

[Fla. Stat. § 732.506](#)

Current through the 2019 Session of the Florida Legislature.

LexisNexis® Florida Annotated Statutes > Title XLII. Estates and Trusts. (Chs. 731 — 740) > Chapter 732. Probate Code: Intestate Succession and Wills. (Pts. I — IX) > Part V. Wills. (§§ 732.501 — 732.526)

Notice

 This section has more than one version with varying effective dates.

§ 732.506. Revocation by act. — [Effective January 1, 2020]

A will or codicil, other than an electronic will, is revoked by the testator, or some other person in the testator's presence and at the testator's direction, by burning, tearing, canceling, defacing, obliterating, or destroying it with the intent, and for the purpose, of revocation. An electronic will or codicil is revoked by the testator, or some other person in the testator's presence and at the testator's direction, by deleting, canceling, rendering unreadable, or obliterating the electronic will or codicil, with the intent, and for the purpose, of revocation, as proved by clear and convincing evidence.

History

S. 1, ch. 74-106; s. 23, ch. 75-220; s. 963, [ch. 97-102](#); s. 31, [ch. 2019-71](#), eff. Jan. 1, 2020.

Annotations

LexisNexis® Notes

Notes

Editor's notes.

Created from former s. 731.14.

Case Notes

[Fla. Stat. § 732.521](#)

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§ 732.521. Definitions. [Effective January 1, 2020]

As used in ss. 732.521-732.525, the term:

- (1)“Audio-video communication technology” has the same meaning as provided in s. 117.201.
- (2)“Electronic record” has the same meaning as provided in s. 668.50.
- (3)“Electronic signature” means an electronic mark visibly manifested in a record as a signature and executed or adopted by a person with the intent to sign the record.
- (4)“Electronic will” means a testamentary instrument, including a codicil, executed with an electronic signature by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument which merely appoints a personal representative or guardian or revokes or revises another will.
- (5)“Online notarization” has the same meaning as provided in s. 117.201.
- (6)“Online notary public” has the same meaning as provided in s. 117.201.
- (7)“Qualified custodian” means a person who meets the requirements of s. 732.525(1).
- (8)“Secure system” means a system that satisfies the requirements of a secure repository qualified to retain electronic journals of online notaries public in accordance with s. 117.245 and any rules established under part II of chapter 117.

History

S. 32, [ch. 2019-71](#), eff. Jan. 1, 2020.

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§ 732.522. Method and place of execution. [Effective July 1, 2020]

For purposes of the execution or filing of an electronic will, the acknowledgment of an electronic will by the testator and the affidavits of witnesses under s. 732.503, or any other instrument under the Florida Probate Code:

- (1) Any requirement that an instrument be signed may be satisfied by an electronic signature.
- (2) Any requirement that individuals sign an instrument in the presence of one another may be satisfied by witnesses being present and electronically signing by means of audio-video communication technology that meets the requirements of part II of chapter 117 and any rules adopted thereunder, if:
 - (a) The individuals are supervised by a notary public in accordance with s. 117.285;
 - (b) The individuals are authenticated and signing as part of an online notarization session in accordance with s. 117.265;
 - (c) The witness hears the signer make a statement acknowledging that the signer has signed the electronic record; and
 - (d) The signing and witnessing of the instrument complies with the requirements of s. 117.285.
- (3) Except as otherwise provided in this part, all questions as to the force, effect, validity, and interpretation of an electronic will which comply with this section must be determined in the same manner as in the case of a will executed in accordance with s. 732.502.
- (4) An instrument that is signed electronically is deemed to be executed in this state if the instrument states that the person creating the instrument intends to execute and understands that he or she is executing the instrument in, and pursuant to the laws of, this state.

History

S. 33, [ch. 2019-71](#), eff. July 1, 2020.

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§ 732.523. Self-proof of electronic will. [Effective January 1, 2020]

An electronic will is self-proved if:

- (1) The acknowledgment of the electronic will by the testator and the affidavits of the witnesses are made in accordance with s. 732.503 and are part of the electronic record containing the electronic will, or are attached to, or are logically associated with, the electronic will;
- (2) The electronic will designates a qualified custodian;
- (3) The electronic record that contains the electronic will is held in the custody of a qualified custodian at all times before being offered to the court for probate; and
- (4) The qualified custodian who has custody of the electronic will at the time of the testator's death certifies under oath that, to the best knowledge of the qualified custodian, the electronic record that contains the electronic will was at all times before being offered to the court in the custody of a qualified custodian in compliance with s. 732.524 and that the electronic will has not been altered in any way since the date of its execution.

History

S. 34, [ch. 2019-71](#), eff. Jan. 1, 2020.

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§ 732.524. Qualified custodians. [Effective January 1, 2020]

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

(a)Domiciled in and a resident of this state; or

(b)Incorporated, organized, or have its principal place of business in this state.

(2)A qualified custodian shall:

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

1. Electronic wills;

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

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

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

(c)Provide access to or information concerning the electronic will, or the electronic record containing the electronic will, only:

1. To the testator;

2. To persons authorized by the testator in the electronic will or in written instructions signed by the testator with the formalities required for the execution of a will in this state;

3. After the death of the testator, to the testator's nominated personal representative; or

4. At any time, as directed by a court of competent jurisdiction.

(3)The qualified custodian of the electronic record of an electronic will may elect to destroy such record, including any of the documentation required to be created and stored under

paragraph (2)(a), at any time after the earlier of the fifth anniversary of the conclusion of the administration of the estate of the testator or 20 years after the death of the testator.

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

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

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

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

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

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

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

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

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

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

For purposes of making this affidavit, the outgoing qualified custodian may rely conclusively on any affidavits delivered by a predecessor qualified custodian in connection with its designation or appointment as qualified custodian; however, all such affidavits must be delivered to the successor qualified custodian.

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

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

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

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

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

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

(11)Upon receiving information that the testator is dead, a qualified custodian must deposit the electronic will with the court in accordance with s. 732.901. A qualified custodian may not charge a fee for depositing the electronic will with the clerk, provided the affidavit is made in accordance with s. 732.503, or furnishing in writing any information requested by a court under paragraph (2)(b).

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

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

History

S. 35, [ch. 2019-71](#), eff. Jan. 1, 2020.

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