

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1936

By: Representative Clowney

For An Act To Be Entitled

AN ACT TO CLARIFY THE LAW CONCERNING THE EXECUTION OF
WILLS AND HOLOGRAPHIC WILLS; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY THE LAW CONCERNING THE
EXECUTION OF WILLS AND HOLOGRAPHIC WILLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 28-25-103 is amended to read as follows:
28-25-103. Execution generally.

(a) ~~The execution of a will, other than holographic, must be by the signature of the testator and of at least two (2) witnesses~~ As used in this section:

(1) "Material portions" means the words identifying the property of the testator or the property being devised by the testator; and

(2) "Signature" means a mark intended to authenticate a document, including without limitation a nickname, a mark, or an initial.

(b) Except as otherwise provided in subsection (b) of this section, a will shall be:

(1) In writing;

(2) Either:

(A) Signed by the testator; or

(B) At the direction of the testator, signed in the name of the testator by a person who is in the conscious presence of the testator; and

(3)(A) Signed by at least (2) witnesses.



(B) Each witness shall sign the will within a reasonable time after the:

(i) Witness has witnessed the will signed as provided under subdivision (a)(2) of this section; or

(ii) Testator has acknowledged the will or the signature on the will.

(c) A will that does not comply with subsection (a) of this section is valid as a holographic will whether or not witnessed if the:

(1) Signature of the testator is in the handwriting of the testator; and

(2) Material portions of the will are in the handwriting of the testator.

(d) Extrinsic evidence may be used to establish a testator's intent for a document to constitute the testator's will, including without limitation portions of the document that are not in the testator's handwriting.

~~(b)(1) The testator shall declare to the attesting witnesses that the instrument is his or her will and either:~~

~~(A) Himself or herself sign;~~

~~(B) Acknowledge his or her signature already made;~~

~~(C) Sign by mark, his or her name being written near it and witnessed by a person who writes his or her own name as witness to the signature; or~~

~~(D)(i) At his or her discretion and in his or her presence have someone else sign his or her name for him or her.~~

~~(ii) The person so signing shall write his or her own name and state that he or she signed the testator's name at the request of the testator.~~

~~(2) In any of the cases listed in subdivision (b)(1) of this section:~~

~~(A) The signature must be at the end of the instrument; and~~

~~(B) The act must be done in the presence of two (2) or more attesting witnesses.~~

~~(c) The attesting witnesses must sign at the request and in the presence of the testator.~~

SECTION 2. Arkansas Code § 28-25-104 is repealed.

~~28-25-104. Holographic wills generally.~~

~~When the entire body of the will and the signature shall be written in the proper handwriting of the testator, the will may be established by the evidence of at least three (3) credible disinterested witnesses to the handwriting and signature of the testator, notwithstanding there may be no attesting witnesses to the will.~~