

CHAPTER 2019-71

Committee Substitute for Committee Substitute for House Bill No. 409

An act relating to electronic legal documents; providing directives to the Division of Law Revision; amending s. 117.01, F.S.; revising provisions relating to use of the office of notary public; amending s. 117.021, F.S.; requiring electronic signatures to include access protection; prohibiting a person from requiring a notary public to perform a notarial act with certain technology; requiring the Department of State, in collaboration with the Agency for State Technology, to adopt rules for certain purposes; amending s. 117.05, F.S.; revising limitations on notary fees to conform to changes made by the act; providing for inclusion of certain information in a jurat or notarial certificate; providing for compliance with online notarization requirements; providing for notarial certification of a printed electronic record; revising statutory forms for jurats and notarial certificates; amending s. 117.107, F.S.; providing applicability; revising prohibited acts; creating s. 117.201, F.S.; providing definitions; creating s. 117.209, F.S.; authorizing online notarizations; providing an exception; creating s. 117.215, F.S.; specifying the application of other laws in relation to online notarizations; creating s. 117.225, F.S.; specifying registration and qualification requirements for online notaries public; creating s. 117.235, F.S.; authorizing the performance of certain notarial acts; creating s. 117.245, F.S.; requiring an online notary public to keep electronic journals of online notarizations and certain audio-video communication recordings; specifying the information that must be included for each online notarization; requiring that an online notary public retain a copy of the recording of an audio-video communication; specifying requirements for such recording; requiring an online notary public to take certain steps regarding the maintenance and security of the electronic journal; specifying that the Department of State maintains jurisdiction for a specified period of time for purposes of investigating notarial misconduct; authorizing the use of specified information for evidentiary purposes; creating s. 117.255, F.S.; specifying requirements for the use of electronic journals, signatures, and seals; requiring an online notary public to provide notification of the theft, vandalism, or loss of an electronic journal, signature, or seal; authorizing an online notary public to make copies of electronic journal entries and to provide access to related recordings under certain circumstances; authorizing an online notary public to charge a fee for making and delivering such copies; providing an exception; creating s. 117.265, F.S.; prescribing online notarization procedures; specifying the manner by which an online notary public must verify the identity of a principal; requiring an online notary public to take certain measures as to the security of technology used; specifying that an electronic notarial certificate must identify the performance of an online notarization; specifying that noncompliance does not impair the validity of a notarial act or the notarized electronic record; authorizing the

use of specified information for evidentiary purposes; providing for construction; creating s. 117.275, F.S.; providing fees for online notarizations; creating s. 117.285, F.S.; specifying the manner by which an online notary public may supervise the witnessing of electronic records of online notarizations; specifying the circumstances under which an instrument is voidable; specifying the duties of Remote Online Notarization service providers and online notaries public; providing applicability and jurisdiction; creating s. 117.295, F.S.; authorizing the department to adopt rules and standards for online notarizations; providing minimum standards for online notarizations until such rules are adopted; requiring certain entities to provide a course for online notaries public; creating s. 117.305, F.S.; superseding certain provisions of federal law regulating electronic signatures; amending s. 28.222, F.S.; requiring the clerk of the circuit court to record certain instruments; amending s. 92.50, F.S.; revising requirements for oaths, affidavits, and acknowledgments; amending s. 95.231, F.S.; providing a limitation period for certain recorded instruments; amending s. 689.01, F.S.; providing for witnessing of documents in connection with real estate conveyances; providing for validation of certain recorded documents; amending s. 694.08, F.S.; providing for validation of certain recorded documents; amending s. 695.03, F.S.; providing and revising requirements for making acknowledgments, proofs, and other documents; amending s. 695.04, F.S.; conforming provisions to changes made by the act; amending s. 695.25, F.S.; revising the statutory short form of acknowledgments to include acknowledgment by online notarization; amending s. 695.28, F.S.; providing for validity of recorded documents; conforming provisions to changes made by the act; amending s. 709.2119, F.S.; authorizing the acceptance of a power of attorney based upon an electronic journal or electronic record made by a notary public; amending s. 709.2120, F.S.; prohibiting acceptance of a power of attorney if witnessed or notarized remotely; amending s. 709.2202, F.S.; prohibiting certain authority granted through a power of attorney if witnessed or notarized remotely; amending s. 731.201, F.S.; redefining the term “will” to conform to changes made by the act; amending s. 732.506, F.S.; exempting electronic wills from provisions governing the revocation of wills and codicils; prescribing the manner by which an electronic will or codicil may be revoked; creating s. 732.521, F.S.; providing definitions; creating s. 732.522, F.S.; prescribing the manner by which an electronic will must be executed; creating s. 732.523, F.S.; specifying requirements for the self-proof of an electronic will; creating s. 732.524, F.S.; specifying requirements necessary to serve as a qualified custodian of an electronic will; providing the duties of such qualified custodian; creating s. 732.525, F.S.; requiring a qualified custodian to post and maintain a blanket surety bond of a specified amount and maintain liability insurance; authorizing the Attorney General to petition a court to appoint a receiver to manage electronic records of a qualified custodian; creating s. 732.526, F.S.; specifying conditions by which an electronic will is deemed to be an original will; amending s. 733.201, F.S.; requiring that self-proved electronic wills meet certain requirements for admission to probate;

creating s. 740.11, F.S.; specifying that any act taken pursuant to ch. 740, F.S., does not affect the requirement that a will be deposited within a certain timeframe; providing effective dates.

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

Section 1. The Division of Law Revision is directed to:

(1) Create part I of chapter 117, Florida Statutes, consisting of ss. 117.01-117.108, Florida Statutes, to be entitled “General Provisions.”

(2) Create part II of chapter 117, Florida Statutes, consisting of ss. 117.201-117.305, Florida Statutes, to be entitled “Online Notarizations.”

Section 2. Subsection (1) of section 117.01, Florida Statutes, is amended to read:

117.01 Appointment, application, suspension, revocation, application fee, bond, and oath.—

(1) The Governor may appoint as many notaries public as he or she deems necessary, each of whom ~~must shall~~ be at least 18 years of age and a legal resident of ~~this~~ the state. A permanent resident alien may apply and be appointed and shall file with his or her application a recorded Declaration of Domicile. The residence required for appointment must be maintained throughout the term of appointment. A notary public ~~Notaries public~~ shall be appointed for 4 years and may only shall use and exercise the office of notary public if he or she is within the boundaries of this state. An applicant must be able to read, write, and understand the English language.

Section 3. Subsections (4) and (5) of section 117.021, Florida Statutes, are renumbered as subsections (5) and (6), respectively, subsection (2) of that section is amended, and new subsections (4) and (7) are added to that section, to read:

117.021 Electronic notarization.—

(2) In performing an electronic notarial act, a notary public shall use an electronic signature that is:

(a) Unique to the notary public;

(b) Capable of independent verification;

(c) Retained under the notary public’s sole control and includes access protection through the use of passwords or codes under control of the notary public; and

(d) Attached to or logically associated with the electronic document in a manner that any subsequent alteration to the electronic document displays evidence of the alteration.

(4) A person may not require a notary public to perform a notarial act with respect to an electronic record with a form of technology that the notary public has not selected to use.

(7) The Department of State, in collaboration with the Agency for State Technology, shall adopt rules establishing standards for tamper-evident technologies that will indicate any alteration or change to an electronic record after completion of an electronic notarial act. All electronic notarizations performed on or after January 1, 2020, must comply with the adopted standards.

Section 4. Subsection (1), paragraph (a) of subsection (2), subsections (4) and (5), paragraph (a) of subsection (12), and subsections (13) and (14) of section 117.05, Florida Statutes, are amended, and paragraph (c) is added to subsection (12) of that section, to read:

117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.—

(1) ~~A No person may not shall~~ obtain or use a notary public commission in other than his or her legal name, and it is unlawful for a notary public to notarize his or her own signature. Any person applying for a notary public commission must submit proof of identity to the Department of State ~~if so requested~~. Any person who violates ~~the provisions of this subsection commits is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) The fee of a notary public may not exceed \$10 for any one notarial act, except as provided in s. 117.045 or s. 117.275.

(4) When notarizing a signature, a notary public shall complete a jurat or notarial certificate in substantially the same form as those found in subsection (13). The jurat or certificate of acknowledgment shall contain the following elements:

(a) The venue stating the location of the notary public at the time of the notarization in the format, “State of Florida, County of

(b) The type of notarial act performed, an oath or an acknowledgment, evidenced by the words “sworn” or “acknowledged.”

(c) Whether That the signer personally appeared before the notary public at the time of the notarization by physical presence or by means of audio-video communication technology as authorized under part II of this chapter.

(d) The exact date of the notarial act.

(e) The name of the person whose signature is being notarized. It is presumed, absent such specific notation by the notary public, that notarization is to all signatures.

(f) The specific type of identification the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence specified in subsection (5).

(g) The notary public's ~~notary's~~ official signature.

(h) The notary public's ~~notary's~~ name, which must be typed, printed, or stamped below the signature.

(i) The notary public's ~~notary's~~ official seal affixed below or to either side of the notary public's ~~notary's~~ signature.

(5) A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying. In the case of an online notarization, the online notary public shall comply with the requirements set forth in part II of this chapter.

(a) For purposes of this subsection, the term "personally knows" means having an acquaintance, derived from association with the individual, which establishes the individual's identity with at least a reasonable certainty.

(b) For the purposes of this subsection, the term "satisfactory evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person whose signature is to be notarized is not the person he or she claims to be and any one of the following:

1. The sworn written statement of one credible witness personally known to the notary public or the sworn written statement of two credible witnesses whose identities are proven to the notary public upon the presentation of satisfactory evidence that each of the following is true:

a. That the person whose signature is to be notarized is the person named in the document;

b. That the person whose signature is to be notarized is personally known to the witnesses;

c. That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another acceptable form of identification;

d. That it is the reasonable belief of the witnesses that the person whose signature is to be notarized does not possess any of the identification documents specified in subparagraph 2.; and

e. That the witnesses do not have a financial interest in nor are parties to the underlying transaction; or

2. Reasonable reliance on the presentation to the notary public of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:

a. A Florida identification card or driver license issued by the public agency authorized to issue driver licenses;

b. A passport issued by the Department of State of the United States;

c. A passport issued by a foreign government if the document is stamped by the United States Bureau of Citizenship and Immigration Services;

d. A driver license or an identification card issued by a public agency authorized to issue driver licenses in a state other than Florida or in, a territory of the United States, or Canada or Mexico;

e. An identification card issued by any branch of the armed forces of the United States;

f. A veteran health identification card issued by the United States Department of Veterans Affairs;

g. An inmate identification card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in the custody of the department;

h. An inmate identification card issued by the United States Department of Justice, Bureau of Prisons, for an inmate who is in the custody of the department;

i. A sworn, written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated upon confinement and that the person named in the document is the person whose signature is to be notarized; or

j. An identification card issued by the United States Bureau of Citizenship and Immigration Services.

(12)(a) A notary public may supervise the making of a copy of a tangible or an electronic record or the printing of an electronic record ~~photocopy of an original document~~ and attest to the trueness of the copy or of the printout, provided the document is neither a vital record in this state, another state, a territory of the United States, or another country, nor a public record, if a copy can be made by the custodian of the public record.

(c) A notary public must use a certificate in substantially the following form in notarizing a copy of a tangible or an electronic record or a printout of an electronic record:

STATE OF FLORIDA

COUNTY OF

On this day of, ...(year)..., I attest that the preceding or attached document is a true, exact, complete, and unaltered ...(copy of a tangible or an electronic record presented to me by the document’s custodian)... or a ... (printout made by me from such record).... If a printout, I further attest that, at the time of printing, no security features, if any, present on the electronic record, indicated that the record had been altered since execution.

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

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

(13) The following notarial certificates are sufficient for the purposes indicated, if completed with the information required by this chapter. The specification of forms under this subsection does not preclude the use of other forms.

(a) For an oath or affirmation:

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.

(b) For an acknowledgment in an individual capacity:

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this day of, ...(year) ..., by ...(name of person acknowledging)....

...(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.

(c) For an acknowledgment in a representative capacity:

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this day of, ...(year) ..., by ...(name of person)... as ...(type of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....

...(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.

(14) A notary public must make reasonable accommodations to provide notarial services to persons with disabilities.

(a) A notary public may notarize the signature of a person who is blind after the notary public has read the entire instrument to that person.

(b) A notary public may notarize the signature of a person who signs with a mark if:

1. The document signing is witnessed by two disinterested persons;

2. The notary public prints the person’s first name at the beginning of the designated signature line and the person’s last name at the end of the designated signature line; and

3. The notary public prints the words “his (or her) mark” below the person’s signature mark.

(c) The following notarial certificates are sufficient for the purpose of notarizing for a person who signs with a mark:

1. For an oath or affirmation:

...(First Name)... ...(Last Name)...
...His (or Her) Mark...

STATE OF FLORIDA

COUNTY OF

Sworn to and subscribed before me by means of physical presence or online notarization, this day of, ...(year)..., by ...(name of person making statement)..., who signed with a mark in the presence of these witnesses:

...(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.

2. For an acknowledgment in an individual capacity:

...(First Name)... ...(Last Name)...
...His (or Her) Mark...

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this day of, ...(year)

..., by ...(name of person acknowledging)..., who signed with a mark in the presence of these witnesses:

...(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.

(d) A notary public may sign the name of a person whose signature is to be notarized when that person is physically unable to sign or make a signature mark on a document if:

- 1. The person with a disability directs the notary public to sign in his or her presence by verbal, written, or other means;
- 2. The document signing is witnessed by two disinterested persons; and
- 3. The notary public writes below the signature the following statement: “Signature affixed by notary, pursuant to s. 117.05(14), Florida Statutes,” and states the circumstances and the means by which the notary public was directed to sign of the signing in the notarial certificate.

The notary public must maintain the proof of direction and authorization to sign on behalf of the person with a disability for 10 years from the date of the notarial act.

(e) The following notarial certificates are sufficient for the purpose of notarizing for a person with a disability who directs the notary public to sign his or her name:

- 1. For an oath or affirmation:

STATE OF FLORIDA

COUNTY OF

Sworn to (or affirmed) before me by means of physical presence or online notarization, this day of, ...(year)..., by ...(name of person making statement)..., and subscribed by ...(name of notary)... at the direction of ~~and in the presence of~~ ...(name of person making statement) ...by ...(written, verbal, or other means)..., and in the presence of these witnesses:

...(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.

2. For an acknowledgment in an individual capacity:

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this day of, ...(year) ..., by ...(name of person acknowledging)... and subscribed by ...(name of notary)... at the direction of ~~and in the presence of~~ ...(name of person acknowledging)..., and in the presence of these witnesses:

...(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. Subsections (2) and (9) of section 117.107, Florida Statutes, are amended to read:

117.107 Prohibited acts.—

(2) A notary public may not sign notarial certificates using a facsimile signature stamp unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to the Department of State with an exemplar of the facsimile signature stamp. This subsection does not apply to or prohibit the use of an electronic signature and seal by a notary public who is registered as an online notary public to perform an electronic or online notarization in accordance with this chapter.

(9) A notary public may not notarize a signature on a document if the person whose signature is being notarized does not appear before the notary public either by means of physical presence or by means of audio-video communication technology as authorized under part II of this chapter ~~is not in the presence of the notary public~~ at the time the signature is notarized. Any notary public who violates this subsection is guilty of a civil infraction, punishable by penalty not exceeding \$5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties. It is no defense

to the civil infraction specified in this subsection that the notary public acted without intent to defraud. A notary public who violates this subsection with the intent to defraud is guilty of violating s. 117.105.

Section 6. Section 117.201, Florida Statutes, is created to read:

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

(1) “Appear before,” “before,” or “in the presence of” mean:

(a) In the physical presence of another person; or

(b) Outside of the physical presence of another person, but able to see, hear, and communicate with the person by means of audio-video communication technology.

(2) “Audio-video communication technology” means technology in compliance with applicable law which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another.

(3) “Credential analysis” means a process or service, in compliance with applicable law, in which a third party aids a public notary in affirming the validity of a government-issued identification credential and data thereon through review of public or proprietary data sources.

(4) “Electronic,” “electronic record,” or “electronic signature” has the same meaning as provided in s. 668.50.

(5) “Errors and omissions insurance” means a type of insurance that provides coverage for potential errors or omissions in or relating to the notarial act and is maintained, as applicable, by the online notary public or his or her employer, or a Remote Online Notarization service provider.

(6) “Government-issued identification credential” means any approved credential for verifying identity under s. 117.05(5)(b)2.

(7) “Identity proofing” means a process or service in compliance with applicable law in which a third party affirms the identity of an individual through use of public or proprietary data sources, which may include by means of knowledge-based authentication or biometric verification.

(8) “Knowledge-based authentication” means a form of identity proofing based on a set of questions which pertain to an individual and are formulated from public or proprietary data sources.

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

(10) “Online notary public” means a notary public commissioned under part I of this chapter, a civil-law notary appointed under chapter 118, or a

commissioner of deeds appointed under part IV of chapter 721, who has registered with the Department of State to perform online notarizations under this part.

(11) “Physical presence” means being in the same physical location as another person and close enough to see, hear, communicate with, and exchange credentials with that person.

(12) “Principal” means an individual whose electronic signature is acknowledged, witnessed, or attested to in an online notarization or who takes an oath or affirmation administered by the online notary public.

(13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, including public records as defined in s. 119.011.

(14) “Remote Online Notarization service provider” or “RON service provider” means a person that provides audio-video communication technology and related processes, services, software, data storage, or other services to online notaries public for the purpose of directly facilitating their performance of online notarizations in compliance with this chapter and any rules adopted by the Department of State pursuant to s. 117.295.

(15) “Remote presentation” means transmission of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to identify the individual seeking the notary’s services and to perform credential analysis through audio-video communication technology.

Section 7. Section 117.209, Florida Statutes, is created to read:

117.209 Authority to perform online notarizations.—

(1) An online notary public may perform any of the functions authorized under part I of this chapter as an online notarization by complying with the requirements of this part and any rules adopted by the Department of State pursuant to s. 117.295, excluding solemnizing the rites of matrimony.

(2) If a notarial act requires a principal to appear before or in the presence of the online notary public, the principal may appear before the online notary public by means of audio-video communication technology that meets the requirements of this part and any rules adopted by the Department of State pursuant to s. 117.295.

(3) An online notary public physically located in this state may perform an online notarization as authorized under this part, regardless of whether the principal or any witnesses are physically located in this state at the time of the online notarization. A commissioner of deeds registered as an online notary public may perform an online notarization while physically located within or outside the state in accordance with the territorial limits of its

jurisdiction and other limitations and requirements otherwise applicable to notarial acts by commissioners of deeds.

(4) The validity of an online notarization performed by an online notary public registered in this state shall be determined by applicable laws of this state regardless of the physical location of the principal or any witnesses at the time of the notarial act.

Section 8. Section 117.215, Florida Statutes, is created to read:

117.215 Relation to other laws.—

(1) If a provision of law requires a notary public or other authorized official of this state to notarize a signature or a statement, to take an acknowledgment of an instrument, or to administer an oath or affirmation so that a document may be sworn, affirmed, made under oath, or subject to penalty of perjury, an online notarization performed in accordance with the provisions of this part and any rules adopted hereunder satisfies such requirement.

(2) If a provision of law requires a signature or an act to be witnessed, compliance with the online electronic witnessing standards prescribed in s. 117.285 and any rules adopted thereunder satisfies that requirement.

Section 9. Section 117.225, Florida Statutes, is created to read:

117.225 Registration; qualifications.—A notary public, a civil-law notary appointed under chapter 118, or a commissioner of deeds appointed under part IV of chapter 721 may complete registration as an online notary public with the Department of State by:

(1) Holding a current commission as a notary public under part I of this chapter, an appointment as a civil-law notary under chapter 118, or an appointment as a commissioner of deeds under part IV of chapter 721, and submitting a copy of such commission or proof of such appointment with his or her registration.

(2) Certifying that the notary public, civil-law notary, or commissioner of deeds registering as an online notary public has completed a classroom or online course covering the duties, obligations, and technology requirements for serving as an online notary public.

(3) Paying a notary public registration fee as required by s. 113.01.

(4) Submitting a registration as an online notary public to the Department of State, signed and sworn to by the registrant.

(5) Identifying the RON service provider whose audio-video communication technology and processes for credential analysis and identity proofing technologies the registrant intends to use for online notarizations, and confirming that such technology and processes satisfy the requirements of

this chapter and any rules adopted by the Department of State pursuant to s. 117.295.

(6) Providing evidence satisfactory to the Department of State that the registrant has obtained a bond in the amount of \$25,000, payable to any individual harmed as a result of a breach of duty by the registrant acting in his or her official capacity as an online notary public, conditioned for the due discharge of the office, and on such terms as are specified in rule by the Department of State as reasonably necessary to protect the public. The bond shall be approved and filed with the Department of State and executed by a surety company duly authorized to transact business in this state. Compliance by an online notary public with this requirement shall satisfy the requirement of obtaining a bond under s. 117.01(7).

(7) Providing evidence satisfactory to the Department of State that the registrant acting in his or her capacity as an online notary public is covered by an errors and omissions insurance policy from an insurer authorized to transact business in this state, in the minimum amount of \$25,000 and on such terms as are specified by rule by the Department of State as reasonably necessary to protect the public.

Section 10. Section 117.235, Florida Statutes, is created to read:

117.235 Performance of notarial acts.—

(1) An online notary public is subject to part I of this chapter to the same extent as a notary public appointed and commissioned only under that part, including the provisions of s. 117.021 relating to electronic notarizations.

(2) An online notary public may perform notarial acts as provided by part I of this chapter in addition to performing online notarizations as authorized and pursuant to the provisions of this part.

Section 11. Section 117.245, Florida Statutes, is created to read:

117.245 Electronic journal of online notarizations.—

(1) An online notary public shall keep one or more secure electronic journals of online notarizations performed by the online notary public. For each online notarization, the electronic journal entry must contain all of the following:

(a) The date and time of the notarization.

(b) The type of notarial act.

(c) The type, the title, or a description of the electronic record or proceeding.

(d) The name and address of each principal involved in the transaction or proceeding.

(e) Evidence of identity of each principal involved in the transaction or proceeding in any of the following forms:

1. A statement that the person is personally known to the online notary public.

2. A notation of the type of government-issued identification credential provided to the online notary public.

(f) An indication that the principal satisfactorily passed the identity proofing.

(g) An indication that the government-issued identification credential satisfied the credential analysis.

(h) The fee, if any, charged for the notarization.

(2) The online notary public shall retain an uninterrupted and unedited copy of the recording of the audio-video communication in which an online notarization is performed. The recording must include all of the following:

(a) Appearance by the principal and any witness before the online notary public.

(b) Confirmation of the identity of the principal and any witness.

(c) A general description or identification of the records to be signed.

(d) At the commencement of the recording, recitation by the online notary public of information sufficient to identify the notarial act.

(e) A declaration by the principal that his or her signature on the record is knowingly and voluntarily made.

(f) All of the actions and spoken words of the principal, notary public, and any required witness during the entire online notarization, including the signing of any records before the online notary public.

(3) The online notary public shall take reasonable steps to:

(a) Ensure the integrity, security, and authenticity of online notarizations.

(b) Maintain a backup record of the electronic journal required by subsection (1).

(c) Protect the electronic journal, the backup record, and any other records received by the online notary public from unauthorized access or use.

(4) The electronic journal required under subsection (1) and the recordings of audio-video communications required under subsection (2) shall be maintained for at least 10 years after the date of the notarial act. However, a

full copy of the recording of the audio-video communication required under subsection (2) relating to an online notarization session that involves the signing of an electronic will must be maintained by a qualified custodian in accordance with chapters 731 and 732. The Department of State maintains jurisdiction over the electronic journal and audio-video communication recordings to investigate notarial misconduct for a period of 10 years after the date of the notarial act. The online notary public, a guardian of an incapacitated online notary public, or the personal representative of a deceased online notary public may, by contract with a secure repository in accordance with any rules established under this chapter, delegate to the repository the online notary public's duty to retain the electronic journal and the required recordings of audio-video communications, provided that the Department of State is notified of such delegation of retention duties to the repository within 30 days thereafter, including the address and contact information for the repository. If an online notary public delegates to a secure repository under this section, the online notary public shall make an entry in his or her electronic journal identifying such repository, and provide notice to the Department of State as required in this subsection.

(5) An omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or of the electronic record which was notarized, but may be introduced as evidence to establish violations of this chapter; as evidence of possible fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, unconscionability; or for other evidentiary purposes. However, if the recording of the audio-video communication required under subsection (2) relating to the online notarization of the execution of an electronic will cannot be produced by the online notary public or the qualified custodian, the electronic will shall be treated as a lost or destroyed will subject to s. 733.207.

Section 12. Section 117.255, Florida Statutes, is created to read:

117.255 Use of electronic journal, signature, and seal.—An online notary public shall:

(1) Take reasonable steps to ensure that any registered device used to create an electronic seal is current and has not been revoked or terminated by the issuing or registering authority of the device.

(2) Keep the electronic journal and electronic seal secure and under his or her sole control, which includes access protection using passwords or codes under control of the online notary public. The online notary public may not allow another person to use the online notary public's electronic journal, electronic signature, or electronic seal, other than a RON service provider or other authorized person providing services to an online notary public to facilitate performance of online notarizations.

(3) Attach or logically associate the electronic signature and seal to the electronic notarial certificate of an electronic record in a manner that is capable of independent verification using tamper-evident technology that

renders any subsequent change or modification to the electronic record evident.

(4) Notify an appropriate law enforcement agency and the Department of State of any unauthorized use of or compromise to the security of the electronic journal, official electronic signature, or electronic seal within 7 days after discovery of such unauthorized use or compromise to security.

(5) Make electronic copies, upon request, of the pertinent entries in the electronic journal and provide access to the related audio-video communication recordings to the following persons:

(a) The parties to an electronic record notarized by the online notary public;

(b) The qualified custodian of an electronic will notarized by the online notary public;

(c) The title agent, settlement agent, or title insurer who insured the electronic record or engaged the online notary public with regard to a real estate transaction;

(d) The online notary public's RON service provider whose services were used by the online notary public to notarize the electronic record;

(e) Any person who is asked to accept a power of attorney that was notarized by the online notary public;

(f) The Department of State pursuant to a notary misconduct investigation; and

(g) Any other persons pursuant to a subpoena, court order, law enforcement investigation, or other lawful inspection demand.

(6) The online notary public may charge a fee not to exceed \$20 per transaction record for making and delivering electronic copies of a given series of related electronic records, except if requested by:

(a) A party to the electronic record;

(b) In a real estate transaction, the title agent, settlement agent, or title insurer who insured the electronic record or engaged the online notary public with regard to such transaction; or

(c) The Department of State pursuant to an investigation relating to the official misconduct of an online notary public.

If the online notary public does charge a fee, the online notary public shall disclose the amount of such fee to the requester before making the electronic copies.

Section 13. Section 117.265, Florida Statutes, is created to read:

117.265 Online notarization procedures.—

(1) An online notary public physically located in this state may perform an online notarization that meets the requirements of this part regardless of whether the principal or any witnesses are physically located in this state at the time of the online notarization. A commissioner of deeds registered as an online notary public may perform an online notarization while physically located within or outside of this state in accordance with the territorial limits of its jurisdiction and other limitations and requirements otherwise applicable to notarial acts by commissioners of deeds. An online notarization performed in accordance with this chapter is deemed to have been performed within this state and is governed by the applicable laws of this state.

(2) In performing an online notarization, an online notary public shall confirm the identity of a principal and any witness appearing online, at the time that the signature is taken, by using audio-video communication technology and processes that meet the requirements of this part and of any rules adopted hereunder and record the two-way audio-video conference session between the notary public and the principal and any witnesses. A principal may not act in the capacity of a witness for his or her own signature in an online notarization.

(3) In performing an online notarization of a principal not located within this state, an online notary public must confirm, either verbally or through the principal's written consent, that the principal desires for the notarial act to be performed by a Florida notary public and under the general law of this state.

(4) An online notary public shall confirm the identity of the principal by:

(a) Personal knowledge of each principal; or

(b) All of the following, as such criteria may be modified or supplemented in rules adopted by the Department of State pursuant to s. 117.295:

1. Remote presentation of a government-issued identification credential by each principal.

2. Credential analysis of each government-issued identification credential.

3. Identity proofing of each principal in the form of knowledge-based authentication or another method of identity proofing that conforms to the standards of this chapter.

If the online notary public is unable to satisfy subparagraphs (b)1.-3., or if the databases consulted for identity proofing do not contain sufficient information to permit authentication, the online notary public may not perform the online notarization.

(5) An online notary public may change his or her RON service provider or providers from time to time, but shall notify the Department of State of such change within 30 days thereafter.

(6) The online notary public or his or her RON service provider shall take reasonable steps to ensure that the audio-video communication technology used in an online notarization is secure from unauthorized interception.

(7) The electronic notarial certificate for an online notarization must include a notation that the notarization is an online notarization which may be satisfied by placing the term “online notary” in or adjacent to the online notary public’s seal.

(8) Except where otherwise expressly provided in this part, the provisions of part I of this chapter apply to an online notarization and an online notary public.

(9) Any failure to comply with the online notarization procedures set forth in this section does not impair the validity of the notarial act or the electronic record that was notarized, but may be introduced as evidence to establish violations of this chapter or as an indication of possible fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, unconscionability, or for other evidentiary purposes. This subsection may not be construed to alter the duty of an online notary public to comply with this chapter and any rules adopted hereunder.

Section 14. Section 117.275, Florida Statutes, is created to read:

117.275 Fees for online notarization.—An online notary public or the employer of such online notary public may charge a fee, not to exceed \$25, for performing an online notarization under this part. Fees for services other than notarial acts are not governed by this section.

Section 15. Section 117.285, Florida Statutes, is created to read:

117.285 Supervising the witnessing of electronic records.—An online notary public may supervise the witnessing of electronic records by the same audio-video communication technology used for online notarization, 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 witness’s 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 trust with testamentary aspects under chapter 736, a health care advance directive, a waiver of spousal rights under s. 732.701 or s. 732.702, or a power of attorney authorizing any of the transactions enumerated in s. 709.2208, the following 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 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.

(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 shall affect the application of s. 709.2119.

(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 paragraphs (5)(a) or (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 16. Effective upon becoming a law, section 117.295, Florida Statutes, is created to read:

117.295 Standards for electronic and online notarization; rulemaking authority.—

(1) For purposes of this part, the Department of State may adopt rules necessary to implement the requirements of this chapter and to set standards for online notarization which include, but are not limited to:

(a) Improvements in technology and methods of assuring the identity of principals and the security of an electronic record, including tamper-evident technologies in compliance with the standards adopted pursuant to s. 117.021 which apply to online notarizations.

(b) Education requirements for online notaries public and the required terms of bonds and errors and omissions insurance, but not including the amounts of such bonds and insurance policies.

(c) Identity proofing, credential analysis, unauthorized interception, remote presentation, audio-video communication technology, and retention of electronic journals and copies of audio-video communications recordings in a secure repository.

(2) By January 1, 2020, the Department of State shall adopt forms, processes, and interim or emergency rules necessary to accept applications from and register online notaries public pursuant to s. 117.225.

(3) Until such time as the Department of State adopts rules setting standards that are equally or more protective, the following minimum standards shall apply to any online notarization performed by an online notary public of this state or his or her RON service provider:

(a) Use of identity proofing by means of knowledge-based authentication which must have, at a minimum, the following security characteristics:

1. The principal must be presented with five or more questions with a minimum of five possible answer choices per question.

2. Each question must be drawn from a third-party provider of public and proprietary data sources and be identifiable to the principal's social security number or other identification information, or the principal's identity and historical events records.

3. Responses to all questions must be made within a 2-minute time constraint.

4. The principal must answer a minimum of 80 percent of the questions correctly.

5. The principal may be offered one additional attempt in the event of a failed attempt.

6. During the second attempt, the principal may not be presented with more than three questions from the prior attempt.

(b) Use of credential analysis using one or more commercially available automated software or hardware processes that are consistent with sound commercial practices; that aid the notary public in verifying the authenticity of the credential by analyzing the integrity of visual, physical, or cryptographic security features to indicate that the credential is not fraudulent or inappropriately modified; and that use information held or published by the issuing source or authoritative source, as available, to confirm the validity of credential details. The output of the credential analysis process must be provided to the online notary public performing the notarial act.

(c) Use of audio-video communication technology in completing online notarizations that must meet the following requirements:

1. The signal transmission must be reasonably secure from interception, access, or viewing by anyone other than the participants communicating.

2. The technology must provide sufficient audio clarity and video resolution to enable the notary to communicate with the principal and any witness, and to confirm the identity of the principal and any witness, as required, using the identification methods described in s. 117.265.

(4) A RON service provider is deemed to have satisfied tamper-evident technology requirements by use of technology that renders any subsequent change or modification to the electronic record evident.

(5) In addition to any coverage it elects to provide for individual online notaries public, maintenance of errors and omissions insurance coverage by a RON service provider in a total amount of at least \$250,000 in the annual aggregate with respect to potential errors or omissions in or relating to the technology or processes provided by the RON service provider. An online notary public is not responsible for the security of the systems used by the principal or others to access the online notarization session.

(6) A 2-hour in-person or online course addressing the duties, obligations, and technology requirements for serving as an online notary public offered by the Florida Land Title Association; the Real Property, Probate and Trust Law Section of the Florida Bar; the Florida Legal Education Association, Inc.; the Department of State; or a vendor approved by the Department of State shall satisfy the education requirements of s. 117.225(2). Each such provider shall make the in-person or online course generally available to all applicants. Regardless of membership in the provider's organization, the provider shall charge each attendee the same cost for the course unless the course is provided in conjunction with a regularly scheduled meeting of the provider's membership.

(7) The rulemaking required under this section is exempt from s. 120.541(3).

Section 17. Section 117.305, Florida Statutes, is created to read:

117.305 Relation to federal law.—This part supersedes the Electronic Signatures in Global and National Commerce Act as authorized under 15 U.S.C. s. 7001 et seq., but does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize the electronic delivery of the notices described in 15 U.S.C. s. 7003(b).

Section 18. Paragraph (h) of subsection (3) of section 28.222, Florida Statutes, is redesignated as paragraph (i), and a new paragraph (h) is added to that subsection to read:

28.222 Clerk to be county recorder.—

(3) The clerk of the circuit court shall record the following kinds of instruments presented to him or her for recording, upon payment of the service charges prescribed by law:

(h) Copies of any instruments originally created and executed using an electronic signature, as defined in s. 695.27, and certified to be a true and correct paper printout by a notary public in accordance with chapter 117, if the county recorder is not prepared to accept electronic documents for recording electronically.

Section 19. Subsections (1) and (2) of section 92.50, Florida Statutes, are amended to read:

92.50 Oaths, affidavits, and acknowledgments; who may take or administer; requirements.—

(1) IN THIS STATE.—Oaths, affidavits, and acknowledgments required or authorized under the laws of this state (except oaths to jurors and witnesses in court and such other oaths, affidavits and acknowledgments as are required by law to be taken or administered by or before particular officers) may be taken or administered by or before any judge, clerk, or deputy clerk of any court of record within this state, including federal courts, or by or before any United States commissioner or any notary public within this state. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; however, when taken or administered by or before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE UNITED STATES.—Oaths, affidavits, and acknowledgments required or authorized under the laws of this state, may be taken or administered in any other state, territory, or district of the United States, by or before any judge, clerk or deputy clerk of any court of record, within such state, territory, or district, having a seal, or by or before any notary public or justice of the peace, having a seal, in such state, territory, or district; provided, however, such officer or person is authorized under the laws of such state, territory, or district to take or administer oaths, affidavits and acknowledgments. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; provided, however, when taken or administered by or before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

Section 20. Subsection (1) of section 95.231, Florida Statutes, is amended to read:

95.231 Limitations where deed or will on record.—

(1) Five years after the recording of an instrument required to be executed in accordance with s. 689.01; 5 years after the recording of a power of attorney accompanying and used for an instrument required to be executed in accordance with s. 689.01; or 5 years after the probate of a will purporting to convey real property, from which it appears that the person owning the property attempted to convey, affect, or devise it, the instrument, power of attorney, or will shall be held to have its purported effect to convey, affect, or devise, the title to the real property of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in, failure of, or absence of acknowledgment or relinquishment of dower, in the absence of fraud, adverse possession, or

pending litigation. The instrument is admissible in evidence. A power of attorney validated under this subsection shall be valid only for the purpose of effectuating the instrument with which it was recorded.

Section 21. Section 689.01, Florida Statutes, is amended to read:

689.01 How real estate conveyed.—

(1) No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of more than 1 year, or by the party's lawfully authorized agent, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to, or out of any messuages, lands, tenements or hereditaments, shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party's lawfully authorized agent, or by the act and operation of law. No seal shall be necessary to give validity to any instrument executed in conformity with this section. Corporations may execute any and all conveyances in accordance with the provisions of this section or ss. 692.01 and 692.02.

(2) For purposes of this chapter:

(a) Any requirement that an instrument be signed in the presence of two subscribing witnesses may be satisfied by witnesses being present and electronically signing by means of audio-video communication technology, as defined in s. 117.201.

(b) The act of witnessing an electronic signature is satisfied if a witness is in the physical presence of the principal or present through audio-video communication technology at the time the principal affixes his or her electronic signature and the witness hears the principal make a statement acknowledging that the principal has signed the electronic record.

(c) The terms used in this subsection have the same meanings as the terms defined in s. 117.201.

(3) All acts of witnessing made or taken in the manner described in subsection (2) are validated and, upon recording, may not be denied to have provided constructive notice based on any alleged failure to have strictly complied with this section or the laws governing notarization of instruments, including online notarization. This subsection does not preclude a challenge to the validity or enforceability of an instrument or electronic record based upon fraud, forgery, impersonation, duress, incapacity, undue

influence, minority, illegality, unconscionability, or any other basis not related to the act of witnessing.

Section 22. Section 694.08, Florida Statutes, is amended to read:

694.08 Certain instruments validated, notwithstanding lack of seals or witnesses, or defect in acknowledgment,—ete.—

(1) Whenever any power of attorney has been executed and delivered, or any conveyance has been executed and delivered to any grantee by the person owning the land therein described, or conveying the same in an official or representative capacity, and has, for a period of 7 years or more been spread upon the records of the county wherein the land therein described has been or was at the time situated, and one or more subsequent conveyances of said land or parts thereof have been made, executed, delivered and recorded by parties claiming under such instrument or instruments, and such power of attorney or conveyance, or the public record thereof, shows upon its face a clear purpose and intent of the person executing the same to authorize the conveyance of said land or to convey the said land, the same shall be taken and held by all the courts of this state, in the absence of any showing of fraud, adverse possession, or pending litigation, to have authorized the conveyance of, or to have conveyed, the fee simple title, or any interest therein, of the person signing such instruments, or the person in behalf of whom the same was conveyed by a person in an official or representative capacity, to the land therein described as effectively as if there had been no defect in, failure of, or absence of the acknowledgment or the certificate of acknowledgment, if acknowledged, or the relinquishment of dower, and as if there had been no lack of the word “as” preceding the title of the person conveying in an official or representative capacity, of any seal or seals, or of any witness or witnesses, and shall likewise be taken and held by all the courts of this state to have been duly recorded so as to be admissible in evidence;

(2) Provided, however, that this section shall not apply to any conveyance the validity of which shall be contested or have been contested by suit commenced heretofore or within 1 year of the effective date of this law.

Section 23. Section 695.03, Florida Statutes, is amended to read:

695.03 Acknowledgment and proof; validation of certain acknowledgments; legalization or authentication before foreign officials.—To entitle any instrument concerning real property to be recorded, the execution must be acknowledged by the party executing it, proved by a subscribing witness to it, or legalized or authenticated in one of the following forms ~~by a civil-law notary or notary public who affixes her or his official seal, before the officers and in the form and manner following:~~

(1) WITHIN THIS STATE.—An acknowledgment or a proof may be taken, administered, or made within this state by or may be made before a judge, clerk, or deputy clerk of any court; a United States commissioner or

magistrate; or any a notary public or civil-law notary of this state, and the certificate of acknowledgment or proof must be under the seal of the court or officer, as the case may be. ~~All affidavits and acknowledgments heretofore made or taken in this manner are hereby validated.~~

(2) OUTSIDE WITHOUT THIS STATE BUT WITHIN THE UNITED STATES.—An acknowledgment or a proof taken, administered, or made outside ~~out~~ of this state but within the United States may be taken, administered, or made by or before a civil-law notary of this state or a commissioner of deeds appointed by the Governor of this state; a judge or clerk of any court of the United States or of any state, territory, or district; by or before a United States commissioner or magistrate; or by or before any a notary public, justice of the peace, master in chancery, or registrar or recorder of deeds of any state, territory, or district having a seal, and the certificate of acknowledgment or proof must be under the seal of the court or officer, as the case may be. If the acknowledgment or proof is taken, administered, or made by or before a notary public who does not affix a seal, it is sufficient for the notary public to type, print, or write by hand on the instrument, “I am a Notary Public of the State of ...(state)..., and my commission expires on ...(date)...”

(3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN COUNTRIES.—~~An~~ If the acknowledgment, an affidavit, an oath, a legalization, an authentication, or a proof taken, administered, or made outside the United States or is made in a foreign country, ~~it~~ may be taken, administered, or made by or before a commissioner of deeds appointed by the Governor of this state to act in such country; before a notary public of such foreign country or a civil-law notary of this state or of such foreign country who has an official seal; before an ambassador, envoy extraordinary, minister plenipotentiary, minister, commissioner, charge d’affaires, consul general, consul, vice consul, consular agent, or other diplomatic or consular officer of the United States appointed to reside in such country; or before a military or naval officer authorized by 10 U.S.C. s. 1044a ~~the Laws or Articles of War of the United States~~ to perform the duties of notary public, and the certificate of acknowledgment, legalization, authentication, or proof must be under the seal of the officer. A certificate legalizing or authenticating the signature of a person executing an instrument concerning real property and to which a civil-law notary or notary public of that country has affixed her or his official seal is sufficient as an acknowledgment. For the purposes of this section, the term “civil-law notary” means a civil-law notary as defined in chapter 118 or an official of a foreign country who has an official seal and who is authorized to make legal or lawful the execution of any document in that jurisdiction, in which jurisdiction the affixing of her or his official seal is deemed proof of the execution of the document or deed in full compliance with the laws of that jurisdiction.

(4) COMPLIANCE AND VALIDATION.—The affixing of the official seal or the electronic equivalent thereof under s. 117.021 or other applicable law, including part II of chapter 117, conclusively establishes that the acknowledgment or proof was taken, administered, or made in full compliance with

the laws of this state or, as applicable, the laws of the other state, or of the foreign country governing notarial acts. All affidavits, oaths, acknowledgments, legalizations, authentications, or proofs taken, administered, or made in any manner as set forth in subsections (1), (2), and (3) are validated and upon recording may not be denied to have provided constructive notice based on any alleged failure to have strictly complied with this section, as currently or previously in effect, or the laws governing notarization of instruments. This subsection does not preclude a challenge to the validity or enforceability of an instrument or electronic record based upon fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, unconscionability, or any other basis not related to the notarial act or constructive notice provided by recording.

~~All affidavits, legalizations, authentications, and acknowledgments heretofore made or taken in the manner set forth above are hereby validated.~~

Section 24. Section 695.04, Florida Statutes, is amended to read:

695.04 Requirements of certificate.—The certificate of the officer before whom the acknowledgment or proof is taken, except for a certificate legalizing or authenticating the signature of a person executing an instrument concerning real property pursuant to s. 695.03(3), shall contain and set forth substantially the matter required to be done or proved to make such acknowledgment or proof effectual as set forth in s. 117.05.

Section 25. Section 695.25, Florida Statutes, is amended to read:

695.25 Short form of acknowledgment.—The forms of acknowledgment set forth in this section may be used, and are sufficient for their respective purposes, under any law of this state. The forms shall be known as “Statutory Short Forms of Acknowledgment” and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in his or her own right:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ...(date)... by ...(name of person acknowledging)..., who is personally known to me or who has produced ...(type of identification)... as identification.

...(Signature of person taking acknowledgment)...

...(Name typed, printed or stamped)...

...(Title or rank)...

...(Serial number, if any)...

(2) For a corporation:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ...(date)... by ...(name of officer or agent, title of officer or agent)... of ...(name of corporation acknowledging)..., a ...(state or place of incorporation)... corporation, on behalf of the corporation. He/she is personally known to me or has produced ...(type of identification)... as identification.

...(Signature of person taking acknowledgment)...

...(Name typed, printed or stamped)...

...(Title or rank)...

...(Serial number, if any)...

(3) For a limited liability company:

STATE OF.....

COUNTY OF

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ...(date)... by ...(name of member, manager, officer or agent, title of member, manager, officer or agent)..., of ...(name of company acknowledging)..., a ...(state or place of formation)... limited liability company, on behalf of the company, who is personally known to me or has produced ...(type of identification)... as identification.

...(Signature of person taking acknowledgment)...

...(Name typed, printed or stamped)...

...(Title or rank)...

...(Serial number, if any)...

~~(4)~~(3) For a partnership:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ...(date)... by ...(name of acknowledging partner or agent)..., partner (or agent) on behalf of ...(name of partnership)..., a partnership. He/she is personally known to me or has produced ...(type of identification)... as identification.

...(Signature of person taking acknowledgment)...

...(Name typed, printed or stamped)...

...(Title or rank)...

...(Serial number, if any)...

(5)(4) For an individual acting as principal by an attorney in fact:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ...(date)... by ...(name of attorney in fact)... as attorney in fact, who is personally known to me or who has produced ...(type of identification)... as identification on behalf of ... (name of principal)....

...(Signature of person taking acknowledgment)...

...(Name typed, printed or stamped)...

...(Title or rank)...

...(Serial number, if any)...

(6)(5) By any public officer, trustee, or personal representative:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ...(date)... by ...(name and

title of position)..., who is personally known to me or who has produced ... (type of identification)... as identification.

...(Signature of person taking acknowledgment)...

...(Name typed, printed or stamped)...

...(Title or rank)...

...(Serial number, if any)....

Section 26. Section 695.28, Florida Statutes, is amended to read:

695.28 Validity of recorded electronic documents.—

(1) A document that is otherwise entitled to be recorded and that was or is submitted to the clerk of the court or county recorder by electronic or other means and accepted for recordation is deemed validly recorded and provides notice to all persons notwithstanding:

(a) That the document was received and accepted for recordation before the Department of State adopted standards implementing s. 695.27; ~~or~~

(b) Any defects in, deviations from, or the inability to demonstrate strict compliance with any statute, rule, or procedure relating to electronic signatures, electronic witnesses, electronic notarization, or online notarization, or for submitting or recording to submit or record an electronic document in effect at the time the electronic document was executed or was submitted for recording;

(c) That the document was signed, witnessed, or notarized electronically, and that the document was notarized by an online notary public outside the physical presence of the signer through audio-video communication technology, as defined in s. 117.201, or that witnessing may have been done outside the physical presence of the notary public or principal through such audio-visual communication; or

(d) That the document recorded was a certified printout of a document to which one or more electronic signatures have been affixed.

(2) This section does not alter the duty of the clerk or recorder to comply with s. 28.222, s. 695.27, or any rules adopted pursuant to those sections ~~that section.~~

(3) This section does not preclude a challenge to the validity or enforceability of an instrument or electronic record based upon fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, unconscionability, or any other basis not in the nature of those matters described in subsection (1).

Section 27. Subsections (3) and (4) of section 709.2119, Florida Statutes, are amended to read:

709.2119 Acceptance of and reliance upon power of attorney.—

(3) A third person who is asked to accept a power of attorney that appears to be executed in accordance with s. 709.2105 may in good faith request, and rely upon, without further investigation:

(a) A certified English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English;

(b) An opinion of counsel as to any matter of law concerning the power of attorney if the third person making the request provides in a writing or other record the reason for the request; ~~or~~

(c) The affidavit described in subsection (2); or

(d) The electronic journal or record made by the notary public pursuant to the laws of the state in which the notary public is appointed if the power of attorney is witnessed or notarized remotely through the use of online witnesses or notarization.

(4) An English translation, ~~or an opinion of counsel, or an electronic journal or record~~ requested under this section must be provided at the principal's expense unless the request is made after the time specified in s. 709.2120(1) for acceptance or rejection of the power of attorney.

Section 28. Subsection (4) of section 709.2120, Florida Statutes, is amended to read:

709.2120 Rejecting power of attorney.—

(4) A third person is not required to accept a power of attorney if:

(a) The third person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(b) The third person has knowledge of the termination or suspension of the agent's authority or of the power of attorney before exercising the power;

(c) A timely request by the third person for an affidavit, English translation, ~~or opinion of counsel, or electronic journal or record~~ under s. 709.2119 ~~s. 709.2119(4)~~ is refused by the agent;

(d) The power of attorney is witnessed or notarized remotely through the use of online witnesses or notarization, and either the agent is unable to produce the electronic journal or record, or the notary public did not maintain an electronic journal or record of the notarization;

(e)(d) Except as provided in paragraph (b), the third person believes in good faith that the power is not valid or that the agent does not have authority to perform the act requested; or

(f)(e) The third person makes, or has knowledge that another person has made, a report to the local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

Section 29. Subsection (6) of section 709.2202, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section to read:

709.2202 Authority that requires separate signed enumeration.—

(6) Notwithstanding subsection (1) and s. 709.2106(3), a power of attorney, executed by a principal domiciled in this state at the time of execution, that is witnessed remotely pursuant to s. 117.285 or other applicable law by a witness who is not in the physical presence of the principal is not effective to grant authority to an agent to take any of the actions enumerated in subsection (1).

Section 30. Subsection (40) of section 731.201, Florida Statutes, is amended to read:

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(40) “Will” means a testamentary an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument which merely appoints a personal representative or guardian or revokes or revises another will. The term includes an electronic will as defined in s. 732.521.

Section 31. Section 732.506, Florida Statutes, is amended to read:

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

Section 32. Section 732.521, Florida Statutes, is created to read:

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

(1) “Audio-video communication technology” has the same meaning as provided in s. 117.201.

(2) “Electronic record” has the same meaning as provided in s. 668.50.

(3) “Electronic signature” means an electronic mark visibly manifested in a record as a signature and executed or adopted by a person with the intent to sign the record.

(4) “Electronic will” means a testamentary instrument, including a codicil, executed with an electronic signature by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument which merely appoints a personal representative or guardian or revokes or revises another will.

(5) “Online notarization” has the same meaning as provided in s. 117.201.

(6) “Online notary public” has the same meaning as provided in s. 117.201.

(7) “Qualified custodian” means a person who meets the requirements of s. 732.525(1).

(8) “Secure system” means a system that satisfies the requirements of a secure repository qualified to retain electronic journals of online notaries public in accordance with s. 117.245 and any rules established under part II of chapter 117.

Section 33. Effective July 1, 2020, section 732.522, Florida Statutes, is created to read:

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

(1) Any requirement that an instrument be signed may be satisfied by an electronic signature.

(2) Any requirement that individuals sign an instrument in the presence of one another may be satisfied by witnesses being present and electronically signing by means of audio-video communication technology that meets the requirements of part II of chapter 117 and any rules adopted thereunder, if:

(a) The individuals are supervised by a notary public in accordance with s. 117.285;

(b) The individuals are authenticated and signing as part of an online notarization session in accordance with s. 117.265;

(c) The witness hears the signer make a statement acknowledging that the signer has signed the electronic record; and

(d) The signing and witnessing of the instrument complies with the requirements of s. 117.285.

(3) Except as otherwise provided in this part, all questions as to the force, effect, validity, and interpretation of an electronic will which comply with this section must be determined in the same manner as in the case of a will executed in accordance with s. 732.502.

(4) An instrument that is signed electronically is deemed to be executed in this state if the instrument states that the person creating the instrument intends to execute and understands that he or she is executing the instrument in, and pursuant to the laws of, this state.

Section 34. Section 732.523, Florida Statutes, is created to read:

732.523 Self-proof of electronic will.—An electronic will is self-proved if:

(1) The acknowledgment of the electronic will by the testator and the affidavits of the witnesses are made in accordance with s. 732.503 and are part of the electronic record containing the electronic will, or are attached to, or are logically associated with, the electronic will;

(2) The electronic will designates a qualified custodian;

(3) The electronic record that contains the electronic will is held in the custody of a qualified custodian at all times before being offered to the court for probate; and

(4) The qualified custodian who has custody of the electronic will at the time of the testator's death certifies under oath that, to the best knowledge of the qualified custodian, the electronic record that contains the electronic will was at all times before being offered to the court in the custody of a qualified custodian in compliance with s. 732.524 and that the electronic will has not been altered in any way since the date of its execution.

Section 35. Section 732.524, Florida Statutes, is created to read:

732.524 Qualified custodians.—

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

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

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

(2) A qualified custodian shall:

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

1. Electronic wills;
2. Records attached to or logically associated with electronic wills; and
3. Acknowledgments of the electronic wills by testators, affidavits of the witnesses, and the records described in s. 117.245(1) and (2) which pertain to the online notarization.

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

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

1. To the testator;
2. To persons authorized by the testator in the electronic will or in written instructions signed by the testator with the formalities required for the execution of a will in this state;
3. After the death of the testator, to the testator's nominated personal representative; or
4. At any time, as directed by a court of competent jurisdiction.

(3) The qualified custodian of the electronic record of an electronic will may elect to destroy such record, including any of the documentation required to be created and stored under paragraph (2)(a), at any time after the earlier of the fifth anniversary of the conclusion of the administration of the estate of the testator or 20 years after the death of the testator.

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

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

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

1. Providing written notice to the testator of the name, address, and qualifications of the proposed successor qualified custodian. The testator

must provide written consent before the electronic record, including the electronic will, is delivered to a successor qualified custodian;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 36. Section 732.525, Florida Statutes, is created to read:

732.525 Liability coverage; receivership of qualified custodians.—

(1) A qualified custodian shall:

(a) Post and maintain a blanket surety bond of at least \$250,000 to secure the faithful performance of all duties and obligations required under this part. The bond must be made payable to the Governor and his or her successors in office for the benefit of all persons who store electronic records with a qualified custodian and their estates, beneficiaries, successors, and heirs, and be conditioned on the faithful performance of all duties and obligations under this chapter. The terms of the bond must cover the acts or omissions of the qualified custodian and each agent or employee of the qualified custodian; or

(b) Maintain a liability insurance policy that covers any losses sustained by any person who stores electronic records with a qualified custodian and their estates, beneficiaries, successors, and heirs which are caused by errors or omissions by the qualified custodian and each agent or employee of the qualified custodian. The policy must cover losses of at least \$250,000 in the aggregate.

(2) The Attorney General may petition a court of competent jurisdiction for the appointment of a receiver to manage the electronic records of a

qualified custodian for proper delivery and safekeeping if any of the following conditions exist:

- (a) The qualified custodian is ceasing operation;
- (b) The qualified custodian intends to close the facility and adequate arrangements have not been made for proper delivery of the electronic records in accordance with this part;
- (c) The Attorney General determines that conditions exist which present a danger that electronic records will be lost or misappropriated; or
- (d) The qualified custodian fails to maintain and post a surety bond or maintain insurance as required in this section.

Section 37. Section 732.526, Florida Statutes, is created to read:

732.526 Probate.—

(1) An electronic will that is filed electronically with the clerk of the court through the Florida Courts E-Filing Portal is deemed to have been deposited with the clerk as an original of the electronic will.

(2) A paper copy of an electronic will which is certified by a notary public to be a true and correct copy of the electronic will may be offered for and admitted to probate and shall constitute an original of the electronic will.

Section 38. Subsection (1) of section 733.201, Florida Statutes, is amended to read:

733.201 Proof of wills.—

(1) Self-proved wills executed in accordance with this code may be admitted to probate without further proof. However, a purportedly self-proved electronic will may be admitted to probate only in the manners prescribed in subsections (2) and (3) if the execution of such electronic will, or the acknowledgment by the testator and the affidavits of the witnesses, involves an online notarization in which there was a substantial failure to comply with the procedures set forth in s. 117.265.

Section 39. Section 740.11, Florida Statutes, is created to read:

740.11 Relation to wills.—No act taken pursuant to this chapter is valid to affect the obligation of a person to deposit a will of a decedent as required under s. 732.901.

Section 40. Except as otherwise expressly provided in this act, and except for this section, which shall take effect upon becoming a law, this act shall take effect January 1, 2020.

Approved by the Governor June 7, 2019.

Filed in Office Secretary of State June 7, 2019.