

STATUTORY REQUIREMENTS FOR EXECUTING SOME ELEMENTS OF AN ESTATE PLAN

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1. Wills

B. VALIDITY:

C.R.S. 15-11-502. To be valid, a will must be in writing and signed by the testator and

EITHER:

- Signed by 2 witnesses

OR

- Acknowledged by the Testator before a Notary Public.

OR

- Holographic (signature and material portions in Testator's handwriting).

C. SELF-PROVING:

C.R.S. 15-11-504. To be self-proving, a will must be signed by the Testator and signed by two witnesses "in the conscious presence of the Testator" who swear before the Notary Public as to the Testator's testamentary capacity and to the absence of constraint or undue influence.

Comments to C.R.S. 15-11-504. "Self-proving" means a will may be admitted to probate without the testimony of testifying witnesses. Because no witness testimony is required to admit a will to informal probate, the procedural advantage of a self-proved will is limited to formal probate proceedings.

D. TRANSMITTING WILLS UNDER THE EMERGENCY REMOTE NOTARIZATION RULE

5.2.9(C). The ORIGINAL signed will must arrive to the Notary within 15 days of the remote notarization, and within 3 days of receiving the signed will the Notary must confirm that it is identical to the will remotely notarize and affix the signature and seal.

2. Medical Power of Attorney and the Colorado Patient Autonomy Act:

C.R.S. 15-14-506 (specifically C.R.S. 15-14-506). Nothing in the statute that requires witness or notary.

3. Power of Attorney for Financial and Banking Matters:

C.R.S. 15-14-705, Execution of Power of Attorney. A power of attorney must be signed by the Principal or at the direction of Principal by a person in the Principal's conscious presence. A notarized signature on a power of attorney is presumed to be genuine.

4. Advance Directives:

C.R.S. 15-18-106. Must be signed by the Declarant in the presence of 2 witnesses who are not physicians, employees of the declarant's physician or health care facility, persons with a claim against the estate or persons who know or believe they are beneficiary or heir at law to the Declarant.

-BUT-

C.R.S. 15-14-506. The agent under medical power of attorney "shall act in accordance with the terms, directives, conditions, or limitations stated in the medical durable power of attorney, and in conformance with the principal's wishes that are known to the agent."

-AND-

C.R.S. 15-14-504. Legislative Declaration-Construction of Statute. Specifically mentions the right to refuse medical treatment and artificial nourishment.

5. Transmittal Requirements for remotely notarized documents that are NOT WILLS.

5.2.9 (A) & (B) After the Notary performs the Notarial Act, the signer MUST transmit a copy by electronic means directly to the Notary on the same date and the Notary MUST notarize the copy as soon as received and transmit it back to the person.

6. Sample Notary Block for Remote Notarization.

The foregoing document described as _____ was signed and sworn to (or affirmed) before me by _____ on _____ (date), who appeared before me by **real-time audio-video communication** pursuant to the authority of Executive Order D 2020 019 (as subsequently extended and/or amended) signed by the Honorable Jared Polis, Governor of the State of Colorado, and as supplemented by Temporary Rule 8 CCR 1505-11 (as subsequently extended and/or amended) issued by the Colorado Secretary of State. Said audio-visual communication and signing was recorded by the undersigned Notary Public in an audio-video format with the consent of the above-named person, and such audio-video recording will be securely stored by the undersigned Notary Public for a period of ten years in compliance with section 24-21-519, C.R.S.

For Wills, add:

Seal Affixed to Original on _____.