



**SUPPLEMENT TO
EXECUTIVE COUNCIL ZOOM MEETING
AGENDA**

Friday, May 29, 2020
11:30 am

**NOTE: This Supplement will be posted to the
Section website.**

Supplement to Executive Council Agenda

Information Items:

1. **Ad Hoc Committee on E-Wills** - *Angela Adams, Chair*

Updated and revised bill text, replacing the version dated as of May 11, 2020, as contained in the Agenda, is provided.

1 A bill to be entitled

2 An act relating to electronic legal documents; amending s. 117.285(5); clarifying that this
3 subsection is only applicable to the testamentary aspects of revocable trusts and when fewer than
4 two witnesses are physically present with the principal at the time of execution; amending s.
5 117.285(6)(b); deleting erroneous cross-reference; amending s. 709.2119(2)(c); revising
6 statutory affidavit form to comply with new notarization requirements; amending s.
7 732.401(2)(e); revising statutory affidavit form to comply with new notarization requirements;
8 amending s. 732.503(1); revising statutory self-proof form to comply with new notarization
9 requirements; amending s. 732.521(7); correcting erroneous cross-reference; amending s.
10 732.703(5)(b)3. and 4.; revising statutory affidavit form to comply with new notarization
11 requirements; amending s. 747.051(1); revising statutory affidavit form to comply with new
12 notarization requirements; providing that the amendments are remedial and retroactive; and
13 providing an effective date.

14 Be it Enacted by the Legislature of the State of Florida:

15 Section 1. Subsection (5) of section 117.285, Florida Statutes, is amended to read:

16 (5) Notwithstanding subsections (2) and (3), if an electronic record to be signed is a
17 will under chapter 732, a revocable trust with testamentary aspects described in s. 736.0403(2)(b)
18 under chapter 736, a health care advance directive, a waiver of spousal rights under s. 732.701 or
19 s. 732.702, or a power of attorney authorizing any of the transactions enumerated in s. 709.2208,
20 the following shall apply when fewer than two witnesses are in the physical presence of the
21 principal:

22 (a) Prior to facilitating witnessing of an instrument by means of audio-video
23 communication technology, a RON service provider shall require the principal to answer the
24 following questions in substantially the following form:

- 25 1. Are you under the influence of any drug or alcohol today that impairs your
26 ability to make decisions?
- 27 2. Do you have any physical or mental condition or long-term disability that
28 impairs your ability to perform the normal activities of daily living?
- 29 3. Do you require assistance with daily care?

30 (b) If any question required under paragraph (a) is answered in the affirmative, the
31 principal's signature on the instrument may only be validly witnessed by witnesses in the
32 physical presence of the principal at the time of signing.

33 (c) Subsequent to submission of the answers required under paragraph (a), the RON
34 service provider shall give the principal written notice in substantially the following form:

35 NOTICE: If you are a vulnerable adult as defined in s. 415.102, Florida Statutes, the
36 documents you are about to sign are not valid if witnessed by means of audio-video
37 communication technology. If you suspect you may be a vulnerable adult, you should
38 have witnesses physically present with you before signing.

39 (d) The act of witnessing an electronic signature through the witness's presence by
40 audio-video communication technology is valid only if, during the audio-video communication,
41 the principal provides verbal answers to all of the following questions, each of which must be
42 asked by the online notary public in substantially the following form:

- 43 1. Are you currently married? If so, name your spouse.
- 44 2. Please state the names of anyone who assisted you in accessing this video
45 conference today.
- 46 3. Please state the names of anyone who assisted you in preparing the
47 documents you are signing today.
- 48 4. Where are you currently located?
- 49 5. Who is in the room with you?

50 (e) An online notary public shall consider the responses to the questions specified in
51 paragraph (d) in carrying out of the duties of a notary public as set forth in s. 117.107(5).

52 (f) A principal's responses to the questions in paragraphs (a) and (d) may be offered as
53 evidence regarding the validity of the instrument, but an incorrect answer may not serve as the
54 sole basis to invalidate an instrument.

55 (g) The presence of a witness with the principal at the time of signing by means of
56 audio-video communication technology is not effective for witnessing the signature of a
57 principal who is a vulnerable adult as defined in s. 415.102. The contestant of an electronic

58 record has the burden of proving that the principal was a vulnerable adult at the time of
59 executing the electronic record.

60 (h) Nothing in this subsection shall:

61 1. Preclude a power of attorney, which includes banking or investment powers
62 enumerated in s. 709.2208, from being effective with respect to any other authority
63 granted therein or with respect to the agent's authority in connection with a real property,
64 commercial, or consumer transaction or loan, to exercise any power specified therein or
65 to execute and deliver instruments obligating the principal or to draw upon the proceeds
66 of such transaction or loan; or

67 2. Affect the non-testamentary aspects of a revocable trust under chapter 736.

68 (i) The electronic record containing an instrument signed by witnesses who were
69 present with the principal by means of audio-video communication technology shall contain a
70 perceptible indication of their presence by such means.

71 (j) Nothing in this subsection shall affect the application of s. 709.2119.

72 (k) The requirements of this subsection do not apply if at least two witnesses are in the
73 physical presence of the principal.

74 Section 2. Subsection (6) of section 117.285, Florida Statutes, is amended to read:

75 (6) Pursuant to subpoena, court order, an authorized law enforcement inquiry, or other
76 lawful request, a RON service provider or online notary public shall provide:

77 (a) The last known address of each witness who witnessed the signing of an electronic
78 record using audio-video communication technology under this section.

79 (b) A principal's responses to the questions in paragraphs (5)(a) or ~~(5)(d)(b)~~, as
80 applicable.

81 (c) An uninterrupted and unedited copy of the recording of the audio-video
82 communication in which an online notarization is performed.

83 Section 3. Subsection (2)(c) of section 709.2119, Florida Statutes, is amended to read:

84 (c) A written affidavit executed by the agent under this subsection may, but need not, be
85 in the following form:

86 STATE OF _____

87 COUNTY OF _____

88 Before me, the undersigned authority, personally appeared (agent) (“Affiant”) by the
89 means stated below, who swore or affirmed that:

90 1. Affiant is the agent named in the Power of Attorney executed by (principal)
91 (“Principal”) on (date) .

92 2. This Power of Attorney is currently exercisable by Affiant. The principal is domiciled
93 in (insert name of state, territory, or foreign country) .

94 3. To the best of Affiant's knowledge after diligent search and inquiry:

95 a. The Principal is not deceased;

96 b. Affiant's authority has not been suspended by initiation of proceedings to determine
97 incapacity or to appoint a guardian or a guardian advocate;

98 c. Affiant's authority has not been terminated by the filing of an action for dissolution or
99 annulment of Affiant's marriage to the principal, or their legal separation; and

100 d. There has been no revocation, or partial or complete termination, of the power of
101 attorney or of Affiant's authority.

102 4. Affiant is acting within the scope of authority granted in the power of attorney.

103 5. Affiant is the successor to (insert name of predecessor agent), who has resigned, died,
104 become incapacitated, is no longer qualified to serve, has declined to serve as agent, or is
105 otherwise unable to act, if applicable.

106 6. Affiant agrees not to exercise any powers granted by the Power of Attorney if Affiant
107 attains knowledge that the power of attorney has been revoked, has been partially or completely
108 terminated or suspended, or is no longer valid because of the death or adjudication of incapacity
109 of the Principal.

110 _____
111 (Affiant)

112 Sworn to (or affirmed) and subscribed before me by means of physical presence or
113 online notarization, this ___ day of (month) , (year) , by (name of person making
114 statement) .

115 (Signature of Notary Public-~~State of Florida~~)

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

117 Personally Known OR Produced Identification

118 (Type of Identification Produced)

119 Section 4. Subsection (2)(e) of section 732.401, Florida Statutes, is amended to read:

120 (e) The election shall be made by filing a notice of election containing the legal
121 description of the homestead property for recording in the official record books of the county or
122 counties where the homestead property is located. The notice must be in substantially the
123 following form:

124 ELECTION OF SURVIVING SPOUSE TO TAKE A
125 ONE-HALF INTEREST OF DECEDENT’S INTEREST
126 IN HOMESTEAD PROPERTY

127 STATE OF _____

128 COUNTY OF _____

129 1. The decedent, _____, died on _____. On the date of the decedent’s
130 death, ~~the~~ the decedent was married to _____, who survived the decedent.

131 2. At the time of the decedent’s death, the decedent owned an interest in real property
132 that the affiant believes to be homestead property described in s. 4, Article X of the State
133 Constitution, which real property being in _____ County, Florida, and described
134 as: (description of homestead property) .

135 3. Affiant elects to take one-half of decedent’s interest in the homestead as a tenant in
136 common in lieu of a life estate.

137 4. If affiant is not the surviving spouse, affiant is the surviving spouse’s attorney in fact
138 or guardian of the property, and an order has been rendered by a court having jurisdiction of the
139 real property authorizing the undersigned to make this election.

140 _____
141 (Affiant)

142 Sworn to (or affirmed) and subscribed before me by means of physical presence or online
143 notarization, this day of (month), (year), by (affiant) .

144 (Signature of Notary Public-~~State of Florida~~)

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

146 Personally Known OR Produced Identification

147 (Type of Identification Produced)

148 Section 5. Subsection (1) of section 732.503, Florida Statutes, is amended to read:

149 (1) A will or codicil executed in conformity with s. 732.520 may be made self-proved at
150 the time of its execution or at any subsequent date by the acknowledgement of it by the testator
151 and the affidavits of the witnesses, made before an officer authorized to administer oaths and
152 evidenced by the officer’s certificate attached to or following the will, in substantially the
153 following form:

154 STATE OF ~~FLORIDA~~ _____

155 COUNTY OF _____

156 I, _____, declare to the officer taking my acknowledgment of this
157 instrument, and to the subscribing witnesses, that I signed this instrument as my will.

158 _____

159 Testator

160 We, _____ and _____,

161 have been sworn by the officer signing below, and declare to that officer on our oaths that the
162 testator declared the instrument to be the testator’s will and signed it in our presence and that we
163 each signed the instrument as a witness in the presence of the testator and of each other.

164 _____

165 Witness

166 _____

167 _____

168 Witness

169 Acknowledged and subscribed before me by means of physical presence or online
170 notarization, by the testator, (type or print testator’s name), who is personally known to me or
171 ~~who~~ has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, and
172 sworn to and subscribed before me by means of physical presence or online notarization,
173 by the witnesses, (type or print name of first witness) who is personally known to me or ~~who~~
174 has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, and sworn
175 to and subscribed before me by means of physical presence or online notarization, by the
176 witness (type or print name of second witness) who is personally known to me or ~~who~~ has

177 produced (state type of identification—see s. 117.05(5)(b)2.) as identification, and subscribed by
178 me in the presence of the testator and the subscribing witnesses, by the means stated above, all
179 on (date).

180 (Signature of Officer)

181 (Print, type, or stamp commissioned name and affix official seal)

182 Section 6. Subsection (7) of section 732.521, Florida Statutes, is amended to read:

183 (7) “Qualified custodian” means a person who meets the requirements of s. ~~732.525(1)~~
184 732.524(1).

185 Section 7. Subsection (5)(b)3. of section 732.703., Florida Statutes, is amended to read:

186 3. If the death certificate is silent as to the decedent’s marital status at the time of his
187 or her death, the payor is not liable for making a payment on account of, or for
188 transferring an interest in, that portion of the asset to the primary beneficiary upon
189 delivery to the payor of an affidavit validly executed by the primary beneficiary in
190 substantially the following form:

191 STATE OF _____

192 COUNTY OF _____

193 Before me, the undersigned authority, personally appeared by the means stated
194 below, (type or print Affiant’s name) (“Affiant”), who swore or affirmed that:

195 1. (Type or print name of Decedent) (“Decedent”) died on (type or print the date of
196 the Decedent’s death) .

197 2. Affiant is a “primary beneficiary” as that term is defined in Section 732.703, Florida
198 Statutes. Affiant and Decedent were married on (type or print the date of marriage) , and were
199 legally married to one another on the date of the Decedent’s death.

200 _____
(Affiant)

201 Sworn to or affirmed before me by means of physical presence or online
202 notarization, by the affiant, who is personally known to me or who has produced (state type of
203 identification) as identification, this _____ day of (month) , (year) .

204 (Signature of Officer)

205 (Print, Type, or Stamp Commissioned name of Notary Public)

206 Section 8. Subsection (5)(b)4. of section 732.703., Florida Statutes, is amended to read:

207 4. If the death certificate is silent as to the decedent's marital status at the time of his
 208 or her death, the payor is not liable for making a payment on account of, or for
 209 transferring an interest in, that portion of the asset to the secondary beneficiary upon
 210 delivery to the payor of an affidavit validly executed by the secondary beneficiary
 211 affidavit in substantially the following form:

212 STATE OF _____

213 COUNTY OF _____

214 Before me, the undersigned authority, personally appeared by the means stated
 215 below, (type or print Affiant's name) ("Affiant"), who swore or affirmed that:

216 1. (Type or print name of Decedent) ("Decedent") died on (type or print the date of
 217 the Decedent's death) .

218 2. Affiant is a "secondary beneficiary" as that term is defined in Section 732.703,
 219 Florida Statutes. On the date of the Decedent's death, the Decedent was not legally married to
 220 the spouse designated as the "primary beneficiary" as that term is defined in Section 732.703,
 221 Florida Statutes.

222 (Affiant)

223 Sworn to or affirmed before me by means of physical presence or online
 224 notarization, by the affiant, who is personally known to me or who has produced (state type of
 225 identification) as identification, this _____ day of (month), (year) .

226 (Signature of Officer)

227 (Print, Type, or Stamp Commissioned name of Notary Public)

228 Section 9. Subsection (1) of section 747.051, Florida Statutes, is amended to read:

229 (1) If the wife of any person defined as an absentee in s. 747.01(1), or his next of kin if
 230 said absentee has no wife, shall wish to sell or transfer any property of the absentee which has a
 231 gross value of less than \$5,000, or shall require the consent of the absentee in any matter
 232 regarding the absentee's children or in any other matter in which the gross value of the subject
 233 matter is less than \$5,000, she may apply to the circuit court for an order authorizing said sale,
 234 transfer, or consent without opening a full conservatorship proceeding as provided by this
 235 chapter. She may make the application without the assistance of an attorney. Said application

236 shall be made by petition on the following form, which form shall be made readily available to
237 the applicant by the clerk of the circuit court:

238 **In the Circuit Court**

239 In re: (Absentee) , case number _____ .

240 **PETITION FOR SUMMARY RELIEF**

241 Petitioner, (Name) , whose residence is (Street & number) , (City or town) , and
242 (County) , Florida, and who is the (Describe relationship to absentee) of the absentee,
243 (Name) , states that the absentee has been (Imprisoned or missing in action) since (Date)
244 when (Describe details) . Petitioner desires to sell/transfer (Describe property) of the value
245 of (Value) because (Give reasons) . The terms of sale/transfer are (Give reasons) .
246 Petitioner requires the consent of the absentee for the purpose of _____ .

247 (Petitioner)

248 State of ~~Florida~~ _____

249 County of _____

250 Sworn to (or affirmed) and subscribed before me by means of physical presence or
251 online notarization, this ___ day of _____ , (year) , by (name of person making statement) .

252 (Signature of Notary Public—~~State of Florida~~)

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

254 Personally Known _____ OR Produced Identification _____

255 Type of Identification Produced _____

256 Section 10. The changes made by this act are remedial in nature, and apply retroactively
257 as of January 1, 2020.

258 Section 11. This act shall take effect upon becoming law.