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Signature Pages for Electronic Will and Self-Proving Declaration (WA)

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Will signature pages that comply with the execution requirements for Washington electronic wills, including an attestation clause, signature lines for the testator and witnesses, and a self-proving declaration. This Standard Clause contains integrated notes and drafting tips.

DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

To be valid in Washington, a will generally must be:

- In writing.
- Signed by the testator or by another under the testator's direction and in the testator's presence.
- Attested to by two or more competent witnesses while in the presence of the testator and at the testator's direction or request.

(RCW 11.12.020.) Subject to certain strict requirements, Washington permits:

- Electronic wills (see Electronic Wills).
- Nuncupative (oral) wills (see State Q&A, Wills: Question 5: Oral (Nuncupative) Wills).

Washington does not require a will include a self-proving declaration to be a valid will. However, it is standard practice to include a self-proving declaration as part of a will absent good reason not to do so. With a few exceptions, a will that is self-proved generally eliminates the need to have witnesses appear in court or provide affidavits after death (RCW 11.20.020; *In re Estate of Starkel*, 134 P.3d 1197, 1203 (Wash. Ct. App. 2006)).

This Standard Clause provides the signature pages that can be used with an electronic will in Washington, including:

- An attestation clause.
- A signature line for the testator.
- Signature lines for witnesses.
- A self-proving declaration.

For additional information regarding:

- Wills in Washington, including electronic wills, see State Q&A, Wills: Washington.
- Self-proving a traditional non-electronic will, see Standard Clause, Signature Pages for Will and Self-Proving Declaration (WA).

Electronic Wills

Washington permits electronic wills. An electronic will is a will that is executed under the Washington Uniform Electronic Wills Act (WUEWA), including that the will is:

- Signed with an electronic symbol, an electronic sound, or process.
- Signed in compliance with the law of the jurisdiction where the testator is:
  - physically located when signing the will; or
  - domiciled or resides when either the will is signed or when the testator dies.

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- Signed by at least two competent witnesses in the physical or electronic presence of the testator after the testator:
  - signs the will; or
  - acknowledges having signed the will.

(RCW 11.12.410, 11.12.430, and 11.12.440(c).)

Creating and executing electronic wills requires adherence to a detailed process including that:

- All individuals taking part in the electronic signing of the will must be in the physical or electronic presence of each other, communicating in real time as if they were physically present in the same location (RCW 11.12.440(c)).
- To be self-proving, a qualified custodian stores the electronic will at all times following execution (RCW 11.12.450(1)(b) and 11.12.460; see Drafting Note, Self-Proving Declaration).

For more information on executing electronic wills, see State Q&A, Wills: Question 6: Electronic Will Execution Requirements.

Bracketed Items

The drafting party should replace bracketed language in ALL CAPS with case-specific facts or other information. Bracketed language in sentence case is optional language that the drafting party may include, modify, or delete in its discretion. A forward slash between words or phrases indicates that the drafting party should include one of the words or phrases contained in the brackets in the document.

IN WITNESS WHEREOF, I have signed this Will on the [DATE] day of [MONTH], [YEAR].

[TESTATOR NAME], Testator

DRAFTING NOTE: SIGNATURE BLOCK

A written will must be signed:

- By the testator or by another at the testator's direction and in the testator's presence.
- By two or more competent witnesses while in the testator's presence and at the testator's direction or request.

(RCW 11.12.020.)

Testator's Signature

If the testator is capable of signing the will electronically, the testator should do so (see Electronic Wills). If necessary, the testator can have another person sign for the testator (RCW 11.12.030). However, the testator must have the capacity to create the will (see State Q&A, Wills: Washington; Question 3).

Witness Signatures

At least two witnesses must sign a will. To serve as witnesses, the individuals must be competent (RCW 11.12.020). To be competent, a witness must be able to, at the time of attestation, legally testify in court to the facts which they attest by signing the will (not legally disqualified from testifying in court by reason of mental incapacity, personal interest, or conviction of a crime) (*In re Mitchell's Estate*, 249 P.2d 385, 394 (Wash. 1952)).

A beneficiary or other interested person should generally not serve as a witness. But, if they do, this does not in itself invalidate the will, though it may invalidate or reduce any bequest to the interested person. (RCW 11.12.160.)

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Counsel may wish to keep a record of the witnesses' addresses and contact information for the files, in case they need to be contacted later.

Execution of Electronic Will

In Washington, for the execution or filing of an electronic will, the acknowledgment of an electronic will by the testator, and the affidavits of witnesses (which are their signed attestations), any requirement that individuals sign an instrument in the presence of one another may also be satisfied by witnesses being present by and electronically signing by means of audio-video communication technology (RCW 11.12.410 and 11.12.440). Washington statute does not provide a different testator signature block for an electronic will than for a written will.

If the testator and witnesses execute the will electronically, counsel should ensure that all requirements for an electronic signature and presence are met (see Drafting Note, Electronic Wills).

For more information on executing electronic wills, see State Q&A, Wills: Question 6: Electronic Will Execution Requirements.

[SELF-PROVING DECLARATION

I, [TESTATOR NAME], the testator, and, being sworn, declare to the 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, of sound mind, and under no constraint or undue influence.

_____

[TESTATOR NAME], Testator

We, [FIRST WITNESS NAME] and [SECOND WITNESS 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, of sound mind, and under no constraint or undue influence.

_____

[FIRST WITNESS NAME]

_____

[SECOND WITNESS NAME]

CERTIFICATE OF OFFICER

STATE OF WASHINGTON)

COUNTY OF [COUNTY NAME])ss.

)

Subscribed, sworn to, and acknowledged before me by [TESTATOR NAME], the testator, and subscribed and sworn to before me by [FIRST WITNESS NAME] and [SECOND WITNESS NAME], witnesses, this [DAY] day of [MONTH], [YEAR].

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_____

(Print name) _____

NOTARY PUBLIC in and for the state of Washington

My commission expires _____

OR

SELF-PROVING DECLARATION

I, [TESTATOR NAME], the testator, declare under penalty of perjury under the law of Washington that the following is true and correct: 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, of sound mind, and under no constraint or undue influence.

_____

[TESTATOR NAME], Testator

DECLARATION OF WITNESSES

We, [FIRST WITNESS NAME] and [SECOND WITNESS NAME], witnesses, declare under penalty of perjury under the law of Washington that the following is true and correct: 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, of sound mind, and under no constraint or undue influence.

_____

[FIRST WITNESS NAME]

_____

[SECOND WITNESS NAME]]

DRAFTING NOTE: SELF-PROVING DECLARATION

Washington does not require a will to include a self-proving declaration to be a valid will. However, counsel should include one. A will that is self-proved is generally admitted to probate without having to submit additional proof that it was executed in conformity with Washington law (RCW 11.20.020(2)).

The self-proving declaration creates a rebuttable presumption that the will met the signature and witness requirements at the time of execution without the need for live testimony or affidavits from the witnesses after the testator's death (RCW 11.20.020(2); see State Q&A, Wills: Washington: Question 6).

There is no statutory form for a self-proving declaration for a written will in Washington, though Washington provides statutory language that must substantially be used for self-proving an electronic will (RCW 11.12.450).

An electronic will can be simultaneously executed, attested, and made self-proving if both:

- The affidavits of the witnesses are affixed to or logically associated with the electronic will.

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- The qualified custodian maintains custody of the electronic will at all times following execution by the testator and witnesses.

(RCW 11.12.450(1).)

A qualified custodian can be either:

- Any suitable person over age 18 residing in Washington when the testator signed the electronic will.
- A Washington trust company and national banks when authorized.
- A Washington nonprofit corporation, if permitted by the corporation's bylaws or articles of incorporation.
- Any Washington professional service corporation, professional limited liability company, or limited liability partnership, owned exclusively by attorneys.
- A will repository in the testator's county of domicile.

(RCW 11.12.460(1).)

The following cannot serve as qualified custodians:

- Minors, persons of unsound mind, or persons convicted of any felony or crime involving moral turpitude.
- An individual who is an heir, beneficiary, or otherwise with an interest in the testator's estate.
- Corporations, limited liability companies, or limited liability partnerships, except as provided above.

(RCW 11.12.460(2).)

Self-Proof of Electronic Wills

For an electronic will self-proving declaration, the testator can electronically sign an acknowledgment and the witnesses can sign affidavits of witnesses either:

- Before an officer authorized to administer oaths using the form under RCW 11.12.450(3)(a).
- Under RCW 5.50.010 to 5.50.901 using the form provided under RCW 11.12.450(3)(b) by an unsworn testator and witnesses. In this case, the testator and witnesses are making unsworn declarations not in front of an officer authorized to administer oaths.

(RCW 11.12.450.)

The electronic affidavits must state the same facts the witnesses generally testify to in court to prove the will. Counsel should choose:

- The first option above if the self-proving declaration is to be made before an officer authorized to administer oaths.
- The second option above if fewer than two attesting witnesses are physically present in the same location as the testator at the time of signing, in which case the signatures must be:
  - made before an officer authorized under RCW 42.45.280 to electronically administer oaths (an electronic records notary public); and
  - evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will.

(RCW 11.12.450(2).)

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