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SIGNING LEGAL DOCUMENTS IN QUARANTINE

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Signing Legal Documents In Quarantine

by David Silver

We are all aware of the need to practice social distancing during this COVID-19 crisis, especially for those among us who are elderly, have pre-existing conditions, or otherwise have a higher risk of a severe outcome to the disease. However, there are some situations that make social distancing impossible, such as executing certain legal documents. For example, a deed or a Power-of-Attorney is not valid unless it is notarized, and a Self-Proving-Will requires two witnesses and a notary to be physically present when the document is signed. While phone conferences, video chats, email, and the U.S. Postal Service can usually facilitate the drafting and finalizing of most legal documents, the documents still need to be properly executed in order to be effective. How can a high-risk person in self-quarantine sign these extremely important legal documents without risking exposure?

On May 4, 2020, North Carolina enacted a law allowing for a Notary to perform notarization using video conference technology. This authorization is temporary, with a current expiration date of August 1, 2020.

In order to comply with the law, the video conference must be live, meaning that you cannot simply take a video of someone signing a document and send it to a Notary. The video must be able to be recorded, even though a recording is not necessary. The audio and video must be clear enough that the Notary can hear and understand all of the participants and the Notary must have an unobstructed view of each participant. If the person signing is not personally known to the Notary, then the Notary must be shown a form of identification that includes a picture and contains the person's signature and includes a physical description. A North Carolina Driver's license will meet all of these requirements, but a Passport will not since it lacks a physical description. If a witness is required, the witness must sign after the signor but while the real-time video between the signer and the witness is still open. Finally, the person signing, each witness and the Notary must all be physically present in North Carolina.

The documents must be faxed or electronically transmitted by the signor (or a designee) to the Notary the same day it is signed, and the Notary will print it, notarize it, and electronically transmit it back to the signor on the same day. Even if the Notary provides a video device and waits outside in the parking lot of a hospital or a nursing home, the statute requires that it be electronically transmitted (the drafters were in a hurry and could not think of everything), I suggest the Notary scan

and email it to him/herself. If the Notary is required to notarize the original document, it must still be faxed or transmitted to the Notary on the same day it is signed so the Notary can compare the copy to the original whenever it is eventually received before it is notarized. The Notary will be required to utilize special language in the Notarization statement and the Notary will have to maintain a log of all emergency video notarizations for ten years.

While there are many dangers and potential abuses to allowing this type notarization, it should help those at high risk and those in quarantine (i.e. nursing homes and hospitals) be able to execute legal documents that can give them peace of mind and make it easier for their loved ones to provide them with assistance.

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