

By Senator Powell

30-00743B-21

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1 A bill to be entitled
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
26 absentee to reflect means of notarization; providing
27 for construction and retroactive application;
28 providing an effective date.
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30-00743B-21

2021848__

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

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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 to
40 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
51 principal are using audio-video communication technology.

52 (2) If the witness is remote from the principal and viewing
53 and communicating with the principal by means of audio-video
54 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

30-00743B-21

2021848__

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 the
62 witness is either in the physical presence of the principal or
63 present through audio-video communication technology at the time
64 the principal affixes the electronic signature and the witness
65 hears the principal make a statement to the effect that the
66 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
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 today
87 that impairs your ability to make decisions?

30-00743B-21

2021848__

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,
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

30-00743B-21

2021848__

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 to
121 the questions specified in paragraph (d) in carrying out of the
122 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
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

30-00743B-21

2021848__

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.

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

30-00743B-21

2021848__

175 out of an act of witnessing pursuant to this section, and may
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 search
198 and inquiry:

199 a. The Principal is not deceased;

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

203 c. Affiant's authority has not been terminated by the

30-00743B-21

2021848__

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 the
215 Power of Attorney if Affiant attains knowledge that the power of
216 attorney has been revoked, has been partially or completely
217 terminated or suspended, or is no longer valid because of the
218 death or adjudication of incapacity of the Principal.

219
220
221 ... (Affiant) ...
222

223 Sworn to (or affirmed) and subscribed before me by means of
224 physical presence or online notarization this day of
225 ...(month)..., ...(year)..., by ...(name of person making
226 statement)...

227
228 ... (Signature of Notary Public ~~State of Florida~~) ...
229

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

232 Personally Known OR Produced Identification

30-00743B-21

2021848__

233 ... (Type of Identification Produced) ...

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

237 732.401 Descent of homestead.—

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

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

249

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

254

255 STATE OF.....

256 COUNTY OF.....

257

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

261 2. At the time of the decedent's death, the decedent owned

30-00743B-21

2021848__

262 an interest in real property that the affiant believes to be
263 homestead property described in s. 4, Article X of the State
264 Constitution, which real property being in County,
265 Florida, and described as: ...(description of homestead
266 property)....

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

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

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275
276 ...(Affiant)...

277
278 Sworn to (or affirmed) and subscribed before me by means of
279 physical presence or online notarization this day of
280 ...(month)...., ...(year)...., by ...(affiant)...

281
282 ... (Signature of Notary Public ~~State of Florida~~) ...

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

285
286 Personally Known OR Produced Identification

287
288 ...(Type of Identification Produced) ...

289
290 Section 5. Subsection (1) of section 732.503, Florida

30-00743B-21

2021848__

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

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

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30-00743B-21

2021848__

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Witness

Acknowledged and subscribed before me by means of physical presence or online notarization by the testator, (type or print testator's name), who is personally known to me or ~~who~~ has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, and sworn to and subscribed before me by each of the following witnesses:; (type or print name of first witness) who is personally known to me or ~~who~~ has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, by means of physical presence or online notarization; and (type or print name of second witness) who is personally known to me or ~~who~~ has produced (state type of identification—see s. 117.05(5)(b)2.) as identification, by means of physical presence or online notarization. ~~and~~ Subscribed by me in the presence of the testator and the subscribing witnesses, by the means specified herein, all on (date).

...(Signature of Officer)...

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

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

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

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

Section 7. Paragraph (b) of subsection (5) of section

30-00743B-21

2021848__

349 732.703, Florida Statutes, is amended to read:

350 732.703 Effect of divorce, dissolution, or invalidity of
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
376 an interest in, that portion of the asset to the primary
377 beneficiary upon delivery to the payor of an affidavit validly

30-00743B-21

2021848__

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

396 ... (Affiant)...

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

403 ... (Signature of Officer)...
404 ... (Print, Type, or Stamp Commissioned name of Notary
405 Public)...
406

30-00743B-21

2021848__

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

414
 415 STATE OF.....
 416 COUNTY OF.....
 417

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

422 1. ... (Type or print name of Decedent) ...
 423 ("Decedent") died on ... (type or print the date of the
 424 Decedent's death)....

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

431
 432 ... (Affiant) ...

433 Sworn to or affirmed before me by means of
 434 physical presence or online notarization by the
 435 affiant who is personally known to me or ~~who~~ has

30-00743B-21

2021848__

436 produced ...(state type of identification)... as
437 identification this day of ...(month)...,
438 ...(year)....
439 ...(Signature of Officer)...
440 ...(Print, Type, or Stamp Commissioned name of Notary
441 Public)...

442

443 Section 8. Subsection (1) of section 747.051, Florida
444 Statutes, is amended to read:

445 747.051 Summary procedure.-

446 (1) If the wife of any person defined as an absentee in s.
447 747.01(1), or his next of kin if said absentee has no wife,
448 shall wish to sell or transfer any property of the absentee
449 which has a gross value of less than \$5,000, or shall require
450 the consent of the absentee in any matter regarding the
451 absentee's children or in any other matter in which the gross
452 value of the subject matter is less than \$5,000, she may apply
453 to the circuit court for an order authorizing said sale,
454 transfer, or consent without opening a full conservatorship
455 proceeding as provided by this chapter. She may make the
456 application without the assistance of an attorney. Said
457 application shall be made by petition on the following form,
458 which form shall be made readily available to the applicant by
459 the clerk of the circuit court:

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461 In the Circuit Court

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463 In re: ...(Absentee)..., case number

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30-00743B-21

2021848__

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PETITION FOR SUMMARY RELIEF

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

...(Petitioner)...

State of Florida
County of....

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

...(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.....

Section 9. The amendments made by this act are remedial in nature and shall apply retroactively to January 1, 2020.

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