

## WILLS AND DECEDENTS' ESTATES: WILLS - PROBATE.

**Officer's acknowledgment clause that refers to testator and witnesses identified in and subscribing to certificate does not render certificate invalid for purposes of authenticating will.**

The Honorable William J. Howell

Member, House of Delegates

December 8, 1998

You ask whether a particular form of certificate satisfies the requirements of § 64.1-87.1 of the *Code of Virginia*.

Section 64.1-87.1 provides that a will may be made self-proved by annexing to the will a certificate executed by the testator and two witnesses before an officer authorized to administer oaths. The officer's certificate is to be "substantially ... in form and content" like the certificate set out in § 64.1-87.1.<sup>1</sup>

The only difference between the form set out in § 64.1-87.1 and the form about which you inquire is in the acknowledgment clause to be signed by the officer administering the oath. While the acknowledgment clause in the form you submit states that the certificate was subscribed, sworn and acknowledged by the testator and witnesses before a notary public for the Commonwealth, on a particular day, month and year, the clause does not contain spaces for the names of the testator and witnesses.

The self-proving certificate in § 64.1-87.1 "has no purpose other than to authenticate the will to which it is attached or of which it is a part."<sup>2</sup> This purpose is satisfied by a certificate that contains the statements needed to authenticate the will and that is substantially in the form set out in § 64.1-87.1.<sup>3</sup> It is my opinion that the certificate about which you inquire substantially conforms with the requirements of § 64.1-87.1. The certificate contains the names of the testator and the witnesses in the body of the certificate and the signatures of the testator and witnesses at the end of the certificate. That the officer's acknowledgment clause does not restate the names of the testator and witnesses, but rather refers to them as "Testator" and "Witnesses," does not, in my view, render the form invalid for purposes of § 64.1-87.1. It is clear that the terms "Testator" and "Witnesses" refer to the persons identified in and subscribing to the certificate.

<sup>1</sup>Section 64.1-87.1 sets out the following certificate:

"Before me, the undersigned authority, on this day personally appeared ....., ....., and ....., known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, ....., the testator, declared to me and to the witnesses in my presence that said instrument is his last will and testament and that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will and testament in the presence of said witnesses who, in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at

the time of the execution of said will, was over the age of eighteen years and of sound and disposing mind and memory.

".....

"Testator

".....

"Witness

".....

"Witness

"Subscribed, sworn and acknowledged before me by ....., the testator, and subscribed and sworn before me by ..... and ....., witnesses, this .... day of ....., A.D., .....

"SIGNED .....

".....

"(OFFICIAL CAPACITY OF OFFICER)"

<sup>2</sup>1991 Op. Va. Att'y Gen. 207, 209; see also 1982-1983 Op. Va. Att'y Gen. 766, 768 (witnesses subscribe will to establish genuineness of testator's signature and sign self-proving affidavit to prove that will was signed, executed and acknowledged by testator).

<sup>3</sup>Pursuant to § 64.1-49, a will must be signed by the testator, with the signature made or the will acknowledged by the testator in the presence of two witnesses, who are present at the same time and who subscribe the will in the presence of the testator.