

SECTION 8. ~~ELECTRONIC WILL ATTESTED AND MADE SELF-PROVING AT TIME OF EXECUTION. AFFIDAVIT OF ATTESTING WITNESSES TO AN ELECTRONIC WILL.~~

(1)(a) An electronic will may be filed with the court for administration as a decedent's original will pursuant to ORS 113.035.

(b) An electronic will may be filed with the court as a decedent's original will under ORS 114.525 only if the electronic will includes an affidavit of attesting witnesses that was signed simultaneously with the execution of the electronic will and the affidavit meets the requirements under subsection (3) of this section.

(2) ~~An electronic will may be simultaneously executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses. An affidavit of attesting witnesses to an electronic will may be used as evidence of the execution of the will instead of the personal presence of the witnesses in court as provided in ORS 113.055 only if:~~

(a) The witnesses sign the affidavit simultaneously with the execution of the electronic will and the affidavit meets the requirements under subsection (3) of this section; or

(b) The proponent of the electronic will gives notice of the filing of the petition under ORS 113.035 together with a copy of the petition and the electronic will to those persons identified in ORS 113.035 (5), (7), (8) and (9) and within 20 days following the date of the notice, no person receiving notice under this paragraph files a written objection to the petition.

(3)(2) ~~The acknowledgment and affidavits~~ affidavit under subsection (1) of this section subsection (2)(a) of this section must include an acknowledgement of the testator and be:

(a) ~~Be~~ Made before an officer authorized to administer oaths under law of the state in which execution occurs or, if fewer than two attesting witnesses are physically present in the same location as the testator at the time of signing under Section 5 (1)(b) of this 2027 Act, before an officer authorized under ORS 194.277; ~~and~~

(b) ~~Be~~ Evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will; ~~and~~

~~(3)(c) The acknowledgment and affidavits under subsection (a) must b~~ Be in substantially the following form:

I, _____, the testator, and, being sworn, declare to the
(name)

undersigned officer that I sign this instrument as my electronic will, I willingly sign it or willingly direct another individual to sign it for me, I execute it as my voluntary act for the purposes expressed in this instrument, and I am 18 years of age or older or have been

emancipated or lawfully married,¹ am of sound mind, and am under no constraint or undue influence.

Testator

We, _____ and _____,
(name) (name)

witnesses, being sworn, declare to the undersigned officer that the testator signed this instrument as the testator's electronic will, that the testator willingly signed it or willingly directed another individual to sign for the testator, and that each of us, in the physical or electronic presence of the testator, signs this instrument as witness to the testator's signing, and to the best of our knowledge the testator is ~~{18}~~ years of age or older; or has been emancipated or lawfully married, is of sound mind, and is under no constraint or undue influence.

Witness

Witness

Certificate of officer:

State of _____

County of _____

Subscribed, sworn to, and acknowledged before me by _____,
(name)

the testator, and subscribed and sworn to before me by _____ and
(name)

_____, witnesses, this _____ day of _____, _____.
(name)

(Seal)

¹ Note: LC added emancipated or married to align with ORS 112.225. "Any person who is 18 years of age or older or who has been lawfully married or who has been emancipated in accordance with ORS 419B.550 to 419B.558, and who is of sound mind, may make a will."

(4)(a)² If a person who received notice under subsection (2)(b) of this section files a written objection to the petition within 20 days following the date of the notice, the court, after hearing or on the basis of affidavits, may determine that clear and convincing evidence exists proving the validity of the matters contained in the affidavit.

(b) If the court determines that clear and convincing evidence exists proving the validity of the matters contained in the affidavit, the court shall:

(A) Prepare written findings of fact in support of the determination; and

(B) Enter a limited judgment that admits the electronic will for probate as the decedent's will.

(c) A determination under this subsection does not preclude the filing of a will contest under ORS 113.075, except that the will may not be contested on the grounds of the validity of the affidavit of the attesting witnesses.

SECTION 8a. ORS 113.055 is amended to read:

113.055. (1) Upon the ex parte review of a petition for the probate of a will, an affidavit of an attesting witness may be used instead of the personal presence of the witness in court. The witness may give evidence of the execution of the will by attaching the affidavit to the will or to a photographic or other facsimile copy of the will and may identify the signature of the testator and witnesses to the will by use of the will or the copy. The affidavit shall be received in evidence by the court and have the same weight as to matters contained in the affidavit as if the testimony were given by the witness in open court. Except as provided in section 8 of this 2027 Act, ~~the~~ affidavit of the attesting witness may be made at or after the time of execution of the will.

(2) However, upon motion of any person interested in the estate filed within 30 days from the date the personal representative first delivers or mails information under ORS 113.145 (1), the court may require that the witness making the affidavit be brought before the court. If the witness is outside the reach of a subpoena, the court may order that the deposition of the witness be taken.

(3) If the evidence of none of the attesting witnesses is available, the court may allow proof of the will by testimony or other evidence that the signature of the testator or at least one of the witnesses is genuine.

(4) In the event of contest of the will or of probate of the will in solemn form, proof of any facts shall be made in the same manner as in an action tried without a jury.

² This process largely mirrors that in ORS 112.238 (2) to (4).