CHAPTER 133 - WILLS

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WHO MAY MAKE A WILL

SECTION 133.020 Sound mind; age. Every person of sound mind, over the age of 18 years, may, by last will, dispose of all his or her estate, real and personal, the same being chargeable with the payment of the testator's debts.

EXECUTION

SECTION 133.040 Valid wills: Requirements of writing, subscription, witnesses and attestation. No will executed in this State or Reservation, except such electronic wills or holographic wills as are mentioned in this chapter, is valid unless it is in writing and signed by the testator, or by an attending person at the testator's express direction, and attested by at least two competent witnesses who subscribe their names to the will in the presence of the testator.

SECTION 133.045 Disposition of certain tangible personal property by reference to list or statement; requirements.

1. Whether or not the provisions relating to electronic wills and holographic wills apply, a will may refer to a written statement or list, including, without limitation, a written statement or list contained in an electronic record, to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, securities and property used in a trade or business.
2. To be admissible as evidence of the intended disposition, the statement or list must contain:

(a) The date of its execution.
(b) A title indicating its purpose.
(c) A reference to the will to which it relates.
(d) A reasonably certain description of the items to be disposed of and the names of the devisees.
(e) The testator's handwritten signature or electronic signature.

3. The statement or list may be:

(a) Referred to as a writing to be in existence at the time of the testator's death.
(b) Prepared before or after the execution of the will.
(c) Altered by the testator after its preparation.
(d) A writing which has no significance apart from its effect upon the dispositions made by the will.

SECTION 133.050 Attesting witnesses may sign self-proving declarations or affidavits to be attached to will.

1. Any attesting witness to a will may sign a declaration under penalty of perjury or an affidavit before any person authorized to administer oaths in or out of the State, stating such facts as the witness would be required to testify to in court to prove the will. The declaration or affidavit must be written on the will or, if that is impracticable, on some paper attached thereto. The sworn statement of any witness so taken must be accepted by the court as if it had been taken before the court.
2. The affidavit described in subsection 1 may be in substantially the following form:

State of Nevada }
}ss.
County of..... }

(Date).....

Then and there personally appeared ..... and ....., who, being duly sworn, depose and say: That they witnessed the execution of the foregoing will of the testator, ...; that the testator subscribed the will and declared it to be his last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory.

.....
Affiant
.....

Affiant

Subscribed and sworn to before me
this ..... day of the month of ..... of the year .....

.....
Notary Public

3. The declaration described in subsection 1 may be in substantially the following form:
Under penalty of perjury pursuant to the law of the State of Nevada, the undersigned, ... and ....., declare that the following is true of their own knowledge: That they witnessed the execution of the foregoing will of the testator, ...; that the testator subscribed the will and declared it to be his last will and testament in their presence; that they thereafter subscribed the will as witnesses in the presence of the testator and in the presence of each other and at the request of the testator; and that the testator at the time of the execution of the will appeared to them to be of full age and of sound mind and memory.

Dated this ..... day of ....., ...

Declarant
Declarant

SECTION 133.055 Signature affixed to self-proving affidavit or declaration that is attached to will considered signature affixed to will. A signature affixed to a self-proving affidavit or a self-proving declaration that is attached to a will and executed at the same time as the will is considered a signature affixed to the will if necessary to prove the execution of the will.

SECTION 133.060 Devise to subscribing witness. All devises in a will to a subscribing witness are void unless there are two other competent subscribing witnesses to the will.

SECTION 133.070 Creditors as witnesses. A mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will.

SECTION 133.080 Foreign execution.

1. If in writing and subscribed by the testator, a last will and testament executed outside this State or Reservation in the manner prescribed by the law, either of the state where executed or of the testator's domicile, shall be deemed to be legally executed, and is of the same force and effect as if executed in the manner prescribed by the law of this State or Reservation.

2. This section must be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

3. As used in this section, "subscribed" includes, without limitation, placing an electronic signature on an electronic will.

SECTION 133.085 Electronic will.

1. An electronic will is a will of a testator that:

(a) Is written, created and stored in an electronic record;

(b) Contains the date and the electronic signature of the testator and which includes, without limitation, at least one authentication characteristic of the testator; and

(c) Is created and stored in such a manner that:

(1) Only one authoritative copy exists;

(2) The authoritative copy is maintained and controlled by the testator or a custodian designated by the testator in the electronic will;

(3) Any attempted alteration of the authoritative copy is readily identifiable; and

(4) Each copy of the authoritative copy is readily identifiable as a copy that is not the authoritative copy.

2. Every person of sound mind over the age of 18 years may, by last electronic will, dispose of all of his estate, real and personal, but the estate is chargeable with the payment of the testator's debts.

3. An electronic will that meets the requirements of this section is subject to no other form, and may be made in or out of this Reservation. An electronic will is valid and has the same force and effect as if formally executed.

4. An electronic will shall be deemed to be executed on this Reservation if the authoritative copy of the electronic will is:

(a) Transmitted to and maintained by a custodian designated in the electronic will at his place of business on this Reservation or at his residence on this Reservation; or

(b) Maintained by the testator at his place of business on this Reservation or at his residence on this Reservation.

5. The provisions of this section do not apply to a trust other than a trust contained in an electronic will.

6. As used in this section:

(a) "Authentication characteristic" means a characteristic of a certain person that is unique to that person and that is capable of measurement and recognition in an electronic record as a biological aspect of or physical act performed by that person. Such a characteristic may consist of a fingerprint, a retinal scan, voice recognition, facial recognition, a digitized signature or other authentication using a unique characteristic of the person.

(b) "Authoritative copy" means the original, unique, identifiable and unalterable electronic record of an electronic will.

(c) "Digitized signature" means a graphical image of a handwritten signature that is created, generated or stored by electronic means.

SECTION 133.090 Holographic will.

1. A holographic will is a will in which the signature, date and material provisions are written by the hand of the testator, whether or not it is witnessed or notarized. It is subject to no other form, and may be made in or out of this Reservation.

2. Every person of sound mind over the age of 18 years may, by last holographic will, dispose of all of the estate, real or personal, but the estate is chargeable with the payment of the testator's debts.

3. Such wills are valid and have the same force and effect as if formally executed.

SECTION 133.100 Nuncupative or oral will invalid. A nuncupative or oral will is not valid.

SECTION 133.105 Transfer of security issued in registered form or beneficiary form effective without compliance with formal requirements of chapter.

1. A security issued in registered form which contains the words "transferable on death to" a named person, or equivalent language or abbreviation, is effective to transfer the interest evidenced by the security to that person, upon the death of its owner, without compliance with the formal requirements of this chapter for the execution of wills.

2. A security registered in beneficiary form pursuant to SECTION 111.480 to 111.650 of the Nevada Revised Statutes, inclusive, is effective to transfer the interest evidenced by the security to the beneficiary at the death of the owner or the deaths of all multiple owners, without compliance with the formal requirements of this chapter for the execution of wills.

3. As used in this section, "security" and "registered form" have the meanings ascribed to them in SECTION 104.8102 of the Nevada Revised Statutes.

REVOCATION

SECTION 133.110 Revocation by marriage; effect upon rights of surviving spouse. If a person marries after making a will and the spouse survives the maker, the will is revoked as to the spouse, unless provision has been made for the spouse by marriage contract, or unless the spouse is provided for in the will, or in such a way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation shall be received.

SECTION 133.115 Revocation of provisions in favor of former spouse on divorce or annulment; exceptions. Divorce or annulment of the marriage of the testator revokes every devise, beneficial interest or designation to serve as personal representative given to the testator's former spouse in a will executed before the entry of the decree of divorce or annulment unless otherwise:

1. Provided in a property or separation agreement which is approved by the court in the divorce or annulment proceedings; or

2. Ordered by the court in the divorce or annulment proceedings,

➥ and the will takes effect in the same manner as if the former spouse had died before the testator.

SECTION 133.120 Other means of revocation.

1. A written will may only be revoked by:

(a) Burning, tearing, cancelling or obliterating the will, with the intention of revoking it, by the testator, or by some person in the presence and at the direction of the testator; or

(b) Another will or codicil in writing, executed as prescribed in this chapter.

2. This section does not prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

SECTION 133.130 Effect of revocation of subsequent will. If, after the making of any will, the testator executes a second will, the destruction, cancellation or revocation of the second will does not revive the first will, unless it appears by the terms of the revocation that it was the intention to revive and give effect to the first will, or unless, after the destruction, cancellation or revocation, the first will is reexecuted.

PROPERTY PASSING BY WILL

SECTION 133.140 Agreements of testator. A bond, covenant or agreement made by a testator to convey any property devised in any will previously made is not a revocation of the previous devise, but the property passes by the devise, subject to the same remedies on the bond, covenant or agreement, for the specific performance or otherwise, against the devisee, as might be had by law against the heirs of the testator, if the property had descended to them.

SECTION 133.150 Charges or encumbrances upon estate. A charge or encumbrance upon any estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, is not a revocation of a will relating to the same estate which was previously executed, but the devises therein contained pass subject to the charge or encumbrance.

SECTION 133.155 Specific devise passes subject to mortgage or lien existing on date of death. A specific devise passes subject to any mortgage or lien existing on the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

KINDRED NOT MENTIONED IN WILL WHO SHARE IN ESTATE

SECTION 133.160 Rights of child born after making of will by parent of child. When a child is born after the making of a will by a parent of that child and no provision is made for the child in the will, the child is entitled to the same share in the estate of the testator as if the testator had died intestate, unless it is apparent from the will that it was the intention of the testator that no provision should be made for that child.

SECTION 133.170 Omission of child or grandchild presumed intentional; rights of child or grandchild if omission found unintentional. When the child of a testator or the issue of a deceased child of a testator is omitted from the testator's will, it must be presumed that the omission was intentional. Should the court find that the

omission was unintentional, the child, or the issue of the deceased child, is entitled to the same share in the estate of the testator as if the testator had died intestate.

SECTION 133.180 Sources of unmentioned child's share. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child or the issue of a child omitted in the will, as mentioned in SECTION 133.160 and 133.170, the share must first be taken from the estate not disposed of by the will, if any. If that is not sufficient, so much as is necessary must be taken from all the devisees in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or other provision in the will would thereby be defeated. In that case, the specific devise or provision may be exempted from the apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

SECTION 133.190 Effect of advancements. If the child or children, or their descendants, so unprovided for, have had an equal proportion of the testator's estate bestowed upon them in the testator's lifetime, by way of an advancement, as provided in SECTION 151.120, they take nothing under SECTION 133.160, 133.170 and 133.180.

SECTION 133.200 Death of devisee. When any estate is devised to any child or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, those descendants, in the absence of a provision in the will to the contrary, take the estate so given by the will in the same manner as the devisee would have done if the devisee had survived the testator.

EFFECT OF CERTAIN PROVISIONS

SECTION 133.210 Devise of real property. Every devise of real property in any will conveys all the estate of the testator therein which could lawfully be devised, unless it clearly appears by the will that the testator intended to convey a lesser estate.

SECTION 133.220 Interests acquired after execution of will. Any estate, right or interest in real property acquired by the testator after the making of a will passes thereby in like manner as if it had been acquired before the time of making the will, if that manifestly appears by the will to have been the intention of the testator.