

REFERENCE TITLE: wills; electronic signatures; requirements

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2197

Introduced by
Representative Wilmeth

AN ACT

AMENDING SECTIONS 14-1201, 14-2518, 14-2519 AND 14-2521, ARIZONA REVISED
STATUTES; RELATING TO WILLS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 14-1201. Definitions

5 In this title, unless the context otherwise requires:

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

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

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

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

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

35 6. "Certified paper original" means a tangible medium that contains
36 both the text of an electronic will and any self-proving affidavit
37 concerning the electronic will and that is accompanied by an affidavit
38 that is executed pursuant to section 14-2523.

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

43 8. "Claims", in respect to estates of decedents and protected
44 persons, includes liabilities of the decedent or the protected person,
45 whether arising in contract, in tort or otherwise, and liabilities of the

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

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

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

11 11. "Court" means the superior court.

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

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

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

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

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

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

36 18. "Electronic" means having electrical, digital, magnetic,
37 optical, electromagnetic or similar capabilities.

38 19. "Electronic record" means a record that is created, generated,
39 sent, communicated, received or stored by electronic means.

40 20. "Electronic signature" means an electronic method or process
41 that does both of the following:

42 (a) Is attached to or logically associated with an electronic
43 record and that is executed or adopted by a person with the intent to sign
44 the electronic record.

1 (b) Uses a security procedure that allows a determination that the
2 electronic signature was all of the following:

- 3 (i) Unique to the person using it.
4 (ii) Capable of verification.
5 (iii) Under the sole control of the person making the electronic
6 signature.
7 (iv) Linked to the electronic record to which the electronic
8 signature relates in a manner so that if the electronic record is changed
9 the electronic signature is invalidated.

10 21. "Electronic will" means a testamentary instrument that is
11 executed and maintained on an electronic medium and that is executed in
12 compliance with section 14-2518.

13 22. "ELECTRONICALLY PRESENT" MEANS TWO OR MORE INDIVIDUALS WHO ARE
14 IN A DIFFERENT PHYSICAL LOCATION AND WHO ARE COMMUNICATING IN REAL TIME BY
15 ELECTRONIC MEANS TO THE SAME EXTENT AS IF THE INDIVIDUALS WERE PHYSICALLY
16 PRESENT IN THE SAME LOCATION.

17 ~~22.~~ 23. "Estate" includes the property of the decedent, trust or
18 other person whose affairs are subject to this title as originally
19 constituted and as it exists from time to time during administration. As
20 it relates to a spouse, the estate includes only the separate property and
21 the share of the community property belonging to the decedent or person
22 whose affairs are subject to this title.

23 ~~23.~~ 24. "Exempt property" means that property of a decedent's
24 estate that is described in section 14-2403.

25 ~~24.~~ 25. "Fiduciary" includes a personal representative, guardian,
26 conservator and trustee.

27 ~~25.~~ 26. "Foreign personal representative" means a personal
28 representative who is appointed by another jurisdiction.

29 ~~26.~~ 27. "Formal proceedings" means proceedings that are conducted
30 before a judge with notice to interested persons.

31 ~~27.~~ 28. "Governing instrument" means a deed, will, trust,
32 insurance or annuity policy, account with pay on death designation,
33 security registered in beneficiary form, pension, profit sharing,
34 retirement or similar benefit plan, instrument creating or exercising a
35 power of appointment or a power of attorney or a dispositive, appointive
36 or nominative instrument of any similar type.

37 ~~28.~~ 29. "Guardian" means a person who has qualified as a guardian
38 of a minor or incapacitated person pursuant to testamentary or court
39 appointment but excludes a person who is merely a guardian ad litem.

40 ~~29.~~ 30. "Guardian ad litem" includes a person who is appointed
41 pursuant to section 14-1408.

42 ~~30.~~ 31. "Heirs", except as controlled by section 14-2711, means
43 persons, including the surviving spouse and the state, who are entitled
44 under the statutes of intestate succession to the property of a decedent.

1 ~~31.~~ 32. "Incapacitated person" has the same meaning prescribed in
2 section 14-5101.

3 ~~32.~~ 33. "Informal proceedings" means those proceedings conducted
4 without notice to interested persons by an officer of the court acting as
5 a registrar for probate of a will or appointment of a personal
6 representative.

7 ~~33.~~ 34. "Interested person" includes any trustee, heir, devisee,
8 child, spouse, creditor, beneficiary, person holding a power of
9 appointment and other person who has a property right in or claim against
10 a trust estate or the estate of a decedent, ward or protected person.
11 Interested person also includes a person who has priority for appointment
12 as personal representative and other fiduciaries representing interested
13 persons. Interested person, as the term relates to particular persons,
14 may vary from time to time and must be determined according to the
15 particular purposes of, and matter involved in, any proceeding.

16 ~~34.~~ 35. "Issue" of a person means descendant as defined in this
17 section.

18 ~~35.~~ 36. "Joint tenants with the right of survivorship" and
19 "community property with the right of survivorship" includes co-owners of
20 property held under circumstances that entitle one or more to the whole of
21 the property on the death of the other or others but excludes forms of
22 co-ownership registration in which the underlying ownership of each party
23 is in proportion to that party's contribution.

24 ~~36.~~ 37. "Lease" includes any oil, gas or other mineral lease.

25 ~~37.~~ 38. "Letters" includes letters testamentary, letters of
26 guardianship, letters of administration and letters of conservatorship.

27 ~~38.~~ 39. "Minor" means a person who is under eighteen years of age.

28 ~~39.~~ 40. "Mortgage" means any conveyance, agreement or arrangement
29 in which property is encumbered or used as security. Mortgage does not
30 include leases or easements.

31 ~~40.~~ 41. "Nonresident decedent" means a decedent who was domiciled
32 in another jurisdiction at the time of the decedent's death.

33 ~~41.~~ 42. "Organization" means a corporation, limited liability
34 company, business trust, estate, trust, partnership, joint venture,
35 association, government or governmental subdivision or agency or any other
36 legal or commercial entity.

37 ~~42.~~ 43. "Original will" means either an original paper will or a
38 certified paper original of an electronic will.

39 ~~43.~~ 44. "Paper will" means a testamentary instrument that is
40 executed and maintained on a tangible medium and that is executed in
41 compliance with section 14-2502 or 14-2503.

42 ~~44.~~ 45. "Parent" includes any person entitled to take, or who
43 would be entitled to take if the child died without a will, as a parent
44 under this title by intestate succession from the child whose relationship

1 is in question and excludes any person who is only a stepparent, foster
2 parent or grandparent.

3 ~~45.~~ 46. "Payor" means a trustee, insurer, business entity,
4 employer, government, governmental agency or subdivision or any other
5 person who is authorized or obligated by law or a governing instrument to
6 make payments.

7 ~~46.~~ 47. "Person" means an individual or an organization.

8 ~~47.~~ 48. "Personal representative" includes an executor, an
9 administrator, a successor personal representative, a special
10 administrator and persons who perform substantially the same function
11 under the law governing their status. A general personal representative
12 excludes a special administrator.

13 ~~48.~~ 49. "Petition" means a written request to the court for an
14 order after notice.

15 ~~49.~~ 50. "Proceeding" includes action at law and suit in equity.

16 ~~50.~~ 51. "Property" has the same meaning prescribed in section
17 14-10103.

18 ~~51.~~ 52. "Protected person" has the same meaning prescribed in
19 section 14-5101.

20 ~~52.~~ 53. "Protective proceeding" has the same meaning prescribed in
21 section 14-5101.

22 ~~53.~~ 54. "Qualified custodian" means a person who fulfills the
23 requirements of section 14-2520.

24 ~~54.~~ 55. "Registrar" means the official of the court who is
25 designated to perform the functions of registrar as provided in section
26 14-1307.

27 ~~55.~~ 56. "Security" includes any note, stock, treasury stock, bond,
28 debenture, evidence of indebtedness, certificate of interest or
29 participation in an oil, gas or mining title or lease or in payments out
30 of production under that title or lease, collateral trust certificate,
31 transferable share or voting trust certificate and, in general, includes
32 any interest or instrument commonly known as a security, or any
33 certificate of interest or participation, any temporary or interim
34 certificate, receipt or certificate of deposit for, or any warrant or
35 right to subscribe to or purchase, any of these securities.

36 ~~56.~~ 57. "Separate property" means that property of a husband or
37 wife that is the spouse's separate property as defined in section 25-213.

38 ~~57.~~ 58. "Settlement", in reference to a decedent's estate,
39 includes the full process of administration, distribution and closing.

40 ~~58.~~ 59. "Special administrator" means a personal representative as
41 described by sections 14-3614 through 14-3618.

42 ~~59.~~ 60. "State" has the same meaning prescribed in section
43 14-10103.

1 ~~60.~~ 61. "Successor personal representative" means a personal
2 representative, other than a special administrator, who is appointed to
3 succeed a previously appointed personal representative.
4 ~~61.~~ 62. "Successors" means persons, other than creditors, who are
5 entitled to property of a decedent under a will or this title.
6 ~~62.~~ 63. "Supervised administration" refers to the proceedings
7 described in chapter 3, article 5 of this title.
8 ~~63.~~ 64. "Survive" means that a person has neither predeceased an
9 event, including the death of another person, nor is deemed to have
10 predeceased an event under section 14-2104 or 14-2702.
11 ~~64.~~ 65. "Tangible medium" means a medium on which information may
12 be inscribed by writing, typing, printing or similar means and that is
13 perceivable by reading directly from the medium on which the information
14 is inscribed.
15 ~~65.~~ 66. "Testacy proceeding" means a proceeding to establish a
16 will or determine intestacy.
17 ~~66.~~ 67. "Testator" includes a person of either sex.
18 ~~67.~~ 68. "Trust" includes an express trust, private or charitable,
19 with any additions, wherever and however created. Trust also includes a
20 trust created or determined by judgment or decree under which the trust is
21 to be administered in the manner of an express trust. Trust excludes
22 other constructive trusts and excludes resulting trusts, conservatorship,
23 personal representatives, trust accounts, custodial arrangements pursuant
24 to chapter 7, article 7 of this title, business trusts providing for
25 certificates to be issued to beneficiaries, common trust funds, voting
26 trusts, security arrangements, liquidation trusts and trusts for the
27 primary purpose of paying debts, dividends, interest, salaries, wages,
28 profits, pensions or employee benefits of any kind, trusts created by a
29 city or town for the payment of medical insurance, health care benefits or
30 expenses, long-term or short-term disability, self insurance reserves and
31 similar programs administered by a city or town, legal defense trusts and
32 any arrangement under which a person is nominee or escrowee for another.
33 ~~68.~~ 69. "Trustee" includes an original, additional or successor
34 trustee, whether or not appointed or confirmed by the court.
35 ~~69.~~ 70. "Ward" has the same meaning prescribed in section 14-5101.
36 ~~70.~~ 71. "Will" includes a codicil and any testamentary instrument
37 that merely appoints an executor, revokes or revises another will,
38 nominates a guardian or expressly excludes or limits the right of an
39 individual or class to succeed to property of the decedent passing by
40 intestate succession. A will may be a paper will or an electronic will.

1 Sec. 2. Section 14-2518, Arizona Revised Statutes, is amended to
2 read:

3 14-2518. Electronic will; requirements; interpretation

4 A. An electronic will must meet all of the following requirements:

5 1. Be created and maintained in an electronic record **THAT IS**
6 **READABLE AS TEXT AT THE TIME OF SIGNING.**

7 2. Contain the electronic signature of the testator or the
8 testator's electronic signature made by some other individual in the
9 testator's conscious presence and by the testator's direction.

10 3. Contain the electronic signatures of at least two persons, each
11 of whom met ~~both~~ **ALL** of the following requirements:

12 (a) Was physically present **OR ELECTRONICALLY PRESENT** with the
13 testator when the testator electronically signed the will, acknowledged
14 the testator's signature or acknowledged the will.

15 (b) Electronically signed the will within a reasonable time after
16 the person witnessed the testator signing the will, acknowledging the
17 testator's signature or acknowledging the will as described in subdivision
18 (a) of this paragraph.

19 (c) **IF ELECTRONICALLY PRESENT WITH THE TESTATOR WHEN THE TESTATOR**
20 **ELECTRONICALLY SIGNED THE WILL, ACKNOWLEDGED THE TESTATOR'S SIGNATURE OR**
21 **ACKNOWLEDGED THE WILL, WAS PHYSICALLY LOCATED WITHIN THE UNITED STATES AT**
22 **THE TIME OF SERVING AS A WITNESS.**

23 4. State the date that the testator and each of the witnesses
24 electronically signed the will.

25 5. Contain a copy of a government-issued identification card of the
26 testator that was current at the time of execution of the will.

27 B. Except as provided in this section and sections 14-2519,
28 14-2520, 14-2521, 14-2522 and 14-2523, any question raised about the
29 force, effect, validity and interpretation of an electronic will shall be
30 determined in the same manner as a question regarding a paper will
31 executed pursuant to section 14-2502.

32 C. This section does not apply to a trust except a testamentary
33 trust created in an electronic will.

34 Sec. 3. Section 14-2519, Arizona Revised Statutes, is amended to
35 read:

36 14-2519. Self-proved electronic will

37 A. In addition to the requirements of section 14-2504, to be
38 self-proved, an electronic will must meet all of the following
39 requirements:

40 1. Contain the electronic signature and electronic seal of a notary
41 public placed on the will in accordance with applicable law.

42 2. Designate a qualified custodian to maintain custody of the
43 electronic will.

1 3. Before being offered for probate or being reduced to a certified
2 paper original, be under the exclusive control of a qualified custodian at
3 all times.

4 B. NOTWITHSTANDING SECTION 14-2504, SUBSECTION B, THE AFFIDAVITS
5 FOR AN ATTESTED SELF-PROVING ELECTRONIC WILL SHALL BE IN SUBSTANTIALLY THE
6 FOLLOWING FORM:

7 WE, _____, _____ AND _____,
8 THE TESTATOR AND THE WITNESSES, RESPECTIVELY, WHOSE NAMES ARE
9 SIGNED TO THE ATTACHED OR FOREGOING INSTRUMENT, BEING FIRST
10 DULY SWORN DO DECLARE TO THE UNDERSIGNED AUTHORITY THAT THE
11 TESTATOR SIGNED AND EXECUTED THE INSTRUMENT AS THE TESTATOR'S
12 WILL AND THAT HE/SHE SIGNED WILLINGLY, OR WILLINGLY DIRECTED
13 ANOTHER TO SIGN FOR HIM/HER, AND THAT HE/SHE EXECUTED IT AS
14 HIS/HER FREE AND VOLUNTARY ACT FOR THE PURPOSES EXPRESSED IN
15 THIS DOCUMENT, AND THAT EACH OF THE WITNESSES, IN THE PHYSICAL
16 OR ELECTRONIC PRESENCE AND HEARING OF THE TESTATOR, SIGNED THE
17 WILL AS WITNESS AND THAT TO THE BEST OF HIS/HER KNOWLEDGE THE
18 TESTATOR WAS AT THE TIME OF SIGNING EIGHTEEN YEARS OF AGE OR
19 OLDER, OF SOUND MIND AND UNDER NO CONSTRAINT OR UNDUE
20 INFLUENCE.

21 _____
22 TESTATOR

23 _____
24 WITNESS

25 _____
26 WITNESS

27 THE STATE OF _____
28 COUNTY OF _____

29 SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE ME BY
30 _____, THE TESTATOR, AND SUBSCRIBED AND SWORN TO BEFORE
31 ME BY _____ AND _____, WITNESSES, THIS ____ DAY
32 OF _____.

33 (SEAL)
34 (SIGNED) _____

35 _____
36 (OFFICIAL CAPACITY OF OFFICER)

37 Sec. 4. Section 14-2521, Arizona Revised Statutes, is amended to
38 read:

39 14-2521. Qualified custodian; agreement to serve; ceasing
40 service

41 A. A person shall execute a written statement affirmatively
42 agreeing to serve as the qualified custodian of an electronic will before
43 the person may serve as a qualified custodian. THE WRITTEN STATEMENT MAY
44 BE EXECUTED BY AN ELECTRONIC SIGNATURE AND MAINTAINED AS AN ELECTRONIC
45 RECORD.

1 B. Except for a person ceasing to serve as provided in subsection
2 C, paragraph 1 of this section, a person may not cease serving as a
3 qualified custodian until a successor qualified custodian executes the
4 written statement prescribed by subsection A of this section.

5 C. A person serving as a qualified custodian may cease serving as a
6 qualified custodian:

7 1. If the person does not designate a successor qualified
8 custodian, by providing the testator with both of the following:

9 (a) A thirty-day written notice that the person will cease to serve
10 as a qualified custodian.

11 (b) The certified paper original of the electronic will and all
12 records concerning the electronic will.

13 2. If the person designates a successor qualified custodian, by
14 providing all of the following:

15 (a) A thirty-day written notice that the person will cease to serve
16 as a qualified custodian to the testator and the successor qualified
17 custodian.

18 (b) To the successor qualified custodian, the electronic record of
19 the electronic will and an affidavit that states all of the following:

20 (i) That the person is eligible to act as a qualified custodian in
21 this state and is the qualified custodian designated by the testator in
22 the electronic will or was designated to act in that capacity by another
23 qualified custodian pursuant to this paragraph.

24 (ii) That an electronic record OF THE ELECTRONIC WILL was created
25 at the time the testator executed the electronic will.

26 (iii) That the electronic record OF THE ELECTRONIC WILL has been in
27 the custody of one or more qualified custodians since the execution of the
28 electronic will and has not been altered since the time it was created.

29 (iv) The identity of all qualified custodians who have had custody
30 of the electronic record OF THE ELECTRONIC WILL since the execution of the
31 electronic will.

32 D. For the purposes of making the affidavit prescribed by
33 subsection C, paragraph 2, subdivision (b) of this section, the person may
34 rely conclusively on any affidavits provided by a predecessor qualified
35 custodian if all of these affidavits are provided to the successor
36 qualified custodian.

37 E. If a testator designates a successor qualified custodian in a
38 writing executed with the same formalities required for the execution of
39 an electronic will and the successor qualified custodian executes the
40 written statement prescribed by subsection A of this section, the person
41 serving as qualified custodian shall cease serving in that capacity and
42 shall provide the successor qualified custodian with both of the
43 following:

44 1. The electronic record OF THE ELECTRONIC WILL.

1 2. The affidavit prescribed by subsection C, paragraph 2,
2 subdivision (b) of this section.

3 F. If a qualified custodian is an entity, an affidavit of a duly
4 authorized officer or agent of the entity constitutes the affidavit of the
5 qualified custodian.

6 G. A qualified custodian maintains an electronic will as a bailee,
7 and the electronic will is the property of the testator and not the
8 qualified custodian.