

Chapter 11.20 RCW
CUSTODY, PROOF, AND PROBATE OF WILLS

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RCW 11.20.010 Duty of custodian of will—Liability. Any person having the custody or control of any will shall, within thirty days after he or she shall have received knowledge of the death of the testator, deliver said will to the court having jurisdiction or to the person named in the will as executor, and any executor having in his or her custody or control any will shall within forty days after he or she received knowledge of the death of the testator deliver the same to the court having jurisdiction. Any person who shall wilfully violate any of the provisions of this section shall be liable to any party aggrieved for the damages which may be sustained by such violation. [2010 c 8 § 2015; 1965 c 145 § 11.20.010. Prior: 1917 c 156 § 9; RRS § 1379; prior: Code 1881 §§ 1342, 1343; 1863 p 212 § 78; 1860 p 174 § 45.]

Refusal to serve as executor: RCW 11.28.010.

RCW 11.20.020 Application for probate—Hearing—Order—Proof—Record of testimony—Affidavits of attesting witnesses. (1) Applications for the probate of a will and for letters testamentary, or either, may be made to the judge of the court having jurisdiction and the court may immediately hear the proofs and either probate or reject such will as the testimony may justify. Upon such hearing the court shall make and cause to be entered a formal order, either establishing and probating such will, or refusing to establish and probate the same, and such order shall be conclusive except in the event of a contest of such will as hereinafter provided. All testimony in support of the will shall be reduced to writing, signed by the witnesses, and certified by the judge of the court. If the application for probate of a will does not request the appointment of a personal representative and the court enters an adjudication of testacy establishing such will no further administration shall be required except as commenced pursuant to RCW 11.28.330 or 11.28.340.

(2) In addition to the foregoing procedure for the proof of wills, any or all of the attesting witnesses to a will may, at the request of the testator or, after his or her decease, at the request of the executor or any person interested under it, make an affidavit

before any person authorized to administer oaths, stating such facts as they would be required to testify to in court to prove such will, which affidavit may be written on the will or may be affixed or logically associated with the will or a photographic copy of the will or an electronic will. The sworn statement of any witness so taken shall be accepted by the court as if it had been taken before the court.

(3) An electronic will, the custody of which has not been maintained by a qualified custodian, must be treated as a lost or destroyed will under RCW 11.20.070. [2021 c 140 § 1015; 2010 c 8 § 2016; 1977 ex.s. c 234 § 2; 1974 ex.s. c 117 § 27; 1969 ex.s. c 126 § 1; 1965 c 145 § 11.20.020. Prior: 1917 c 156 § 10; RRS § 1380; prior: 1863 p 212 §§ 85, 86; 1860 p 175 §§ 52, 53.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

Severability—1977 ex.s. c 234: "If any provisions of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 234 § 30.]

Effective date—Application—1977 ex.s. c 234: "This 1977 amendatory act shall take effect on October 1, 1977 and shall apply to all proceedings in probate with respect to decedents whose deaths occurred after the effective date." [1977 ex.s. c 234 § 31.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Will contests: Chapter 11.24 RCW.

RCW 11.20.030 Commission to take testimony of witness. If any witness be prevented by sickness from attending at the time any will is produced for probate, or reside out of the state or more than thirty miles from the place where the will is to be proven, such court may issue a commission annexed to such will, and directed to any judge, notary public, or other person authorized to administer an oath, empowering him or her to take and certify the attestation of such witness. [1987 c 202 § 171; 1965 c 145 § 11.20.030. Prior: 1923 c 142 § 1; 1917 c 156 § 11; RRS § 1381; prior: Code 1881 § 1351; 1863 p 212 § 87; 1860 p 175 § 54.]

Intent—1987 c 202: See note following RCW 2.04.190.

RCW 11.20.040 Proof where one or more witnesses are unable or incompetent to testify, or absent from state. The subsequent incompetency from whatever cause of one or more of the subscribing witnesses, or their inability to testify in open court or pursuant to commission, or their absence from the state, shall not prevent the probate of the will. In such cases the court shall admit the will to probate upon satisfactory testimony that the handwriting of the testator and of an incompetent or absent subscribing witness is

genuine or the court may consider such other facts and circumstances, if any, as would tend to prove such will. [1967 c 168 § 5; 1965 c 145 § 11.20.040. Prior: 1945 c 39 § 1; 1943 c 219 § 1; 1917 c 156 § 12; Rem. Supp. 1945 § 1382; prior: Code 1881 § 1353; 1863 p 213 §§ 89, 90; 1860 p 175 §§ 56, 57.]

RCW 11.20.050 Recording of wills. All wills filed with the clerk of the superior court must be noted in the record required to be kept under RCW 36.23.030(7). They may be withdrawn from the record on the order of the court. [2002 c 271 § 1; 1967 c 168 § 17; 1965 c 145 § 11.20.050. Prior: 1915 c 156 § 13; RRS § 1383; prior: Code 1881 § 1356; 1863 p 213 § 92; 1860 p 175 § 59.]

Clerk to keep record of wills: RCW 36.23.030(7).

RCW 11.20.060 Record of will as evidence. The record of any will made, probated and recorded as herein provided, and the exemplification of such record by the clerk in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven. [1965 c 145 § 11.20.060. Prior: 1917 c 156 § 14; RRS § 1384; prior: 1891 p 382 § 7; Code 1881 § 1358; 1863 p 213 § 94; 1860 p 175 § 61.]

Certified copies of recorded instruments as evidence: RCW 5.44.060.

RCW 11.20.070 Proof of lost or destroyed will. (1) If a will has been lost or destroyed under circumstances such that the loss or destruction does not have the effect of revoking the will, or is an electronic will, custody of which has not been maintained by a qualified custodian, the court may take proof of the execution and validity of the will and establish it, notice to all persons interested having been first given. The proof must be reduced to writing and signed by any witnesses who have testified as to the execution and validity, and must be filed with the clerk of the court.

(2) The provisions of a lost or destroyed will, or an electronic will, custody of which has not been maintained by a qualified custodian, must be proved by clear, cogent, and convincing evidence, consisting at least in part of a witness to either its contents or the authenticity of a copy of the will.

(3) When a lost or destroyed will, or an electronic will, custody of which has not been maintained by a qualified custodian, is established under subsections (1) and (2) of this section, its provisions must be distinctly stated in the judgment establishing it, and the judgment must be recorded as wills are required to be recorded. A personal representative may be appointed by the court in the same manner as is herein provided with reference to original wills presented to the court for probate. [2021 c 140 § 1016; 1994 c 221 § 20; 1965 c 145 § 11.20.070. Prior: 1955 c 205 § 1; 1917 c 156 § 20; RRS § 1390; prior: Code 1881 § 1367; 1860 p 177 § 70.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

Effective dates—1994 c 221: See note following RCW 11.100.035.

Replacement of lost or destroyed probate records: RCW 5.48.060.

RCW 11.20.080 Restraint of personal representative during pendency of application to prove lost or destroyed will. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration shall have been granted on the estate of the testator, or letters testamentary of any previous will of the testator shall have been granted, the court shall have authority to restrain the personal representatives so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will. [1965 c 145 § 11.20.080. Prior: 1917 c 156 § 21; RRS § 1391; prior: Code 1881 § 1369; 1863 p 215 § 105; 1860 p 177 § 72.]

Replacement of lost or destroyed probate records: RCW 5.48.060.

RCW 11.20.090 Admission to probate of foreign will. Wills probated in any other state or territory of the United States, or in any foreign country or state, shall be admitted to probate in this state on the production of a copy of such will and of the original record of probate thereof, certified by the attestation of the clerk of the court in which such probate was made; or if there be no clerk, certification by the attestation of the judge thereof, and by the seal of such officers, if they have a seal. [1977 ex.s. c 234 § 3; 1965 c 145 § 11.20.090. Prior: 1917 c 156 § 22; RRS § 1392; prior: Code 1881 § 1370; 1877 p 284 § 1.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.20.020.

RCW 11.20.100 Laws applicable to foreign wills. All provisions of law relating to the carrying into effect of domestic wills after probate thereof shall, so far as applicable, apply to foreign wills admitted to probate in this state. [1965 c 145 § 11.20.100. Prior: 1917 c 156 § 23; RRS § 1393; prior: Code 1881 § 1371; 1877 p 284 § 2.]