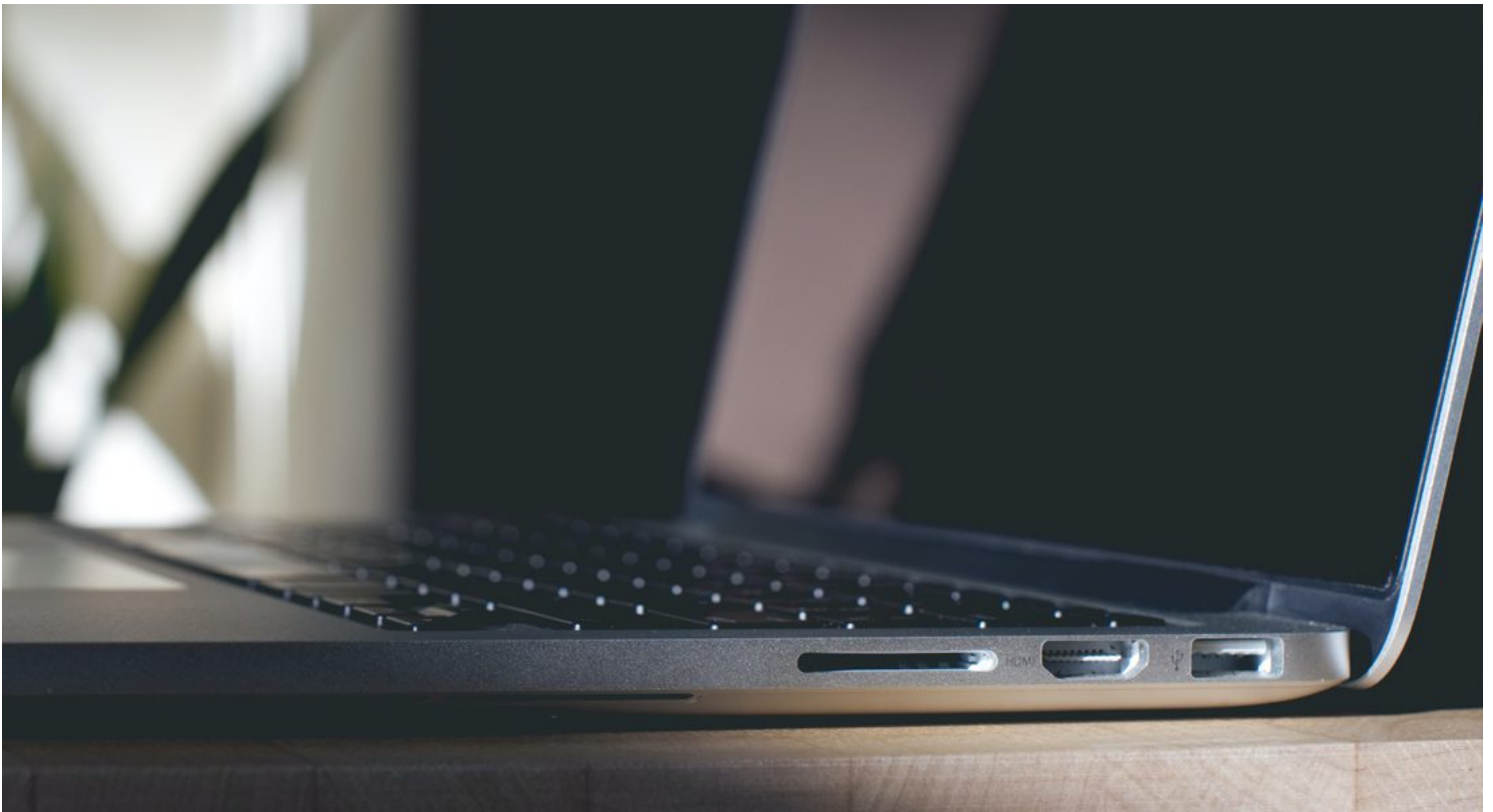


NEWS & INSIGHTS

Remotely signing estate planning documents in Pennsylvania during the COVID-19 pandemic

BY: [SCOTT ALAN MITCHELL](#) | [INSIGHTS](#) | [ARTICLE](#)

APRIL 20, 2020



The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

During these challenging and uncertain times, many people are understandably taking the time to review their

estate planning documents. Saxton & Stump remains as flexible as possible within the framework of the government orders to help clients address their estate planning needs. However, many of these documents require signing in the presence of a witness and notary, leaving many wondering how to sign these types of legal documents during the Pennsylvania-wide stay-at-home order.

Legal signatory requirements

First, it's important to consider that various legal documents have different requirements for execution in Pennsylvania, as follows:

- **Health Care Power of Attorney/Advance Directive/Living Will - two witnesses must sign, but notarization is not required.**
- **General or Financial Power of Attorney - two witnesses must sign in the presence of a notary.**
- **Will - neither witnesses nor a notary is required. (However, if the individual is unable to sign and directs another to sign on his/her behalf, two witnesses are required.) To probate a Will signed without two witnesses and a notary requires two people who are familiar with the individual's signature to sign an affidavit at the time of probate. In other words, notarization can be exchanged for additional paperwork at the time of probate during the COVID-19 restrictions.**
- **Deed - notarization is required for a Deed to be recorded.**

Notarization

Notary law requires a person signing a document to physically appear before the notary (or an affirming attorney) in order for the document to be notarized. The same has generally been assumed to be true regarding witnesses. Under the current stay-at-home orders, non-life-sustaining businesses operating remotely, and long-term care facilities prohibiting visitors, the question remains as to how to execute estate planning documents.

Due in large part to the vocal concerns of estate planning attorneys and other practitioners, there is currently a [temporary suspension](#) of Pennsylvania law requiring notaries to be physically present when documents are signed as long as certain requirements are met. On April 14, the Pennsylvania General Assembly passed [Senate Bill 841](#), which, among other things, proposes to authorize notaries to use communication technology to perform notarial acts remotely under certain provisions, including that the Department of State is notified of the intent to perform those services. The Bill is presently awaiting Governor Tom Wolf's review and approval.

These legislative steps point to what will no doubt become customary practice over time, but the legislation may be out ahead of the practical application. Remote notarization requires the use of a software vendor approved by the Pennsylvania Department of State. Under this program, an electronic connection between the client and a Pennsylvania-certified "e-notary" is established to allow for e-notarization and e-signature for a fee. For the most part, the few approved software vendors are overwhelmed with inquiries and are limiting their application to real

estate and mortgage transactions.

E-notarization of estate planning documents can be done, but it is cumbersome, relatively costly and requires the client to have adequate technology and skill. For estate planning attorneys, the new e-notary law is an inadequate solution to the current problem. Therefore, Saxton & Stump continues to support clients in the signing of estate planning documents during this unprecedented time when these services are needed most.

Partner with trusted legal counsel

We look forward to meeting with you virtually or by phone call to review and revise your existing estate plan, prepare Powers of Attorney, prepare Healthcare Directives and Living Wills, prepare new Wills and/or Trusts, or to review and update beneficiary designations. Our team also has a unique focus on addressing special needs and long-term care planning matters. Saxton & Stump attorneys [Scott Mitchell](#) and Brandon Conrad are available to further discuss your needs and how our [Trusts and Estates Group](#) can provide support for individuals and families on estate plans and discuss your options for signing documents during the COVID-19 pandemic.

Related People

[Scott Alan Mitchell](#)

Related Services and Industries

[Trusts and Estates](#)