

Remote Execution of Wills and Other Estate Planning Documents

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Probate, Estates, Trusts, and Elder Law Seminar
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Overview

Wills

- Highest Formalities
- Tradition
- New, remote options

Notarizations

- Application of remote options to estate planning documents



Review of the Basics

1. In writing
2. Signed by the testator (or by someone in the testator's presence and by the testator's express direction
3. "Attested and signed" by 2 witnesses in the testator's physical or electronic presence

See Md. Code Ann., Est. & Trusts 4-102

COVID – 19 & Emergency Orders

Remote Notarizations

- Executive Order No. 20-03-30-04 (Mar. 30, 2020)
- Executive Order No. 20-09-29-01 (Sept. 29, 2020)
- Effective until July 1, 2021

Remote Witnessing

- Executive Order No. 20-04-10-01 (Apr. 10, 2020)
- Applies to Wills, POAs and HCDs
- Effective until July 1, 2021

Legislation	Code Sections Impacted
<p><u>HB1261 Wills, Powers of Attorney, and Advanced Directives – Electronic Execution</u> Effective: Oct. 1, 2021</p> <p>Synopsis: Authorizing a person to execute an electronic or remotely witnessed will, power of attorney, or health care directive using communications technology.</p>	<ul style="list-style-type: none"> ▪ Estates & Trusts 1-101(w) ▪ Estates & Trusts 4-101 ▪ Estates & Trusts 4-102 ▪ Estates & Trusts 4-104 ▪ Estates & Trusts 17-101 ▪ Estates & Trusts 17-110 ▪ Health Gen. 5-602(a) ▪ Real Prop. 4-109
<p><u>SB36 Wills and Trust Instruments – Electronic Execution</u> Effective: Upon Enactment (April 21, 2022)</p> <p>Synopsis: Authorizing a person to execute an electronic will or remotely witnessed will using communications technology. (Emergency legislation to correct HB1261)</p>	<ul style="list-style-type: none"> ▪ Estates & Trusts 4-102 ▪ State Govt. 18-214(a)
<p><u>SB317 Fees and Use of Communication Technology</u> Effective: June 1, 2022</p> <p>Synopsis: Adjusting the allowable notary fee, removing prohibition on using remote notarizations for wills and trusts, adding a remote <i>ink</i> notary procedure, and clarifying when identity proofing is necessary.</p>	<ul style="list-style-type: none"> ▪ State Govt. 18-214(a) ▪ State Govt. 18-107 ▪ State Govt. 18-222 ▪ State Govt. 18-223

Options for Each Document

Health Care Directive

- Paper or Electronic (Health Gen. 5-602(a)).
- Principal in the physical or electronic presence of the witnesses (Health Gen. 5-602(c)).
- HCDs signed relying on the emergency order affirmatively acknowledged in Health Gen. 5-602(c)(1)(ii).

Power of Attorney

- Principal in the physical or electronic presence of the witnesses (Estates & Trusts 17-110(a)(4)).
- Principal in the physical or electronic presence of notary (Estates & Trusts 17-110(a)(3)).
- Supervising attorney certification for electronic or remotely witnessed/notarized POA (Estates & Trusts 17-110(c)).
- POAs signed relying on the emergency order affirmatively acknowledged in Estates & Trusts 17-110(e).

Options for Each Document

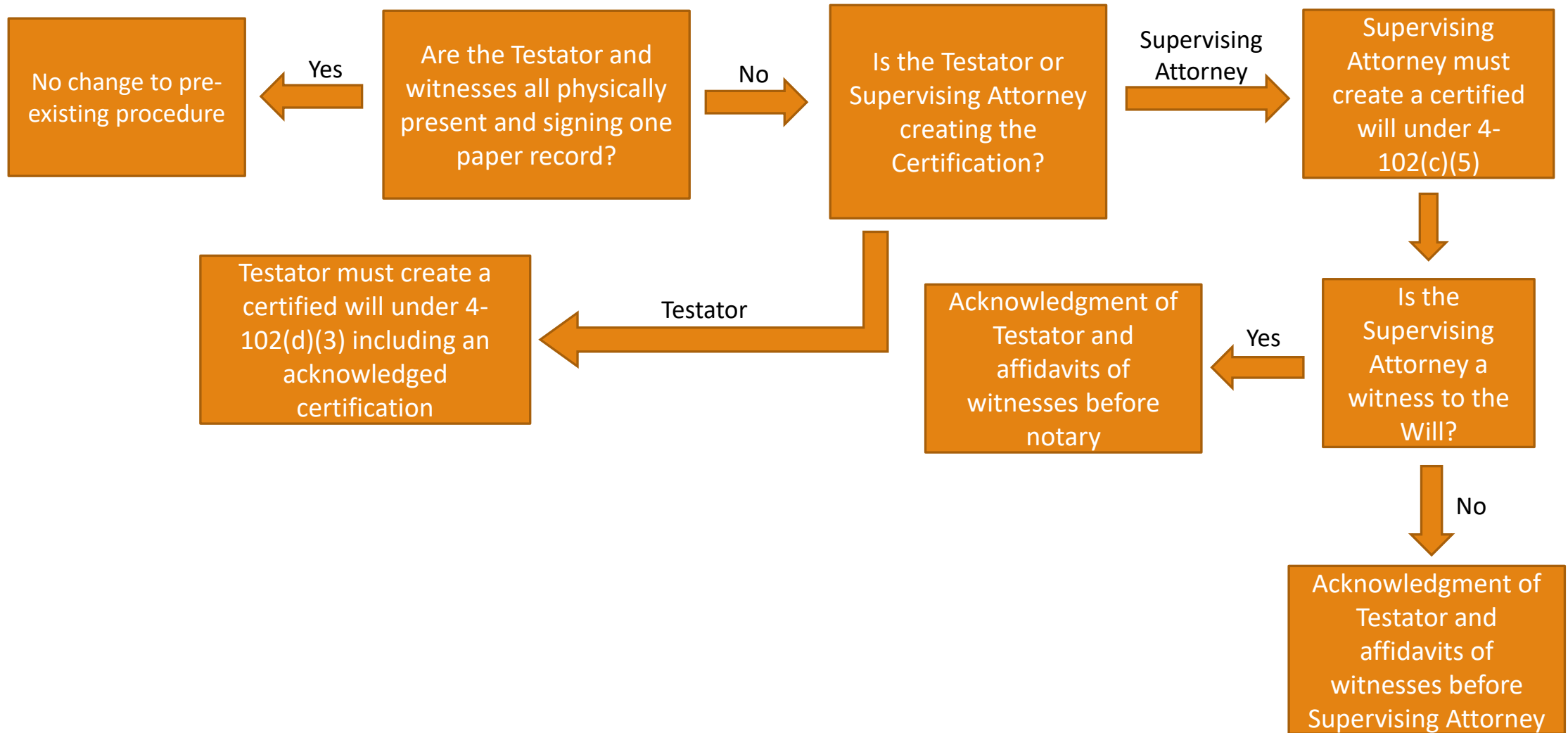
Trusts

- Sparse formalities (Estates & Trusts 14.5-403).
- Remote notary law under State Gov. 18-214 applies.

Wills

- Principal in the physical or electronic presence of the witnesses (Estates & Trusts 4-102(b)(3)(ii)).
- Supervising attorney certification or testator certification, as appropriate (Estates & Trusts 4-102(c)(5) or (d)(3)).
- Create a paper, certified will that is deemed to be the original (Estates & Trusts 4-102(e)).
- Wills signed relying on the emergency order affirmatively acknowledged in Estates & Trusts 4-102(f).

Will Formalities Flowchart



Required Forms

Supervising Attorney's
Certified Will with
Acknowledgment before
Supervising Attorney
(Estates & Trusts 4-102(c)(5))

Supervising Attorney's
Certified Will with
Acknowledgment before
Notary
(Estates & Trusts 4-102(c)(5))

Testator/rix's Certified Will
with Acknowledgment before
Notary
(Estates & Trusts 4-102(d)(3))

Remote Notarization Options

Remote Online Notarization (RON)

- Notify SOS of intent to become a RON notary
- Select a RON vendor from SOS list <https://sos.maryland.gov/Documents/ListAuthorizedRONVendors.pdf>
- Leave time for setup and training!

Remote Inc Notarization (RIN)

- Notify the SOS of intent to become a RIN notary
- Set up appropriate audio-visual communications technology

Requirements for RONs

(State Gov. 18-214(a))

Notary physically
located within
Maryland

Identify remotely
located individual

Reasonably able to
confirm record is the
same

Create an audio-visual
recording of the
performance of the
notarial act and retain
for 10 years

Remotely located
person is within the
U.S. (if not, see 18-
214(a)(4)).

Requirements for RINs

(State Gov. 18-214(b) & (c))

All requirements for RONS
plus

Remotely located individual
signs the physical record
and a declaration during a
recorded audio-visual
session

Send record to Notary
within 3 days

Signs certificate including
statement about RIN
procedure

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