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HB 483

2021 Legislature

1
2 An act relating to electronic legal documents;
3 amending s. 117.201, F.S.; revising the definition of
4 the term "online notarization"; amending s. 117.285,
5 F.S.; clarifying that supervising the witnessing of an
6 electronic record by an online notary public is a
7 notarial act; specifying applicability of online
8 notarization procedures to supervision of the
9 witnessing of an electronic record; modifying
10 witnessing procedures; revising applicability;
11 amending s. 709.2119, F.S.; revising the statutory
12 form for an affidavit for acceptance of and reliance
13 upon a power of attorney to reflect means of
14 notarization; amending s. 732.401, F.S.; revising the
15 statutory form for the notice of election relating to
16 the descent of homestead property to reflect means of
17 notarization; amending s. 732.503, F.S.; revising the
18 statutory form for the self-proof of a will or codicil
19 to reflect means of notarization; amending s. 732.521,
20 F.S.; conforming a cross-reference; amending s.
21 732.703, F.S.; revising statutory forms relating to
22 the disposition of certain assets at death to reflect
23 means of notarization; amending s. 747.051, F.S.;
24 revising the form for a petition of summary relief for
25 the sale or transfer of certain property owned by an

ENROLLED

HB 483

2021 Legislature

26 absentee to reflect means of notarization; providing
 27 for construction and retroactive application;
 28 providing an effective date.

30 Be It Enacted by the Legislature of the State of Florida:

31
 32 Section 1. Subsection (9) of section 117.201, Florida
 33 Statutes, is amended to read:

34 117.201 Definitions.—As used in this part, the term:

35 (9) "Online notarization" means the performance of a
 36 notarial act using electronic means in which the principal or
 37 any witness appears before the notary public by means of audio-
 38 video communication technology.

39 Section 2. Section 117.285, Florida Statutes, is amended
 40 to read:

41 117.285 Supervising the witnessing of electronic records.—
 42 Supervising the witnessing of an electronic record by an online
 43 notary public in accordance with this section is a notarial act.

44 An online notary public may supervise the witnessing of
 45 electronic records by complying with the online notarization
 46 procedures of this part and using the same audio-video
 47 communication technology used for online notarization by a
 48 principal, as follows:

49 (1) The witness may be in the physical presence of the
 50 principal or remote from the principal provided the witness and

ENROLLED

HB 483

2021 Legislature

51 principal are using audio-video communication technology.

52 (2) If the witness is remote from the principal and
53 viewing and communicating with the principal by means of audio-
54 video communication technology, the principal's and witness's
55 identities ~~identity~~ must be verified in accordance with the
56 procedures for identifying a principal as set forth in s.
57 117.265(4). If the witness is in the physical presence of the
58 principal, the witness must confirm his or her identity by
59 stating his or her name and current address on the audio-video
60 recording as part of the act of witnessing.

61 (3) The act of witnessing an electronic signature means
62 the witness is either in the physical presence of the principal
63 or present through audio-video communication technology at the
64 time the principal affixes the electronic signature and the
65 witness hears the principal make a statement to the effect that
66 the principal has signed the electronic record.

67 (4) A witness remote from the principal and appearing
68 through audio-video communication technology must verbally
69 confirm that he or she is a resident of and physically located
70 within the United States or a territory of the United States at
71 the time of witnessing.

72 (5) Notwithstanding subsections (2) and (3), if an
73 electronic record to be signed is a will under chapter 732, a
74 revocable trust with testamentary aspects as described in s.
75 736.0403(2)(b) ~~under chapter 736~~, a health care advance

ENROLLED

HB 483

2021 Legislature

76 directive, an agreement concerning succession or a waiver of
77 spousal rights under s. 732.701 or s. 732.702, respectively, or
78 a power of attorney authorizing any of the transactions
79 enumerated in s. 709.2208, all of the following apply when fewer
80 than two witnesses are in the physical presence of the principal
81 ~~shall apply:~~

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

86 1. Are you under the influence of any drug or alcohol
87 today that impairs your ability to make decisions?

88 2. Do you have any physical or mental condition or long-
89 term disability that impairs your ability to perform the normal
90 activities of daily living?

91 3. Do you require assistance with daily care?

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

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

99
100 NOTICE: If you are a vulnerable adult as defined in s. 415.102,

ENROLLED

HB 483

2021 Legislature

101 Florida Statutes, the documents you are about to sign are not
 102 valid if witnessed by means of audio-video communication
 103 technology. If you suspect you may be a vulnerable adult, you
 104 should have witnesses physically present with you before
 105 signing.

106
 107 (d) The act of witnessing an electronic signature through
 108 the witness's presence by audio-video communication technology
 109 is valid only if, during the audio-video communication, the
 110 principal provides verbal answers to all of the following
 111 questions, each of which must be asked by the online notary
 112 public in substantially the following form:

- 113 1. Are you currently married? If so, name your spouse.
 114 2. Please state the names of anyone who assisted you in
 115 accessing this video conference today.
 116 3. Please state the names of anyone who assisted you in
 117 preparing the documents you are signing today.
 118 4. Where are you currently located?
 119 5. Who is in the room with you?

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

123 (f) A principal's responses to the questions in paragraphs
 124 (a) and (d) may be offered as evidence regarding the validity of
 125 the instrument, but an incorrect answer may not serve as the

ENROLLED

HB 483

2021 Legislature

126 | sole basis to invalidate an instrument.

127 | (g) The presence of a witness with the principal at the
 128 | time of signing by means of audio-video communication technology
 129 | is not effective for witnessing the signature of a principal who
 130 | is a vulnerable adult as defined in s. 415.102. The contestant
 131 | of an electronic record has the burden of proving that the
 132 | principal was a vulnerable adult at the time of executing the
 133 | electronic record.

134 | (h) Nothing in this subsection shall:

135 | 1. Preclude a power of attorney, which includes banking or
 136 | investment powers enumerated in s. 709.2208, from being
 137 | effective with respect to any other authority granted therein or
 138 | with respect to the agent's authority in connection with a real
 139 | property, commercial, or consumer transaction or loan, to
 140 | exercise any power specified therein or to execute and deliver
 141 | instruments obligating the principal or to draw upon the
 142 | proceeds of such transaction or loan; or

143 | 2. Affect the nontestamentary aspects of a revocable trust
 144 | under chapter 736.

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

149 | (j) ~~Nothing in~~ This subsection does not ~~shall~~ affect the
 150 | application of s. 709.2119.

ENROLLED

HB 483

2021 Legislature

151 (k) The requirements of this subsection do not apply if
 152 there are at least two witnesses in the physical presence of the
 153 principal at the time of the notarial act.

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

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

160 (b) A principal's responses to the questions in paragraph
 161 (5) (a) or paragraph (5) (d) ~~(5) (b)~~, as applicable.

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

165 (7) Except as set forth in s. 709.2202, an act of
 166 witnessing performed pursuant to this section satisfies any
 167 requirement that the witness must be a subscribing or attesting
 168 witness or must be in the presence of the principal at the time
 169 of signing.

170 (8) The law of this state governs the validity of
 171 witnessing supervised by an online notary public pursuant to
 172 this section, regardless of the physical location of the witness
 173 at the time of witnessing. State and federal courts in this
 174 state have subject matter jurisdiction over any dispute arising
 175 out of an act of witnessing pursuant to this section, and may

ENROLLED

HB 483

2021 Legislature

176 | issue subpoenas for records or to require the appearance of
 177 | witnesses in relation thereto in accordance with applicable law.

178 | Section 3. Paragraph (c) of subsection (2) of section
 179 | 709.2119, Florida Statutes, is amended to read:

180 | 709.2119 Acceptance of and reliance upon power of
 181 | attorney.—

182 | (2) A third person may require:

183 | (c) A written affidavit executed by the agent under this
 184 | subsection which may, but need not, be in the following form:

185 |
 186 | STATE OF.....

187 | COUNTY OF.....

188 |
 189 | Before me, the undersigned authority, personally appeared
 190 | ...(agent)... ("Affiant") by the means specified herein, who
 191 | swore or affirmed that:

192 | 1. Affiant is the agent named in the Power of Attorney
 193 | executed by ...(principal)... ("Principal") on ...(date)....

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

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

199 | a. The Principal is not deceased;

200 | b. Affiant's authority has not been suspended by

ENROLLED

HB 483

2021 Legislature

201 initiation of proceedings to determine incapacity or to appoint
202 a guardian or a guardian advocate;

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

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

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

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

214 6. Affiant agrees not to exercise any powers granted by
215 the Power of Attorney if Affiant attains knowledge that the
216 power of attorney has been revoked, has been partially or
217 completely terminated or suspended, or is no longer valid
218 because of the death or adjudication of incapacity of the
219 Principal.

220
221
222 ... (Affiant) ...

224 Sworn to (or affirmed) and subscribed before me by means of
225 physical presence or online notarization this day of

ENROLLED

HB 483

2021 Legislature

226 ... (month) ..., ... (year) ..., by ... (name of person making
 227 statement) ...

228
 229 ... (Signature of Notary Public ~~State of Florida~~) ...

230
 231 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

232
 233 Personally Known OR Produced Identification
 234 ... (Type of Identification Produced) ...

235
 236 Section 4. Paragraph (e) of subsection (2) of section
 237 732.401, Florida Statutes, is amended to read:

238 732.401 Descent of homestead.—

239 (2) In lieu of a life estate under subsection (1), the
 240 surviving spouse may elect to take an undivided one-half
 241 interest in the homestead as a tenant in common, with the
 242 remaining undivided one-half interest vesting in the decedent's
 243 descendants in being at the time of the decedent's death, per
 244 stirpes.

245 (e) The election must ~~shall~~ be made by filing a notice of
 246 election containing the legal description of the homestead
 247 property for recording in the official record books of the
 248 county or counties where the homestead property is located. The
 249 notice must be in substantially the following form:

250

ENROLLED

HB 483

2021 Legislature

ELECTION OF SURVIVING SPOUSE
TO TAKE A ONE-HALF INTEREST OF
DECEDENT'S INTEREST IN
HOMESTEAD PROPERTY

STATE OF.....
COUNTY OF.....

1. The decedent,, died on
On the date of the decedent's death, the decedent was married to
....., who survived the decedent.

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

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

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

ENROLLED

HB 483

2021 Legislature

276
277 ... (Affiant) ...

278
279 Sworn to (or affirmed) and subscribed before me by means of
280 physical presence or online notarization this day of
281 ... (month) ..., ... (year) ..., by ... (affiant) ...

282
283 ... (Signature of Notary Public ~~State of Florida~~) ...

284
285 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

286
287 Personally Known OR Produced Identification

288
289 ... (Type of Identification Produced) ...

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

292 732.503 Self-proof of will.—

293 (1) A will or codicil executed in conformity with s.
294 732.502 may be made self-proved at the time of its execution or
295 at any subsequent date by the acknowledgment of it by the
296 testator and the affidavits of the witnesses, made before an
297 officer authorized to administer oaths and evidenced by the
298 officer's certificate attached to or following the will, in
299 substantially the following form:

300

ENROLLED

HB 483

2021 Legislature

301 STATE OF..... ~~FLORIDA~~

302 COUNTY OF

303 I,....., declare to the officer taking my
304 acknowledgment of this instrument, and to the subscribing
305 witnesses, that I signed this instrument as my will.

306
307

308 Testator

309
310 We,.....and....., have been sworn by the officer
311 signing below, and declare to that officer on our oaths that the
312 testator declared the instrument to be the testator's will and
313 signed it in our presence and that we each signed the instrument
314 as a witness in the presence of the testator and of each other.

315
316

317 Witness

318
319

320 Witness

321
322 Acknowledged and subscribed before me by means of
323 physical presence or online notarization by the testator,
324 (type or print testator's name), who is personally known to me
325 or ~~who~~ has produced (state type of identification—see s.

ENROLLED

HB 483

2021 Legislature

326 117.05(5)(b)2.) as identification, and sworn to and subscribed
 327 before me by each of the following witnesses:7 (type or print
 328 name of first witness) who is personally known to me or ~~who~~
 329 has produced (state type of identification—see s.
 330 117.05(5)(b)2.) as identification, by means of physical
 331 presence or online notarization; and (type or print name of
 332 second witness) who is personally known to me or ~~who~~ has
 333 produced (state type of identification—see s. 117.05(5)(b)2.) as
 334 identification, by means of physical presence or online
 335 notarization. ~~and~~ Subscribed by me in the presence of the
 336 testator and the subscribing witnesses, by the means specified
 337 herein, all on (date).

338 ... (Signature of Officer) ...
 339 ... (Print, type, or stamp commissioned name and affix official
 340 seal) ...

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

344 732.521 Definitions.—As used in ss. 732.521-732.525, the
 345 term:

346 (7) "Qualified custodian" means a person who meets the
 347 requirements of s. 732.524(1) ~~s. 732.525(1)~~.

348 Section 7. Paragraph (b) of subsection (5) of section
 349 732.703, Florida Statutes, is amended to read:

350 732.703 Effect of divorce, dissolution, or invalidity of

ENROLLED

HB 483

2021 Legislature

351 marriage on disposition of certain assets at death.—

352 (5) In the case of an asset described in paragraph (3) (a),
353 paragraph (3) (b), or paragraph (3) (c), unless payment or
354 transfer would violate a court order directed to, and served as
355 required by law on, the payor:

356 (b) As to any portion of the asset required by the
357 governing instrument to be paid after the decedent's death to a
358 primary beneficiary explicitly designated in the governing
359 instrument as the decedent's spouse:

360 1. If the death certificate states that the decedent was
361 married at the time of his or her death to that spouse, the
362 payor is not liable for making a payment on account of, or for
363 transferring an interest in, that portion of the asset to such
364 primary beneficiary.

365 2. If the death certificate states that the decedent was
366 not married at the time of his or her death, or if the death
367 certificate states that the decedent was married to a person
368 other than the spouse designated as the primary beneficiary at
369 the time of his or her death, the payor is not liable for making
370 a payment on account of, or for transferring an interest in,
371 that portion of the asset to a secondary beneficiary under the
372 governing instrument.

373 3. If the death certificate is silent as to the decedent's
374 marital status at the time of his or her death, the payor is not
375 liable for making a payment on account of, or for transferring

ENROLLED

HB 483

2021 Legislature

376 an interest in, that portion of the asset to the primary
377 beneficiary upon delivery to the payor of an affidavit validly
378 executed by the primary beneficiary in substantially the
379 following form:

380
381 STATE OF.....
382 COUNTY OF.....

383

384 Before me, the undersigned authority, personally
385 appeared by the means specified herein, ... (type or
386 print Affiant's name)... ("Affiant"), who swore or
387 affirmed that:

388 1. ... (Type or print name of Decedent) ...
389 ("Decedent") died on ... (type or print the date of the
390 Decedent's death)....

391 2. Affiant is a "primary beneficiary" as that term is
392 defined in Section 732.703, Florida Statutes. Affiant
393 and Decedent were married on ... (type or print the
394 date of marriage) ..., and were legally married to one
395 another on the date of the Decedent's death.

396 ... (Affiant) ...

397 Sworn to or affirmed before me by means of physical
398 presence or online notarization by the affiant who
399 is personally known to me or ~~who~~ has produced
400 ... (state type of identification) ... as identification

ENROLLED

HB 483

2021 Legislature

401 this day of ... (month)...., ... (year)....
 402 ... (Signature of Officer) ...
 403 ... (Print, Type, or Stamp Commissioned name of Notary
 404 Public) ...

405
 406 4. If the death certificate is silent as to the decedent's
 407 marital status at the time of his or her death, the payor is not
 408 liable for making a payment on account of, or for transferring
 409 an interest in, that portion of the asset to the secondary
 410 beneficiary upon delivery to the payor of an affidavit validly
 411 executed by the secondary beneficiary ~~affidavit~~ in substantially
 412 the following form:

413
 414 STATE OF.....
 415 COUNTY OF.....

416
 417 Before me, the undersigned authority, personally
 418 appeared by the means specified herein, ... (type or
 419 print Affiant's name)... ("Affiant"), who swore or
 420 affirmed that:

- 421 1. ... (Type or print name of Decedent) ...
 422 ("Decedent") died on ... (type or print the date of the
 423 Decedent's death)....
 424 2. Affiant is a "secondary beneficiary" as that term
 425 is defined in Section 732.703, Florida Statutes. On

ENROLLED

HB 483

2021 Legislature

426 | the date of the Decedent's death, the Decedent was not
 427 | legally married to the spouse designated as the
 428 | "primary beneficiary" as that term is defined in
 429 | Section 732.703, Florida Statutes.

430 |
 431 | ... (Affiant) ...

432 | Sworn to or affirmed before me by means of physical
 433 | presence or online notarization by the affiant who
 434 | is personally known to me or ~~who~~ has produced
 435 | ... (state type of identification) ... as identification
 436 | this day of ... (month) ..., ... (year)
 437 | ... (Signature of Officer) ...
 438 | ... (Print, Type, or Stamp Commissioned name of Notary
 439 | Public) ...

440 |
 441 | Section 8. Subsection (1) of section 747.051, Florida
 442 | Statutes, is amended to read:

443 | 747.051 Summary procedure.—

444 | (1) If the wife of any person defined as an absentee in s.
 445 | 747.01(1), or his next of kin if said absentee has no wife,
 446 | shall wish to sell or transfer any property of the absentee
 447 | which has a gross value of less than \$5,000, or shall require
 448 | the consent of the absentee in any matter regarding the
 449 | absentee's children or in any other matter in which the gross
 450 | value of the subject matter is less than \$5,000, she may apply

ENROLLED

HB 483

2021 Legislature

451 to the circuit court for an order authorizing said sale,
 452 transfer, or consent without opening a full conservatorship
 453 proceeding as provided by this chapter. She may make the
 454 application without the assistance of an attorney. Said
 455 application shall be made by petition on the following form,
 456 which form shall be made readily available to the applicant by
 457 the clerk of the circuit court:

458
 459 In the Circuit Court

460
 461 In re: ...(Absentee)..., case number

462
 463 PETITION FOR SUMMARY RELIEF

464
 465 Petitioner, ...(Name)..., whose residence is ...(Street &
 466 number)..., ...(City or town)..., and ...(County)..., Florida,
 467 and who is the ...(Describe relationship to absentee)... of the
 468 absentee, ...(Name)..., states that the absentee has been
 469 ...(Imprisoned or missing in action)... since ...(Date)... when
 470 ...(Describe details).... Petitioner desires to sell/transfer
 471 ...(Describe property)... of the value of ...(Value)... because
 472 ...(Give reasons).... The terms of sale/transfer are ...(Give
 473 reasons).... Petitioner requires the consent of the absentee for
 474 the purpose of

475 ...(Petitioner)...

ENROLLED

HB 483

2021 Legislature

476 State of ~~Florida~~

477 County of....

478

479 Sworn to (or affirmed) and subscribed before me by means of

480 physical presence or online notarization this day of

481, ... (year) ..., by ... (name of person making

482 statement)....

483

484 ... (Signature of Notary Public ~~— State of Florida~~) ...

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

486 Personally Known OR Produced Identification

487 Type of Identification Produced.....

488

489 Section 9. The amendments made by this act are remedial in

490 nature and shall apply retroactively to January 1, 2020.

491 Section 10. This act shall take effect upon becoming a

492 law.