

CHAPTER 2

WILLS

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49 PC 2-101. Capacity; limitation.

Any person of sound mind who is 18 years of age or older may make a will in accordance with this chapter, but such will may only dispose of property, which at the time of his death, the testator has a right to dispose of without consent of any other person or any official.

Source: S.L. No. 1L-80-86 §1, 1/1/87

49 PC 2-102. Definitions.

As used in this chapter, the following definitions apply:

(1) "Person" includes either man or woman, single or married.

(2) "Will" includes codicil.

Source: S.L. No. 1L-80-86 §2, 1/1/87

49 PC 2-103. Witnesses.

(1) Any person competent to be a witness generally in the state may act as an attesting witness to a will.

(2) No will is invalidated because attested to by an interested witness, but any interested witness shall, unless the will is also attested to by two disinterested witnesses, forfeit so much

of the provisions made for him therein as in the aggregate exceeds in value, as of the date of the testator's death, what he would have received had the testator died intestate.

(3) No attesting witness is interested unless the will gives to him some personal and beneficial interest.

Source: S.L. No. 1L-80-86 §3, 1/1/87

49 PC 2-104. Execution.

The execution of a will under this chapter, other than a handwritten or oral will, must be by the signature of the testator and of at least two witnesses as follows:

(1) Testator. The testator shall signify to the attesting witness that the instrument is his will and either himself sign, or acknowledge his signature already made, or, at his direction and in his presence, have someone else sign his name for him. In any of the above cases the act must be done in the presence of two or more attesting witnesses.

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

Source: S.L. No. 1L-80-86 §4, 1/1/87

49 PC 2-105. Handwritten will.

A handwritten will is a will in the handwriting of the testator. A handwritten will may be made under this chapter without any witness, but the signature and all its material provisions must be in the handwriting of the testator and his handwriting must be proved by two witnesses.

Source: S.L. No. 1L-80-86 §5, 1/1/87

49 PC 2-106. Oral will.

(1) An oral will is a will presented verbally by the testator. An oral will may be made under this chapter only by a person in imminent peril of death, whether from illness or otherwise, and shall be valid only if the testator dies as a result of the impending peril. An oral will must be:

(a) Declared to be his will by the testator before two disinterested witnesses; and

(b) Submitted for probate within six months after the death of the testator unless the court, for good cause, permits it to be submitted later.

(2) An oral will made under this chapter may dispose of personal property only and to an aggregate value not exceeding \$5,000.

(3) An oral will made under this chapter neither revokes nor changes an existing written will.

Source: S.L. No. 1L-80-86 §6, 1/1/87

49 PC 2-107. Wills executed outside the state or under foreign law.

A will executed outside the state in a manner prescribed by this chapter or a written will executed in a manner prescribed by the law of the place of its execution, or by the law of the testator's domicile at the time of its execution, shall have the same force and effect in the state as if executed in the state in compliance with this chapter.

Source: S.L. No. 1L-80-86 §7, 1/1/87

49 PC 2-108. No retroactive application.

This chapter shall not apply to wills executed in the state before the date this chapter takes effect.

Source: S.L. No. 1L-80-86 §8, 1/1/87

Notes: 1. S.L. No. 1L-80-86 §9, 1/1/87 supersedes 13 TTC §§1 – 9 (1980) and by inference PDC §12-100, 3/71. 2. D.L. No. 4L-97-77 §1, 5/13/77 amended PDC §12-100(b). 3. D.L. No. 4L-97-77 §2, 5/13/77 added PDC §12-100(c).