

REFERENCE TITLE: **electronic wills and trusts.**

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2656

Introduced by
Representative Leach (with permission of Committee on Rules)

AN ACT

AMENDING SECTIONS 14-1201, 14-2502, 14-2506 AND 14-2507, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-2518, 14-2519, 14-2520, 14-2521, 14-2522 AND 14-2523; AMENDING SECTIONS 14-3402 AND 14-3971, ARIZONA REVISED STATUTES; RELATING TO WILLS AND TRUSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-1201, Arizona Revised Statutes, is amended to
3 read:

4 14-1201. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Agent" includes an attorney-in-fact under a durable or
7 nondurable power of attorney, a person who is authorized to make decisions
8 concerning another person's health care and a person who is authorized to
9 make decisions for another person under a natural death act.

10 2. "Application" means a written request to the registrar for an
11 order of informal probate or appointment under chapter 3, article 3 of
12 this title.

13 3. "Basis for compensation" means AN hourly rate, a fixed fee or a
14 contingency fee agreement and reimbursable costs.

15 4. "Beneficiary", as it relates to a trust beneficiary, includes a
16 person who has any present or future interest, vested or contingent, and
17 also includes the owner of an interest by assignment or other
18 transfer. As it relates to a charitable trust, beneficiary includes any
19 person entitled to enforce the trust. As it relates to a beneficiary of a
20 beneficiary designation, beneficiary refers to a beneficiary of an
21 insurance or annuity policy, an account with pay on death designation, a
22 security registered in beneficiary form or a pension, profit sharing,
23 retirement or similar benefit plan, or any other nonprobate transfer at
24 death. As it relates to a beneficiary designated in a governing
25 instrument, beneficiary includes a grantee of a deed, a devisee, a trust
26 beneficiary, a beneficiary of a beneficiary designation, a donee,
27 appointee or taker in default of a power of appointment and a person in
28 whose favor a power of attorney or a power held in any person, fiduciary
29 or representative capacity is exercised.

30 5. "Beneficiary designation" refers to a governing instrument
31 naming a beneficiary of an insurance or annuity policy, of an account with
32 pay on death designation, of a security registered in beneficiary form or
33 of a pension, profit sharing, retirement or similar benefit plan, or any
34 other nonprobate transfer at death.

35 6. "CERTIFIED PAPER ORIGINAL" MEANS A TANGIBLE DOCUMENT EXECUTED
36 PURSUANT TO SECTION 14-2523 THAT CONTAINS BOTH THE TEXT OF AN ELECTRONIC
37 WILL AND ANY SELF-PROVING AFFIDAVIT CONCERNING THE ELECTRONIC WILL.

38 ~~6.~~ 7. "Child" includes a person who is entitled to take as a child
39 under this title by intestate succession from the parent whose
40 relationship is involved. Child excludes a person who is only a
41 stepchild, a foster child, a grandchild or a more remote descendant.

42 ~~7.~~ 8. "Claims", in respect to estates of decedents and protected
43 persons, includes liabilities of the decedent or the protected person,
44 whether arising in contract, in tort or otherwise, and liabilities of the
45 estate that arise at or after the death of the decedent or after the

1 appointment of a conservator, including funeral expenses and expenses of
2 administration. Claims do not include estate or inheritance taxes or
3 demands or disputes regarding title of a decedent or a protected person to
4 specific assets alleged to be included in the estate.

5 ~~8.~~ 9. "Community property" means that property of a husband and
6 wife that is acquired during the marriage and that is community property
7 as prescribed in section 25-211.

8 ~~9.~~ 10. "Conservator" means a person who is appointed by a court to
9 manage the estate of a protected person.

10 ~~10.~~ 11. "Court" means the superior court.

11 ~~11.~~ 12. "Dependent child" means a minor child whom the decedent
12 was obligated to support or an adult child who was in fact being supported
13 by the decedent at the time of the decedent's death.

14 ~~12.~~ 13. "Descendant" means all of the decedent's descendants of
15 all generations, with the relationship of parent and child at each
16 generation.

17 ~~13.~~ 14. "Devise", when used as a noun, means a testamentary
18 disposition of real or personal property and, when used as a verb, means
19 to dispose of real or personal property by will.

20 ~~14.~~ 15. "Devisee" means a person designated in a will to receive a
21 devise. For the purposes of chapter 3 of this title, in the case of a
22 devise to an existing trust or trustee, or to a trustee on trust described
23 by will, the trust or trustee is the devisee and the beneficiaries are not
24 devisees.

25 ~~15.~~ 16. "Disability" means cause for a protective order as
26 described in section 14-5401.

27 ~~16.~~ 17. "Distributee" means any person who has received property
28 of a decedent from that person's personal representative other than as a
29 creditor or purchaser. Distributee includes a testamentary trustee only
30 to the extent of distributed assets or increment that remains in that
31 person's hands. A beneficiary of a testamentary trust to whom the trustee
32 has distributed property received from a personal representative is a
33 distributee of the personal representative. For the purposes of this
34 paragraph, "testamentary trustee" includes a trustee to whom assets are
35 transferred by will, to the extent of the devised assets.

36 18. "ELECTRONIC MEDIUM" MEANS A MEDIUM HAVING ELECTRICAL, DIGITAL,
37 MAGNETIC, OPTICAL, ELECTROMAGNETIC OR SIMILAR CAPABILITIES.

38 19. "ELECTRONIC RECORD" MEANS A RECORD THAT IS CREATED, GENERATED,
39 SENT, COMMUNICATED, RECEIVED OR STORED BY ELECTRONIC MEANS.

40 20. "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC METHOD OR PROCESS
41 THAT THROUGH THE APPLICATION OF A SECURITY PROCEDURE ALLOWS A
42 DETERMINATION THAT THE ELECTRONIC SIGNATURE AT THE TIME IT WAS EXECUTED
43 WAS ALL OF THE FOLLOWING:

44 (a) UNIQUE TO THE PERSON USING IT.

1 (b) CAPABLE OF VERIFICATION.
2 (c) UNDER THE SOLE CONTROL OF THE PERSON USING IT.
3 (d) LINKED TO THE ELECTRONIC DOCUMENT TO WHICH IT RELATES IN A
4 MANNER SO THAT IF THE DOCUMENT IS CHANGED THE ELECTRONIC SIGNATURE IS
5 INVALIDATED.
6 21. "ELECTRONIC WILL" MEANS A TESTAMENTARY INSTRUMENT THAT IS
7 EXECUTED AND MAINTAINED ON AN ELECTRONIC MEDIUM AND THAT IS EXECUTED IN
8 COMPLIANCE WITH SECTION 14-2518.
9 ~~17.~~ 22. "Estate" includes the property of the decedent, trust or
10 other person whose affairs are subject to this title as originally
11 constituted and as it exists from time to time during administration. As
12 it relates to a spouse, the estate includes only the separate property and
13 the share of the community property belonging to the decedent or person
14 whose affairs are subject to this title.
15 ~~18.~~ 23. "Exempt property" means that property of a decedent's
16 estate that is described in section 14-2403.
17 ~~19.~~ 24. "Fiduciary" includes a personal representative, guardian,
18 conservator and trustee.
19 ~~20.~~ 25. "Foreign personal representative" means a personal
20 representative appointed by another jurisdiction.
21 ~~21.~~ 26. "Formal proceedings" means proceedings conducted before a
22 judge with notice to interested persons.
23 ~~22.~~ 27. "Governing instrument" means a deed, will, trust,
24 insurance or annuity policy, account with pay on death designation,
25 security registered in beneficiary form, pension, profit sharing,
26 retirement or similar benefit plan, instrument creating or exercising a
27 power of appointment or a power of attorney or a dispositive, appointive
28 or nominative instrument of any similar type.
29 ~~23.~~ 28. "Guardian" means a person who has qualified as a guardian
30 of a minor or incapacitated person pursuant to testamentary or court
31 appointment but excludes a person who is merely a guardian ad litem.
32 ~~24.~~ 29. "Guardian ad litem" includes a person who is appointed
33 pursuant to section 14-1408.
34 ~~25.~~ 30. "Heirs", except as controlled by section 14-2711, means
35 persons, including the surviving spouse and the state, who are entitled
36 under the statutes of intestate succession to the property of a decedent.
37 ~~26.~~ 31. "Incapacitated person" has the same meaning prescribed in
38 section 14-5101.
39 ~~27.~~ 32. "Informal proceedings" means those proceedings conducted
40 without notice to interested persons by an officer of the court acting as
41 a registrar for probate of a will or appointment of a personal
42 representative.
43 ~~28.~~ 33. "Interested person" includes any trustee, heir, devisee,
44 child, spouse, creditor, beneficiary, person holding a power of
45 appointment and other person who has a property right in or claim against

1 a trust estate or the estate of a decedent, ward or protected person.
 2 Interested person also includes a person who has priority for appointment
 3 as personal representative and other fiduciaries representing interested
 4 persons. Interested person, as the term relates to particular persons,
 5 may vary from time to time and must be determined according to the
 6 particular purposes of, and matter involved in, any proceeding.

7 ~~29.~~ 34. "Issue" of a person means descendant as defined in this
 8 section.

9 ~~30.~~ 35. "Joint tenants with the right of survivorship" and
 10 "community property with the right of survivorship" includes co-owners of
 11 property held under circumstances that entitle one or more to the whole of
 12 the property on the death of the other or others but excludes forms of
 13 co-ownership registration in which the underlying ownership of each party
 14 is in proportion to that party's contribution.

15 ~~31.~~ 36. "Lease" includes any oil, gas or other mineral lease.

16 ~~32.~~ 37. "Letters" includes letters testamentary, letters of
 17 guardianship, letters of administration and letters of conservatorship.

18 ~~33.~~ 38. "Minor" means a person who is under eighteen years of age.

19 ~~34.~~ 39. "Mortgage" means any conveyance, agreement or arrangement
 20 in which property is encumbered or used as security. Mortgage does not
 21 include leases or easements.

22 ~~35.~~ 40. "Nonresident decedent" means a decedent who was domiciled
 23 in another jurisdiction at the time of the decedent's death.

24 ~~36.~~ 41. "Organization" means a corporation, limited liability
 25 company, business trust, estate, trust, partnership, joint venture,
 26 association, government or governmental subdivision or agency or any other
 27 legal or commercial entity.

28 42. "PAPER WILL" MEANS A TESTAMENTARY INSTRUMENT THAT IS EXECUTED
 29 AND MAINTAINED ON A TANGIBLE MEDIUM AND THAT IS EXECUTED IN COMPLIANCE
 30 WITH SECTION 14-2502 OR 14-2503.

31 ~~37.~~ 43. "Parent" includes any person entitled to take, or who
 32 would be entitled to take if the child died without a will, as a parent
 33 under this title by intestate succession from the child whose relationship
 34 is in question and excludes any person who is only a stepparent, foster
 35 parent or grandparent.

36 ~~38.~~ 44. "Payor" means a trustee, insurer, business entity,
 37 employer, government, governmental agency or subdivision or any other
 38 person who is authorized or obligated by law or a governing instrument to
 39 make payments.

40 ~~39.~~ 45. "Person" means an individual or an organization.

41 ~~40.~~ 46. "Personal representative" includes executor,
 42 administrator, successor personal representative, special administrator
 43 and persons who perform substantially the same function under the law
 44 governing their status. A general personal representative excludes a
 45 special administrator.

~~41.~~ 47. "Petition" means a written request to the court for an order after notice.

~~42.~~ 48. "Proceeding" includes action at law and suit in equity.

~~43.~~ 49. "Property" has the same meaning prescribed in section 14-10103.

~~44.~~ 50. "Protected person" has the same meaning prescribed in section 14-5101.

~~45.~~ 51. "Protective proceeding" has the same meaning prescribed in section 14-5101.

52. "QUALIFIED CUSTODIAN" MEANS A PERSON WHO FULFILLS THE REQUIREMENTS OF SECTION 14-2520.

~~46.~~ 53. "Registrar" means the official of the court designated to perform the functions of registrar as provided in section 14-1307.

~~47.~~ 54. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under that title or lease, collateral trust certificate, transferable share or voting trust certificate and, in general, includes any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of these securities.

~~48.~~ 55. "Separate property" means that property of a husband or wife that is the spouse's separate property as defined in section 25-213.

~~49.~~ 56. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution and closing.

~~50.~~ 57. "Special administrator" means a personal representative as described by sections 14-3614 through 14-3618.

~~51.~~ 58. "State" has the same meaning prescribed in section 14-10103.

~~52.~~ 59. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~53.~~ 60. "Successors" means persons, other than creditors, who are entitled to property of a decedent under a will or this title.

~~54.~~ 61. "Supervised administration" refers to the proceedings described in chapter 3, article 5 of this title.

~~55.~~ 62. "Survive" means that a person has neither predeceased an event, including the death of another person, nor is deemed to have predeceased an event under section 14-2104 or 14-2702.

~~56.~~ 63. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~57.~~ 64. "Testator" includes a person of either sex.

~~58.~~ 65. "Trust" includes an express trust, private or charitable, with any additions, wherever and however created. Trust also includes a

trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts and excludes resulting trusts, conservatorship, personal representatives, trust accounts, custodial arrangements pursuant to chapter 7, article 7 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind, trusts created by a city or town for the payment of medical insurance, health care benefits or expenses, long-term or short-term disability, self insurance reserves and similar programs administered by a city or town, legal defense trusts and any arrangement under which a person is nominee or escrowee for another.

~~59.~~ 66. "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by the court.

~~60.~~ 67. "Ward" has the same meaning prescribed in section 14-5101.

~~61.~~ 68. "Will" includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. **A WILL MAY BE A PAPER WILL OR AN ELECTRONIC WILL.**

Sec. 2. Section 14-2502, Arizona Revised Statutes, is amended to read:

14-2502. Execution of paper wills; witnessed wills; holographic wills; testamentary intent

A. Except as provided in sections 14-2503, 14-2506 and 14-2513, a **PAPER** will shall be:

1. In writing.
2. Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.
3. Signed by at least two people, each of whom signed within a reasonable time after that person witnessed either the signing of the will as described in paragraph 2 or the testator's acknowledgment of that signature or acknowledgment of the will.

B. Intent that ~~the A document constitute~~ **OR AN ELECTRONIC RECORD CONSTITUTES** the testator's will can be established by extrinsic evidence, including, for holographic wills under section 14-2503, portions of the document that are not in the testator's handwriting.

Sec. 3. Section 14-2506, Arizona Revised Statutes, is amended to read:

14-2506. Execution; choice of law

A written will is valid if executed in compliance with section 14-2502 **OR 14-2518**, or if its execution complies with the law at the time of execution of the place where the ~~will is executed~~ **TESTATOR IS**

1 PHYSICALLY PRESENT WHEN THE TESTATOR EXECUTES THE WILL, or of the law of
2 the place where at the time of execution or at the time of death the
3 testator is domiciled, has a place of abode or is a national.

4 Sec. 4. Section 14-2507, Arizona Revised Statutes, is amended to
5 read:

6 14-2507. Revocation of will; requirements

7 A. A testator may revoke a will in whole or in part:

8 1. By executing a subsequent will that revokes the previous will or
9 part expressly or by inconsistency.

10 2. By performing a revocatory act on the will if the testator
11 performs the act with this intent or if another person performs the act in
12 the testator's conscious presence and by the testator's direction. For
13 THE purposes of this paragraph, "revocatory act on the will" includes
14 burning, tearing, canceling, obliterating, RENDERING UNREADABLE or
15 destroying the will or any part of it. A burning, tearing or canceling is
16 a revocatory act on the will whether or not the burn, tear or cancellation
17 touched any of the words on the will.

18 B. If a subsequent will does not expressly revoke a previous will,
19 the execution of the subsequent will wholly revokes the previous will by
20 inconsistency if the testator intended the subsequent will to replace
21 rather than supplement the previous will.

22 C. The testator is presumed to have intended a subsequent will to
23 replace rather than supplement a previous will if the subsequent will
24 makes a complete disposition of the testator's estate. If this
25 presumption arises and is not rebutted by clear and convincing evidence,
26 the previous will is revoked and only the subsequent will is operative on
27 the testator's death.

28 D. The testator is presumed to have intended a subsequent will to
29 supplement rather than replace a previous will if the subsequent will does
30 not make a complete disposition of the testator's estate. If this
31 presumption arises and is not rebutted by clear and convincing evidence,
32 the subsequent will revokes the previous will only to the extent the
33 subsequent will is inconsistent with the previous will and each will is
34 fully operative on the testator's death to the extent ~~they~~ THE WILLS are
35 not inconsistent.

36 Sec. 5. Title 14, chapter 2, article 5, Arizona Revised Statutes,
37 is amended by adding sections 14-2518, 14-2519, 14-2520, 14-2521, 14-2522
38 and 14-2523, to read:

39 14-2518. Electronic will; requirements; interpretation

40 A. AN ELECTRONIC WILL MUST MEET ALL OF THE FOLLOWING REQUIREMENTS:

41 1. BE CREATED AND MAINTAINED IN AN ELECTRONIC RECORD.

1 2. CONTAIN THE ELECTRONIC SIGNATURE OF THE TESTATOR OR THE
2 TESTATOR'S ELECTRONIC SIGNATURE MADE BY SOME OTHER INDIVIDUAL IN THE
3 TESTATOR'S CONSCIOUS PRESENCE AND BY THE TESTATOR'S DIRECTION.

4 3. CONTAIN THE ELECTRONIC SIGNATURES OF AT LEAST TWO PERSONS, EACH
5 OF WHOM MET BOTH OF THE FOLLOWING REQUIREMENTS:

6 (a) WAS PHYSICALLY PRESENT WITH THE TESTATOR WHEN THE TESTATOR
7 ELECTRONICALLY SIGNED THE WILL, ACKNOWLEDGED THE TESTATOR'S SIGNATURE OR
8 ACKNOWLEDGED THE WILL.

9 (b) ELECTRONICALLY SIGNED THE WILL WITHIN A REASONABLE TIME AFTER
10 THE PERSON WITNESSED THE TESTATOR SIGNING THE WILL, ACKNOWLEDGING THE
11 TESTATOR'S SIGNATURE OR ACKNOWLEDGING THE WILL AS DESCRIBED IN SUBDIVISION
12 (a) OF THIS PARAGRAPH.

13 4. STATE THE DATE THAT THE TESTATOR AND EACH OF THE WITNESSES
14 ELECTRONICALLY SIGNED THE WILL.

15 5. CONTAIN A COPY OF A GOVERNMENT-ISSUED IDENTIFICATION CARD OF THE
16 TESTATOR.

17 B. EXCEPT AS PROVIDED IN THIS SECTION AND SECTIONS 14-2519,
18 14-2520, 14-2521, 14-2522 AND 14-2523, ANY QUESTION RAISED ABOUT THE
19 FORCE, EFFECT, VALIDITY AND INTERPRETATION OF AN ELECTRONIC WILL SHALL BE
20 DETERMINED IN THE SAME MANNER AS A QUESTION REGARDING A PAPER WILL
21 EXECUTED PURSUANT TO SECTION 14-2502.

22 C. THIS SECTION DOES NOT APPLY TO A TRUST EXCEPT A TESTAMENTARY
23 TRUST CREATED IN AN ELECTRONIC WILL.

24 14-2519. Self-proved electronic will

25 IN ADDITION TO THE REQUIREMENTS OF SECTION 14-2504, TO BE
26 SELF-PROVED, AN ELECTRONIC WILL MUST MEET ALL OF THE FOLLOWING
27 REQUIREMENTS:

28 1. CONTAIN THE ELECTRONIC SIGNATURE AND ELECTRONIC SEAL OF A NOTARY
29 PUBLIC PLACED ON THE WILL IN ACCORDANCE WITH APPLICABLE LAW.

30 2. THE ELECTRONIC WILL DESIGNATES A QUALIFIED CUSTODIAN TO MAINTAIN
31 CUSTODY OF THE ELECTRONIC WILL.

32 3. BEFORE BEING OFFERED FOR PROBATE OR BEING REDUCED TO A CERTIFIED
33 PAPER COPY, THE ELECTRONIC WILL IS UNDER THE CUSTODY OF A QUALIFIED
34 CUSTODIAN AT ALL TIMES.

35 14-2520. Qualified custodian

36 A QUALIFIED CUSTODIAN OF AN ELECTRONIC WILL:

37 1. MAY NOT BE RELATED TO THE TESTATOR BY BLOOD, MARRIAGE OR
38 ADOPTION.

39 2. MAY NOT BE A DEVISEE UNDER THE ELECTRONIC WILL OR RELATED BY
40 BLOOD, MARRIAGE OR ADOPTION TO A DEVISEE UNDER THE ELECTRONIC WILL.

41 3. SHALL CONSISTENTLY EMPLOY AND STORE ELECTRONIC RECORDS OF
42 ELECTRONIC WILLS IN A SYSTEM THAT PROTECTS ELECTRONIC RECORDS FROM
43 DESTRUCTION, ALTERATION OR UNAUTHORIZED ACCESS AND DETECTS ANY CHANGE TO
44 AN ELECTRONIC RECORD.

4. SHALL STORE IN THE ELECTRONIC RECORD OF AN ELECTRONIC WILL EACH OF THE FOLLOWING:

(a) A PHOTOGRAPH OR OTHER VISUAL RECORD OF THE TESTATOR AND THE ATTESTING WITNESSES THAT WAS TAKEN CONTEMPORANEOUSLY WITH THE EXECUTION OF THE ELECTRONIC WILL.

(b) A PHOTOCOPY, PHOTOGRAPH, FACSIMILE OR OTHER VISUAL RECORD OF ANY DOCUMENTATION THAT WAS TAKEN CONTEMPORANEOUSLY WITH THE EXECUTION OF THE ELECTRONIC WILL AND PROVIDES SATISFACTORY EVIDENCE OF THE IDENTITIES OF THE TESTATOR AND THE ATTESTING WITNESSES, INCLUDING DOCUMENTATION OF THE METHODS OF IDENTIFICATION USED.

(c) AN AUDIO AND VIDEO RECORDING OF THE TESTATOR, ATTESTING WITNESSES AND NOTARY PUBLIC, AS APPLICABLE, TAKEN AT THE TIME THE TESTATOR, EACH ATTESTING WITNESS AND NOTARY PUBLIC, AS APPLICABLE, PLACED THE PERSON'S ELECTRONIC SIGNATURE ON THE ELECTRONIC WILL.

5. SHALL PROVIDE TO ANY COURT THAT IS HEARING A MATTER INVOLVING AN ELECTRONIC WILL THAT IS CURRENTLY OR WAS PREVIOUSLY STORED BY THE QUALIFIED CUSTODIAN ANY INFORMATION REQUESTED BY THE COURT PERTAINING TO THE QUALIFICATIONS OF THE QUALIFIED CUSTODIAN AND THE POLICIES AND PRACTICES OF THE QUALIFIED CUSTODIAN CONCERNING THE MAINTENANCE, STORAGE AND PRODUCTION OF ELECTRONIC WILLS AND MAY BE CALLED BY AN INTERESTED PARTY TO SERVE AS A FACT WITNESS REGARDING THE MAINTENANCE, STORAGE AND PRODUCTION OF ELECTRONIC WILLS.

14-2521. Qualified custodian; agreement to serve; ceasing service

A. A PERSON SHALL EXECUTE A WRITTEN STATEMENT AFFIRMATIVELY AGREEING TO SERVE AS THE QUALIFIED CUSTODIAN OF AN ELECTRONIC WILL BEFORE THE PERSON MAY SERVE AS A QUALIFIED CUSTODIAN.

B. EXCEPT FOR A PERSON CEASING TO SERVE AS PROVIDED IN SUBSECTION C, PARAGRAPH 1 OF THIS SECTION, A PERSON MAY NOT CEASE SERVING AS A QUALIFIED CUSTODIAN UNTIL A SUCCESSOR QUALIFIED CUSTODIAN EXECUTES THE WRITTEN STATEMENT PRESCRIBED BY SUBSECTION A OF THIS SECTION.

C. A PERSON SERVING AS A QUALIFIED CUSTODIAN MAY CEASE SERVING AS A QUALIFIED CUSTODIAN BY:

1. IF THE PERSON DOES NOT DESIGNATE A SUCCESSOR QUALIFIED CUSTODIAN, PROVIDING THE TESTATOR WITH BOTH OF THE FOLLOWING:

(a) A THIRTY-DAY WRITTEN NOTICE THAT THE PERSON WILL CEASE TO SERVE AS A QUALIFIED CUSTODIAN.

(b) THE CERTIFIED PAPER ORIGINAL OF THE ELECTONIC WILL AND ALL RECORDS CONCERNING THE ELECTRONIC WILL.

2. IF THE PERSON DESIGNATES A SUCCESSOR QUALIFIED CUSTODIAN, BY PROVIDING ALL OF THE FOLLOWING:

(a) A THIRTY-DAY WRITTEN NOTICE THAT THE PERSON WILL CEASE TO SERVE AS A QUALIFIED CUSTODIAN TO THE TESTATOR AND THE SUCCESSOR QUALIFIED CUSTODIAN.

(b) TO THE SUCCESSOR QUALIFIED CUSTODIAN, THE ELECTRONIC RECORD OF THE ELECTRONIC WILL AND AN AFFIDAVIT THAT STATES ALL OF THE FOLLOWING:

(i) THAT THE PERSON IS ELIGIBLE TO ACT AS A QUALIFIED CUSTODIAN IN THIS STATE AND IS THE QUALIFIED CUSTODIAN DESIGNATED BY THE TESTATOR IN THE ELECTRONIC WILL OR WAS DESIGNATED TO ACT IN THAT CAPACITY BY ANOTHER QUALIFIED CUSTODIAN PURSUANT TO THIS PARAGRAPH.

(ii) THAT AN ELECTRONIC RECORD WAS CREATED AT THE TIME THE TESTATOR EXECUTED THE ELECTRONIC WILL.

(iii) THAT THE ELECTRONIC RECORD HAS BEEN IN THE CUSTODY OF ONE OR MORE QUALIFIED CUSTODIANS SINCE THE EXECUTION OF THE ELECTRONIC WILL AND HAS NOT BEEN ALTERED SINCE THE TIME IT WAS CREATED.

(iv) THE IDENTITY OF ALL QUALIFIED CUSTODIANS WHO HAVE HAD CUSTODY OF THE ELECTRONIC RECORD SINCE THE EXECUTION OF THE ELECTRONIC WILL.

D. FOR THE PURPOSES OF MAKING THE AFFIDAVIT PRESCRIBED BY SUBSECTION C, PARAGRAPH 2, SUBDIVISION (b) OF THIS SECTION, THE PERSON MAY RELY CONCLUSIVELY ON ANY AFFIDAVITS PROVIDED BY A PREDECESSOR QUALIFIED CUSTODIAN IF ALL OF THESE AFFIDAVITS ARE PROVIDED TO THE SUCCESSOR QUALIFIED CUSTODIAN.

E. IF A TESTATOR DESIGNATES A SUCCESSOR QUALIFIED CUSTODIAN IN A WRITING EXECUTED WITH THE SAME FORMALITIES REQUIRED FOR THE EXECUTION OF AN ELECTRONIC WILL AND THE SUCCESSOR QUALIFIED CUSTODIAN EXECUTES THE WRITTEN STATEMENT PRESCRIBED BY SUBSECTION A OF THIS SECTION, THE PERSON SERVING AS QUALIFIED CUSTODIAN SHALL CEASE SERVING IN THAT CAPACITY AND SHALL PROVIDE THE SUCCESSOR QUALIFIED CUSTODIAN WITH BOTH OF THE FOLLOWING:

1. THE ELECTRONIC RECORD.

2. THE AFFIDAVIT PRESCRIBED BY SUBSECTION C, PARAGRAPH 2, SUBDIVISION (b) OF THIS SECTION.

F. IF A QUALIFIED CUSTODIAN IS AN ENTITY, AN AFFIDAVIT OF A DULY AUTHORIZED OFFICER OR AGENT OF THE ENTITY CONSTITUTES THE AFFIDAVIT OF THE QUALIFIED CUSTODIAN.

14-2522. Electronic record; access; destruction

A. A QUALIFIED CUSTODIAN SHALL PROVIDE ACCESS TO OR INFORMATION CONCERNING THE ELECTRONIC WILL IN THE ELECTRONIC RECORD OR THE CERTIFIED PAPER ORIGINAL OF THE ELECTRONIC WILL ONLY TO:

1. THE TESTATOR OR ANOTHER PERSON AS DIRECTED BY THE WRITTEN INSTRUCTIONS OF THE TESTATOR.

2. AFTER THE DEATH OF THE TESTATOR, THE NOMINATED PERSONAL REPRESENTATIVE OF THE TESTATOR OR ANY INTERESTED PERSON.

B. A QUALIFIED CUSTODIAN MAY DESTROY THE ELECTRONIC RECORD AT THE EARLIER OF:

1. ONE HUNDRED YEARS AFTER THE TESTATOR'S DEATH.

1 2. FIVE YEARS AFTER THE TESTATOR'S LAST WILL IS ADMITTED TO PROBATE
2 AND ALL APPELLATE OPPORTUNITIES HAVE BEEN EXHAUSTED.

3 C. A QUALIFIED CUSTODIAN SHALL CANCEL, RENDER UNREADABLE OR
4 OBLITERATE THE ELECTRONIC RECORD IF THE TESTATOR DIRECTS THE QUALIFIED
5 CUSTODIAN TO DO SO IN A WRITING EXECUTED WITH THE SAME FORMALITIES
6 REQUIRED FOR THE EXECUTION OF AN ELECTRONIC WILL.

7 14-2523. Certified paper original of electronic will:
8 affidavits

9 A. ON THE CREATION OF A CERTIFIED PAPER ORIGINAL OF AN ELECTRONIC
10 WILL, IF THE ELECTRONIC WILL HAS ALWAYS BEEN IN THE CUSTODY OF A QUALIFIED
11 CUSTODIAN, THE QUALIFIED CUSTODIAN SHALL STATE IN AN AFFIDAVIT ALL OF THE
12 FOLLOWING:

13 1. THAT THE QUALIFIED CUSTODIAN IS ELIGIBLE TO ACT AS A QUALIFIED
14 CUSTODIAN IN THIS STATE AND IS THE QUALIFIED CUSTODIAN DESIGNATED BY THE
15 TESTATOR IN THE ELECTRONIC WILL OR WAS DESIGNATED TO ACT IN THAT CAPACITY
16 BY ANOTHER QUALIFIED CUSTODIAN PURSUANT TO SECTION 14-2521, SUBSECTION C,
17 PARAGRAPH 2.

18 2. THAT AN ELECTRONIC RECORD WAS CREATED AT THE TIME THE TESTATOR
19 EXECUTED THE ELECTRONIC WILL.

20 3. THAT THE ELECTRONIC RECORD HAS BEEN IN THE CUSTODY OF ONE OR
21 MORE QUALIFIED CUSTODIANS SINCE THE EXECUTION OF THE ELECTRONIC WILL AND
22 HAS NOT BEEN ALTERED SINCE THE TIME IT WAS CREATED.

23 4. THE IDENTITY OF ALL QUALIFIED CUSTODIANS WHO HAVE HAD CUSTODY OF
24 THE ELECTRONIC RECORD SINCE THE EXECUTION OF THE ELECTRONIC WILL.

25 5. THAT THE CERTIFIED PAPER ORIGINAL IS A TRUE, CORRECT AND
26 COMPLETE TANGIBLE MANIFESTATION OF THE ELECTRONIC WILL.

27 6. THAT THE RECORDS DESCRIBED IN SECTION 14-2520, PARAGRAPH 4 ARE
28 IN THE CUSTODY OF THE QUALIFIED CUSTODIAN.

29 B. ON THE CREATION OF A CERTIFIED PAPER ORIGINAL OF AN ELECTRONIC
30 WILL, IF THE ELECTRONIC WILL HAS NOT ALWAYS BEEN IN THE CUSTODY OF A
31 QUALIFIED CUSTODIAN, THE PERSON WHO DISCOVERED THE ELECTRONIC WILL AND THE
32 PERSON WHO REDUCED THE ELECTRONIC WILL TO THE CERTIFIED PAPER ORIGINAL
33 SHALL EACH STATE IN AN AFFIDAVIT ALL OF THE FOLLOWING TO THE BEST OF EACH
34 PERSON'S KNOWLEDGE:

35 1. WHEN THE ELECTRONIC WILL WAS CREATED, IF NOT INDICATED IN THE
36 ELECTRONIC WILL.

37 2. WHEN, HOW AND BY WHOM THE ELECTRONIC WILL WAS DISCOVERED.

38 3. THE IDENTITY OF EACH PERSON WHO HAS HAD ACCESS TO THE ELECTRONIC
39 WILL.

40 4. THE METHOD IN WHICH THE ELECTRONIC WILL WAS STORED AND THE
41 SAFEGUARDS IN PLACE TO PREVENT ALTERATIONS TO THE ELECTRONIC WILL.

42 5. WHETHER THE ELECTRONIC WILL HAS BEEN ALTERED SINCE ITS
43 EXECUTION.

44 6. THAT THE CERTIFIED PAPER ORIGINAL IS A TRUE, CORRECT AND
45 COMPLETE TANGIBLE MANIFESTATION OF THE ELECTRONIC WILL.

C. FOR THE PURPOSES OF MAKING THE AFFIDAVIT PRESCRIBED BY SUBSECTION A OF THIS SECTION, THE QUALIFIED CUSTODIAN MAY RELY CONCLUSIVELY ON ANY AFFIDAVITS PROVIDED BY A PREDECESSOR QUALIFIED CUSTODIAN.

Sec. 6. Section 14-3402, Arizona Revised Statutes, is amended to read:

14-3402. Formal testacy or appointment proceedings; petition; contents

A. Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will must:

1. Request an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

2. Contain the statements required for informal applications as stated in paragraph 1 of subsection B of section 14-3301 and the statements required by subdivisions (b) and (c), paragraph 2 of subsection B of section 14-3301; and

3. State whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will or a certified copy of a will probated in another jurisdiction neither is in the possession of the court nor accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed or otherwise unavailable. FOR THE PURPOSES OF THIS PARAGRAPH, "ORIGINAL WILL" INCLUDES A CERTIFIED PAPER ORIGINAL OF AN ELECTRONIC WILL.

B. A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by paragraphs 1 and 4 of subsection B of section 14-3301 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subdivision (b), paragraph 4 of subsection B of section 14-3301 may be omitted.

Sec. 7. Section 14-3971, Arizona Revised Statutes, is amended to read:

14-3971. Collection of personal property by affidavit; ownership of vehicles; affidavit of succession to real property

A. At any time after the death of a decedent, any employer owing wages, salary or other compensation for personal services of the decedent shall pay to the surviving spouse of the decedent the amount owing, not in

1 excess of five thousand dollars, on being presented an affidavit made by
2 or on behalf of the spouse stating that the affiant is the surviving
3 spouse of the decedent, or is authorized to act on behalf of the spouse,
4 and that no application or petition for the appointment of a personal
5 representative is pending or has been granted in this state or, if
6 granted, the personal representative has been discharged or more than one
7 year has elapsed since a closing statement has been filed.

8 B. Thirty days after the death of a decedent, any person indebted
9 to the decedent or having possession of tangible personal property or an
10 instrument evidencing a debt, obligation, stock or chose in action
11 belonging to the decedent shall make payment of the indebtedness or
12 deliver the tangible personal property or an instrument evidencing a debt,
13 obligation, stock or chose in action to a person claiming to be the
14 successor of the decedent upon being presented an affidavit made by or on
15 behalf of the successor and stating that all of the following are true:

16 1. Thirty days have elapsed since the death of the decedent.

17 2. Either:

18 (a) An application or petition for the appointment of a personal
19 representative is not pending and a personal representative has not been
20 appointed in any jurisdiction and the value of all personal property in
21 the decedent's estate, wherever located, less liens and encumbrances, does
22 not exceed seventy-five thousand dollars as valued as of the date of
23 death.

24 (b) The personal representative has been discharged or more than
25 one year has elapsed since a closing statement has been filed and the
26 value of all personal property in the decedent's estate, wherever located,
27 less liens and encumbrances, does not exceed seventy-five thousand dollars
28 as valued as of the date of the affidavit.

29 3. The claiming successor is entitled to payment or delivery of the
30 property.

31 C. A transfer agent of any security shall change the registered
32 ownership on the books of a corporation from the decedent to the successor
33 or successors on presentation of an affidavit pursuant to subsection B of
34 this section.

35 D. The motor vehicle division shall transfer title of a motor
36 vehicle from the decedent to the successor or successors on presentation
37 of an affidavit as provided in subsection B of this section and on payment
38 of the necessary fees.

39 E. No sooner than six months after the death of a decedent, a
40 person or persons claiming as successor or successors to the decedent's
41 interest in real property, including any debt secured by a lien on real
42 property, may file in the court in the county in which the decedent was
43 domiciled at the time of death, or if the decedent was not domiciled in
44 this state then in any county in which real property of the decedent is
45 located, an affidavit describing the real property and the interest of the

1 decedent in that property and stating that all of the following are true
 2 and material and acknowledging that any false statement in the affidavit
 3 may subject the person or persons to penalties relating to perjury and
 4 subornation of perjury:

5 1. Either:

6 (a) An application or petition for the appointment of a personal
 7 representative is not pending and a personal representative has not been
 8 appointed in any jurisdiction and the value of all real property in the
 9 decedent's estate located in this state, less liens and encumbrances
 10 against the real property, does not exceed one hundred thousand dollars as
 11 valued at the date of death. The value of the decedent's interest in that
 12 real property shall be determined from the full cash value of the property
 13 as shown on the assessment rolls for the year in which the decedent died,
 14 except that in the case of a debt secured by a lien on real property the
 15 value shall be determined by the unpaid principal balance due on the debt
 16 as of the date of death.

17 (b) The personal representative has been discharged or more than
 18 one year has elapsed since a closing statement has been filed and the
 19 value of all real property in the decedent's estate, wherever located,
 20 less liens and encumbrances, does not exceed one hundred thousand dollars
 21 as valued as of the date of the affidavit. The value of the decedent's
 22 interest in that real property is determined from the full cash value of
 23 the property as shown on the assessment rolls for the year in which the
 24 affidavit is given, except that if a debt is secured by a lien on real
 25 property, the value is determined by the unpaid principal balance due on
 26 the debt as of the date of the affidavit.

27 2. Six months have elapsed since the death of the decedent as shown
 28 in a certified copy of the decedent's death certificate attached to the
 29 affidavit.

30 3. Funeral expenses, expenses of last illness and all unsecured
 31 debts of the decedent have been paid.

32 4. The person or persons signing the affidavit are entitled to the
 33 real property by reason of the allowance in lieu of homestead, exempt
 34 property or family allowance, by intestate succession as the sole heir or
 35 heirs, or by devise under a valid last will of the decedent, the original
 36 of which OR, IN THE CASE OF AN ELECTRONIC WILL, A CERTIFIED PAPER ORIGINAL
 37 OF WHICH, is attached to the affidavit or has been probated.

38 5. No other person has a right to the interest of the decedent in
 39 the described property.

40 6. No federal estate tax is due on the decedent's estate.

41 F. The normal filing fee shall be charged for the filing of an
 42 affidavit under subsection E of this section unless waived by the court as
 43 provided by section 12-301 or 12-302. On receipt of the affidavit and
 44 after determining that the affidavit is complete, the registrar shall
 45 issue a certified copy of the affidavit without attachments, and the copy

1 shall be recorded in the office of the recorder in the county where the
2 real property is located.

3 G. This section does not limit the rights of heirs and devisees
4 under section 14-3901.

5 Sec. 8. Effective date

6 This act is effective from and after June 30, 2019.