an electronic signature is
1022 satisfied if a witness is in the physical presence of the
1023 principal or present through audio-video communication
1024 technology at the time the principal affixes his or her
1025 electronic signature and the witness hears the principal make a
1026 statement acknowledging that the principal has signed the
1027 electronic record.

1028 (c) Terms defined in s. 117.201 have the same meanings when
1029 used in this subsection.

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1030 (3) All acts of witnessing made or taken in the manner
1031 described in subsection (2) are validated and, upon recording,
1032 may not be denied to have provided constructive notice based on
1033 any alleged failure to have strictly complied with this section
1034 or the laws governing notarization of instruments, including
1035 online notarization. This subsection does not preclude a
1036 challenge to the validity or enforceability of an instrument or
1037 electronic record based upon fraud, forgery, impersonation,
1038 duress, incapacity, undue influence, minority, illegality,
1039 unconscionability, or any other basis not related to the act of
1040 witnessing.

1041 Section 23. Section 694.08, Florida Statutes, is amended
1042 to read:

1043 694.08 Certain instruments validated, notwithstanding lack
1044 of seals or witnesses, or defect in acknowledgment,~~ete.-~~

1045 (1) Whenever any power of attorney has been executed and
1046 delivered, or any conveyance has been executed and delivered to
1047 any grantee by the person owning the land therein described, or
1048 conveying the same in an official or representative capacity,
1049 and has, for a period of 7 years or more been spread upon the
1050 records of the county wherein the land therein described has
1051 been or was at the time situated, and one or more subsequent
1052 conveyances of said land or parts thereof have been made,
1053 executed, delivered and recorded by parties claiming under such
1054 instrument or instruments, and such power of attorney or

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1055 conveyance, or the public record thereof, shows upon its face a
1056 clear purpose and intent of the person executing the same to
1057 authorize the conveyance of said land or to convey the said
1058 land, the same shall be taken and held by all the courts of this
1059 state, in the absence of any showing of fraud, adverse
1060 possession, or pending litigation, to have authorized the
1061 conveyance of, or to have conveyed, the fee simple title, or any
1062 interest therein, of the person signing such instruments, or the
1063 person in behalf of whom the same was conveyed by a person in an
1064 official or representative capacity, to the land therein
1065 described as effectively as if there had been no defect in,
1066 failure of, or absence of the acknowledgment or the certificate
1067 of acknowledgment, if acknowledged, or the relinquishment of
1068 dower, and as if there had been no lack of the word "as"
1069 preceding the title of the person conveying in an official or
1070 representative capacity, of any seal or seals, or of any witness
1071 or witnesses, and shall likewise be taken and held by all the
1072 courts of this state to have been duly recorded so as to be
1073 admissible in evidence;

1074 (2) Provided, however, that this section shall not apply
1075 to any conveyance the validity of which shall be contested or
1076 have been contested by suit commenced heretofore or within 1
1077 year of the effective date of this law.

1078 Section 24. Section 695.03, Florida Statutes, is amended
1079 to read:

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1080 695.03 Acknowledgment and proof; validation of certain
1081 acknowledgments; legalization or authentication before foreign
1082 officials.—To entitle any instrument concerning real property to
1083 be recorded, the execution must be acknowledged by the party
1084 executing it, proved by a subscribing witness to it, or
1085 legalized or authenticated in one of the following forms ~~by a~~
1086 ~~civil-law notary or notary public who affixes her or his~~
1087 ~~official seal, before the officers and in the form and manner~~
1088 ~~following:~~

1089 (1) WITHIN THIS STATE.—An acknowledgment or a proof may be
1090 taken, administered, or made within this state by or ~~may be made~~
1091 before a judge, clerk, or deputy clerk of any court; a United
1092 States commissioner or magistrate; or any ~~a~~ notary public or
1093 civil-law notary of this state, and the certificate of
1094 acknowledgment or proof must be under the seal of the court or
1095 officer, as the case may be. ~~All affidavits and acknowledgments~~
1096 ~~heretofore made or taken in this manner are hereby validated.~~

1097 (2) OUTSIDE ~~WITHOUT~~ THIS STATE BUT WITHIN THE UNITED
1098 STATES.—An acknowledgment or a proof taken, administered, or
1099 made outside ~~out~~ of this state but within the United States may
1100 be taken, administered, or made by or before a civil-law notary
1101 of this state or a commissioner of deeds appointed by the
1102 Governor of this state; a judge or clerk of any court of the
1103 United States or of any state, territory, or district; by or
1104 before a United States commissioner or magistrate; or by or

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1105 before any a notary public, justice of the peace, master in
1106 chancery, or registrar or recorder of deeds of any state,
1107 territory, or district having a seal, and the certificate of
1108 acknowledgment or proof must be under the seal of the court or
1109 officer, as the case may be. If the acknowledgment or proof is
1110 taken, administered, or made by or before a notary public who
1111 does not affix a seal, it is sufficient for the notary public to
1112 type, print, or write by hand on the instrument, "I am a Notary
1113 Public of the State of ...(state)..., and my commission expires
1114 on ...(date)...."

1115 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN
1116 COUNTRIES. ~~An If the~~ acknowledgment, an affidavit, an oath, a
1117 legalization, an authentication, or a proof taken, administered,
1118 or made outside the United States or is made in a foreign
1119 country, ~~it~~ may be taken, administered, or made by or before a
1120 commissioner of deeds appointed by the Governor of this state to
1121 act in such country; before a notary public of such foreign
1122 country or a civil-law notary of this state or of such foreign
1123 country who has an official seal; before an ambassador, envoy
1124 extraordinary, minister plenipotentiary, minister, commissioner,
1125 charge d'affaires, consul general, consul, vice consul, consular
1126 agent, or other diplomatic or consular officer of the United
1127 States appointed to reside in such country; or before a military
1128 or naval officer authorized by 10 U.S.C. s. 1044a ~~the Laws or~~
1129 ~~Articles of War of the United States~~ to perform the duties of

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1130 notary public, and the certificate of acknowledgment,
1131 legalization, authentication, or proof must be under the seal of
1132 the officer. A certificate legalizing or authenticating the
1133 signature of a person executing an instrument concerning real
1134 property and to which a civil-law notary or notary public of
1135 that country has affixed her or his official seal is sufficient
1136 as an acknowledgment. For the purposes of this section, the term
1137 "civil-law notary" means a civil-law notary as defined in
1138 chapter 118 or an official of a foreign country who has an
1139 official seal and who is authorized to make legal or lawful the
1140 execution of any document in that jurisdiction, in which
1141 jurisdiction the affixing of her or his official seal is deemed
1142 proof of the execution of the document or deed in full
1143 compliance with the laws of that jurisdiction.

1144 (4) COMPLIANCE AND VALIDATION.—The affixing of the
1145 official seal or the electronic equivalent thereof under s.
1146 117.021 or other applicable law, including part II of chapter
1147 117, conclusively establishes that the acknowledgement or proof
1148 was taken, administered, or made in full compliance with the
1149 laws of this state or, as applicable, the laws of the other
1150 state, or of the foreign country governing notarial acts. All
1151 affidavits, oaths, acknowledgments, legalizations,
1152 authentications, or proofs taken, administered, or made in any
1153 manner as set forth in subsections (1), (2), and (3) are
1154 validated and upon recording may not be denied to have provided

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1155 constructive notice based on any alleged failure to have
1156 strictly complied with this section, as currently or previously
1157 in effect, or the laws governing notarization of instruments.
1158 This subsection does not preclude a challenge to the validity or
1159 enforceability of an instrument or electronic record based upon
1160 fraud, forgery, impersonation, duress, incapacity, undue
1161 influence, minority, illegality, unconscionability, or any other
1162 basis not related to the notarial act or constructive notice
1163 provided by recording.

1164
1165 ~~All affidavits, legalizations, authentications, and~~
1166 ~~acknowledgments heretofore made or taken in the manner set forth~~
1167 ~~above are hereby validated.~~

1168 Section 25. Section 695.04, Florida Statutes, is amended
1169 to read:

1170 695.04 Requirements of certificate.—The certificate of the
1171 officer before whom the acknowledgment or proof is taken, except
1172 for a certificate legalizing or authenticating the signature of
1173 a person executing an instrument concerning real property
1174 pursuant to s. 695.03(3), shall contain and set forth
1175 substantially the matter required to be done or proved to make
1176 such acknowledgment or proof effectual as set forth in s.
1177 117.05.

1178 Section 26. Section 695.25, Florida Statutes, is amended
1179 to read:

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1205 or agent)... of ...(name of corporation acknowledging)..., a
1206 ...(state or place of incorporation)... corporation, on behalf
1207 of the corporation. He/she is personally known to me or has
1208 produced ...(type of identification)... as identification.

1209 ... (Signature of person taking acknowledgment)...

1210 ... (Name typed, printed or stamped)...

1211 ... (Title or rank)...

1212 ... (Serial number, if any)...

1213 (3) For a limited liability company:

1214 STATE OF

1215 COUNTY OF

1216 The foregoing instrument was acknowledged before me by
1217 means of [] physical presence or [] online notarization, this
1218 ...(date)... by ...(name of member, manager, officer or agent,
1219 title of member, manager, officer or agent)...., of ...(name of
1220 company acknowledging)...., a ...(state or place of formation)...
1221 limited liability company, on behalf of the company, who is
1222 personally known to me or has produced ...(type of
1223 identification).... as identification.

1224

1225 ... (Signature of person taking acknowledgment)...

1226 ... (Name typed, printed or stamped)...

1227 ... (Title or rank)...

1228 ... (Serial number, if any)...

1229 (4)~~(3)~~ For a partnership:

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1230 STATE OF

1231 COUNTY OF

1232 The foregoing instrument was acknowledged before me by
1233 means of [] physical presence or [] online notarization, this
1234 ... (date) ... by ... (name of acknowledging partner or agent) ...,
1235 partner (or agent) on behalf of ... (name of partnership) ..., a
1236 partnership. He/she is personally known to me or has produced
1237 ... (type of identification) ... as identification.

1238 ... (Signature of person taking acknowledgment) ...

1239 ... (Name typed, printed or stamped) ...

1240 ... (Title or rank) ...

1241 ... (Serial number, if any) ...

1242 (5)~~(4)~~ For an individual acting as principal by an
1243 attorney in fact:

1244 STATE OF

1245 COUNTY OF

1246 The foregoing instrument was acknowledged before me by
1247 means of [] physical presence or [] online notarization, this
1248 ... (date) ... by ... (name of attorney in fact) ... as attorney in
1249 fact, who is personally known to me or who has produced ... (type
1250 of identification) ... as identification on behalf of ... (name of
1251 principal)

1252 ... (Signature of person taking acknowledgment) ...

1253 ... (Name typed, printed or stamped) ...

1254 ... (Title or rank) ...

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1255 | ... (Serial number, if any)...

1256 | ~~(6)~~(5) By any public officer, trustee, or personal
1257 | representative:

1258 | STATE OF

1259 | COUNTY OF

1260 | The foregoing instrument was acknowledged before me by
1261 | means of [] physical presence or [] online notarization, this
1262 | ... (date) ... by ... (name and title of position) ..., who is
1263 | personally known to me or who has produced ... (type of
1264 | identification) ... as identification.

1265 | ... (Signature of person taking acknowledgment)...

1266 | ... (Name typed, printed or stamped)...

1267 | ... (Title or rank)...

1268 | ... (Serial number, if any)....

1269 | Section 27. Section 695.28, Florida Statutes, is amended
1270 | to read:

1271 | 695.28 Validity of recorded electronic documents.—

1272 | (1) A document that is otherwise entitled to be recorded
1273 | and that was or is submitted to the clerk of the court or county
1274 | recorder by electronic or other means and accepted for
1275 | recordation is deemed validly recorded and provides notice to
1276 | all persons notwithstanding:

1277 | (a) That the document was received and accepted for
1278 | recordation before the Department of State adopted standards
1279 | implementing s. 695.27; ~~or~~

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1280 (b) Any defects in, deviations from, or the inability to
1281 demonstrate strict compliance with any statute, rule, or
1282 procedure relating to electronic signatures, electronic
1283 witnesses, electronic notarization, or online notarization, or
1284 for submitting or recording to submit or record an electronic
1285 document in effect at the time the electronic document was
1286 executed or was submitted for recording;

1287 (c) That the document was signed, witnessed, or notarized
1288 electronically, and that the document was notarized by an online
1289 notary public outside the physical presence of the signer
1290 through audio-video communication technology, as defined in s.
1291 117.201, or that witnessing may have been done outside the
1292 physical presence of the notary public or principal through such
1293 audio-visual communication; or

1294 (d) That the document recorded was a certified printout of
1295 a document to which one or more electronic signatures have been
1296 affixed.

1297 (2) This section does not alter the duty of the clerk or
1298 recorder to comply with s. 28.222, s. 695.27, or any rules
1299 adopted pursuant to those sections ~~that section~~.

1300 (3) This section does not preclude a challenge to the
1301 validity or enforceability of an instrument or electronic record
1302 based upon fraud, forgery, impersonation, duress, incapacity,
1303 undue influence, minority, illegality, unconscionability, or any

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1304 other basis not in the nature of those matters described in
1305 subsection (1).

1306 Section 28. Subsections (3) and (4) of section 709.2119,
1307 Florida Statutes, are amended to read:

1308 709.2119 Acceptance of and reliance upon power of
1309 attorney.—

1310 (3) A third person who is asked to accept a power of
1311 attorney that appears to be executed in accordance with s.
1312 709.2105 may in good faith request, and rely upon, without
1313 further investigation:

1314 (a) A certified English translation of the power of
1315 attorney if the power of attorney contains, in whole or in part,
1316 language other than English;

1317 (b) An opinion of counsel as to any matter of law
1318 concerning the power of attorney if the third person making the
1319 request provides in a writing or other record the reason for the
1320 request; ~~or~~

1321 (c) The affidavit described in subsection (2); or

1322 (d) The electronic journal or record made by the notary
1323 public pursuant to the laws of the state in which the notary
1324 public is appointed if the power of attorney is witnessed or
1325 notarized remotely through the use of online witnesses or
1326 notarization.

1327 (4) An English translation, ~~or~~ an opinion of counsel, or
1328 an electronic journal or record requested under this section

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1329 must be provided at the principal's expense unless the request
1330 is made after the time specified in s. 709.2120(1) for
1331 acceptance or rejection of the power of attorney.

1332 Section 29. Subsection (4) of section 709.2120, Florida
1333 Statutes, is amended to read:

1334 709.2120 Rejecting power of attorney.—

1335 (4) A third person is not required to accept a power of
1336 attorney if:

1337 (a) The third person is not otherwise required to engage
1338 in a transaction with the principal in the same circumstances;

1339 (b) The third person has knowledge of the termination or
1340 suspension of the agent's authority or of the power of attorney
1341 before exercising the power;

1342 (c) A timely request by the third person for an affidavit,
1343 English translation, ~~or~~ opinion of counsel, or electronic
1344 journal or record under s. 709.2119 ~~s. 709.2119(4)~~ is refused by
1345 the agent;

1346 (d) The power of attorney is witnessed or notarized
1347 remotely through the use of online witnesses or notarization,
1348 and either the agent is unable to produce the electronic journal
1349 or record, or the notary public did not maintain an electronic
1350 journal or record of the notarization;

1351 (e) ~~(d)~~ Except as provided in paragraph (b), the third
1352 person believes in good faith that the power is not valid or
1353 that the agent does not have authority to perform the act

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1354 requested; or

1355 (f)~~(e)~~ The third person makes, or has knowledge that
1356 another person has made, a report to the local adult protective
1357 services office stating a good faith belief that the principal
1358 may be subject to physical or financial abuse, neglect,
1359 exploitation, or abandonment by the agent or a person acting for
1360 or with the agent.

1361 Section 30. Subsection (6) of section 709.2202, Florida
1362 Statutes, is renumbered as subsection (7), and a new subsection
1363 (6) is added to that section to read:

1364 709.2202 Authority that requires separate signed
1365 enumeration.—

1366 (6) Notwithstanding subsection (1) and s. 709.2106(3), a
1367 power of attorney, executed by a principal domiciled in this
1368 state at the time of execution, that is witnessed remotely
1369 pursuant to s. 117.285 or other applicable law by a witness who
1370 is not in the physical presence of the principal is not
1371 effective to grant authority to an agent to take any of the
1372 actions enumerated in subsection (1).

1373 Section 31. Subsection (40) of section 731.201, Florida
1374 Statutes, is amended to read:

1375 731.201 General definitions.—Subject to additional
1376 definitions in subsequent chapters that are applicable to
1377 specific chapters or parts, and unless the context otherwise
1378 requires, in this code, in s. 409.9101, and in chapters 736,

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1379 738, 739, and 744, the term:

1380 (40) "Will" means an instrument, including a codicil,
1381 executed by a person in the manner prescribed by this code,
1382 which disposes of the person's property on or after his or her
1383 death and includes an instrument which merely appoints a
1384 personal representative or revokes or revises another will. The
1385 term includes an electronic will as defined in s. 732.521.

1386 Section 32. Section 732.506, Florida Statutes, is amended
1387 to read:

1388 732.506 Revocation by act.—A will or codicil, other than
1389 an electronic will, is revoked by the testator, or some other
1390 person in the testator's presence and at the testator's
1391 direction, by burning, tearing, canceling, defacing,
1392 obliterating, or destroying it with the intent, and for the
1393 purpose, of revocation. An electronic will or codicil is revoked
1394 by the testator, or some other person in the testator's presence
1395 and at the testator's direction, by deleting, canceling,
1396 rendering unreadable, or obliterating the electronic will or
1397 codicil, with the intent, and for the purpose, of revocation, as
1398 proved by clear and convincing evidence.

1399 Section 33. Section 732.521, Florida Statutes, is created
1400 to read:

1401 732.521 Definitions.—As used in ss. 732.521-732.525, the
1402 term:

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1403 (1) "Audio-video communication technology" has the same
1404 meaning as provided in s. 117.201.

1405 (2) "Electronic record" has the same meaning as provided
1406 in s. 668.50.

1407 (3) "Electronic signature" means an electronic mark
1408 visibly manifested in a record as a signature and executed or
1409 adopted by a person with the intent to sign the record.

1410 (4) "Electronic will" means an instrument, including a
1411 codicil, executed with an electronic signature by a person in
1412 the manner prescribed by this code, which disposes of the
1413 person's property on or after his or her death and includes an
1414 instrument which merely appoints a personal representative or
1415 revokes or revises another will.

1416 (5) "Online notarization" has the same meaning as provided
1417 in s. 117.201.

1418 (6) "Online notary public" has the same meaning as
1419 provided in s. 117.201.

1420 (7) "Qualified custodian" means a person who meets the
1421 requirements of s. 732.525(1).

1422 (8) "Secure system" means a system that satisfies the
1423 requirements of a secure repository qualified to retain
1424 electronic journals of online notaries public in accordance with
1425 s. 117.245 and any rules established under part II of chapter
1426 117.

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1427 Section 34. Effective July 1, 2020, section 732.522,
1428 Florida Statutes, is created to read:

1429 732.522 Method and place of execution.—For purposes of the
1430 execution or filing of an electronic will, the acknowledgment of
1431 an electronic will by the testator and the affidavits of
1432 witnesses under s. 732.503, or any other instrument under the
1433 Florida Probate Code:

1434 (1) Any requirement that an instrument be signed may be
1435 satisfied by an electronic signature.

1436 (2) Any requirement that individuals sign an instrument in
1437 the presence of one another may be satisfied by witnesses being
1438 present and electronically signing by means of audio-video
1439 communication technology that meets the requirements of part II
1440 of chapter 117 and any rules adopted thereunder, if:

1441 (a) The individuals are supervised by a notary public in
1442 accordance with s. 117.285;

1443 (b) The individuals are authenticated and signing as part
1444 of an online notarization session in accordance with s. 117.265;

1445 (c) The witness hears the signer make a statement
1446 acknowledging that the signer has signed the electronic record;
1447 and

1448 (d) In the case of an electronic will, the testator
1449 provides, to the satisfaction of the online notary public during
1450 the online notarization, verbal answers to all of the following
1451 questions:

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- 1452 1. Are you 18 years of age or older?
- 1453 2. Are you of sound mind?
- 1454 3. Are you signing this will voluntarily?
- 1455 4. Are you under the influence of any drugs or alcohol
1456 that impairs your ability to make decisions?
- 1457 5. Has anyone forced or influenced you to include anything
1458 in this will which you do not wish to include?
- 1459 6. Did anyone assist you in accessing this video
1460 conference? If so, who?
- 1461 7. Where are you? Name everyone you know in the room with
1462 you.
- 1463 (3) The execution of an electronic will of a testator who
1464 is a vulnerable adult, as defined in s. 415.102, may not be
1465 witnessed by means of audio-video communication technology. The
1466 contestant of the electronic will has the burden of proving that
1467 the testator was a vulnerable adult at the time of executing the
1468 electronic will.
- 1469 (4) Except as otherwise provided in this part, all
1470 questions as to the force, effect, validity, and interpretation
1471 of an electronic will which comply with this section must be
1472 determined in the same manner as in the case of a will executed
1473 in accordance with s. 732.502.
- 1474 (5) An instrument that is signed electronically is deemed
1475 to be executed in this state if the instrument states that the
1476 person creating the instrument intends to execute and

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1477 understands that he or she is executing the instrument in, and
1478 pursuant to the laws of, this state.

1479 Section 35. Section 732.523, Florida Statutes, is created
1480 to read:

1481 732.523 Self-proof of electronic will.—An electronic will
1482 is self-proved if:

1483 (1) The acknowledgment of the electronic will by the
1484 testator and the affidavits of the witnesses are made in
1485 accordance with s. 732.503 and are part of the electronic record
1486 containing the electronic will, or are attached to, or are
1487 logically associated with, the electronic will;

1488 (2) The electronic will designates a qualified custodian;

1489 (3) The electronic record that contains the electronic
1490 will is held in the custody of a qualified custodian at all
1491 times before being offered to the court for probate; and

1492 (4) The qualified custodian who has custody of the
1493 electronic will at the time of the testator's death certifies
1494 under oath that, to the best knowledge of the qualified
1495 custodian, the electronic record that contains the electronic
1496 will was at all times before being offered to the court in the
1497 custody of a qualified custodian in compliance with s. 732.524
1498 and that the electronic will has not been altered in any way
1499 since the date of its execution.

1500 Section 36. Section 732.524, Florida Statutes, is created
1501 to read:

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1502 732.524 Qualified custodians.—

1503 (1) To serve as a qualified custodian of an electronic
1504 will, a person must:

1505 (a) Be domiciled in and a resident of this state or be
1506 incorporated or organized in this state;

1507 (b) In the course of maintaining custody of electronic
1508 wills, regularly employ a secure system and store in such secure
1509 system electronic records containing:

1510 1. Electronic wills;

1511 2. Records attached to or logically associated with
1512 electronic wills; and

1513 3. Acknowledgements of the electronic wills by testators,
1514 affidavits of the witnesses, and the records described in s.
1515 117.245(1) and (2) which pertain to the online notarization; and

1516 (c) Furnish for any court hearing involving an electronic
1517 will that is currently or was previously stored by the qualified
1518 custodian any information requested by the court pertaining to
1519 the qualified custodian's qualifications, policies, and
1520 practices related to the creation, sending, communication,
1521 receipt, maintenance, storage, and production of electronic
1522 wills.

1523 (2) The qualified custodian of an electronic will shall
1524 provide access to or information concerning the electronic will,
1525 or the electronic record containing the electronic will, only:

1526 (a) To the testator;

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1527 (b) To persons authorized by the testator in the
1528 electronic will or in written instructions signed by the
1529 testator with the formalities required for the execution of a
1530 will in this state;

1531 (c) After the death of the testator, to the testator's
1532 nominated personal representative; or

1533 (d) At any time, as directed by a court of competent
1534 jurisdiction.

1535 (3) The qualified custodian of the electronic record of an
1536 electronic will may elect to destroy such record, including any
1537 of the documentation required to be created and stored under
1538 paragraph (1)(d), at any time after the earlier of the fifth
1539 anniversary of the conclusion of the administration of the
1540 estate of the testator or 20 years after the death of the
1541 testator.

1542 (4) A qualified custodian who at any time maintains
1543 custody of the electronic record of an electronic will may elect
1544 to cease serving in such capacity by:

1545 (a) Delivering the electronic will or the electronic
1546 record containing the electronic will to the testator, if then
1547 living, or, after the death of the testator, by filing the will
1548 with the court in accordance with s. 732.901; and

1549 (b) If the outgoing qualified custodian intends to
1550 designate a successor qualified custodian, by doing the
1551 following:

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1552 1. Providing written notice to the testator of the name,
1553 address, and qualifications of the proposed successor qualified
1554 custodian. The testator must provide written consent before the
1555 electronic record, including the electronic will, is delivered
1556 to a successor qualified custodian;

1557 2. Delivering the electronic record containing the
1558 electronic will to the successor qualified custodian; and

1559 3. Delivering to the successor qualified custodian an
1560 affidavit of the outgoing qualified custodian stating that:

1561 a. The outgoing qualified custodian is eligible to act as
1562 a qualified custodian in this state;

1563 b. The outgoing qualified custodian is the qualified
1564 custodian designated by the testator in the electronic will or
1565 appointed to act in such capacity under this paragraph;

1566 c. The electronic will has at all times been in the
1567 custody of one or more qualified custodians in compliance with
1568 this section since the time the electronic record was created,
1569 and identifying such qualified custodians; and

1570 d. To the best of the outgoing qualified custodian's
1571 knowledge, the electronic will has not been altered since the
1572 time it was created.

1573
1574 For purposes of making this affidavit, the outgoing qualified
1575 custodian may rely conclusively on any affidavits delivered by a
1576 predecessor qualified custodian in connection with its

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1577 designation or appointment as qualified custodian; however, all
1578 such affidavits must be delivered to the successor qualified
1579 custodian.

1580 (5) Upon the request of the testator which is made in a
1581 writing signed with the formalities required for the execution
1582 of a will in this state, a qualified custodian who at any time
1583 maintains custody of the electronic record of the testator's
1584 electronic will must cease serving in such capacity and must
1585 deliver to a successor qualified custodian designated in writing
1586 by the testator the electronic record containing the electronic
1587 will and the affidavit required in subparagraph (4) (b) 3.

1588 (6) A qualified custodian may not succeed to office as a
1589 qualified custodian of an electronic will unless he or she
1590 agrees in writing to serve in such capacity.

1591 (7) If a qualified custodian is an entity, an affidavit,
1592 or an appearance by the testator in the presence of a duly
1593 authorized officer or agent of such entity, acting in his or her
1594 own capacity as such, shall constitute an affidavit, or an
1595 appearance by the testator in the presence of the qualified
1596 custodian.

1597 (8) A qualified custodian must provide a paper copy of an
1598 electronic will and the electronic record containing the
1599 electronic will to the testator immediately upon request. For
1600 the first request, the testator may not be charged a fee for
1601 being provided with these documents.

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1602 (9) The qualified custodian shall be liable for any
1603 damages caused by the negligent loss or destruction of the
1604 electronic record, including the electronic will, while it is in
1605 the possession of the qualified custodian. A qualified custodian
1606 may not limit liability for such damages.

1607 (10) A qualified custodian may not terminate or suspend
1608 access to, or downloads of, the electronic will by the testator,
1609 provided that a qualified custodian may charge a fee for
1610 providing such access and downloads.

1611 (11) Upon receiving information that the testator is dead,
1612 a qualified custodian must deposit the electronic will with the
1613 court in accordance with s. 732.901. A qualified custodian may
1614 not charge a fee for depositing the electronic will with the
1615 clerk, providing the affidavit is made in accordance with s.
1616 732.503, or furnishing in writing any information requested by a
1617 court under paragraph (1) (d).

1618 (12) Except as provided in this act, a qualified custodian
1619 must at all times keep information provided by the testator
1620 confidential and may not disclose such information to any third
1621 party.

1622 (13) A contractual venue provision between a qualified
1623 custodian and a testator is not valid or enforceable to the
1624 extent that it requires a specific jurisdiction or venue for any
1625 proceeding relating to the probate of an estate or the contest
1626 of a will.

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1627 Section 37. Section 732.525, Florida Statutes, is created
1628 to read:

1629 732.525 Liability coverage; receivership of qualified
1630 custodians.-

1631 (1) A qualified custodian shall:

1632 (a) Post and maintain a blanket surety bond of at least
1633 \$250,000 to secure the faithful performance of all duties and
1634 obligations required under this part. The bond must be made
1635 payable to the Governor and his or her successors in office for
1636 the benefit of all persons who store electronic records with a
1637 qualified custodian and their estates, beneficiaries,
1638 successors, and heirs, and be conditioned on the faithful
1639 performance of all duties and obligations under this chapter.
1640 The terms of the bond must cover the acts or omissions of the
1641 qualified custodian and each agent or employee of the qualified
1642 custodian; or

1643 (b) Maintain a liability insurance policy that covers any
1644 losses sustained by any person who stores electronic records
1645 with a qualified custodian and their estates, beneficiaries,
1646 successors, and heirs which are caused by errors or omissions by
1647 the qualified custodian and each agent or employee of the
1648 qualified custodian. The policy must cover losses of at least
1649 \$250,000 in the aggregate.

1650 (2) The Attorney General may petition a court of competent
1651 jurisdiction for the appointment of a receiver to manage the

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1652 electronic records of a qualified custodian for proper delivery
1653 and safekeeping if any of the following conditions exist:

1654 (a) The qualified custodian is ceasing operation;

1655 (b) The qualified custodian intends to close the facility
1656 and adequate arrangements have not been made for proper delivery
1657 of the electronic records in accordance with this part;

1658 (c) The Attorney General determines that conditions exist
1659 which present a danger that electronic records will be lost or
1660 misappropriated; or

1661 (d) The qualified custodian fails to maintain and post a
1662 surety bond or maintain insurance as required in this section.

1663 Section 38. Section 732.526, Florida Statutes, is created
1664 to read:

1665 732.526 Probate.—

1666 (1) An electronic will that is filed electronically with
1667 the clerk of the court through the Florida Courts E-Filing
1668 Portal is deemed to have been deposited with the clerk as an
1669 original of the electronic will.

1670 (2) A paper copy of an electronic will which is certified
1671 by a notary public to be a true and correct copy of the
1672 electronic will may be offered for and admitted to probate and
1673 shall constitute an original of the electronic will.

1674 Section 39. Subsection (1) of section 733.201, Florida
1675 Statutes, is amended to read:

1676 733.201 Proof of wills.—

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1677 (1) Self-proved wills executed in accordance with this
1678 code may be admitted to probate without further proof. However,
1679 a purportedly self-proved electronic will may be admitted to
1680 probate only in the manners prescribed in subsections (2) and
1681 (3) if the execution of such electronic will, or the
1682 acknowledgement by the testator and the affidavits of the
1683 witnesses, involves an online notarization in which there was a
1684 substantial failure to comply with the procedures set forth in
1685 s. 117.265.

1686 Section 40. Section 740.10, Florida Statutes, is created
1687 to read:

1688 740.10 Relation to wills.—No act taken pursuant to this
1689 chapter is valid to affect the obligation of a person to deposit
1690 a will of a decedent as required under s. 732.901.

1691 Section 41. Except as otherwise expressly provided in this
1692 act, and except for this section, which shall take effect upon
1693 becoming a law, this act shall take effect January 1, 2020.

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