IC 29-1-5

Chapter 5. Execution and Revocation of Wills

IC 29-1-5-1

Sound mind; age; armed forces

Sec. 1. Any person of sound mind who is eighteen (18) years of age or older, or who is younger and a member of the armed forces, or of the merchant marine of the United States, or its allies, may make a will.

(Formerly: Acts 1953, c.112, s.501; Acts 1971, P.L.404, SEC.1.)

IC 29-1-5-2

Writing; witnesses

Sec. 2. (a) All wills except nuncupative wills shall be executed in writing.

(b) Any person competent at the time of attestation to be a witness generally in this state may act as an attesting witness to the execution of a will and his subsequent incompetency shall not prevent the probate thereof.

(c) If any person shall be a subscribing witness to the execution of any will in which any interest is passed to him, and such will cannot be proved without his testimony or proof of his signature thereto as a witness, such will shall be void only as to him and persons claiming under him, and he shall be compelled to testify respecting the execution of such will as if no such interest had been passed to him; but if he would have been entitled to a distributive share of the testator's estate except for such will, then so much of said estate as said witness would have been thus entitled to, not exceeding the value of such interest passed to him by such will, shall be saved to him.

(d) No attesting witness is interested unless the will gives to him some personal and beneficial interest. The fact that a person is named in the will as executor, trustee, or guardian, or as counsel for the estate, personal representative, trustee or guardian does not make him an interested person.

(Formerly: Acts 1953, c.112, s.502.)

IC 29-1-5-3

Signatures; videotape

Sec. 3. (a) This section applies to a will executed before, on, or after July 1, 2003. A will, other than a nuncupative will, must be executed by the signature of the testator and of at least two (2) witnesses on:

(1) a will under subsection (b);

(2) a self-proving clause under section 3.1(c) of this chapter; or

(3) a self-proving clause under section 3.1(d) of this chapter.

(b) A will may be attested as follows:

(1) The testator, in the presence of two (2) or more attesting

witnesses, shall signify to the witnesses that the instrument is the testator's will and either:

(A) sign the will;

(B) acknowledge the testator's signature already made; or

(C) at the testator's direction and in the testator's presence have someone else sign the testator's name.

(2) The attesting witnesses must sign in the presence of the testator and each other.

An attestation or self-proving clause is not required under this subsection for a valid will.

(c) A will that is executed substantially in compliance with subsection (b) will not be rendered invalid by the existence of:

(1) an attestation or self-proving clause or other language; or

(2) additional signatures;

not required by subsection (b).

(d) A will executed in accordance with subsection (b) is self-proved if the witness signatures follow an attestation or self-proving clause or other declaration indicating in substance the facts set forth in section 3.1(c) or 3.1(d) of this chapter.

(e) This section shall be construed in favor of effectuating the testator's intent to make a valid will.

(Formerly: Acts 1953, c.112, s.503; Acts 1975, P.L.288, SEC.4.) As amended by Acts 1978, P.L.132, SEC.2; P.L.273-1983, SEC.1; P.L.273-1985, SEC.1; P.L.262-1989, SEC.1; P.L.4-2003, SEC.1; P.L.176-2003, SEC.6.

IC 29-1-5-3.1

Self-proving clause

Sec. 3.1. (a) This section applies to a will executed before, on, or after July 1, 2003. When a will is executed, the will may be:

(1) attested; and

(2) made self-proving;

by incorporating into or attaching to the will a self-proving clause that meets the requirements of subsection (c) or (d). If the testator and witnesses sign a self-proving clause that meets the requirements of subsection (c) or (d) at the time the will is executed, no other signatures of the testator and witnesses are required for the will to be validly executed and self-proved.

(b) If a will is executed by the signatures of the testator and witnesses on an attestation clause under section 3(b) of this chapter, the will may be made self-proving at a later date by attaching to the will a self-proving clause signed by the testator and witnesses that meets the requirements of subsection (c) or (d).

(c) A self-proving clause must contain the acknowledgment of the will by the testator and the statements of the witnesses, each made under the laws of Indiana and evidenced by the signatures of the testator and witnesses (which may be made under the penalties for perjury) attached or annexed to the will in form and content

substantially as follows:

We, the undersigned testator and the undersigned witnesses, respectively, whose names are signed to the attached or foregoing instrument declare:

(1) that the testator executed the instrument as the testator's will;

(2) that, in the presence of both witnesses, the testator signed or acknowledged the signature already made or directed another to sign for the testator in the testator's presence;

(3) that the testator executed the will as a free and voluntary act for the purposes expressed in it;

(4) that each of the witnesses, in the presence of the testator and of each other, signed the will as a witness;

(5) that the testator was of sound mind when the will was executed; and

(6) that to the best knowledge of each of the witnesses the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies.

_____
Testator

____ _____
Date Witness

_____
Witness

(d) A will is attested and self-proved if the will includes or has attached a clause signed by the testator and the witnesses that indicates in substance that:

(1) the testator signified that the instrument is the testator's will;

(2) in the presence of at least two (2) witnesses, the testator signed the instrument or acknowledged the testator's signature already made or directed another to sign for the testator in the testator's presence;

(3) the testator executed the instrument freely and voluntarily for the purposes expressed in it;

(4) each of the witnesses, in the testator's presence and in the presence of all other witnesses, is executing the instrument as a witness;

(5) the testator was of sound mind when the will was executed; and

(6) the testator is, to the best of the knowledge of each of the witnesses, either:

(A) at least eighteen (18) years of age; or

(B) a member of the armed forces or the merchant marine of the United States or its allies.

(e) This section shall be construed in favor of effectuating the testator's intent to make a valid will.

As added by P.L.4-2003, SEC.2.

IC 29-1-5-3.2
Videotape

Sec. 3.2. Subject to the applicable Indiana Rules of Trial Procedure, a videotape may be admissible as evidence of the following:

(1) The proper execution of a will.
(2) The intentions of a testator.
(3) The mental state or capacity of a testator.
(4) The authenticity of a will.
(5) Matters that are determined by a court to be relevant to the probate of a will.

As added by P.L.4-2003, SEC.3.

IC 29-1-5-4
Nuncupative will; requisites; limitations

Sec. 4. (a) A nuncupative will may be made only by a person in imminent peril of death, whether from illness or otherwise, and shall be valid only if the testator died as a result of the impending peril, and must be

(1) Declared to be his will by the testator before two (2) disinterested witnesses;

(2) Reduced to writing by or under the direction of one (1) of the witnesses within thirty (30) days after such declaration; and

(3) Submitted for probate within six (6) months after the death of the testator.

(b) The nuncupative will may dispose of personal property only and to an aggregate value not exceeding one thousand ($1,000) dollars, except that in the case of persons in active military, air or naval service in time of war the aggregate amount may be ten thousand ($10,000) dollars.

(c) A nuncupative will does not revoke an existing written will. Such written will is changed only to the extent necessary to give effect to the nuncupative will.

(Formerly: Acts 1953, c.112, s.504.)

IC 29-1-5-5
Compliance with law

Sec. 5. A will is legally executed if the manner of its execution complies with the law, in force either at the time of execution or at the time of the testator's death, of

(1) This state, or
(2) The place of execution, or
(3) The domicile of the testator at the time of execution or at the time of his death.

(Formerly: Acts 1953, c.112, s.505.)

IC 29-1-5-6
Revocation; revival

Sec. 6. No will in writing, nor any part thereof, except as in this article provided, shall be revoked, unless the testator, or some other person in his presence and by his direction, with intent to revoke, shall destroy or mutilate the same; or such testator shall execute other writing for that purpose, signed, subscribed and attested as required in section 3 or 3.1 of this chapter. A will can be revoked in part only by the execution of a writing as herein provided. And if, after the making of any will, the testator shall execute a second, a revocation of the second shall not revive the first will, unless it shall appear by the terms of such revocation to have been his intent to revive it, or, unless, after such revocation, he shall duly republish the previous will.
(Formerly: Acts 1953, c.112, s.506.) As amended by Acts 1982, P.L.171, SEC.16; P.L.4-2003, SEC.4.

IC 29-1-5-7
Nuncupative will; revocation

Sec. 7. A nuncupative will or any part thereof can be revoked by another nuncupative will.
(Formerly: Acts 1953, c.112, s.507.)

IC 29-1-5-8
Revocation; divorce; annulment of marriage; change in circumstances

Sec. 8. If after making a will the testator is divorced, all provisions in the will in favor of the testator's spouse so divorced are thereby revoked. Annulment of the testator's marriage shall have the same effect as a divorce as hereinabove provided. With this exception, no written will, nor any part thereof, can be revoked by any change in the circumstances or condition of the testator.
(Formerly: Acts 1953, c.112, s.508.)

IC 29-1-5-9
Trust inter vivos; execution

Sec. 9. An instrument creating an inter vivos trust in order to be valid need not be executed as a testamentary instrument pursuant to section 3 or 3.1 of this chapter, even though such trust instrument reserves to the maker or settlor the power to revoke, or the power to alter or amend, or the power to control investments, or the power to consume the principal, or because it reserves to the maker or settlor any one or more of said powers.
(Formerly: Acts 1953, c.112, s.509.) As amended by Acts 1982, P.L.171, SEC.17; P.L.4-2003, SEC.5.