

## CHAPTER 2021-205

### House Bill No. 483

An act relating to electronic legal documents; amending s. 117.201, F.S.; revising the definition of the term “online notarization”; amending s. 117.285, F.S.; clarifying that supervising the witnessing of an electronic record by an online notary public is a notarial act; specifying applicability of online notarization procedures to supervision of the witnessing of an electronic record; modifying witnessing procedures; revising applicability; amending s. 709.2119, F.S.; revising the statutory form for an affidavit for acceptance of and reliance upon a power of attorney to reflect means of notarization; amending s. 732.401, F.S.; revising the statutory form for the notice of election relating to the descent of homestead property to reflect means of notarization; amending s. 732.503, F.S.; revising the statutory form for the self-proof of a will or codicil to reflect means of notarization; amending s. 732.521, F.S.; conforming a cross-reference; amending s. 732.703, F.S.; revising statutory forms relating to the disposition of certain assets at death to reflect means of notarization; amending s. 747.051, F.S.; revising the form for a petition of summary relief for the sale or transfer of certain property owned by an absentee to reflect means of notarization; providing for construction and retroactive application; providing an effective date.

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

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

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

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

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

117.285 Supervising the witnessing of electronic records.—Supervising the witnessing of an electronic record by an online notary public in accordance with this section is a notarial act. An online notary public may supervise the witnessing of electronic records by complying with the online notarization procedures of this part and using the same audio-video communication technology used for online notarization by a principal, as follows:

(1) The witness may be in the physical presence of the principal or remote from the principal provided the witness and principal are using audio-video communication technology.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Nothing in this subsection shall:

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

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

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

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

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

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

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

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

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

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

(8) The law of this state governs the validity of witnessing supervised by an online notary public pursuant to this section, regardless of the physical location of the witness at the time of witnessing. State and federal courts in this state have subject matter jurisdiction over any dispute arising out of an act of witnessing pursuant to this section, and may issue subpoenas for records or to require the appearance of witnesses in relation thereto in accordance with applicable law.

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

709.2119 Acceptance of and reliance upon power of attorney.—

(2) A third person may require:

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

STATE OF.....

COUNTY OF.....

Before me, the undersigned authority, personally appeared ...(agent)... (“Affiant”) by the means specified herein, who swore or affirmed that:

- 1. Affiant is the agent named in the Power of Attorney executed by ... (principal)... (“Principal”) on ...(date)....
- 2. This Power of Attorney is currently exercisable by Affiant. The principal is domiciled in ...(insert name of state, territory, or foreign country)....
- 3. To the best of Affiant’s knowledge after diligent search and inquiry:
  - a. The Principal is not deceased;
  - b. Affiant’s authority has not been suspended by initiation of proceedings to determine incapacity or to appoint a guardian or a guardian advocate;
  - c. Affiant’s authority has not been terminated by the filing of an action for dissolution or annulment of Affiant’s marriage to the principal, or their legal separation; and
  - d. There has been no revocation, or partial or complete termination, of the power of attorney or of Affiant’s authority.
- 4. Affiant is acting within the scope of authority granted in the power of attorney.
- 5. Affiant is the successor to ...(insert name of predecessor agent)..., who has resigned, died, become incapacitated, is no longer qualified to serve, has declined to serve as agent, or is otherwise unable to act, if applicable.
- 6. Affiant agrees not to exercise any powers granted by the Power of Attorney if Affiant attains knowledge that the power of attorney has been revoked, has been partially or completely terminated or suspended, or is no longer valid because of the death or adjudication of incapacity of the Principal.

.....  
...(Affiant)...

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization this ..... day of ...(month)..., ...(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 4. Paragraph (e) of subsection (2) of section 732.401, Florida Statutes, is amended to read:

732.401 Descent of homestead.—

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

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

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.

.....  
...(Affiant)...

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

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

732.503 Self-proof of will.—

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

STATE OF..... FLORIDA

COUNTY OF .....

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

.....  
Testator

We,.....and....., have been sworn by the officer signing below, and declare to that officer on our oaths that the testator declared the instrument

to be the testator’s will and signed it in our presence and that we each signed the instrument as a witness in the presence of the testator and of each other.

.....

Witness

.....

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 732.703, Florida Statutes, is amended to read:

732.703 Effect of divorce, dissolution, or invalidity of marriage on disposition of certain assets at death.—

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



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

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

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

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

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

Before me, the undersigned authority, personally appeared by the means specified herein, ...(type or print Affiant’s name)..... (“Affiant”), who swore or affirmed that:

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

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

...(Affiant)...

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

...(Signature of Officer)...

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

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

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

Before me, the undersigned authority, personally appeared by the means specified herein, ...(type or print Affiant’s name)... (“Affiant”), who swore or affirmed that:

1. ...(Type or print name of Decedent)... (“Decedent”) died on ...(type or print the date of the Decedent’s death)....
2. Affiant is a “secondary beneficiary” as that term is defined in Section 732.703, Florida Statutes. On the date of the Decedent’s death, the Decedent was not legally married to the spouse designated as the “primary beneficiary” as that term is defined in Section 732.703, Florida Statutes.

...(Affiant)...

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

...(Signature of Officer)...  
...(Print, Type, or Stamp Commissioned name of Notary Public)...

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

747.051 Summary procedure.—

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

In the Circuit Court

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

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.

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.