



ESTATE & TRUST SECTION MARYLAND STATE BAR ASSOCIATION

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PRACTITIONER'S GUIDE TO REMOTE WITNESSING IN MARYLAND & BEST PRACTICE IDEAS

Legal Authority: Governor Hogan's Executive Order No. 20-04-10-01
Authorizing Remote Witnessing and Electronic Signing of Certain Documents

What You Need To Know: Pursuant to the Governor's Order, the in-person witnessing requirements of a will (ET Sec. 4-102), power of attorney (ET Sec. 17-110) and advance directive (HG Sec. 5-602) are suspended.

Expiration Date of the Order: When the State of Emergency due to COVID-19 has been terminated and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.

Key Definitions:

"Electronic Presence" = the relationship between two or more individuals in different physical locations who can observe one another and communicate to the same extent as if the individuals were physically present in the same location.

"Electronic Signature" = a visible electronic mark attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

"Remote Witnessing" = to witness the execution of a document by a person who is in the Electronic Presence, but not the physical presence of the witness.

"Supervising Attorney" = an individual who has been admitted to practice law before the courts of this State and is in good standing.



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Requirements for Remote Witnessing of Documents:

- The witness shall be in the Electronic Presence of the Signer;
- The witness shall be a resident of the State of Maryland and be physically located in the United States at the time the execution of the document is witnessed;
- The Signer and all witnesses shall be in the physical presence or Electronic Presence of one another and a Supervising Attorney, who shall not be one of the witnesses;
- The Signer and witnesses shall sign one or more counterparts of the same document, or affix their electronic signatures to it; and
- The Supervising Attorney shall create a certified copy of the document, which shall be deemed to be the original of the document, and shall contain all pages of the document, the original signature or electronic signatures of the Signer and all witnesses, and a certification of the Supervising Attorney saying that:
 - The Supervising Attorney took reasonable steps to verify:
 - That the copy of the document is a true, complete and accurate copy of the document signed by the Signer;
 - That the signatures contained in the copy are either the original signatures or electronic signatures of the Signer and each of the witnesses;
 - The identity of the Signer, and that the Signer was a resident or domiciliary of, or was physically located in, this State at the time the Signer signed the document; and
 - The identity of each witness, and that the witness was a resident of this State at the time the witness signed the document; and
 - The document was remotely witnessed in reliance on the Order of the Governor of the State of Maryland Number 20-04-10-01, dated April 10, 2020, Authorizing Remote Witnessing and Electronic Signing of Certain Documents.



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Best Practice Ideas

The following are best practice ideas if the remote witnessing procedure described above is not utilized. Disclaimer: The following are merely suggestions based on anecdotal evidence from practitioners. Use good judgment and take proper precautions to protect yourself and your staff.

1. Defer non-emergency document executions until later when social distancing restrictions are relaxed.
2. Send detailed written instructions to the Client for executing documents. Instruct them to return signed copies. Review for proper execution in case re-execution becomes necessary.
3. Consider "drive-thru" signing where documents are brought to the office by vehicle. Using protective gear (i.e., gloves, hand sanitizer, etc.) pre-printed documents in an envelope are given to the Client. Client, with his/her own writing utensil, executes all documents in the presence of witnesses and returns the documents in said envelope. Witnesses and notary with protective gear sign/notarize the document(s). Documents are then taken inside the law office for copies and originals sent to the Client.
4. Have documents executed using a conference room or office with glass window barriers. Using protective gear, wipe down surfaces before and after meeting. (Consider developing a set of questions to ask the Client before agreeing to meet the Client to confirm that they do not have symptoms, have not been diagnosed with the virus, have not been in contact with anyone who has been diagnosed with the virus, has not recently travelled, etc.)
5. Include a release for the Client to sign if the Client elects to have documents signed in the physical presence of the attorney and staff.
6. If execution of a document is critical, use the best witnesses and processes available; documenting what was done and why and re-execute at a later date.
7. If the attorney has no prior relationship or experiences with Client, the attorney may need to be on high alert for potential undue influence.
8. For any Client who has been diagnosed with the virus – attorney or staff meeting with the Client either via drive-thru or in person is not recommended.