

## COVID-19 And Estate Planning

### **Estate Planning Is Possible In A Socially Distanced Environment**

In light of the ongoing COVID-19 pandemic, are you leery about visiting your advisor's office to attend to estate planning documents? You're not alone. But how do you plan your estate and execute critical documents if you're uncomfortable with face-to-face meetings or are required to self-quarantine? The good news is that you have options.

#### **Meeting Remotely vs. In-Person**

It can be argued that estate planning is more important now than ever before. Fortunately, many estate planning activities may be doable from the safety of your own home.

Bear in mind that there are definite advantages to meeting with your advisor in person to talk about creating or updating your estate plan. But these discussions can be conducted in video conferences or phone calls, and document drafts can be transmitted and reviewed via email, secure online portals or even traditional "snail mail."

#### **Signing Documents**

Traditionally, estate planning documents are executed in an attorney's office in the presence of witnesses and a notary public. In-office document signings may still be possible with appropriate precautions, such as wearing masks and practicing social distancing. But there are other options that allow you to avoid traveling to an attorney's office and that minimize the number of people involved. The options available depend in part on the type of document being signed.

In most states, a typewritten will (as well as a modification or codicil to an existing will) must be signed in the physical presence of at least two witnesses. Typically, those witnesses must be disinterested — that is, they don't stand to inherit or otherwise benefit under the will. But some states permit family members or other interested parties to serve as witnesses.

In those states, it may be possible to conduct a will signing at home (with instructions from your attorney) and have members of your household witness it. If disinterested witnesses are required, you might have friends or neighbors observe the signing from a safe distance (in your backyard, for example). In some states a will can be valid without witnesses, if “clear and convincing” evidence is provided in court, after the will-maker’s death, to prove its validity.

What about notarization? In some states wills are notarized as a best practice, but in most states it’s not required. However, wills are often accompanied by a self-proving affidavit, which must be notarized. A self-proving affidavit is a sworn statement, signed by the will-maker and witnesses, that affirms the will’s validity. It’s not required, but it can streamline the probate process. One strategy for avoiding the presence of a notary (assuming online notarization isn’t an option in your state) is to sign the will without a notary and then arrange for the parties to sign a self-proving affidavit in front of a notary when it’s safer to do so.

Another option in some states is a “holographic,” or handwritten, will, which generally doesn’t require witnesses or notarization.

In many states, you can sign a trust document without witnesses or notarization, and it may even be possible to sign it electronically. One potential strategy for avoiding traditional will-signing requirements is to sign a holographic “pour over” will that transfers all assets to a revocable trust, which can accomplish many of the same objectives as a traditional will.

### **Using Powers Of Attorney And Health Care Directives**

Finally, depending on your state, it may be possible to sign a valid durable power of attorney (for financial or legal matters) without witnesses or notarization. This isn’t advisable, however, since notarization usually confers presumptive validity, making it more likely that the document will be accepted by financial institutions or other third parties.

Health care powers of attorney or advance directives generally must be signed in front of witnesses. However, typically they're not required to be notarized.

## Exploring Your Options

In a time of social distancing, it may be tempting to explore one of the many do-it-yourself (DIY) tools for creating an estate plan. Software or online tools that automate the creation of wills, trusts and other documents have a certain appeal, but they also present some significant risks.

Before you turn to DIY estate planning tools, talk to your estate planning advisor. They may have options available to you so that you can feel safe while attending to your estate plan.

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