

Planning Ahead



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Estate Plan Signing While “Safer at Home”

Even before the coronavirus pandemic, California has not kept up with electronic execution of Wills and other Estate Planning documents. And while emergency orders in a handful of states now permit a notary to acknowledge a document without an in-person meeting with the signer, California is not one of them. Excuse the pun, but California Estate Planning attorneys live by the adage “where there’s a ‘Will’, there’s a way!”

In California, your Will must still be personally signed. You cannot sign a Will by DocuSign or other e-signature method. You cannot type out a Will on your computer, phone, or iPad without printing it out and signing it. And unless the Will is written in your own handwriting, it must also be signed by 2 witnesses. Some states require a Will to be notarized, but not in California – we still need 2 witnesses.

Although it is standard practice to have a Trust and many other Estate Planning documents notarized, there are only a few documents that require a notary to be effective. For example, there is no legal requirement that a Trust be notarized. Compare a Durable Power of Attorney using the statutory form (the form most commonly used and recognized) which must be notarized. Note that a Durable Power of Attorney other than the statutory form is valid with 2 signatures. An Advance Health Care Directive can be notarized but if a notary is not available, it is valid with 2 signatures instead. Other documents that require a notary are Deeds and Certifications of Trust.

Finding a notary or even obtaining 2 witnesses can be a challenge under current circumstances. Estate Planning attorneys are finding “work arounds” to assist their clients with proper execution. Signings are happening with face masks and gloves at “Safe Distance” on the porch at the client’s home or at the street curb outside the attorney’s office. For clients in a nursing facility unable to receive visitors, with generous assistance of nursing home staff, attorneys are presiding over signings outside the window, communicating with the client inside by phone. Even under “Safer At Home” directives, attorneys are creatively overcoming obstacles to make sure their clients’ Estate Plan documents are properly executed, witnessed, and notarized, as applicable.

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