

[Tenn. Code Ann. § 32-2-110](#)

Current through the 2025 Regular Session.

TN - Tennessee Code Annotated > Title 32 Wills > Chapter 2 Probate of Wills

32-2-110. Affidavit of witnesses to prove will.

Any or all of the attesting witnesses to any will may, at the request of the testator or, after the testator's death, at the request of the executor or any person interested under the will, make and sign an affidavit before any officer authorized to administer oaths in or out of this state, stating the facts to which they would be required to testify in court to prove the will, which affidavit shall be written on the will or, if that is impracticable, on some paper attached to the will, and the sworn statement of any such witness so taken shall be accepted by the court of probate when the will is not contested as if it had been taken before the court.

History

Acts 1972, ch. 568, § 1; T.C.A., § 32-211.

Annotations

Case Notes

1. Validity.
2. Signature of Testator.

NOTES TO DECISIONS

1. Validity.

[T.C.A. § 32-1-104](#) was not complied with and decedent's will was not properly executed when names of attesting witnesses were simply typed onto a will and the witnesses did not sign the will; this was so regardless of whether the witnesses initialed other pages of the will and supplied affidavits pursuant to [T.C.A. § 32-2-110](#). [In re Estate of Stringfield, 283 S.W.3d 832, 2008 Tenn. App. LEXIS 457 \(Tenn. Ct. App. Aug. 4, 2008\)](#), appeal denied, [S.W.3d —, 2009 Tenn. LEXIS 223 \(Tenn. Feb. 17, 2009\)](#).

Because the testator's will was executed in 2011, prior to the 2016 amendment to [T.C.A. § 32-1-104\(b\)](#), to the extent necessary for his will to be validly executed, the witness signatures affixed to an affidavit meeting the requirements of [T.C.A. § 32-2-110](#) were considered signatures to the will, provided the signatures were made contemporaneously with the testator's signature and the affidavit contained language meeting the requirements of [§ 32-1-104\(a\)](#). The contestant failed to establish that the circuit court erred in relying on the witness affidavits or that the affidavits were invalid in the instant case. [In re Estate of Wilson, — S.W.3d —, 2024 Tenn. App. LEXIS 33 \(Tenn. Ct. App. Jan. 29, 2024\)](#)

2. Signature of Testator.

Purported will was invalid because the requirements for execution of an attested will prescribed by [T.C.A. § 32-1-104\(1\)](#) were not satisfied when the decedent failed to sign the will but signed the separate affidavit of attesting witnesses; that he may have intended to sign the will and believed he did so was immaterial, since a court could not excuse compliance with [§ 32-1-104](#). [In re Estate of Chastain, 401 S.W.3d 612, 2012 Tenn. LEXIS 816 \(Tenn. Nov. 16, 2012\)](#)

Research References & Practice Aids

Textbooks.

Pritchard on Wills and Administration of Estates (4th ed., Phillips and Robinson), §§ 318, 319, 332, 1035, 1036.

Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 4-509, 4-510, 4-802, 4-803.

Tennessee Jurisprudence, 25 Tenn. Juris., Wills, §§ 11, 12, 49.

Law Reviews.

Some Whys and Wherefores of Will-Drafting — Revised (Robert L. McMurray), 15 No. 2 Tenn. B.J. 2 (1979).

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