

CHAPTER 30.1-08 WILLS

30.1-08-01. (2-501) Who may make a will.

Any adult who is of sound mind may make a will.

30.1-08-02. (2-502) Execution - Witnessed wills - Holographic wills.

1. Except as provided in subsection 2 and in sections 30.1-08-06 and 30.1-08-13, a will must be:
 - a. In writing.
 - b. Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.
 - c. Either signed:
 - (1) By at least two individuals, each of whom signed within a reasonable time after witnessing either the signing of the will as described in subdivision b or the testator's acknowledgment of that signature or acknowledgment of the will; or
 - (2) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments.
2. A will that does not comply with subsection 1 is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.
3. Intent that a document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

30.1-08-03. Holographic will.

Repealed by S.L. 1993, ch. 334, § 50.

30.1-08-04. (2-504) Self-proved will.

1. A will that is executed with attesting witnesses may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will in substantially the following form:

STATE OF _____
COUNTY OF _____

I, _____, the testator, sign my name to this instrument this _____ day of _____, _____, and being first sworn, declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument, and being first sworn, declare to the undersigned authority that the testator signs and executes this instrument as the testator's will and that the testator signs it willingly or willingly directs another to sign for the testator, and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator,
and subscribed and sworn to before me by _____ and _____, witnesses,
this _____ day of _____.

(SEAL) _____ (Signed) _____

(Official capacity of officer)

2. A will that is executed with attesting witnesses may at any time after its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

STATE OF _____
COUNTY OF _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that the testator had signed willingly or willingly directed another to sign for the testator, and that the testator executed it as the testator's free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of our knowledge the testator was at that time 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____.

(SEAL) _____ (Signed) _____

(Official capacity of officer)

3. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

30.1-08-05. (2-505) Who may witness.

1. Any person generally competent to be a witness may act as a witness to a will.
2. A will or any provision thereof is not invalid because the will is signed by an interested witness.

30.1-08-06. (2-506) Choice of law as to execution.

A written will is valid if executed in compliance with section 30.1-08-02 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

30.1-08-07. (2-507) Revocation by writing or by act.

1. A will or any part thereof is revoked:

- a. By executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or
 - b. By performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this subdivision, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a "revocatory act on the will", whether or not the burn, tear, or cancellation touched any of the words on the will.
2. If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.
3. The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.
4. The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

30.1-08-08. (2-508) Revocation by change of circumstances.

Except as provided in sections 30.1-10-03 and 30.1-10-04, a change of circumstances does not revoke a will or any part of it.

30.1-08-09. (2-509) Revival of revoked will.

1. If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under subdivision b of subsection 1 of section 30.1-08-07, the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.
2. If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under subdivision b of subsection 1 of section 30.1-08-07, a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.
3. If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later, will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

30.1-08-10. (2-510) Incorporation by reference.

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

30.1-08-11. (2-511) Testamentary additions to trusts.

1. A will may validly devise property to the trustee of a trust established or to be established during the testator's lifetime by the testator, by the testator and some other person, or by some other person including a funded or unfunded life insurance trust,

although the trustor has reserved any or all rights of ownership of the insurance contracts, or at the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, or concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

2. Unless the testator's will provides otherwise, property devised to a trust described in subsection 1:
 - a. Is not held under a testamentary trust of the testator but becomes a part of the trust to which it is devised.
 - b. Must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.
3. Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

30.1-08-12. (2-512) Events of independent significance.

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

30.1-08-13. (2-513) Separate writing identifying devise of certain types of tangible personal property.

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death, it may be prepared before or after the execution of the will, it may be altered by the testator after its preparation, and it may be a writing that has no significance apart from its effect on the dispositions made by the will.