

3B:3-4

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 3B:3-4

(Wills--self-
prooving)

LAWS OF: 1991

CHAPTER: 255

Bill No: S3540

Sponsor(s): Laskin

Date Introduced: June 13, 1991

Com mittee: Assembly: -----

Senate: Judiciary

A mended during passage: No

Date of Passage: Assembly: June 27, 1991

Senate: June 20, 1991

Date of Approval: August 13, 1991

Following statements are attached if available:

Sponsor state ment: Yes

Com mittee Assembly: No

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

(over)

Attached:

**Comments by National Conference of Commissioners on Uniform
State Laws.**

KBG/SLJ

P.L.1991, CHAPTER 255, approved August 13, 1991
1991 Senate No. 3540

1 AN ACT concerning the self-proving of wills in certain cases and
2 amending N.J.S.3B:3-4.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. N.J.S.3B:3-4 is amended to read as follows:
7 3B:3-4. [A] Any will executed [in compliance with N.J.S.
8 3B:3-2] on or after September 1, 1978 may be simultaneously
9 executed, attested, and made self-proved, by acknowledgment
10 thereof by the testator and affidavits of the witnesses, each
11 made before an officer authorized pursuant to R.S. 46:14-6, R.S.
12 46:14-7 or R.S. 46:14-8 to take acknowledgments and proofs of
13 instruments entitled to be recorded under the laws of this State,
14 in substantially the following form:

15 I..... the testator, sign my name to this instrument
16 this.....day of....., 19...., and being duly sworn, do
17 hereby declare to the undersigned authority that I sign and
18 execute this instrument as my last will and that I sign it willingly
19 (or willingly direct another to sign for me), that I execute it as
20 my free and voluntary act for the purposes therein expressed, and
21 that I am 18 years of age or older, of sound mind, and under no
22 constraint or undue influence.

23
24 Testator

25 We..... the witnesses, sign our names to this
26 instrument, and, being duly sworn, do hereby declare to the
27 undersigned authority that the testator signs and executes this
28 instrument as his last will and that he signs it willingly (or
29 willingly directs another to sign for him), and that each of us, in
30 the presence and hearing of the testator, hereby signs this will as
31 witness to the testator's signing, and that to the best of our
32 knowledge the testator is 18 years of age or older, of sound mind,
33 and under no constraint or undue influence.

34
35 Witness

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37
38 Witness

39 The State of.....
40 County of.....

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.
Matter underlined thus is new matter.

1 Subscribed, sworn to and acknowledged before me
2 by....., the testator and subscribed and sworn to
3 before me by.....and....., witnesses,
4 this.....day of.....

5
6
7 (Signed).....

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11 (Official capacity of officer)

12 (cf: N.J.S.3B:3-4)
13 2. This act shall take effect immediately.

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16 STATEMENT

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18 This bill is intended to make it clear that the execution by a
19 testator and witnesses respectively of the acknowledgment and
20 affidavit provided for in N.J.S. 3B:3-4 is itself sufficient to both
21 execute and attest the will and to make it self-proving. The need
22 for such clarification has become urgent in light of the holding of
23 the New Jersey Supreme Court in In re Ranney (A-67) decided
24 April 30, 1991, that signatures of a testator and witnesses on a
25 self-proving affidavit fail to literally satisfy the requirements of
26 N.J.S. 3B:3-2 as signatures on a will.

27 The bill adopts the current language of Section 2-504 of the
28 Uniform Probate Code, which was amended at the
29 recommendation of the Joint Editorial Board in 1975. Originally,
30 the Uniform Probate Code had authorized only the addition to a
31 signed and witnessed will of acknowledgement of the testator and
32 affidavits of the witnesses, thus requiring the testator and
33 witnesses to sign twice, once on the will itself and once on the
34 self-proving affidavit.

35 The holding in Ranney is contrary to the widespread belief of
36 the legal profession that only the signatures of the testator and
37 witnesses on the self-proving affidavit were required to make a
38 ~~validly executed and self-proved will.~~ The bill clarifies that
39 N.J.S. 3B:3-4, as amended by this bill, shall apply to wills
40 executed on or after September 1, 1978, the effective date of
41 that section as originally enacted.

42 No similar amendment is made to N.J.S. 3B:3-5, so that to
43 make a will self proved subsequent to its execution shall require
44 that it be originally executed in compliance with N.J.S. 3B:3-2.

45
46
47 CIVIL JUSTICE

48
49 Clarifies law with regard to the requirements for making a will
50 self proving.

SENATE, No. 3540

STATE OF NEW JERSEY

INTRODUCED JUNE 13, 1991

By Senators LASKIN, O'CONNOR, AMBROSIO, ORECHIO,
DiFRANCESCO, ZANE and GORMLEY

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8 3B:3-2] on or after September 1, 1978 may be simultaneously
9 executed, attested, and made self-proved, by acknowledgment
10 thereof by the testator and affidavits of the witnesses, each
11 made before an officer authorized pursuant to R.S. 46:14-6, R.S.
12 46:14-7 or R.S. 46:14-8 to take acknowledgments and proofs of
13 instruments entitled to be recorded under the laws of this State,
14 in substantially the following form:

15 I,....., the testator, sign my name to this instrument
16 this.....day of....., 19..., and being duly sworn, do
17 hereby declare to the undersigned authority that I sign and
18 execute this instrument as my last will and that I sign it willingly
19 (or willingly direct another to sign for me), that I execute it as
20 my free and voluntary act for the purposes therein expressed, and
21 that I am 18 years of age or older, of sound mind, and under no
22 constraint or undue influence.

23
24 Testator

25 We,....., the witnesses, sign our names to this
26 instrument, and, being duly sworn, do hereby declare to the
27 undersigned authority that the testator signs and executes this
28 instrument as his last will and that he signs it willingly (or
29 willingly directs another to sign for him), and that each of us, in
30 the presence and hearing of the testator, hereby signs this will as
31 witness to the testator's signing, and that to the best of our
32 knowledge the testator is 18 years of age or older, of sound mind,
33 and under no constraint or undue influence.

34
35 Witness

36
37
38 Witness

39 The State of.....
40 County of.....

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 Subscribed, sworn to and acknowledged before me
2 by....., the testator and subscribed and sworn to
3 before me by.....and....., witnesses,
4 this.....day of.....

5
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9

(Signed).....

10
11

.....
(Official capacity of officer)

12

(cf: N.J.S.3B:3-4)

13

2. This act shall take effect immediately.

14
15

STATEMENT

16
17

18 This bill is intended to make it clear that the execution by a
19 testator and witnesses respectively of the acknowledgment and
20 affidavit provided for in N.J.S. 3B:3-4 is itself sufficient to both
21 execute and attest the will and to make it self-proving. The need
22 for such clarification has become urgent in light of the holding of
23 the New Jersey Supreme Court in In re Ranney (A-67) decided
24 April 30, 1991, that signatures of a testator and witnesses on a
25 self-proving affidavit fail to literally satisfy the requirements of
26 N.J.S. 3B:3-2 as signatures on a will.

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The bill adopts the current language of Section 2-504 of the
Uniform Probate Code, which was amended at the
recommendation of the Joint Editorial Board in 1975. Originally,
the Uniform Probate Code had authorized only the addition to a
signed and witnessed will of acknowledgment of the testator and
affidavits of the witnesses, thus requiring the testator and
witnesses to sign twice, once on the will itself and once on the
self-proving affidavit.

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The holding in Ranney is contrary to the widespread belief of
the legal profession that only the signatures of the testator and
witnesses on the self-proving affidavit were required to make a
validly executed and self-proved will. The bill clarifies that
N.J.S. 3B:3-4, as amended by this bill, shall apply to wills
executed on or after September 1, 1978, the effective date of
that section as originally enacted.

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No similar amendment is made to N.J.S. 3B:3-5, so that to
make a will self proved subsequent to its execution shall require
that it be originally executed in compliance with N.J.S. 3B:3-2.

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CIVIL JUSTICE

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49 Clarifies law with regard to the requirements for making a will
50 self proving.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3540

STATE OF NEW JERSEY

DATED: JUNE 17, 1991

The Senate Judiciary Committee reports favorably Senate Bill No. 3540.

New Jersey's present probate code went into effect September 1, 1978. Under section 3B:3-2 of the probate code, in order for a will to be valid, a will must be signed by the testator and by two witnesses. The clause at the end of a will in which the signatures of the testator and the witnesses appear is commonly referred to as the "attestation" clause.

Under section 3B:3-4 of the probate code, a will is deemed "self-proved" if at the time of execution an affidavit in the form set forth in 3B:3-4 is signed by the testator and the witnesses. The advantage to a will's being "self-proved" is that the will, unless contested, can be admitted to probate without testimony from the subscribing witnesses.

In In Re Ranney decided April 30, 1991, the New Jersey Supreme Court ruled that the signatures of the testator and witnesses on a self-proving affidavit failed to literally satisfy the requirements of the N.J.S.3B:3-2 signatures on a will. In order to clarify this situation, this bill would amend 3B:3-4 to provide that any will executed in or after September 1, 1978 shall be deemed validly executed and self-proved by the testator's and witnesses' signing of the self-proving affidavit. A separate attestation clause would not be required.

HANDBOOK
OF THE
NATIONAL CONFERENCE
OF COMMISSIONERS
ON
UNIFORM STATE LAWS
AND
PROCEEDINGS
OF THE
ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-FOURTH
YEAR



QUEBEC CITY, CANADA
AUGUST 2-8
1975

HEADQUARTERS OFFICE
645 North Michigan Avenue
Chicago, Illinois 60611

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when this form of benefit is provided for an electing spouse by the decedent's plan.

9.

SECTION 2-504. [Self-proved Will.] An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF _____
COUNTY OF _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time, 18 or more years of age, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(Seal) (Signed) _____

(Official capacity of officer)

(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution

occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19____, and being first sworn, declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, _____, the witnesses, sign our names to this instrument, and being first sworn, declare to the undersigned authority that the testator signed and executed this instrument as his last will and that he signed it willingly (or willingly directed another to sign for him), and that each of us, in the presence and hearing of the testator, signs this will as a witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

The State of _____

County of _____

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(Seal) (Signed) _____

(Official capacity of officer)

(b) An attested will at any time after its execution may be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the

official seal, attached or annexed to the will in substantially the following form:

The State of _____

County of _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first sworn, declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he signed willingly (or willingly directed another to sign for him), that he executed it as his free and voluntary act for the purposes therein expressed, that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of our knowledge the testator was at that time 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to, and acknowledged before me by _____
_____, the testator, and subscribed and sworn to before me by
_____, and _____, witnesses, this
_____ day of _____.

(Seal) (Signed) _____

(Official capacity of officer)

ADDED COMMENT

The original text of this section directed that the officer who assisted the execution of a self-proved will be authorized to act by virtue of the laws of "this State", thereby restricting this mode of execution to wills offered for probate in the state where they were executed. Also, the original text authorized only the addition to an already signed and witnessed will, of an acknowledgment of the testator and affidavits of the witnesses, thereby requiring testator and witnesses to sign twice even though the entire execution ceremony occurred in the presence of a notary or other official. In 1975, the Joint Editorial Board recommended the substitution of new text that eliminates these problems.